

# HOUSE JOURNAL

---

---

SEVENTY-EIGHTH LEGISLATURE, REGULAR SESSION

---

---

## PROCEEDINGS

SEVENTY-FIFTH DAY — FRIDAY, MAY 23, 2003

The house met at 11:45 a.m. and was called to order by the speaker pro tempore.

The roll of the house was called and a quorum was announced present (Record 663).

Present — Mr. Speaker; Allen; Alonzo; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Absent, Excused — Bailey; Riddle.

## LEAVES OF ABSENCE GRANTED

On motion of Representative Reyna and by unanimous consent, all members who were granted leaves of absence on the previous legislative day were granted leaves for this legislative day.

## RULES SUSPENDED

Representative Reyna moved to suspend all necessary rules in order to take up and consider at this time, on third reading and final passage, the bills on the local, consent, and resolutions calendar which were considered on the previous legislative day.

The motion prevailed without objection.

### **MOTION FOR ONE RECORD VOTE**

On motion of Representative Reyna and by unanimous consent, the house agreed to use the first record vote taken for all those bills on the local, consent, and resolutions calendar that require a record vote on third reading and final passage, with the understanding that a member may record an individual vote on any bill with the journal clerk.

#### **LOCAL, CONSENT, AND RESOLUTIONS CALENDAR THIRD READING**

The following bills which were considered on second reading on the previous legislative day on the local, consent, and resolutions calendar were laid before the house, read third time, and passed by the following record vote (members registering votes and the results of the vote are shown following bill number).

(Record 664): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Turner(C).

Absent, Excused — Bailey; Riddle.

Absent — Noriega.

#### **STATEMENT OF VOTE**

When Record No. 664 was taken, I was in the house but away from my desk. I would have voted yes.

Noriega

**HB 1756**

**HB 3574**

**HB 3587**  
**HB 3606**  
**HB 3608**  
**HB 3629**  
**SB 253**  
**SB 367**  
**SB 368**  
**SB 369**  
**SB 370**  
**SB 371**  
**SB 372**  
**SB 381**  
**SB 407**  
**SB 607**  
**SB 704**  
**SB 721**  
**SB 822**  
**SB 892**  
**SB 899**  
**SB 919**  
**SB 1070**  
**SB 1072**  
**SB 1211**  
**SB 1326**  
**SB 1356**  
**SB 1418**  
**SB 1429**  
**SB 1457**  
**SB 1489**  
**SB 1565**  
**SB 1572**  
**SB 1574**  
**SB 1581**  
**SB 1606**

**SB 1639**

**SB 1647**

**SB 1669**

**SB 1892**

**SB 1884**

The following bills which were considered on second reading on the previous legislative day on the local, consent, and resolutions calendar were laid before the house, read third time, and passed by voice vote (members registering votes are shown following bill number):

**HB 3582**

**HB 3594**

**HB 3598**

**HB 3602**

**HB 3610** (Krusee recorded voting present, not voting)

**HB 3614**

**HB 3615**

**HB 3616**

**HB 3617**

**HB 3618**

**HB 3619**

**HB 3620**

**HB 3621**

**HB 3622**

**HB 3635**

**HB 3636**

**HB 3569**

**HB 3601**

**SB 349**

**SB 374**

**SB 526**

**SB 533**

**SB 608**

**SB 611**

**SB 692**

**SB 719**

**SB 745**

**SB 774**

**SB 804**

**SB 842**

**SB 861**

**SB 965**

**SB 995**

**SB 1018**

**SB 1022**

**SB 1071**

**SB 1136**

**SB 1251**

**SB 1282**

**SB 1439**

**SB 1464**

**SB 1504**

**SB 1526**

**SB 1527**

**SB 1552**

**SB 1663**

**SB 1694**

#### **MOTION TO CONFORM CAPTIONS**

Representative Reyna moved to conform the captions of the senate bills taken up in lieu of the house bills to the house bills' caption.

The motion prevailed without objection.

#### **MOTION TO CHANGE JOURNAL**

Representative Bonnen moved to strike the motion to print the dialogue between Representative Dunnam and Representative Taylor from the house journal of Day 74, Thursday, May 22.

The motion prevailed without objection.

#### **HR 777 AND HR 748 - MOTION TO ADD NAMES**

On motion of Representative Hodge, the names of all the members of the house were added to **HR 777** and **HR 748** as signers thereof.

#### **POSTPONED BUSINESS**

The following bills were laid before the house as postponed business:

**SB 597 ON SECOND READING**  
**(Pitts and Flores - House Sponsors)**

**SB 597**, A bill to be entitled An Act relating to the regulation of certain companies that provide for-profit legal service contracts; providing penalties.

**SB 597** was read second time on May 19 and was postponed until 1:00 p.m., May 22.

**Amendment No. 1 (Committee Amendment No. 1)**

On behalf of Representative Eissler, Representative Pitts offered the following committee amendment to **SB 597**:

Amend **SB 597** as follows:

(1) On page 10, between lines 13 and 14, insert the following:

Sec. 953.105. ADDITIONAL FINANCIAL SECURITY REQUIREMENTS. (a) The executive director shall annually review:

(1) the audited financial statements of a company; and

(2) a certified statement describing the company's reserves, if any.

(b) The statement described by Subsection (a)(2) must be made by an actuary who is a member in good standing of the American Academy of Actuaries.

(c) After reviewing the information described by Subsection (a), the executive director may require a company to maintain certain reserves in order for the company to obtain or maintain the company's registration.

(2) On page 10, line 14, strike "953.105" and substitute "953.106".

Amendment No. 1 was adopted without objection.

**SB 597**, as amended, was passed to third reading.

**CSSB 14 ON SECOND READING**

**(Smithee, Seaman, Eiland, Bonnen, Gallego, et al. - House Sponsors)**

**CSSB 14**, A bill to be entitled An Act relating to the regulation of residential property and commercial and personal automobile insurance; providing a criminal penalty.

**CSSB 14** was read second time on May 21, amended, postponed until 9 a.m., May 22, amended, and was again postponed until 9 a.m. today.

**Amendment No. 34**

Representative Mabry offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

(1) On page 14, line 16, between "counsel" and "may" insert ", an insured, and any other interested person".

(2) On page 17, line 24, in the title of the section, between "Counsel" and the period, insert "AND THE PUBLIC".

(3) On page 17, line 25, between "counsel" and "may" insert ", an insured, or any other interested person".

(5) On page 18, line 2, between "counsel," and "not" insert "an insured, or any other interested person,".

(5) On page 18, before line 8, insert a new subsection (c) as follows:

(c) To ensure public participation, the commissioner shall publish on its website, in a conspicuous manner, a listing of each rate filing within three days after the filing and make a copy of the filing available to the public at that time. The insurer shall file an exact copy of its entire rate filing for this purpose.

(6) On page 18, before line 8, insert a new subsection (d) as follows:

(d) If the public counsel, an insured, or any other interested person objects to the rate filing, the Commissioner shall not approve the filing, if at all, until after a hearing at the State Office of Administrative Hearings.

(7) On page 18, line 14, between "counsel" and "may" insert ", an insured, or any other interested person".

(8) On page 47, after line 8, insert a new subsection (r) as follows:

(r) To ensure public participation, the commissioner shall publish on its website, in a conspicuous manner, a listing of each rate filing within three days after the filing and make a copy of the filing available to the public at that time. The insurer shall file an exact copy of its entire rate filing for this purpose. If an insured or any other interested person objects to a filing under this Section, the Commissioner shall hold a hearing at the State Office of Administrative Hearings on the objection. An insured and any other interested person may participate in any hearing or arbitration held under this Section and any appeal of an order under this Section.

(9) In Article 4, add a new SECTION, appropriately numbered, to read as follows:

SECTION 4. \_\_\_\_\_. Section 7, Article 5.13-2, Insurance Code, is amended by adding a new subsection (d) to read as follows:

(d) To ensure public participation, the commissioner shall publish on its website, in a conspicuous manner, a listing of each filing for personal automobile or residential property insurance under this Article within three days after the filing and make a copy of the filing available to the public at that time. The insurer shall file an exact copy of its entire rate filing for this purpose. If an insured or any other interested person objects to a filing under this Article, the Commissioner shall hold a hearing at the State Office of Administrative Hearings on the objection. An insured and any other interested person may participate in any hearing or arbitration held under this Article and any appeal of an order under this Article.

(10) On page 37, line 8, between "counsel" and "may" insert ", an insured, or any other interested person".

(11) On page 38, before line 17, add a new subsection to the statute to read as follows:

Sec. 7. If an insured or any other interested person objects to an underwriting guideline, the Commissioner shall hold a hearing at the State Office of Administrative Hearings on the objection. An insured and any other interested person may participate in any hearing held under this Article and any appeal of an order under this Article. After the hearing, the Commissioner may disapprove any underwriting guideline used by the insurer.

(12) Add a new SECTION to Article 6, numbered accordingly, as follows:

SECTION 6. \_\_\_\_\_. Chapter 827, Insurance Code, is amended by amending Section 827.005 to add a new subsection (c) to read as follows:

(c) If an insured or any other interested person objects to a withdrawal plan, the Commissioner shall hold a hearing at the State Office of Administrative Hearings on the objection. An insured and any other interested person may participate in any hearing held under this Article and any appeal of an order under this Article.

Representative Smithee moved to table Amendment No. 34.

A record vote was requested.

The motion to table prevailed by (Record 665): 88 Yeas, 49 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chavez; Chisum; Christian; Cook, B.; Cook, R.; Crabb; Davis, J.; Dawson; Delisi; Denny; Driver; Eiland; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Kuempel; Laubenberg; Madden; Marchant; McCall; McReynolds; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Capelo; Castro; Coleman; Davis, Y.; Dukes; Dunnam; Edwards; Escobar; Farrar; Flores; Gallego; Garza; Geren; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Hopson; Jones, J.; Laney; Lewis; Mabry; Martinez Fischer; McClendon; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Rose; Solis; Telford; Thompson; Uresti; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Turner(C).

Absent, Excused — Bailey; Riddle.

Absent — Corte; Crownover; Deshotel; Dutton; Krusee; Luna; Ritter; Smithee; Villarreal.

### STATEMENT OF VOTE

When Record No. 665 was taken, my vote failed to register. I would have voted yes.

Deshotel

### Amendment No. 35

On behalf of Representative Taylor, Representative Bonnen offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:



In SECTION 1.01, sec. 6 DISAPPROVAL OF RATE on page 14, line 25, between "not" and "discriminatory," insert "unfairly."

Amendment No. 35 was adopted without objection.

**Amendment No. 36**

Representative Taylor offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

On page 19 strike lines 10 through 17.

Amendment No. 36 was withdrawn.

**Amendment No. 37**

Representative Bonnen offered the following amendment to **CSSB 14**:

Amend **CSSB 14** on page 19, after line 17, by adding a new Section 20 to added Article 5.142, Insurance Code, to read as follows:

Sec. 20. OPTIONAL PREMIUM DISCOUNT. (a) An insurer that issues a residential property insurance policy in this state may provide a discount in the premiums that would otherwise be charged for the policy if the policyholder has installed a water leak detection system that meets the building and performance standards for mold reduction in Section 430.002, Property Code.

(b) The commissioner shall establish by rule the amount of a premium discount applicable under this section based on sound actuarial principles.

Amendment No. 37 was adopted without objection.

**INTRODUCTION OF GUESTS**

The chair recognized Representative Dunnam who introduced Kelly Goodsheller and Ashley Donahue.

**CSSB 14 - (consideration continued)**

**Amendment No. 38**

Representative Gallego offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, on page 19, by striking lines 18 through page 24, line 4.

Amendment No. 38 was withdrawn.

**Amendment No. 39**

Representative Taylor offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

On page 24 strike lines 5 through 11.

Amendment No. 39 was withdrawn.

**Amendment No. 40**

Representative Mabry offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, house committee printing, as follows:

(1) Insert a new ARTICLE in the bill, to read as follows, and renumber the ARTICLES and SECTIONS of the bill appropriately:

## ARTICLE \_\_\_\_\_. RESIDENTIAL PROPERTY INSURANCE DISCOUNTS

SECTION \_\_\_\_\_.01. Section 6(a), Article 5.33A, Insurance Code, is amended to read as follows:

(a) A person's property qualifies for a homeowners insurance premium reduction if the property:

(1) meets the following minimum specifications:

(A) exterior doors must be solid core doors that are 1-3/8 inches thick and must be secured by dead-bolt locks;

(B) metal doors must be secured by dead-bolt locks;

(C) double doors must meet the specifications provided by Subdivision (1) of this subsection, must have the inactive door secured by header and threshold bolts that penetrate metal strike plates, and in the case of glass located within 40 inches of header and threshold bolts, must have the bolts flush-mounted in the edge of the door;

(D) sliding glass doors must be secured by secondary locking devices to prevent lifting and prying;

(E) dutch doors must have concealed flush-bolt locking devices to interlock upper and lower halves and must be secured by a dead-bolt lock;

(F) garage doors must be equipped with key-operated locking devices; and

(G) windows must be secured by auxiliary locking devices; or

(2) is equipped with an electronic burglar alarm that meets the following requirements:

(A) all exterior structure openings are contacted or the system is equipped with motion detectors or glass breakage sensors;

(B) the system includes an interior and exterior siren;

(C) all equipment is U.L. approved and is monitored by a U.L. approved central station; and

(D) sales, service, installation, and monitoring of the system are done in compliance with Chapter 1702, Occupations Code [~~the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes)~~].

SECTION \_\_\_\_\_.02. This article takes effect September 1, 2003, and applies only to a discount for a policy of homeowners' insurance that is delivered, issued for delivery, or renewed on or after January 1, 2004.

(2) In SECTION 9.37 of the bill, in Subdivision (2) of that SECTION (page 89, line 14, house committee printing), strike "5.33A,".

Amendment No. 40 was withdrawn.

### Amendment No. 41

Representative Gallego offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by striking Section 2.02 (on page 35, line 22 through page 38, line 16) and substituting the following:

SECTION 2.02. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-2V to read as follows:

Article 21.49-2V. Regulation of Underwriting Guidelines.

Sec. 1. DEFINITIONS. In this article:

(1) "Actuarially sound" means the underwriting guideline is shown to differentiate among consumers who have different expected costs associated with the transfer of risk, all other relevant factors being the same. The burden of proof in any proceeding regarding whether an underwriting guideline is actuarially sound shall be on the party that used or intends to use the underwriting guideline to show that the underwriting guideline is actuarially sound.

(2) "Credit scoring" and "insurance scoring" mean an underwriting guideline based in whole or in part on information related to an individual's credit, credit worthiness, credit standing, credit capacity, credit history, payment habits, or financial responsibility.

(3) "Person" means any individual, insurance company, reciprocal or interinsurance exchange, mutual, farm mutual insurance company, capital stock company, fraternal benefit society, local mutual aid association, county mutual insurance company, association, Lloyd's plan company, farm mutual company, and any other legal entity engaged in the business of insurance, including agents.

(4) "Personal automobile insurance" means an automobile insurance policy providing insurance coverages for the ownership, maintenance, or use of private passenger, utility, and miscellaneous type motor vehicles and trailers including mobile homes and recreational trailers, and not primarily used for the delivery of goods, materials, or services, unless such use is in farm or ranch operations and provided that such vehicles are owned or leased by an individual or individuals.

(5) "Residential property insurance" means insurance against loss to real or tangible personal property at a fixed location provided in a homeowners policy, a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(6) "Underwriting guideline" means a rule, standard, marketing decision, guideline, or practice, whether written, oral or electronic, used by an insurer or its agent to examine, bind, accept, reject, renew, nonrenew, cancel, or limit coverages made available to classes of consumers or individual consumers.

Sec. 2. PROHIBITION. No person shall use an underwriting guideline for personal automobile insurance or residential property insurance, other than underwriting guidelines covered in section 3 of this article, without the prior approval of the commissioner. If the commissioner has not issued an order approving the filing within 30 days after the filing of the application, the insurer may request a hearing on the application, to be held at the State Office of Administrative Hearings under Government Code Chapter 2001. The burden of proof in any such hearing shall be on the insurer. The hearings examiner must issue a proposal for decision within 30 days after the filing of the request for a hearing. The hearings examiner's proposed order shall be final unless the commissioner issues a different order within 15 days after the commissioner receives the proposed order.

Sec. 3. PERMISSIBLE UNDERWRITING GUIDELINES. An insurer is not required to obtain the commissioner's approval to use an underwriting guideline that complies with paragraph (1), (2), or (3) of this section:

(1) Underwriting guidelines for personal automobile insurance that are based on the following characteristics:

(A) average miles driven in a year or other specified time period;

(B) accidents in which a person to be insured under the policy can reasonably be considered to have been at fault and which resulted in bodily injury or property damage;

(C) a final conviction in any court in the United States, forfeiture of bond, or payment of a fine or an amount accepted by the court if the conviction, forfeiture or payment was a result of an allegation that a violation of a law regulating the operation of motor vehicles was committed;

(D) the making of a fraudulent insurance claim; or

(E) number of years of driving experience or number of years licensed to drive.

(2) Underwriting guidelines for residential property insurance that are based on the following characteristics:

(A) the physical condition of the property to be insured, provided the underwriting guideline has specific and objective measures to evaluate the hazard;

(B) claim experience on a residential property policy arising out of the owner's negligence;

(C) if a structure to be insured is vacant or unoccupied for more than 60 days;

(D) the making of a fraudulent insurance claim; or

(E) an act of arson.

(3) underwriting guidelines promulgated by the commissioner by rule, if the commissioner determines after a hearing that the underwriting guideline:

(A) is actuarially sound;

(B) promotes the mitigation of losses; and

(C) does not have an adverse impact based on income level.

Sec. 4. PRIOR APPROVAL STANDARDS. The commissioner shall not approve the use of an underwriting guideline unless the underwriting guideline:

(A) is actuarially sound;

(B) promotes the mitigation of losses; and

(C) does not have an adverse impact based on income level.

Amendment No. 41 was withdrawn.

#### **Amendment No. 42**

Representative Geren offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

(1) On Page 35, Line 26, after the semi-colon, add "(1) "Appliance" means a household device operated by gas or electric current, including hoses directly attached to the appliance. The term includes but is not limited to air condition units, heating units, refrigerators, dishwashers, icemakers, clothes washers, clothes dryers, stoves, ovens, water heaters, food warmers, trash compactors, and disposers."

(2) Renumber subdivisions, sections, and cross references appropriately.

(3) On Page 37, Line 7, after the period, add "An underwriting guideline may not have an adverse effect, as defined by Section (1)(1), Article 21.49-2U, because of prior appliance-related claims that have been repaired by generally prudent and acceptable repair methods unless more than three appliance-related claims were filed in the preceding three years against the property to be insured or more than three appliance-related claims were filed in the preceding three years by the applicant."

(4) On Page 37, Line 16, after the period, add "(e) The commissioner shall adopt rules to accomplish the purposes of this section, including rules with regard to the definition of a repaired appliance-related claim."

Amendment No. 42 was withdrawn.

### **Amendment No. 43**

Representative Mabry offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, house committee printing, as follows:

(1) Insert a new ARTICLE in the bill, to read as follows, and renumber the ARTICLES and SECTIONS of the bill appropriately:

ARTICLE \_\_\_\_ . RESIDENTIAL PROPERTY INSURANCE DISCOUNTS

SECTION \_\_\_\_ .01. Section 6(a), Article 5.33A, Insurance Code, is amended to read as follows:

(a) A person's property qualifies for a homeowners insurance premium reduction if the property:

(1) meets the following minimum specifications:

(A) exterior doors must be solid core doors that are 1-3/8 inches thick and must be secured by dead-bolt locks;

(B) metal doors must be secured by dead-bolt locks;

(C) double doors must meet the specifications provided by Subdivision (1) of this subsection, must have the inactive door secured by header and threshold bolts that penetrate metal strike plates, and in the case of glass located within 40 inches of header and threshold bolts, must have the bolts flush-mounted in the edge of the door;

(D) sliding glass doors must be secured by secondary locking devices to prevent lifting and prying;

(E) dutch doors must have concealed flush-bolt locking devices to interlock upper and lower halves and must be secured by a dead-bolt lock;

(F) garage doors must be equipped with key-operated locking devices; and

(G) windows must be secured by auxiliary locking devices; or

(2) is equipped with an electronic burglar alarm that meets the following requirements:

(A) all exterior structure openings are contacted or the system is equipped with motion detectors or glass breakage sensors;

(B) the system includes an interior and exterior siren;

(C) all equipment is U.L. approved and is monitored by a U.L. approved central station; and

(D) sales, service, installation, and monitoring of the system are done in compliance with Chapter 1702, Occupations Code [~~the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes)~~].

SECTION \_\_\_\_02. This article takes effect September 1, 2003, and applies only to a discount for a policy of homeowners' insurance that is delivered, issued for delivery, or renewed on or after January 1, 2004.

(2) In SECTION 9.37 of the bill, in Subdivision (2) of that SECTION (page 89, line 14, house committee printing), strike "5.33A,".

Amendment No. 43 was adopted without objection.

#### **Amendment No. 44**

Representative Rodriguez offered the following amendment to **CSSB 14**:

Amend **CSSB 14** (House Committee Printing), in ARTICLE 2 of the bill, by adding the following appropriately numbered SECTION and renumbering existing SECTIONS accordingly:

SECTION 2.\_\_\_\_\_. Subchapter E, Chapter 38, Insurance Code, is amended by adding Section 38.208 to read as follows:

Sec. 38.208. PUBLIC INFORMATION. (a) Notwithstanding Section 552.110, Government Code, all information, including information categorized by zip code, collected by the department under this subchapter regarding the number of policies written by an insurer, the number of vehicles covered by an insurer, the number of premiums collected by an insurer, the amount of membership fees collected by an insurer, and the number of cancellations issued by an insurer:

(1) is public information;

(2) is not confidential and is not subject to any exceptions to disclosure under Chapter 552, Government Code; and

(3) cannot be withheld from disclosure under any other law.

(b) This section applies to any insurer authorized to write personal automobile insurance or residential property insurance in this state, including a reciprocal or interinsurance exchange, a county mutual insurance company, and a Lloyd's plan.

Amendment No. 44 was adopted without objection.

#### **Amendment No. 45**

Representatives Wolens and Eiland offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, in ARTICLE 7 of the bill, by inserting a new SECTION 7.02 in the bill (page 60, after line 27, house committee printing), to read as follows:

SECTION 7.02. Section 3, Article 21.21-6, Insurance Code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 3. UNFAIR DISCRIMINATION DEFINED. "Unfair discrimination" means:

(a) Refusing to insure; refusing to continue to insure; limiting the amount, extent, or kind of coverage available; or charging an individual a different rate for the same coverage because of race, color, religion, or national origin;

(b) Refusing to insure; refusing to continue to insure; limiting the amount, extent, or kind of coverage available; or charging an individual a different rate for the same coverage because of:

(1) the age, gender, marital status, or geographic location of the individual;

(2) the individual's occupation or income;

(3) the fact that another insurer has canceled, non-renewed, or refused to insure the individual for any reason other than non-payment of premium; or

(4) the fact that the individual was previously insured by a non-standard company; however, nothing in this paragraph shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits;

(c) Refusing to insure; refusing to continue to insure; limiting the amount, extent, or kind of coverage; or charging an individual a different rate for the same coverage because of disability or partial disability.

Representative Stick moved to table Amendment No. 45.

A record vote was requested.

The motion to table prevailed by (Record 666): 76 Yeas, 67 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Flynn; Gattis; Goodman; Goolsby; Grusendorf; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Isett; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Laubenberg; Madden; Marchant; McCall; Mercer; Miller; Morrison; Mowery; Nixon; Noriega; Paxton; Pitts; Reyna; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; Villarreal; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Capelo; Casteel; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Gallego; Garza; Geren; Giddings; Griggs; Gutierrez; Hamilton; Hochberg; Hodge; Homer; Hopson; Hughes; Jones, D.; Jones, J.; Kuempel; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Naishtat; Oliveira; Olivo; Peña; Phillips; Pickett; Puente; Quintanilla; Ritter; Rodriguez; Rose; Smithee; Solis; Thompson; Turner(C); Uresti; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker.

Absent, Excused — Bailey; Riddle.

Absent — Eissler; Guillen; Raymond; Telford.

### STATEMENT OF VOTE

I was shown voting yes on Record No. 666. I intended to vote no.

T. Smith

#### Amendment No. 46

Representative Solomons offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

(1) Amend **CSSB 14** by renumbering Article 10 as Article 11 and inserting the following as the new Article 10:

SECTION 10.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 145 to read as follows:

#### CHAPTER 145. CERTAIN PROVISIONS IN CONTRACTS

Sec. 145.001 A covenant, promise, agreement, provision or understanding contained in, collateral to, or affecting a contract is void to the extent that it provides or purports to provide to the indemnitee defense or indemnity, or both, to a person against loss or liability for damage that:

(1) is caused by or results from the sole or concurrent negligence or fault (including strict liability and gross negligence or malice) of the indemnitee, his agent or employee, or other independent contractor of the indemnitee other than the indemnitor; and

(2) arises from:

(A) personal injury or death;

(B) property damage;

(C) a fine, penalty, administrative action, or other action assessed by a governmental entity directly against the indemnitee, its agent or employee, or other independent contractor of the indemnitee other than the indemnitor; or

(D) any other loss, damage or expense that arises from personal injury, death, or property damage.

Sec. 145.002 A covenant, promise, agreement or understanding contained in a contract, or in an agreement collateral to or affecting a contract, that requires a person to provide insurance coverage or does provide insurance coverage is void and unenforceable to the extent that:

(1) the required coverage, including any coverage for an indemnitee as an additional insured, exceeds the limitations and indemnity obligations of this chapter;

(2) is inconsistent, circumvents, or frustrates the prohibitions of this chapter;

(3) it requires an insurance policy to be endorsed to provide a waiver of subrogation; or

(4) it requires an indemnitor to purchase or provide a railroad protective policy, an owners and contractors protective policy, or other similar policy designed to accomplish the same purpose, but only to the extent that such policy exceeds the indemnity obligations of this chapter.



Sec. 145.003. This chapter does not otherwise affect the validity and enforceability of:

(1) an insurance contract; or

(2) benefits and protections under the workers' compensation laws of this state.

Sec. 145.004. The provisions of this section may not be waived by contract or otherwise. Any purported waiver is void.

Sec. 145.005 This chapter prevails over any other law that conflicts with or is inconsistent with this Chapter.

(2) Notwithstanding the provisions of Article 11 or any other provision of this Act, this Article 10 applies to any contract entered into or renewed on or after the effective date of this Act and to any specific, terminable performance of a specific job or activity begun under a contract after the effective date of this Act, including performance under a master or general service agreement, a blanket or maintenance contract, or any similar agreement or contract that purports to provide indemnity to the indemnitee for all or part of the work performed, in whatever form and by whatever name, regardless of whether the agreement or contract was entered into or renewed before the effective date of this Act. Except as noted above, a contract entered into or renewed before the effective date of this Act and any job or activity under the contract begun before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(3) SECTION 10.02. Section 2252.902, Government Code is repealed.

(4) SECTION 10.03. Chapter 130 of the Civil Practice and Remedies Code is repealed.

#### **Amendment No. 46 - Point of Order**

Representative Thompson raised a point of order against further consideration of Amendment No. 46 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair sustained the point of order.

The ruling precluded further consideration of Amendment No. 46.

#### **Amendment No. 47**

Representative Wolens offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

(1) Add a new Article to the bill, appropriately numbered, as follows:

#### **ARTICLE 12. REPEAL OF THE LLOYDS AND OTHER EXEMPTIONS**

SECTION 12.01. The following laws exempting Lloyds plans, reciprocals, interchanges, county mutuals, and farm mutuals from insurance laws in this state are repealed:

(1) Article 5.26(h), Insurance Code;

(2) Article 5.50, Insurance Code;

(3) Section 911.001, Insurance Code, as effective June 1, 2003;

(4) Section 912.002, Insurance Code, as effective June 1, 2003;

(5) Section 912.201, Insurance Code, as effective June 1, 2003;

(6) Section 941.003, Insurance Code, as effective June 1, 2003; and

(7) Section 942.003, Insurance Code, as effective June 1, 2003.

(2) On page 85, strike the amendments to those statutes on lines 16 through page 88, line 27.

Amendment No. 47 was withdrawn.

#### **Amendment No. 48**

Representative E. Jones offered the following amendment to **CSSB 14**:

Amend **CSSB 14** (House Committee Report) by adding the following appropriately numbered ARTICLE to the bill:

ARTICLE \_\_\_\_\_. N.A.I.C. FEES

SECTION \_\_\_\_\_. Section 802.055, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 802.055. COSTS PAID BY INSURANCE COMPANY. ~~(a)~~ An insurance company shall pay all ~~the~~ costs of preparing and furnishing to the National Association of Insurance Commissioners the information required under Section 802.052, including any related filing fees.

~~[(b) Except as provided by Subsection (a), costs relating to providing the information required under Section 802.052 may not be assessed against an insurance company.]~~

Amendment No. 48 was adopted without objection.

#### **Amendment No. 49**

Representative Bonnen offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by adding new SECTIONS appropriately numbered to read as follows:

SECTION \_\_\_\_\_. SECTION 1. Subchapter C, Chapter 5, Insurance Code, is amended by adding Article 5.41-3 to read as follows:

Art. 5.41-3. COMMERCIAL GROUP PROPERTY INSURANCE. (a) An insurer may write commercial group property insurance for a group of businesses or for an association that constitutes a large risk as that term is described by Section 8(f), Article 5.13-2, of this code if:

(1) the members of a group of businesses have clearly identifiable underwriting characteristics; or

(2) the members of an association are engaged in similar undertakings.

(b) An insurer, before using a policy form for a group of businesses or an association described by Subsection (a) of this article in which each member of the group or association is not a large risk as that term is described by Section 8(f), Article 5.13-2, of this code, shall file the policy form with the commissioner. A filing made under this subsection is for informational purposes only.

(c) An insurer, in accordance with Sections 3 through 7, Article 5.13-2 of this code, shall file with the commissioner all rates, supplementary rating information, and pertinent supporting information for commercial group property insurance written under this article in this state.

(d) An insurer filing a policy form or rates and related information under Subsection (b) or (c) of this article shall clearly identify the group of businesses or the association to be insured.

SECTION \_\_\_\_\_. This Act codifies existing industry practices.

Amendment No. 49 was adopted without objection.

### **Amendment No. 50**

Representative Geren offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by adding the following appropriately numbered ARTICLE and renumbering existing ARTICLES of the bill appropriately:

ARTICLE \_\_\_\_\_. RATES FOR PROFESSIONAL LIABILITY INSURANCE  
FOR PHYSICIANS AND HEALTH CARE PROVIDERS

SECTION \_\_\_\_\_.01. Chapter 5, Insurance Code, is amended by adding Subchapter T to read as follows:

SUBCHAPTER T. RATES FOR PROFESSIONAL LIABILITY INSURANCE  
FOR PHYSICIANS AND HEALTH CARE PROVIDERS

Art. 5.161. CONTINGENT ROLLBACK. (a) If a cap on noneconomic damages in health care liability claims becomes constitutional by voter approval of an amendment to the Texas Constitution or is determined to be constitutional by the supreme court, any insurer that delivers, issues for delivery, or renews a policy of professional liability insurance for physicians or health care providers in this state on or after the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional may not charge more for the policy than 85 percent of the amount the insurer charged that insured for the same coverage immediately before the effective date of the constitutional amendment or the date that the cap was determined to be constitutional, or, if the insurer did not insure that insured immediately before that date, 85 percent of the amount the insurer would have charged that insured, provided that the rate was not artificially inflated prior to the determination of constitutionality. An insurer may petition the commissioner for an exception to the rate reduction. A proceeding under this article is a contested case under Chapter 2001, Government Code. The commissioner shall not grant the exception unless the insurer proves by a preponderance of the evidence that the rate reduction is confiscatory. If the insurer meets this evidentiary burden, the commissioner may grant the exception only to the extent that the reduction is confiscatory. The contingent rate rollback required by this article does not apply to a policy or coverage delivered, issued for delivery, or renewed for a public hospital in this state.

(b) If a cap on noneconomic damages in health care liability claims becomes constitutional by voter approval of an amendment to the Texas Constitution or is determined to be constitutional by the supreme court, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the second anniversary of the 30th day after the effective date of the constitutional amendment containing a cap on noneconomic damages in health care liability claims or the date the cap was determined to be constitutional and before the third anniversary of the 30th day

after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 80 percent of the amount the insurer charged or would have charged the insured for the same coverage, provided that the rate was not artificially inflated prior to the determination of constitutionality.

(c) If a cap on noneconomic damages in health care liability claims becomes constitutional by voter approval of an amendment to the Texas Constitution or is determined to be constitutional by the supreme court, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the third anniversary of the 30th day after the effective date of the constitutional amendment containing a cap on noneconomic damages in health care liability claims or the date the cap was determined to be constitutional and before the fourth anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 75 percent of the amount the insurer charged or would have charged the insured for the same coverage, provided that the rate was not artificially inflated prior to the determination of constitutionality.

Amendment No. 50 was withdrawn.

### **Amendment No. 51**

Representative Rose offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by inserting the following appropriately numbered ARTICLE and renumbering appropriately:

ARTICLE \_\_. RATES FOR PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS

SECTION \_\_.01. Chapter 5, Insurance Code, is amended by adding Subchapter T to read as follows:

SUBCHAPTER T. RATES FOR PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS

Art. 5.161. FINDINGS. The legislature finds that:

(1) the cost of professional liability insurance for physicians and health care providers, as defined by Section 1.03(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), has been a significant factor in the reduced availability of health care in this state;

(2) legislation under consideration by the Regular Session of the 78th Legislature should eliminate or significantly reduce the cost of claims under policies of professional liability insurance for physicians and health care providers, and legislation by future legislatures may have the same effect;

(3) while the monetary effect of these legislative changes can be actuarially determined within a reasonable degree of certainty, insurers will delay implementation of rate reductions until they have data evidencing actual loss experience;

(4) delay in implementation of rate reductions will result in a windfall for the insurers benefited by the changes described by this article, and this benefit should be passed on to insureds; and

(5) legislative action in the public interest and within the police power of the state is required to eliminate unnecessary delays to pass these benefits on to the insured physicians and health care providers of this state.

Art. 5.162. SCOPE OF SUBCHAPTER. (a) This subchapter applies to any insurer that is authorized to engage in business in this state and that is authorized to write professional liability insurance for physicians and health care providers, including:

(1) a Lloyd's plan;

(2) a reciprocal or interinsurance exchange;

(3) the joint underwriting association established under Article 21.49-3 of this code; and

(4) a self-insurance trust established under Article 21.49-4 of this code.

(b) It is the intent of the legislature that all insurers, as defined by this article, pass through the savings that accrue from the changes described by Article 5.161 of this code to their policyholders on a prospective basis. To monitor compliance with this legislative directive, the commissioner may require information in rate filings, special data calls, informational hearings, and any other means consistent with other provisions of this code applicable to the affected insurers. Information provided under this subsection is privileged and confidential to the same extent as the information is privileged and confidential under this code or other laws for other insurers described by this article licensed and writing the same line of insurance in this state.

(c) This subchapter applies only to professional liability insurance for physicians and health care providers.

#### Art. 5.163. EQUITABLE RATE REDUCTION

Sec. 1. HEARING. (a) Not later than September 1 of each year, the commissioner shall hold a rulemaking hearing under Chapter 2001, Government Code, to determine the percentage of equitable reductions in insurance rates required on an individual basis of each insurer writing professional liability insurance for physicians and health care providers.

(b) Not later than October 1 of each year, the commissioner shall issue rules mandating the appropriate rate reductions to rates for professional liability insurance for physicians and health care providers and developed without consideration of the effect of the changes described by Article 5.161 of this code.

(c) The commissioner shall set the percentage of the rate reduction for professional liability insurance for physicians and health care providers and may set different rate reductions for different types of policies. The commissioner's order establishing the rate reductions must be based on the evidence adduced at the rulemaking hearing, including the adequacy of the rate at the time of the hearing. Rates resulting from the rate reductions imposed by this article must comply with Section 3(d), Article 5.15-1, of this code.

(d) The rate reductions adopted under this section are applicable to each policy or coverage delivered, issued for delivery, or renewed on and after January 1, 2004, and to each policy or coverage delivered, issued for delivery, or renewed

on and after the 90th day after the date of each subsequent rule adopted under this section. An insurer, as defined by Article 5.162 of this code, shall apply the rate reduction to the rates used by the insurer.

(e) Any rule or order of the commissioner that determines, approves, or sets a rate reduction under this section and is appealed or challenged remains in effect during the pendency of the appeal or challenge. During the pendency of the appeal or challenge, an insurer shall use rates that reflect the rate reduction provided in the order being appealed or challenged. The rate reduction is lawful and valid during the appeal or challenge.

Sec. 2. ADMINISTRATIVE RELIEF. (a) Except as provided by Subsection (b) of this section, a rate filed under Articles 5.13-2 and 5.15-1 of this code for professional liability insurance for physicians and health care providers on and after January 1, 2004, and a rate filed under those articles on and after the 90th day following the effective date of a subsequent rule adopted under Section 1(b) of this article, shall reflect each rate reduction imposed under Section 1 of this article.

(b) Notwithstanding Articles 5.13-2 and 5.15-1 of this code, the commissioner shall, after notice and opportunity for hearing, disapprove a filed rate, without regard to whether the rate complies with Articles 5.13-2 and 5.15-1 of this code, if the commissioner finds that the filed rate does not reflect the rate reduction imposed under Section 1 of this article. A proceeding under this section is a contested case under Chapter 2001, Government Code.

(c) The commissioner may approve a filed rate that reflects less than the full amount of the rate reduction imposed by Section 1 of this article if the commissioner determines based on a preponderance of the evidence presented by an insurer that:

(1) the actual or anticipated loss experience for the insurer's rating classifications is or will be different than the presumptive rate reduction;

(2) the insurer will be financially unable to continue writing in a particular line of insurance;

(3) the rate reduction required under this article would likely result in placing the insurer in a hazardous financial condition described by Section 2, Article 1.32, of this code; or

(4) the resulting rates for the insurer would be unreasonable or confiscatory to the insurer.

Sec. 3. DURATION OF REDUCTION. Unless the commissioner grants relief under Section 2 of this article, each rate reduction required under Section 1 of this article remains in effect for the period specified in the commissioner's rule or order.

Sec. 4. MODIFICATION. The commissioner may, by bulletin or directive, based on the evidence accumulated by the commissioner before the bulletin or directive is issued, modify a rate reduction mandated by the commissioner under this article if a final, unappealable judgment of a court with appropriate jurisdiction stays the effect of, enjoins, or otherwise modifies or declares unconstitutional any legislation described by Article 5.161 of this code on which the commissioner based the rate reduction.

Sec. 5. HEARINGS AND ORDERS. Notwithstanding Chapter 40 of this code, a rulemaking hearing under this article shall be held before the commissioner or the commissioner's designee. The rulemaking procedures established by this section do not apply to any other rate promulgation proceeding.

Sec. 6. PENDING RATE MATTERS. A rate filed pursuant to a commissioner's order issued before May 1, 2003, is not subject to the rate reductions required by this article before January 1, 2004.

Sec. 7. RECOMMENDATIONS TO LEGISLATURE. The commissioner shall assemble information, conduct hearings, and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of this article and to report findings and recommendations to the legislature.

Art. 5.164. CONTINGENT ROLLBACK. (a) If a \$250,000 cap on noneconomic damages in all health care liability claims, without exception, becomes constitutional by voter approval of an amendment to the Texas Constitution or is determined to be constitutional by the supreme court, an insurer, as defined by Article 5.162 of this code, that delivers, issues for delivery, or renews a policy of professional liability insurance for physicians or health care providers in this state on or after the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional may not charge more for the policy than 85 percent of the amount the insurer charged that insured for the same coverage immediately before the effective date of the constitutional amendment or the date that the cap was determined to be constitutional, or, if the insurer did not insure that insured immediately before that date, 85 percent of the amount the insurer would have charged that insured, provided that the rate was adequate and not artificially inflated prior to the determination of constitutionality. An insurer may petition the commissioner for an exception to the rate reduction. A proceeding under this article is a contested case under Chapter 2001, Government Code. The commissioner shall not grant the exception unless the insurer proves by a preponderance of the evidence that the rate reduction is confiscatory. If the insurer meets this evidentiary burden, the commissioner may grant the exception only to the extent that the reduction is confiscatory. The contingent rate rollback required by this article does not apply to a policy or coverage delivered, issued for delivery, or renewed for a public hospital in this state.

(b) If the commissioner makes no determination as to a rate reduction in accordance with Section 1, Article 5.163, of this code, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the second anniversary of the 30th day after the effective date of the constitutional amendment containing a \$250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the third anniversary of the 30th day after the effective date of the constitutional amendment or the date

the cap was determined to be constitutional an amount that exceeds 80 percent of the amount the insurer charged or would have charged the insured for the same coverage.

(c) If the commissioner makes no determination as to a rate reduction in accordance with Section 1, Article 5.163, of this code, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the third anniversary of the 30th day after the effective date of the constitutional amendment containing a \$250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the fourth anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 75 percent of the amount the insurer charged or would have charged the insured for the same coverage.

#### Art. 5.165. FILING OF RATE INFORMATION WITH DEPARTMENT; REPORT TO LEGISLATURE

Sec. 1. PURPOSE. The purpose of this article is to require insurers writing professional liability insurance for physicians and health care providers in this state to annually file with the commissioner of insurance rates and supporting data, including current rates and estimated rates to be charged in the year following the filing date for the purpose of the preparation of a summary report for submission to each legislature and the determination by the commissioner of equitable rate reductions under Article 5.163 of this code. Information submitted under this article must be sufficient for the commissioner to determine the extent of equitable rate reductions under Article 5.163 of this code. The commissioner's report shall contain a review of the rates, presented in a manner that protects the identity of individual insurers:

(1) to inform the legislature as to whether the rates are just, adequate, and reasonable and not excessive or unfairly discriminatory; and

(2) to assist in the determination of the most effective and efficient regulatory system for professional liability insurance for physicians and health care providers in Texas.

Sec. 2. DEFINITIONS. In this article:

(1) "Insurer" means an insurer described by Article 5.162 of this code.

(2) "Supplementary rating information" means any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, and other similar information used by the insurer to determine the applicable premium for an insured. The term includes factors and relativities, such as increased limits factors, classification relativities, deductible relativities, premium discount, and other similar factors and rating plans such as experience, schedule, and retrospective rating.

(3) "Security" or "securities" has the meaning assigned by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).



Sec. 3. RATE INFORMATION. (a) Insurers must file rates for professional liability insurance for physicians and health care providers and supporting information with the commissioner in accordance with the requirements determined by the commissioner under this article.

(b) Filings made by each insurer must be sufficient to respond to the commissioner's request for information under this article and must provide both current rates and estimated rates for the year following the required filing date of this article based on information reasonably known to the insurer at the time of filing.

(c) The insurer shall file, in a format specified by the commissioner, including an electronic format:

(1) all rates for professional liability insurance for physicians and health care providers, supplementary rating information, underwriting guidelines, reasonable and pertinent supporting information for risks written in the state, and all applicable rating manuals;

(2) actuarial support, including all statistics, data, or other information to support the rates, supplementary rating information, and underwriting guidelines used by the insurer;

(3) the policy fees, service fees, and other fees that are charged under Article 21.35B of this code;

(4) information on the insurer's losses from investments in securities, whether publicly or privately traded, including investments in the securities of companies required by any oversight agency to restate earnings within the 24 months preceding the filing date, possessed and used by the insurer to determine premiums or underwriting for professional liability insurance for physicians and health care providers, as this information relates to the rates described by Section 1 of this article;

(5) information on the insurer's costs of reinsurance possessed and used by the insurer to determine premiums or underwriting for professional liability insurance for physicians and health care providers, as this information relates to the rates described by Section 1 of this article;

(6) a complete explanation, and an electronic copy, of all computer models used by the insurer not protected by a contract with a third party; and

(7) a complete explanation of any changes to underwriting guidelines, rates, and supplementary rating information since the last filing under this article.

(d) The commissioner shall determine the date on which the filing is due.

(e) The commissioner may require additional information as provided by Section 4 of this article.

(f) The commissioner shall issue an order specifying the information that insurers must file to comply with this article and the date on which the filing is due.

(g) The commissioner is not required to hold a hearing before issuing the order required under Subsection (f) of this section.

(h) The commissioner shall notify an affected insurer of the order requiring the rate filing information under this section on the day the order is issued.

Sec. 4. ADDITIONAL INFORMATION. After the initial rate submission under Section 3 of this article, the commissioner may require an insurer to provide additional, reasonable information for purposes of the clarification or completeness of the initial rate submission.

Sec. 5. USE OF FILED RATE INFORMATION. (a) Information filed by an insurer with the department under this article that is confidential under a law that applied to the insurer before the effective date of this article remains confidential and is not subject to disclosure under Chapter 552, Government Code, except that the information may be disclosed as provided by Section 552.008, Government Code, relating to information for legislative purposes. Information disclosed pursuant to Section 552.008, Government Code, shall be provided in a commonly used electronic format, including in spreadsheet or comma-delimited format, if so requested. The information may not be released to the public except in summary form in the report required under Section 6 of this article.

(b) Subsection (a) of this section does not preclude the use of information filed under this article as evidence in prosecuting a violation of this code. Confidential information described by Subsection (a) of this section that is used in prosecuting a violation is subject to a protective order until all appeals of the case have been exhausted. If an insurer is found, after the exhaustion of all appeals, to have violated this code, a copy of the confidential information used as evidence of the violation is no longer presumed to be confidential.

Sec. 6. REPORT. (a) The commissioner shall, on a date determined by the commissioner, submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature on the information collected from the filings required under this article. The report may be created based on a sample of the information provided under Section 3 of this article.

(b) The report required under this section shall provide a summary review of the rates currently charged and estimated to be charged over the year following the date of the report, presented in a manner that protects the identity of individual insurers:

(1) to inform the legislature as to whether the rates are just, adequate, and reasonable and not excessive or unfairly discriminatory; and

(2) to assist the legislature in the determination of the most effective and efficient regulatory system for professional liability insurance for physicians and health care providers in this state.

Sec. 7. NOTIFICATION; NONCOMPLIANCE. The commissioner shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature of the names of the insurers that the commissioner requested to make the rate filings under this article and the names of the insurers that did not respond in whole or in part to the commissioner's request. This notification shall be made by separate letter on the fourth day following the date on which the commissioner determines the filing is due under Section 3(f) of this article.

Sec. 8. APPLICATION OF CERTAIN LAW. Chapter 40 of this code does not apply to an action of the commissioner under Section 3(f) of this article.

Sec. 9. FAILURE TO COMPLY. An insurer that fails to comply with any request for information issued by the commissioner under this article is subject, after notice and opportunity for hearing, to sanctions as provided by Chapters 82 and 84 of this code.

SECTION \_\_\_\_\_.02. The commissioner of insurance shall commence a hearing under Section 1, Article 5.163, Insurance Code, as added by this article, on September 1, 2003, and shall issue rules mandating any appropriate rate reductions under Section 1, Article 5.163, Insurance Code, not later than October 1, 2003.

Amendment No. 51 was withdrawn.

### **Amendment No. 52**

Representative Wolens offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by adding a new Article to the bill, appropriately numbered, as follows:

#### ARTICLE \_\_\_\_\_ PUBLIC INFORMATION

SECTION \_\_\_\_\_.01. Subchapter E, Insurance Code, is amended by adding Article 21.49-2M as follows:

Art. 21.49-2M. PUBLIC INFORMATION. (a) Notwithstanding any other law, each rate filing for personal automobile and residential property insurance, including the rates, supplementary rating information, supporting information and applicable rating manuals, filed under this code as of the date the filing is received by the department:

(1) is public information;

(2) is not subject to any exceptions to disclosure under Chapter 552, Texas Government Code; and

(3) cannot be withheld from disclosure under any other law.

(b) This article applies to all insurers, including a reciprocal or interinsurance exchange, farm mutual, county mutual insurance company, Lloyd's plan company, and any other entity writing personal automobile or residential property insurance.

Representative Smithee moved to table Amendment No. 52.

(Hamilton in the chair)

A record vote was requested.

The motion to table prevailed by (Record 667): 88 Yeas, 57 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eiland; Eissler; Farabee; Flynn; Gattis; Goodman; Goolsby; Griggs; Grusendorf; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones,

E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; McReynolds; Menendez; Mercer; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; Villarreal; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Capelo; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Elkins; Ellis; Escobar; Farrar; Flores; Gallego; Garza; Geren; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; Merritt; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Thompson; Turner; Uresti; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Hamilton(C).

Absent, Excused — Bailey; Riddle.

Absent — Telford.

#### **MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 2).

#### **SB 1948 - RECOMMITTED**

Representative Keel moved to recommit **SB 1948** from the Committee on Calendars to the Committee on Criminal Jurisprudence.

The motion prevailed without objection.

#### **COMMITTEE GRANTED PERMISSION TO MEET**

Representative Keel requested permission for the Committee on Criminal Jurisprudence to meet while the house is in session.

Permission to meet was granted without objection.

#### **COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Criminal Jurisprudence, 2 p.m. today, speakers committee room, for a formal meeting, to consider **SB 1948**.

#### **CSSB 14 - (consideration continued)**

#### **Amendment No. 53**

Representatives Rose and Geren offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by inserting the following appropriately numbered ARTICLE and renumbering appropriately:

ARTICLE \_\_\_\_ . RATES FOR PROFESSIONAL LIABILITY INSURANCE FOR  
PHYSICIANS AND HEALTH CARE PROVIDERS

SECTION \_\_\_\_ .01. Chapter 5, Insurance Code, is amended by adding  
Subchapter T to read as follows:

SUBCHAPTER T. RATES FOR PROFESSIONAL LIABILITY INSURANCE  
FOR PHYSICIANS AND HEALTH CARE PROVIDERS

Art. 5.161. FINDINGS. The legislature finds that:

(1) the cost of professional liability insurance for physicians and health care providers, as defined by Section 1.03(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), has been a significant factor in the reduced availability of health care in this state;

(2) legislation under consideration by the Regular Session of the 78th Legislature should eliminate or significantly reduce the cost of claims under policies of professional liability insurance for physicians and health care providers, and legislation by future legislatures may have the same effect;

(3) while the monetary effect of these legislative changes can be actuarially determined within a reasonable degree of certainty, insurers will delay implementation of rate reductions until they have data evidencing actual loss experience;

(4) delay in implementation of rate reductions will result in a windfall for the insurers benefited by the changes described by this article, and this benefit should be passed on to insureds; and

(5) legislative action in the public interest and within the police power of the state is required to eliminate unnecessary delays to pass these benefits on to the insured physicians and health care providers of this state.

Art. 5.162. SCOPE OF SUBCHAPTER. (a) This subchapter applies to any insurer that is authorized to engage in business in this state and that is authorized to write professional liability insurance for physicians and health care providers, including:

(1) a Lloyd's plan;

(2) a reciprocal or interinsurance exchange;

(3) the joint underwriting association established under Article 21.49-3 of this code; and

(4) a self-insurance trust established under Article 21.49-4 of this code.

(b) It is the intent of the legislature that all insurers, as defined by this article, pass through the savings that accrue from the changes described by Article 5.161 of this code to their policyholders on a prospective basis. To monitor compliance with this legislative directive, the commissioner may require information in rate filings, special data calls, informational hearings, and any other means consistent with other provisions of this code applicable to the affected insurers. Information provided under this subsection is privileged and confidential to the same extent as the information is privileged and confidential under this code or other laws for other insurers described by this article licensed and writing the same line of insurance in this state.

(c) This subchapter applies only to professional liability insurance for physicians and health care providers.

Art. 5.163. EQUITABLE RATE REDUCTION

Sec. 1. HEARING. (a) Not later than September 1 of each year, the commissioner shall hold a rulemaking hearing under Chapter 2001, Government Code, to determine the percentage of equitable reductions in insurance rates required on an individual basis of each insurer writing professional liability insurance for physicians and health care providers.

(b) Not later than October 1 of each year, the commissioner shall issue rules mandating the appropriate rate reductions to rates for professional liability insurance for physicians and health care providers and developed without consideration of the effect of the changes described by Article 5.161 of this code.

(c) The commissioner shall set the percentage of the rate reduction for professional liability insurance for physicians and health care providers and may set different rate reductions for different types of policies. The commissioner's order establishing the rate reductions must be based on the evidence adduced at the rulemaking hearing, including the adequacy of the rate at the time of the hearing. Rates resulting from the rate reductions imposed by this article must comply with Section 3(d), Article 5.15-1, of this code.

(d) The rate reductions adopted under this section are applicable to each policy or coverage delivered, issued for delivery, or renewed on and after January 1, 2004, and to each policy or coverage delivered, issued for delivery, or renewed on and after the 90th day after the date of each subsequent rule adopted under this section. An insurer, as defined by Article 5.162 of this code, shall apply the rate reduction to the rates used by the insurer.

(e) Any rule or order of the commissioner that determines, approves, or sets a rate reduction under this section and is appealed or challenged remains in effect during the pendency of the appeal or challenge. During the pendency of the appeal or challenge, an insurer shall use rates that reflect the rate reduction provided in the order being appealed or challenged. The rate reduction is lawful and valid during the appeal or challenge.

Sec. 2. ADMINISTRATIVE RELIEF. (a) Except as provided by Subsection (b) of this section, a rate filed under Articles 5.13-2 and 5.15-1 of this code for professional liability insurance for physicians and health care providers on and after January 1, 2004, and a rate filed under those articles on and after the 90th day following the effective date of a subsequent rule adopted under Section 1(b) of this article, shall reflect each rate reduction imposed under Section 1 of this article.

(b) Notwithstanding Articles 5.13-2 and 5.15-1 of this code, the commissioner shall, after notice and opportunity for hearing, disapprove a filed rate, without regard to whether the rate complies with Articles 5.13-2 and 5.15-1 of this code, if the commissioner finds that the filed rate does not reflect the rate reduction imposed under Section 1 of this article. A proceeding under this section is a contested case under Chapter 2001, Government Code.

(c) The commissioner may approve a filed rate that reflects less than the full amount of the rate reduction imposed by Section 1 of this article if the commissioner determines based on a preponderance of the evidence presented by an insurer that:

(1) the actual or anticipated loss experience for the insurer's rating classifications is or will be different than the presumptive rate reduction;

(2) the insurer will be financially unable to continue writing in a particular line of insurance;

(3) the rate reduction required under this article would likely result in placing the insurer in a hazardous financial condition described by Section 2, Article 1.32, of this code; or

(4) the resulting rates for the insurer would be unreasonable or confiscatory to the insurer.

Sec. 3. DURATION OF REDUCTION. Unless the commissioner grants relief under Section 2 of this article, each rate reduction required under Section 1 of this article remains in effect for the period specified in the commissioner's rule or order.

Sec. 4. MODIFICATION. The commissioner may, by bulletin or directive, based on the evidence accumulated by the commissioner before the bulletin or directive is issued, modify a rate reduction mandated by the commissioner under this article if a final, unappealable judgment of a court with appropriate jurisdiction stays the effect of, enjoins, or otherwise modifies or declares unconstitutional any legislation described by Article 5.161 of this code on which the commissioner based the rate reduction.

Sec. 5. HEARINGS AND ORDERS. Notwithstanding Chapter 40 of this code, a rulemaking hearing under this article shall be held before the commissioner or the commissioner's designee. The rulemaking procedures established by this section do not apply to any other rate promulgation proceeding.

Sec. 6. PENDING RATE MATTERS. A rate filed pursuant to a commissioner's order issued before May 1, 2003, is not subject to the rate reductions required by this article before January 1, 2004.

Sec. 7. RECOMMENDATIONS TO LEGISLATURE. The commissioner shall assemble information, conduct hearings, and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of this article and to report findings and recommendations to the legislature.

Art. 5.164. CONTINGENT ROLLBACK. (a) If a \$250,000 cap on noneconomic damages in all health care liability claims, without exception, becomes constitutional by voter approval of an amendment to the Texas Constitution or is determined to be constitutional by the supreme court, an insurer, as defined by Article 5.162 of this code, that delivers, issues for delivery, or renews a policy of professional liability insurance for physicians or health care providers in this state on or after the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional may not charge more for the policy than 85 percent of the amount the insurer charged that insured for the same coverage immediately before the effective date of the constitutional amendment or the date that the cap was determined to be constitutional, or, if the insurer did not insure that insured immediately before that date, 85 percent of the amount the insurer would have charged that insured,

provided that the rate was adequate and not artificially inflated prior to the determination of constitutionality. An insurer may petition the commissioner for an exception to the rate reduction. A proceeding under this article is a contested case under Chapter 2001, Government Code. The commissioner shall not grant the exception unless the insurer proves by a preponderance of the evidence that the rate reduction is confiscatory. If the insurer meets this evidentiary burden, the commissioner may grant the exception only to the extent that the reduction is confiscatory. The contingent rate rollback required by this article does not apply to a policy or coverage delivered, issued for delivery, or renewed for a public hospital in this state.

(b) If the commissioner makes no determination as to a rate reduction in accordance with Section 1, Article 5.163, of this code, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the second anniversary of the 30th day after the effective date of the constitutional amendment containing a \$250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the third anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 80 percent of the amount the insurer charged or would have charged the insured for the same coverage.

(c) If the commissioner makes no determination as to a rate reduction in accordance with Section 1, Article 5.163, of this code, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the third anniversary of the 30th day after the effective date of the constitutional amendment containing a \$250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the fourth anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 75 percent of the amount the insurer charged or would have charged the insured for the same coverage.

#### Art. 5.165. FILING OF RATE INFORMATION WITH DEPARTMENT; REPORT TO LEGISLATURE

Sec. 1. PURPOSE. The purpose of this article is to require insurers writing professional liability insurance for physicians and health care providers in this state to annually file with the commissioner of insurance rates and supporting data, including current rates and estimated rates to be charged in the year following the filing date for the purpose of the preparation of a summary report for submission to each legislature and the determination by the commissioner of equitable rate reductions under Article 5.163 of this code. Information submitted under this article must be sufficient for the commissioner to determine the extent of equitable rate reductions under Article 5.163 of this code. The commissioner's report shall contain a review of the rates, presented in a manner that protects the identity of individual insurers:



(1) to inform the legislature as to whether the rates are just, adequate, and reasonable and not excessive or unfairly discriminatory; and

(2) to assist in the determination of the most effective and efficient regulatory system for professional liability insurance for physicians and health care providers in Texas.

Sec. 2. DEFINITIONS. In this article:

(1) "Insurer" means an insurer described by Article 5.162 of this code.

(2) "Supplementary rating information" means any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, and other similar information used by the insurer to determine the applicable premium for an insured. The term includes factors and relativities, such as increased limits factors, classification relativities, deductible relativities, premium discount, and other similar factors and rating plans such as experience, schedule, and retrospective rating.

(3) "Security" or "securities" has the meaning assigned by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).

Sec. 3. RATE INFORMATION. (a) Insurers must file rates for professional liability insurance for physicians and health care providers and supporting information with the commissioner in accordance with the requirements determined by the commissioner under this article.

(b) Filings made by each insurer must be sufficient to respond to the commissioner's request for information under this article and must provide both current rates and estimated rates for the year following the required filing date of this article based on information reasonably known to the insurer at the time of filing.

(c) The insurer shall file, in a format specified by the commissioner, including an electronic format:

(1) all rates for professional liability insurance for physicians and health care providers, supplementary rating information, underwriting guidelines, reasonable and pertinent supporting information for risks written in the state, and all applicable rating manuals;

(2) actuarial support, including all statistics, data, or other information to support the rates, supplementary rating information, and underwriting guidelines used by the insurer;

(3) the policy fees, service fees, and other fees that are charged under Article 21.35B of this code;

(4) information on the insurer's losses from investments in securities, whether publicly or privately traded, including investments in the securities of companies required by any oversight agency to restate earnings within the 24 months preceding the filing date, possessed and used by the insurer to determine premiums or underwriting for professional liability insurance for physicians and health care providers, as this information relates to the rates described by Section 1 of this article;

(5) information on the insurer's costs of reinsurance possessed and used by the insurer to determine premiums or underwriting for professional liability insurance for physicians and health care providers, as this information relates to the rates described by Section 1 of this article;

(6) a complete explanation, and an electronic copy, of all computer models used by the insurer not protected by a contract with a third party; and

(7) a complete explanation of any changes to underwriting guidelines, rates, and supplementary rating information since the last filing under this article.

(d) The commissioner shall determine the date on which the filing is due.

(e) The commissioner may require additional information as provided by Section 4 of this article.

(f) The commissioner shall issue an order specifying the information that insurers must file to comply with this article and the date on which the filing is due.

(g) The commissioner is not required to hold a hearing before issuing the order required under Subsection (f) of this section.

(h) The commissioner shall notify an affected insurer of the order requiring the rate filing information under this section on the day the order is issued.

Sec. 4. ADDITIONAL INFORMATION. After the initial rate submission under Section 3 of this article, the commissioner may require an insurer to provide additional, reasonable information for purposes of the clarification or completeness of the initial rate submission.

Sec. 5. USE OF FILED RATE INFORMATION. (a) Information filed by an insurer with the department under this article that is confidential under a law that applied to the insurer before the effective date of this article remains confidential and is not subject to disclosure under Chapter 552, Government Code, except that the information may be disclosed as provided by Section 552.008, Government Code, relating to information for legislative purposes. Information disclosed pursuant to Section 552.008, Government Code, shall be provided in a commonly used electronic format, including in spreadsheet or comma-delimited format, if so requested. The information may not be released to the public except in summary form in the report required under Section 6 of this article.

(b) Subsection (a) of this section does not preclude the use of information filed under this article as evidence in prosecuting a violation of this code. Confidential information described by Subsection (a) of this section that is used in prosecuting a violation is subject to a protective order until all appeals of the case have been exhausted. If an insurer is found, after the exhaustion of all appeals, to have violated this code, a copy of the confidential information used as evidence of the violation is no longer presumed to be confidential.

Sec. 6. REPORT. (a) The commissioner shall, on a date determined by the commissioner, submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature on the information collected from the filings required under this article. The report may be created based on a sample of the information provided under Section 3 of this article.

(b) The report required under this section shall provide a summary review of the rates currently charged and estimated to be charged over the year following the date of the report, presented in a manner that protects the identity of individual insurers:

(1) to inform the legislature as to whether the rates are just, adequate, and reasonable and not excessive or unfairly discriminatory; and

(2) to assist the legislature in the determination of the most effective and efficient regulatory system for professional liability insurance for physicians and health care providers in this state.

Sec. 7. NOTIFICATION; NONCOMPLIANCE. The commissioner shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature of the names of the insurers that the commissioner requested to make the rate filings under this article and the names of the insurers that did not respond in whole or in part to the commissioner's request. This notification shall be made by separate letter on the fourth day following the date on which the commissioner determines the filing is due under Section 3(f) of this article.

Sec. 8. APPLICATION OF CERTAIN LAW. Chapter 40 of this code does not apply to an action of the commissioner under Section 3(f) of this article.

Sec. 9. FAILURE TO COMPLY. An insurer that fails to comply with any request for information issued by the commissioner under this article is subject, after notice and opportunity for hearing, to sanctions as provided by Chapters 82 and 84 of this code.

SECTION \_\_.02. The commissioner of insurance shall commence a hearing under Section 1, Article 5.163, Insurance Code, as added by this article, on September 1, 2003, and shall issue rules mandating any appropriate rate reductions under Section 1, Article 5.163, Insurance Code, not later than October 1, 2003.

#### **Amendment No. 54**

Representatives Eiland and Smithee offered the following amendment to Amendment No. 53:

Amend Amendment No. 53 by Rose to **CSSB 14** by adding the following appropriately numbered SECTIONS to the amendment and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Article 21.49-4, Insurance Code, is amended by amending Subsections (d), (e), (g), (h), (i), and (j), and adding Subsection (k) to read as follows:

(d) The trust investment powers and limitations shall be the same as those of any state bank with trust powers. The trust shall adopt rules [~~and regulations~~] to guarantee all contingent liabilities in the event of dissolution.

(e) The trust is not engaged in the business of insurance under this code and other laws of this state and the provisions of any chapters or sections of this code are declared inapplicable to a trust organized and operated under this article, except as identified in this article, provided that the Texas Department [~~State~~

~~Board~~ of Insurance may require any trust created under this article to satisfy reasonable minimum requirements to insure the capability of the trust to satisfy its contractual obligations.

(g) The trust shall file [~~for informational purposes only,~~] all rates and forms with the Texas Department of Insurance. [~~State Board of Insurance.~~] Such rate and form filings are subject to the rate and form requirements of Article 5.13-2, Insurance Code.

(h) The trust shall file with the Texas Department of Insurance [~~State Board of Insurance~~] all liability claims reports which are required pursuant to Sections 38.151-38.162 [~~Articles 1.24A and 1.24B~~], Insurance Code.

(i) If the trust is found to be in violation of or to have failed to comply with any provision of this code or any duly promulgated rule [~~or regulation~~] of the Texas Department of Insurance, [~~State Board of Insurance which is declared~~] applicable to a trust organized and operated under this article, the department [~~State Board of Insurance,~~] may order sanctions pursuant to Sections 82.001-82.003 and 82.051-82.056 [~~7, Article 1.10,~~] Insurance Code, [~~may order sanctions~~] for such violation.

(j) The trust shall file its independently audited annual financial statement with the Texas Department of Insurance pursuant to Article 1.15A, Insurance Code [~~State Board of Insurance; this audit shall not be considered an examination document~~].

(k) The trust is subject to the examination authority of the Texas Department of Insurance pursuant to Article 1.15, Insurance Code.

SECTION \_\_\_\_\_. Article 21.49-4(f), Insurance Code, is repealed.

Amendment No. 54 was adopted.

A record vote was requested.

Amendment No. 53, as amended, was adopted by (Record 668): 134 Yeas, 9 Nays, 1 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Farabee; Farrar; Flores; Flynn; Gallego; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton(C); Hamric; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Coleman; Davis, Y.; Dunnam; Escobar; Lewis; Noriega; Thompson.

Present, not voting — Mr. Speaker.

Absent, Excused — Bailey; Riddle.

Absent — Garza; Hardcastle; Isett; Luna.

### STATEMENTS OF VOTE

I was shown voting no on Record No. 668. I intended to vote yes.

Dunnam

I was shown voting no on Record No. 668. I intended to vote yes.

Lewis

### Amendment No. 55

Representative Elkins offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by adding the following new ARTICLE to the bill, numbered appropriately, and renumbering existing ARTICLES and SECTIONS of the bill appropriately:

ARTICLE \_\_\_\_ . CAPTIVE AGENT PROVISION

SECTION \_\_\_\_ . Subchapter A, Chapter 21, Insurance Code, is amended by adding Article 21.14A to read as follows:

Art. 21.14A. POLICIES WRITTEN BY AN EXCLUSIVE OR CAPTIVE AGENT

Sec. 1. DEFINITIONS. In this article:

(1) "Agent" means a person who holds a general property and casualty license as that term is described by Section 2, Article 21.14, of this code, who places at least 70 percent of the number of policies sold by that agent in the voluntary market with one insurer or group of insurers under common ownership or control and with whom the agent has a contractual agreement, including an employment agreement.

(2) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write personal automobile insurance or residential property insurance in this state. The term includes an affiliate, as described by Section 823.003(a) of this code, if that affiliate is authorized to write and is writing personal automobile insurance or residential property insurance in this state. The term does not include:

(A) the Texas Windstorm Insurance Association under Article 21.49 of this code;

(B) the FAIR Plan Association under Article 21.49A of this code;

or

(C) the Texas Automobile Insurance Plan Association under Article 21.81 of this code.

Sec. 2. ISSUANCE OF POLICY THROUGH OTHER INSURER. (a) If an insurer temporarily or permanently declines to issue new policies in this state in a particular line of insurance, an agent of that insurer may write new policies in that line of insurance through another insurer.

(b) An agent may write new policies in a line of insurance under this section regardless of the terms of the contract between the insurer declining to issue new policies for that line of insurance and the agent of the insurer.

Representative Smithee moved to table Amendment No. 55.

The motion to table prevailed.

### **Amendment No. 56**

Representative Eiland offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by inserting the following new ARTICLE, numbered appropriately, and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. CERTAIN INSURANCE TRUSTS

SECTION \_\_\_\_\_.01. Article 21.49-4(b), Insurance Code, is amended to read as follows:

(b) An incorporated association, the purpose of which, among other things, shall be to federate and bring into one compact organization the entire profession licensed to practice medicine and surgery or dentistry in the State of Texas, or a portion of the profession licensed to practice medicine who are practicing a particular speciality within the practice of medicine or surgery in the state or are practicing within a particular region of the state [~~and to unite with similar associations of other states to form a nationwide medical association or dental association~~], may create a trust to self-insure physicians or dentists and by contract or otherwise agree to insure other members of the organization or association against health care liability claims and related risks on complying with the following conditions:

(1) the organization or association must have been in continuing existence for a period of at least two years [~~prior to the effective date of this Act~~];

(2) establishment of a health care liability claim trust or other agreement to provide coverage against health care liability claims and related risks; and

(3) employment of appropriate professional staff and consultants for program management.

Amendment No. 56 was adopted without objection.

### **Amendment No. 57**

Representative Eiland offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by adding the following appropriately numbered new ARTICLE to read as follows, and renumbering the existing ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_\_. TEXAS WINDSTORM ASSOCIATION

SECTION \_\_\_\_\_. Subsection (f), Section 3, Article 21.49, Insurance Code, is amended to read as follows:

(f) "Insurable Property" means immovable property at fixed locations in a catastrophe area or corporeal movable property located therein (as may be designated in the plan of operation) which property is determined by the Association, pursuant to the criteria specified in the plan of operation to be in an insurable condition against windstorm, hail and/or fire and explosion as appropriate, as determined by normal underwriting standards; provided, however, that insofar as windstorm and hail insurance is concerned, any structure located within a catastrophe area, commenced on or after the 30th day following the publication of the plan of operation, not built or continuing in compliance with building specifications set forth in the plan of operation shall not be an insurable risk under this Act except as otherwise provided under this Act. A structure, or an addition thereto, which is constructed in conformity with plans and specifications that comply with the specifications set forth in the plan of operation at the time construction commences shall not be declared ineligible for windstorm and hail insurance as a result of subsequent changes in the building specifications set forth in the plan of operation. Except as otherwise provided by this subsection, if [When] repair of damage to a structure involves replacement of items covered in the building specifications as set forth in the plan of operation, such repairs must be completed in a manner to comply with such specifications for the structure to continue within the definition of Insurable Property for windstorm and hail insurance. If repair of damage to a structure is based on a direct loss and claim, the amount of which is equal to less than five percent of the amount of total property coverage on the structure, the repairs may be completed in a manner that returns the structure to its condition immediately before the loss without affecting the eligibility of the structure to qualify as insurable property. Nothing in this Act shall preclude special rating of individual risks as may be provided in the plan of operation. For purposes of this Act, all residential structures, other than a condominium, apartment, duplex, or other multifamily residence, or a hotel or resort facility, which are located within those areas designated as units under the federal Coastal Barrier Resources Act (Public Law 97-348) and for which a building permit or plat has been filed with the municipality, county, or the United States Army Corps of Engineers before the effective date of SB 14, Acts of the 78th Legislature, Regular Session, 2003, are [construction has commenced on or after July 1, 1991 shall not be considered] insurable property.

SECTION \_\_\_\_\_. Subdivision (9), Subsection (h), Section 8, Article 21.49, Insurance Code, is amended to read as follows:

(9) A rate established and authorized by the commissioner under this subsection may not reflect an average rate change that is more than 10 percent higher or lower than the rate for commercial or 10 percent higher or lower than the rate for noncommercial windstorm and hail insurance in effect on the date the filing is made. The rate may not reflect a rate change for an individual rating class that is 15 percent higher or lower than the rate for that individual class in effect on the date the filing is made. The commissioner may, after notice and hearing, suspend this subdivision upon a finding that a catastrophe loss or series of occurrences resulting in losses in the catastrophe area justify a need to assure

rate adequacy in the catastrophe area and also justify a need to assure availability of insurance outside the catastrophe area. [~~This subdivision expires December 31, 2005.~~]

SECTION \_\_\_\_\_. Subsection (f), Section 3, Article 21.49, Insurance Code, as amended by this article, applies only to an insurance policy delivered or issued for delivery by the Texas Windstorm Insurance Association on or after the effective date of this Act. A policy delivered or issued for delivery before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect of that purpose.

Amendment No. 57 was withdrawn.

### **Amendment No. 58**

Representative Nixon offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by inserting the following the new ARTICLE, appropriately numbered, and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

#### ARTICLE \_\_\_\_\_. HOLOCAUST VICTIMS

SECTION \_\_\_\_\_. Section 1, Article 21.74, Insurance Code, is amended by amending Subdivisions (1) and (2) and adding Subdivision (4) to read as follows:

(1) "Holocaust victim" means a person who was killed or injured, or who lost real or personal property or financial assets, as the result of discriminatory laws, policies, or actions directed against any discrete group of which the person was a member, during the period of 1920 to 1945, inclusive, in Germany, areas occupied by Germany, ~~or~~ countries allied with Germany, or countries that were sympathizers with Germany.

(2) "Insurer" means an insurance company or other entity engaged in the business of insurance or reinsurance in this state. The term includes:

(A) a capital stock company, a mutual company, or a Lloyd's plan;  
and

(B) any parent, subsidiary, reinsurer, successor in interest, managing general agent, or affiliated company, at least 50 percent of the stock of which is in common ownership with an insurer engaged in the business of insurance in this state.

(4) "Proceeds" means the face value or other payout value of insurance policies and annuities plus reasonable interest to date of payment without diminution for wartime or immediate postwar currency devaluation.

SECTION \_\_\_\_\_. Article 21.74, Insurance Code, is amended by adding Sections 2A and 2B to read as follows:

Sec. 2A. FILINGS AND CERTIFICATES OF INSURANCE. (a) This section applies to each insurer engaging in business in the state that, directly or through a related company, sold to persons in Europe insurance policies described by Section 1 of this article or dowry or educational insurance policies that were in effect during the period of 1920 to 1945, whether the sale occurred before or after the insurer and the related company became related.

(b) Each insurer shall file or cause to be filed with the commissioner the following information:



(1) the number of insurance policies described by Subsection (a) of this section sold by the insurer or a related company;

(2) the holder, beneficiary, and current status of the policies; and

(3) the city of origin, domicile, or address for each policyholder listed in the policies.

(c) Each insurer shall certify:

(1) that the proceeds of the policies described by Subsection (a) of this section have been paid to the designated beneficiaries or their heirs in circumstances in which that person or those persons, after diligent search, could be located and identified;

(2) that the proceeds of the policies, in circumstances in which the beneficiaries or heirs could not, after diligent search, be located or identified, have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations of the purpose of assisting Holocaust survivors;

(3) that a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders and their heirs and beneficiaries a plan for the distribution of the proceeds; or

(4) that the proceeds have not been distributed and the amount of those proceeds.

(d) The commissioner by rule shall require that insurers update the information submitted to the commissioner under this section at reasonable intervals.

Sec. 2B. ESTABLISHMENT AND MAINTENANCE OF REGISTRY; PUBLIC ACCESS. (a) The commissioner shall establish and maintain within the department a central registry containing records and information relating to insurance policies described by Section 2A(a) of this article of Holocaust victims, living and deceased. The registry shall be known as the Holocaust Era Insurance Registry.

(b) The commissioner by rule shall establish appropriate mechanisms to ensure public access to the registry.

(c) Information contained in the registry:

(1) is public information;

(2) is not subject to any exceptions to disclosure under Chapter 552, Government Code; and

(3) cannot be withheld from disclosure under any other law.

SECTION \_\_\_\_\_. Not later than the 180th day after the effective date of this Act, an insurer subject to Article 21.74, Insurance Code, as amended by this Act, shall file the information and certification required by Section 2A of that article.

Amendment No. 58 was adopted without objection.

#### **Amendment No. 59**

On behalf of Representative Flores, Representative F. Brown offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by inserting the following appropriately numbered ARTICLE and renumbering the subsequent ARTICLES accordingly:

## ARTICLE \_\_\_\_\_. PREMIUM DISCOUNTS

SECTION \_\_\_\_\_. Subchapter A, Chapter 5, Insurance Code, is amended by adding Article 5.03-6 to read as follows:

Art. 5.03-6. PREMIUM DISCOUNT FOR UNITED STATES ARMED FORCES PERSONNEL

Sec. 1. DEFINITIONS. In this article:

(1) "Applicant" means an individual who applies under this article for a discount in motor vehicle insurance premiums.

(2) "Insurer" means an insurance company, interinsurance exchange, mutual, capital stock company, fraternal benefit society, local mutual aid association, county mutual, reciprocal, association, Lloyd's plan insurer, or other entity writing motor vehicle insurance in this state. The term includes an affiliate, as defined by Section 823.003 of this code.

(3) "Motor vehicle" means any private passenger vehicle that:

(A) is registered in a state; and

(B) has a gross weight of 25,000 pounds or less.

Sec. 2. DISCOUNT AUTHORIZED; ELIGIBILITY CONDITIONS FOR DRIVERS. (a) An insurer who delivers or issues for delivery in this state a motor vehicle insurance policy, on receipt of written verification from the insured that the insured or a family member covered by the policy is eligible under Subsection (b) of this section, may grant a discount in the amount provided by Subsection (f) of this section in the premiums charged for the liability, medical payments, personal injury protection, and collision coverage only for the motor vehicle designated to be driven by the eligible individual.

(b) To be eligible for the discount authorized under Subsection (a) of this section, an applicant must:

(1) be licensed to drive in a state;

(2) be on active duty in the United States armed forces or be the spouse of an individual on active duty in the United States armed forces;

(3) have held a driver's license for at least three years on the date the application is filed;

(4) have not, during the three years preceding the date of the application, been convicted of violating a law or ordinance of a state or a political subdivision of a state relating to the operation of a moving motor vehicle; and

(5) have not, during the three years preceding the date of the application, been found at fault in a motor vehicle accident.

(c) An applicant is not eligible to receive a discount under this article if the applicant has been convicted of an offense relating to the operation of a motor vehicle under:

(1) Chapter 49, Penal Code;

(2) Article 67011-1, Revised Statutes, as that statute existed before repeal by Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993, or Section 19.05, Penal Code, as that statute existed before amendment by Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993; or

(3) another state's statute similar to a statute described by Subdivision (1) or (2) of this subsection.

(d) For purposes of Subsections (b) and (c) of this section, an applicant is considered to have been convicted in a case if:

(1) a sentence is imposed; or

(2) the applicant receives community supervision or analogous treatment under the law of another state.

(e) The commissioner by rule may establish additional requirements for receipt of a discount under this article.

(f) The commissioner by rule shall set the amount of the discount applicable under this article and may adopt other rules necessary for the implementation of this article.

Sec. 3. INELIGIBILITY; REVOCATION OF DISCOUNT. (a) An individual may not continue to receive a discount under this article after the first date on which the individual fails to satisfy the requirements of Section 2 of this article unless the individual reestablishes eligibility under this article.

(b) An insurer shall revoke a discount under this article if an applicant for the discount knowingly provides false information in or with the application.

SECTION \_\_\_\_\_. Article 5.03-6, Insurance Code, as added by this article, applies only to a motor vehicle insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2004. A policy that is delivered, issued for delivery, or renewed before January 1, 2004, is governed by the law as it existed immediately before the effective date of this article, and that law is continued in effect for that purpose.

Amendment No. 59 was withdrawn.

### INTRODUCTION OF GUESTS

The chair recognized Representative Corte who introduced Rear Admiral James B. Godwin III and his family.

### CSSB 14 - (consideration continued)

#### Amendment No. 60

Representative Turner offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, by inserting a new ARTICLE in the bill, appropriately numbered, to read as follows:

ARTICLE \_\_\_\_\_. RATING TERRITORIES

SECTION \_\_\_\_\_ 01. Chapter 5, Insurance Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. RATING TERRITORIES FOR CERTAIN LINES

Art. 5.171. RATING TERRITORIES. (a) Notwithstanding any other provision of this code, an insurer may not use a rating territory that is smaller than a county unless the county is subdivided and the rate for any sub-territory within that county is not greater than 15 percent higher than the rate used in any other sub-territory in the county.

(b) For residential property insurance, the commissioner may allow a greater rate difference on the basis of weather-related exposure to loss.

(c) The commissioner may allow greater rate differences for personal automobile insurance only in the manner prescribed by commissioner rule.

Amendment No. 60 was adopted without objection.

**Amendment No. 61**

Representative Geren offered the following amendment to **CSSB 14**:

Amend **CSSB 14** (House Committee Printing) by adding the following appropriately numbered section and renumbering the remaining sections of the bill as appropriate:

SECTION . Sec . RESTRICTIONS ON USE OF CLAIMS HISTORY FOR WATER DAMAGE. (a) Notwithstanding any other law, an insurer may not use a prior water damage claim filed by a person as a basis for determining the rate to be paid by the person for insurance coverage or for determining whether to issue, renew, or cancel an insurance policy to or for the persons if the person:

(1) properly remediated the prior water damage; and

(2) had the remediation inspected and certified by a person or entity knowledgeable and experienced in the remediation of water damage.

(b) An insurer may not use a prior water damage claim filed regarding specific property as a basis for determining the rate to be paid by a person for insurance coverage for that property or for determining whether to issue, renew, or cancel an insurance policy to or for a person seeking insurance coverage for that property if the prior water damage was properly remediated and was inspected and certified by a person knowledgeable and experienced in remediation of water damage.

(c) An insurer may require the inspection and certification of a remediation described by subsection (a) or (b) of this section to be conducted by a person or entity approved by the insurer to inspect and certify the remediation of water damage. An insurer requiring the inspection and certification of a remediation described by Subsection (a) or (b) of this section to be conducted by a person or entity approved by the insurer must ensure that sufficient approved persons or entities are available to conduct necessary inspections and certifications in this state. A person or entity approved by an insurer may charge the applicant for coverage or policyholder a fee, not to exceed \$75, for the required inspection and certification of the remediation. The insurer shall pay any additional amount charged by the approved person or entity in connection with the inspection and certification.

**Amendment No. 62**

Representative Geren offered the following amendment to Amendment No. 61:

Amend the Amendment No. 61 by Geren to **CSSB 14** to read as follows:

On page 2, starting on line 5 through line 12, after the word "insurer" substitute the following:

"must:

(1) ensure that sufficient approved persons or entities are available to conduct necessary inspections and certifications in this state.

(2) file with the department the insurers requirements for the remediation described by subsections (a) and (b) of this section.

(d) A person or entity approved by an insurer to conduct the inspection and certification of a remediation described by subsections (a) or (b) of this section may charge the applicant for coverage or policyholder a fee, not to exceed \$75, for the required inspection and certification of the remediation. The insurer shall pay any additional amount charged by the approved person or entity in connection with the inspection and certification.

(e) an insurer may not use the requirements described by subsection (c)(2) before the commissioner receives and approves the requirements.

(f) the commissioner may adopt rules necessary to implement this section.

Amendment No. 62 was adopted without objection.

Amendment No. 61, as amended, was adopted without objection.

### **Amendment No. 63**

Representative Wise offered the following amendment to **CSSB 14**:

Amend **CSSB 14** (House Committee Printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering existing ARTICLES accordingly:

#### ARTICLE \_\_\_\_ . MOTOR VEHICLE INSURANCE COVERAGE FOR CERTAIN FAMILY MEMBERS

SECTION \_\_\_\_ .01. Subchapter A, Chapter 5, Insurance Code, is amended by adding Article 5.06-3A to read as follows:

##### Art. 5.06-3A. COVERAGE FOR CERTAIN MINORS NOT AUTOMATIC.

(a) A motor vehicle liability insurance policy that provides coverage for an insured named in the policy and for members of the named insured's household does not automatically cover a minor who is a member of the named insured's household solely because the minor obtains a driver's license.

(b) The insured named in a motor vehicle liability insurance policy described by Subsection (a) of this article must inform the insurer issuing the policy that a minor has obtained a driver's license and that coverage for the minor is desired before the coverage takes effect.

SECTION \_\_\_\_ .02. Subchapter A, Chapter 5, Insurance Code, is amended by adding Article 5.06-3B to read as follows:

Art. 5.06-3B. REQUIRING COVERAGE FOR ENTIRE FAMILY. (a) An insurer may not require a policyholder to insure all members of the policyholder's family who are of driving age under one motor vehicle liability insurance policy.

(b) An insurer may not refuse to issue a motor vehicle liability insurance policy to a prospective policyholder solely because all members of the policyholder's family who are of driving age will not be insured under one motor vehicle liability insurance policy issued by the insurer.

SECTION \_\_\_\_\_.03. This article applies only to a motor vehicle insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2004. A motor vehicle insurance policy that is delivered, issued for delivery, or renewed before January 1, 2004, is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

**HR 1312 - ADOPTED**  
**(by Garza)**

Representative Garza moved to suspend all necessary rules to take up and consider at this time **HR 1312**.

The motion prevailed without objection.

The following resolution was laid before the house:

**HR 1312**, Honoring Dr. Sergio Zamora of Eagle Pass for being the recipient of the Physician of the Year for the State of Texas Award.

**HR 1312** was adopted without objection.

**HR 1438 - ADOPTED**  
**(by Garza)**

Representative Garza moved to suspend all necessary rules to take up and consider at this time **HR 1438**.

The motion prevailed without objection.

The following resolution was laid before the house:

**HR 1438**, Honoring Juan Jose "JJ" Martinez on his 37th birthday.

**HR 1438** was adopted without objection.

**CSSB 14 - (consideration continued)**

**Amendment No. 64**

Representative Wise offered the following amendment to Amendment No. 63:

Amend Amendment No. 63 by Wise on page 1, between lines 18 and 19, by inserting:

(c) An insurer is not liable under a motor vehicle liability insurance policy with respect to the liability of a licensed minor who is not covered under the policy and with respect to which there is a driver exclusion signed by the named insured.

Amendment No. 64 was adopted without objection.

Amendment No. 63, as amended, was adopted without objection.

**Amendment No. 65**

Representative Taylor offered the following amendment to **CSSB 14**:

Amend **CSSB 14** (House Committee Printing) by inserting the following appropriately numbered ARTICLE into the bill and renumbering existing ARTICLES of the bill appropriately:

ARTICLE \_\_\_\_\_. MEDICAL LIABILITY INSURANCE UNDERWRITING ASSOCIATION

SECTION \_\_\_\_\_.01. Section 4(b)(5), Article 21.49-3, Insurance Code, is amended to read as follows:

(5) In the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation in accordance with Section 3(c)(2) of this article and contributions from the policyholder's stabilization reserve fund, all members shall, on a basis authorized by the commissioner [board], as long as the commissioner [board] deems it necessary, contribute to the financial requirements of the association in the manner provided for in Section 5. Any assessment or contribution shall be reimbursed to the members, or to the state to the extent that the members have recouped their assessments using premium tax credits as provided under Subsection (b)(3) of this section, with interest at a rate to be approved by the commissioner, subject to the approval of the commissioner [board]. Pending recoupment or reimbursement of assessments or contributions paid to the association by a member, the unrepaid balance of such assessments and contributions may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this code.

Amendment No. 65 was adopted without objection.

**Amendment No. 66**

Representative Ritter offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by inserting a new ARTICLE in the bill, appropriately numbered, to read as follows and renumbering the subsequent ARTICLES of the bill appropriately:

ARTICLE \_\_\_\_\_. WINDSTORM INSURANCE

SECTION \_\_\_\_\_.01. Section 3(f), Article 21.49, Insurance Code, is amended to read as follows:

(f) "Insurable Property" means immovable property at fixed locations in a catastrophe area or corporeal movable property located therein (as may be designated in the plan of operation) which property is determined by the Association, pursuant to the criteria specified in the plan of operation to be in an insurable condition against windstorm, hail and/or fire and explosion as appropriate, as determined by normal underwriting standards; provided, however, that insofar as windstorm and hail insurance is concerned, any structure located within a catastrophe area, commenced on or after the 30th day following the publication of the plan of operation, not built or continuing in compliance with any requirements [building specifications] set forth in the plan of operation shall not be an insurable risk under this Act except as otherwise provided under this Act. A structure, or an addition thereto, which is constructed in conformity with plans [and specifications] that comply with the requirements [specifications] set

forth in the plan of operation at the time construction commences shall not be declared ineligible for windstorm and hail insurance as a result of subsequent changes ~~[in the building specifications]~~ set forth in the plan of operation. When repair of damage to a structure involves replacement of items covered in requirements ~~[the building specifications as]~~ set forth in the plan of operation, such repairs must be completed in a manner to comply with those requirements ~~[such specifications]~~ for the structure to continue within the definition of Insurable Property for windstorm and hail insurance. Nothing in this Act shall preclude special rating of individual risks as may be provided in the plan of operation. For purposes of this Act, all structures, other than a condominium, apartment, duplex, or other multifamily residence, or a hotel or resort facility, which are located within those areas designated as units under the federal Coastal Barrier Resources Act (Public Law 97-348) and for which a building permit or plat has been filed with the municipality, county, or the United States Army Corps of Engineers before the effective date of Senate Bill 14, Acts of the 78th Legislature, Regular Session, 2003, are ~~[construction has commenced on or after July 1, 1991 shall not be considered]~~ insurable property.

SECTION \_\_.02. Section 5, Article 21.49, Insurance Code, is amended by adding Subsection (l) to read as follows:

(l) After January 1, 2004, for geographic areas specified by the commissioner, the commissioner by rule may supplement the building specifications in the plan of operation with the structural provisions of the International Residential Code for one- and two-family dwellings, as published by the International Code Council, or by an analogous entity recognized by the department. For those specified geographic areas, the commissioner by rule may adopt subsequent editions of that code and may adopt any supplements published by the International Code Council and amendments to that code.

SECTION \_\_.03. Section 6A, Article 21.49, Insurance Code, is amended by amending Subsections (a), (d), (h), (j), and (k) and adding Subsections (j-1) and (k-1) to read as follows:

(a) Except as otherwise provided by this Subsection, all structures that are constructed or repaired or to which additions are made on or after January 1, 1988, to be considered insurable property for windstorm and hail insurance from the Association, must be inspected or approved by the Board for compliance with ~~[the building specifications in]~~ the plan of operation. After January 1, 2004 ~~[2002]~~, for ~~[in]~~ geographic areas specified by the commissioner, the commissioner by rule shall adopt ~~[may supplement the building specifications in the plan of operation with the structural provisions of]~~ the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. For those geographic areas, the commissioner by rule may adopt a subsequent edition of that code and may adopt any supplements published by the International Code Council and amendments to the code. [Roofing materials satisfy the building specifications in the plan of operation if those materials pass the UL Standard 997 or a comparable test certified by the Board and are installed as required by the Board to promote the wind resistance of the materials.] A structure constructed, repaired, or to which additions were



made before January 1, 1988, that is located in an area covered at the time by a building code recognized by the Association shall be considered an insurable property for windstorm and hail insurance from the Association without compliance with the inspection or approval requirements of this Section or the plan of operation. A structure constructed, repaired, or to which additions were made before January 1, 1988, that is located in an area not covered by a building code recognized by the Association shall be considered an insurable property for windstorm and hail insurance from the Association without compliance with the inspection or approval requirements of this Section or the plan of operation if that structure has been previously insured by a licensed insurance company authorized to do business in this State and the risk is in essentially the same condition as when previously insured, except for normal wear and tear, and without any structural change other than a change made according to code. Evidence of previous insurance includes a copy of a previous policy, copies of canceled checks or agent's records that show payments for previous policies, and a copy of the title to the structure or mortgage company records that show previous policies. After January 1, ~~2004~~ [2002], a person must submit a notice of a [an application for] windstorm inspection to the unit responsible for certification of windstorm inspections [~~inspection~~] at the department before beginning to construct, alter, remodel, enlarge, or repair a structure. [~~Failure to submit a timely application may result in a certificate of compliance not being issued unless plans and calculations, testing information, manufacturer's installation instructions, or any other documentation required by the commissioner is submitted to the unit responsible for windstorm inspection at the department as may be requested in order to fulfill the requirements of this section. The Board may appoint or employ qualified inspectors as defined in this Section to perform any inspections required by this Section.~~]

(d) A windstorm inspection may only be performed by a qualified inspector. For purposes of this article, a "qualified inspector" includes:

(1) a person determined by the Board to be qualified to perform building inspections because of training or experience;

(2) a licensed professional engineer meeting the requirements of the rules adopted by the commissioner for appointment to conduct windstorm inspections; and

(3) an inspector who is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc., who has certifications as a buildings inspector and coastal construction inspector, and who also complies with other requirements specified by rule by the commissioner. A qualified inspector must be approved and appointed or employed by the department [~~Board~~] to perform building inspections. The department [~~Board~~] may charge a reasonable fee [~~not to exceed \$200~~] for the filing of applications and determining the qualifications of persons for appointment as qualified inspectors.

(h) The department ~~[Board]~~ may charge a reasonable fee to cover the cost of making building requirements ~~[specifications]~~ and inspection standards available to the public.

(j) After notice and hearing, the department ~~[Board]~~ may cancel or revoke an appointment ~~[or authorization]~~ made ~~[- issued, or existing]~~ under this Section if the holder ~~[or possessor]~~ of the appointment ~~[or authorization]~~ is found to be in violation of, or to have failed to comply with, specific provisions of this Section or any rule or regulation of the commissioner ~~[Board]~~ made under this Section. In lieu of cancellation or revocation, the commissioner ~~[Board]~~ may order one or more of the following sanctions, if the commissioner ~~[#]~~ determines from the facts that it would be fair, reasonable, or equitable:

(1) suspending the ~~[authorization or]~~ appointment for a specific period, not to exceed one year;

(2) an order directing the holder ~~[or possessor]~~ of the ~~[authorization or]~~ appointment to cease and desist from the specified activity determined to be in violation of specific provisions of this Section or rules and regulations of the commissioner ~~[Board]~~ made pursuant to this Section or from failing to comply with those provisions of this Section or the rules and regulations promulgated under this Section; or

(3) if the appointed person ~~[authorized or appointed]~~ is found by the commissioner ~~[Board]~~ to have knowingly, wilfully, fraudulently, or with gross negligence signed or caused to be prepared an inspection report that contains a false, fictitious, or fraudulent statement or entry, directing the appointed person ~~[holder or possessor of the authorization or appointment]~~ to remit within a specified time, not to exceed 60 days, a specified monetary forfeiture not to exceed \$5,000 for the violation or failure to comply.

(j-1) If an appointed person is an engineer licensed by the Texas Board of Professional Engineers who is found by the department to have knowingly, wilfully, fraudulently, or with gross negligence signed or caused to be prepared an inspection report that contains a false or fraudulent statement or entry, the commissioner may take action against the appointed person in the manner provided by Subsection (j) of this Section, but may not levy any monetary fine against an appointed person who is a licensed engineer.

(k) A monetary forfeiture paid as a result of an order issued under Subsection (j)(3) of this Section shall be deposited to the credit of the general revenue fund. If it is found after hearing that any appointed person ~~[holder or possessor]~~ has failed to comply with an order issued under Subsection (j) of this Section, the department ~~[Board]~~ shall, unless the ~~[its]~~ order is lawfully stayed, cancel the ~~[authorization or]~~ appointment of the person ~~[holder or possessor]~~. The department ~~[Board]~~ may informally dispose of any matter under Subsection (j) of this Section by consent order or default.

(k-1) The commissioner shall notify the Texas Board of Professional Engineers of each order issued by the commissioner against an appointed person who is an engineer licensed by the Texas Board of Professional Engineers, including an order suspending, canceling, or revoking the appointment of that person.

SECTION \_\_.04. Sections 6C(b), (f), (g), (h), (k), (l), and (m), Article 21.49, Insurance Code, are amended to read as follows:

(b) The Windstorm Building Code Advisory Committee on Specifications and Maintenance is established as an advisory committee to the commissioner to advise and make recommendations to the commissioner on building requirements [~~specifications~~] and maintenance in the plan of operation.

(f) The advisory committee shall analyze and make recommendations for changes regarding procedures described under Section 5(d) of this article that are [~~building specifications~~] adopted by the commissioner in the plan of operation. In making recommendations, the advisory committee shall [~~consider technological developments in building products and windstorm research and shall~~] seek to balance the concerns of all affected parties, including consumers, builders, and the Association.

(g) Each proposal for a change in an applicable procedure [~~building specification~~] must be submitted to the commissioner. Each proposal must be submitted separately in writing and must contain:

(1) the name, mailing address, and telephone number of the proponent, or, if the proponent is a group or organization, the name of the group or organization and the mailing address and telephone number of the group or organization;

(2) a citation of any applicable statute or rule [~~the building code section regarding that specification, as published in the latest edition of that code~~];

(3) the text of the proposed change, with deletions from current [~~code~~] language struck through with a single line and new language underlined; and

(4) a statement of the purpose of the proposed change, with supporting written or printed information.

(h) The commissioner by rule shall adopt a form to be used by a person in presenting a proposal for a change in an applicable procedure [~~building specification~~] to the commissioner.

(k) At an advisory committee meeting, any interested person may present the person's views on a proposal for a change in an applicable procedure [~~building specification~~] that is included on the advisory committee's published agenda. The advisory committee shall consider each comment presented in its action on the disposition of each proposal.

(l) After consideration of a proposal for a change in an applicable procedure [~~building specification~~], the advisory committee by vote shall:

(1) recommend adoption of the proposal as initially submitted;

(2) recommend adoption of the proposal with modifications;

(3) recommend rejection of the proposal; or

(4) suspend consideration of the proposal and request additional evaluation and study of the proposal.

(m) The advisory committee shall submit its recommendation on each proposal to the commissioner. The commissioner shall notify the advisory committee of the acceptance or rejection of each recommendation not later than the 30th day after the date of receipt by the commissioner. Acceptance of a recommendation by the commissioner means that the commissioner will consider

adoption of that recommendation at a rulemaking hearing. Before adopting a recommendation, the commissioner must determine that the proposal, if adopted, will not weaken the integrity or diminish the effectiveness of a procedure [building specification]. [~~The commissioner by rule may adopt a recommendation of the advisory committee by amending the plan of operation and, in amending the plan, may adopt a specification by reference.~~]

SECTION \_\_.05. Article 21.49, Insurance Code, is amended by adding Section 6D to read as follows:

Sec. 6D. APPOINTMENT OF ENGINEERS; RULES. (a) The commissioner, on the request of an engineer licensed by the Texas Board of Professional Engineers, shall appoint the engineer under this article not later than the 10th day after the date of the engineer's delivery to the commissioner of information demonstrating that the engineer is qualified to perform windstorm inspections under this article.

(b) The commissioner shall adopt rules to determine the information the commissioner will consider in appointing engineers under Subsection (a) of this section.

SECTION \_\_.06. Sections 6A(c) and (e), Article 21.49, Insurance Code, are repealed.

SECTION \_\_.076. Article 21.49, Insurance Code, as amended by this article, applies only to a policy of windstorm or hail insurance that is delivered, issued for delivery, or renewed after January 1, 2004. A policy that is delivered, issued for delivery, or renewed on or before January 1, 2004, is governed by the law as it existed immediately before the effective date of this article, and that law is continued in effect for that purpose.

SECTION \_\_.08. This article takes effect January 1, 2004.

## **CSSB 14 - STATEMENT OF LEGISLATIVE INTENT**

### **Amendment No. 66**

REPRESENTATIVE SMITHEE: Mr. Ritter, you and I have worked together on this issue with some of the other members from the coastal area. And it's my understanding—just to make it clear—as you mentioned just a moment ago, that the commissioner will be able to add to the—is it the international building code that's being—

REPRESENTATIVE RITTER: Yes, the commissioner will be able to add amendments to the international residential code.

SMITHEE: Residential code—primarily regarding doors, windows, and roofs?

RITTER: Yes, anything within the code.

SMITHEE: Thank you.

### **REMARKS ORDERED PRINTED**

Representative Smithee moved to print remarks between Representative Ritter and Representative Smithee.

The motion prevailed without objection.

**Amendment No. 67**

Representative Ritter offered the following amendment to Amendment No. 66:

Amend the Ritter amendment to **CSSB 14**, on page 2, line 4 of the amendment, by inserting "residential" between "all" and "structures".

Amendment No. 67 was adopted without objection.

Amendment No. 66, as amended, was adopted without objection.

**Amendment No. 68**

Representative Villarreal offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by inserting the following new ARTICLE, appropriately numbered, and renumber subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. AVAILABILITY OF CERTAIN INFORMATION

SECTION \_\_\_\_\_.01. Subchapter A, Chapter 38, Insurance Code, is amended by adding Section 38.003 to read as follows:

Sec. 38.003. ACCESS TO LEGISLATURE AND OFFICE OF PUBLIC INSURANCE COUNSEL. (a) Notwithstanding any provision of this code, another insurance law of this state, or Chapter 552, Government Code, any document, record, or other information required to be filed with the department under this code or another insurance law of this state:

(1) is available on request to the Office of Public Insurance Counsel;  
and

(2) shall be disclosed as provided by Section 552.008, Government Code, relating to information for legislative purposes.

(b) Confidential information disclosed under this section remains confidential.

Amendment No. 68 was adopted without objection.

**MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 3).

**CSSB 14 - (consideration continued)****Amendment No. 69**

Representative Talton offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by adding the following new sections to the bill, numbered appropriately, and renumbering existing sections of the bill appropriately:

Section \_\_\_\_\_. Article 5.07-1(b), Insurance Code, is amended to read as follows:

(b) In connection with the repair damage to a motor vehicle covered under an auto insurance policy, and insurer, an employee of insurer, an agent of an insurer, a solicitor of insurance for an insurer, an insurance adjuster, or an entity that employs an insurance adjuster may not:

(2) state or suggest, either orally or in writing, to a beneficiary that a specific repair person or facility or a repair person or facility identified on a preferred list compiled by an insurer ~~must be used by a beneficiary in order for the damage repair or parts replacement to be covered by the policy;~~ or

Section \_\_\_\_\_. Article 5.07-1(g), Insurance Code, is amended to read as follows:

(g) In the settlement of liability claims by a third-party against an insured for property damage claimed by the third-party, an insurer may not require the third-party claimant to have repairs made by a particular repair ~~persons person~~ or ~~facilities facility~~ or to use a particular brand, type, kind, age, vendor, supplier, or condition of parts or products. This subsection does not prohibit an insurer from referring a third-party claimant to particular repair persons or facilities or recommending the use of a particular brand, type, kind, age, vendor, supplier, or condition of parts or products if the third-party claimant solicits this information. A third-party claimant may bring an action to recover damages for a violation of this subsection. A third-party claimant who prevails is an action under this subsection is entitled to recover:

(1) the claimant's actual damages, not to exceed \$5,000;

(2) attorney's fees as described by Chapter 38, Civil Practice and Remedies Code; and

(3) court costs.

Section \_\_\_\_\_. This Act applies only to a violation of Article 5.07-1(b) or 5.07-1(g), Insurance Code, as amended by this Act, that occurs or after the effective date of this Act. A violation of Article 5.07-1(b) or 5.07-1(g), Insurance Code, that occurs before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for this purpose.

Amendment No. 69 was adopted without objection.

### **Amendment No. 70**

Representatives Taylor and Rose offered the following amendment to **CSSB 14**:

Amend **CSSB 14** (House Committee Printing) by inserting the following appropriately numbered ARTICLE into the bill and renumbering existing ARTICLES accordingly:

ARTICLE \_\_\_\_\_. CANCELLATION OF CERTAIN INSURANCE POLICIES

Sec. \_\_\_\_\_.01. Section 4, Article 21.49-2B, Insurance Code is amended by amending Subsection (i) and adding Subsection (j) to read as follows:

(i) An insurer may cancel any insurance policy other than a personal automobile or homeowners insurance policy if the policy has been in effect less than 90 days. An insurer may cancel a personal automobile insurance policy if the policy [it] has been in effect less than 60 days. An insurer may cancel a homeowners insurance [any other] policy if the policy [it] has been in effect less than 60 [90] days if:

(1) the insurer identifies a condition that:

(A) creates an increase risk of hazard;

(B) was not disclosed in the application for insurance coverage; and  
(C) is not the subject of a prior claim; or

(2) before the effective date of the policy, the insurer does not accept a copy of a required inspection report that:

(A) was completed by an inspector licensed by the Texas Real Estate Commission or who is otherwise authorized to perform inspections; and

(B) is dated not earlier than the 90th day before the effective date of the policy.

(j) For the purposes of Subsection (i), an inspection report is deemed accepted if an insurer does not reject the inspection report given to the insurer under Subsection (i)(2) before the 11th day after the date the inspection report is received by the insurer.

Amendment No. 70 was adopted without objection.

### **Amendment No. 71**

Representatives Geren, Wolens, Rose, and Wise offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by striking SECTION 3.07 of the bill, starting at page 43, line 5, and adding a new Article to the bill, appropriately numbered, as follows:

ARTICLE \_\_\_\_\_ RATE ROLLBACK FOR HOMEOWNERS INSURANCE

SECTION \_\_\_\_\_,01. Subchapter C, Chapter 5, Insurance Code, is amended by adding Article 5.26-1 to read as follows:

Article 5.26-1. Rate Rollback

Sec. 1. No insurer may charge rates for residential property insurance on policies issued or renewed during the rollback period that are greater than the insurer's rates that were in effect on January 1, 2001.

Sec. 2. "The rollback period" begins September 1, 2003, and ends August 31, 2004.

Sec. 3. In the event of any conflict between this article and any other law, this article shall prevail.

Sec. 4. During the rollback period, the Commissioner may permit an insurer to charge higher rates than those provided in section (1) of this article only if higher rates are required by the Texas or United States Constitution.

Sec. 5. This article applies to all insurers, including a reciprocal or interinsurance exchange, farm mutual, county mutual insurance company, Lloyd's plan company, and any other entity writing residential property insurance.

Amendment No. 71 was withdrawn.

### **Amendment No. 72**

Representative Bonnen offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

(1) In SECTION 3.09 of the bill, in added Section 13, Article 5.13-2, Insurance Code (page 48, lines 18-20, house committee printing), strike Subsection (e) and substitute the following:

(e) For purposes of this section, "nonstandard rates" means rates that are 30 percent or more above the standard rate index as determined by the commissioner under this section.

(2) In SECTION 3.09 of the bill, in added Section 13, Article 5.13-2, Insurance Code (page 48, line 26, through page 49, line 8, house committee printing), strike Subsections (g) and (h) and substitute the following:

(g) A county mutual insurance company, including a county mutual insurance company described by Subsection (f) of this section, that increases its aggregate rates by 10 percent or more in a 12-month period must secure prior approval from the commissioner in the manner provided by Article 5.142 of this code as it existed on of September 1, 2003. The 10 percent threshold described by this subsection shall be calculated by and applied to aggregate business accepted from each managing general agent, as defined by Article 21.07-3 of this code.

(h) A county mutual insurance company is not subject to Article 5.142 of this code or the rate filing requirements under this article for a policy issued for the minimum liability limits in accordance with Subchapter D, Chapter 601, Transportation Code.

(i) A personal automobile policy may not be transferred between a county mutual insurance company and any of its affiliates without prior consent of the policyholder.

(j) The commissioner by rule may designate other types of insurers that historically and as of the effective date of **SB 14**, Acts of the 78th Legislature, Regular Session, 2003, have served or are serving the high-risk, nonstandard market. An insurer designated by the commissioner as having served or serving the nonstandard market is governed by this section.

Amendment No. 72 was adopted without objection.

#### **Amendment No. 73**

Representative Bonnen offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

1. On page 48, line 19, delete "130 percent" and substitute "30 percent".

Amendment No. 73 was adopted without objection.

#### **Amendment No. 74**

Representative Bonnen offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

1. On page 49, line 1, delete the words "12-month period" and substitute "calendar year".

Amendment No. 74 was adopted without objection.

#### **Amendment No. 75**

Representative Gallego offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, on page 49, by striking lines 3 through 8.

Amendment No. 75 was adopted without objection.



**Amendment No. 76**

Representative Gallego offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, on page 50, by striking lines 17 through page 51, line 2, and substituting the following:

Art. 5.13. SCOPE OF SUBCHAPTER [~~SUB-CHAPTER~~]. (a) This subchapter [~~Sub chapter~~] applies to every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyd's plan, county mutual, farm mutual [~~Lloyds~~] or other organization or insurer writing any of the characters of insurance business herein set forth, hereinafter called "Insurer"; provided that nothing in this entire subchapter [~~Sub-chapter~~] shall [ever] be construed to apply to any county or farm mutual insurance company or association, as regulated under Chapters 911 [16] and 912 [17] of this code, except that Article 5.13-2 of this code shall apply to a county mutual insurance company with respect to rates for personal and commercial automobile insurance and residential and commercial property insurance [Code].

Amendment No. 76 was withdrawn.

**Amendment No. 77**

Representative Solomons offered the following amendment to **CSSB 14**:

Amend **CSSB 14** in added Section 13, Article 5.13-2, Insurance Code (page 49, lines 3-8, house committee printing), by striking Subsection (h) and substituting the following:

(h) The commissioner by rule shall set standards to designate other types of insurers that historically and as of the effective date of **SB 14**, Acts of the 78th Legislature, Regular Session, 2003, have served or are serving the high-risk, nonstandard market in this state and have surplus in an amount determined by the commissioner by rule as sufficient. Serving the market shall include providing reinsurance of high-risk, nonstandard business or writing directly high-risk, nonstandard business. An insurer so designated by the commissioner as having served or serving the nonstandard market is governed by this section.

Amendment No. 77 was adopted without objection.

**Amendment No. 78**

On behalf of Representative Flores, Representative Berman offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by inserting the following appropriately numbered ARTICLE and renumbering the subsequent ARTICLES accordingly:

ARTICLE \_\_\_\_\_. PREMIUM DISCOUNTS

SECTION \_\_\_\_\_. Subchapter A, Chapter 5, Insurance Code, is amended by adding Article 5.03-6 to read as follows:

Art. 5.03-6. PREMIUM DISCOUNT FOR UNITED STATES ARMED FORCES PERSONNEL

Sec. 1. DEFINITIONS. In this article:

(1) "Applicant" means an individual who applies under this article for a discount in motor vehicle insurance premiums.

(2) "Insurer" means an insurance company, interinsurance exchange, mutual, capital stock company, fraternal benefit society, local mutual aid association, county mutual, reciprocal, association, Lloyd's plan insurer, or other entity writing motor vehicle insurance in this state. The term includes an affiliate, as defined by Section 823.003 of this code.

(3) "Motor vehicle" means any private passenger vehicle that:

(A) is registered in a state; and

(B) has a gross weight of 25,000 pounds or less.

Sec. 2. DISCOUNT AUTHORIZED; ELIGIBILITY CONDITIONS FOR DRIVERS. (a) An insurer who delivers or issues for delivery in this state a motor vehicle insurance policy, on receipt of written verification from the insured that the insured or a family member covered by the policy is eligible under Subsection (b) of this section, may grant a discount in the amount provided by Subsection (f) of this section in the premiums charged for the liability, medical payments, personal injury protection, and collision coverage only for the motor vehicle designated to be driven by the eligible individual.

(b) To be eligible for the discount authorized under Subsection (a) of this section, an applicant must:

(1) be licensed to drive in a state;

(2) be on active duty in the United States armed forces or be the spouse of an individual on active duty in the United States armed forces;

(3) have held a driver's license for at least three years on the date the application is filed;

(4) have not, during the three years preceding the date of the application, been convicted of violating a law or ordinance of a state or a political subdivision of a state relating to the operation of a moving motor vehicle; and

(5) have not, during the three years preceding the date of the application, been found at fault in a motor vehicle accident.

(c) An applicant is not eligible to receive a discount under this article if the applicant has been convicted of an offense relating to the operation of a motor vehicle under:

(1) Chapter 49, Penal Code;

(2) Article 67011-1, Revised Statutes, as that a statute existed before repeal by Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993, or Section 19.05, Penal Code, as that statute existed before amendment by Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993; or

(3) another state's statute similar to a statute described by Subdivision (1) or (2) of this subsection.

(d) For purposes of Subsections (b) and (c) of this section, an applicant is considered to have been convicted in a case if:

(1) a sentence is imposed; or

(2) the applicant receives community supervision or analogous treatment under the law of another state.

(e) The commissioner by rule may establish additional requirements for receipt of a discount under this article.

(f) The commissioner by rule shall set the amount of the discount applicable under this article and may adopt other rules necessary for the implementation of this article.

Sec. 3. INELIGIBILITY; REVOCATION OF DISCOUNT. (a) An individual may not continue to receive a discount under this article after the first date on which the individual fails to satisfy the requirements of Section 2 of this article unless the individual reestablishes eligibility under this article.

(b) An insurer shall revoke a discount under this article if an applicant for the discount knowingly provides false information in or with the application.

SECTION \_\_\_\_\_. Article 5.03-6, Insurance Code, as added by this article, applies only to a motor vehicle insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2004. A policy that is delivered, issued for delivery, or renewed before January 1, 2004, is governed by the law as it existed immediately before the effective date of this article, and that law is continued in effect for that purpose.

Amendment No. 78 was adopted without objection.

#### **Amendment No. 79**

Representatives Eiland, Kolkhorst, and Bonnen offered the following amendment to **CSSB 14**:

Amend **CSSB 14** (House Committee Printing) as follows:

(1) Insert the following new ARTICLE 4A to read as follows:

#### ARTICLE 4A. EXEMPTIONS FROM CERTAIN RATE REQUIREMENTS

SECTION 4A.01. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.13-2C to read as follows:

#### Art. 5.13-2C. EXEMPTIONS FROM RATE FILING AND APPROVAL REQUIREMENTS FOR CERTAIN INSURERS

Sec. 1. DEFINITIONS. In this article:

(1) "Credit score" has the meaning assigned by Article 21.49-2U of this code.

(2) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write residential property insurance.

(3) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a homeowners policy, including a tenants policy, a condominium owners policy, or a residential fire and allied lines policy.

Sec. 2. APPLICABILITY. (a) Except as provided by Subsection (b) of this section, this article applies only to an insurer that, during the calendar year preceding the date filing is otherwise required under Article 5.13-2 or Article 5.142 of this code, issued residential property insurance policies in this state that

accounted for less than two percent of the total amount of premiums collected by insurers for residential property insurance policies issued in this state, more than 50 percent of which cover property:

(1) valued at less than \$100,000; and

(2) located in an area designated by the commissioner as underserved for residential property insurance under Article 5.35-3 of this code.

(b) If an insurer described by Subsection (a) of this section is a member of an affiliated insurance group, this article applies to the insurer only if the total aggregate premium collected by the group accounts for less than two percent of the total amount of premiums collected by insurers for residential property insurance policies issued in this state.

Sec. 3. EXEMPTION. (a) Except as provided by Subsection (b) of this section, an insurer described by Section 2 of this article is exempt from the rate filing and approval requirements of Article 5.13-2 of this code, as effective on and after September 1, 2004.

(b) An insurer described by Section 2 of this article that proposes to increase the premium rates charged policyholders for a residential property insurance product by 10 percent or more than the amount the insurer charged policyholders for the same or an equivalent residential property insurance product during the preceding calendar year must file the insurer's proposed rates in accordance with Article 5.142 or Article 5.13-2 of this code, as applicable, and obtain approval of the proposed rates as provided by the applicable article.

(c) Articles 5.142 and 5.143 of this code do not apply to an insurer described by Section 2 of this article.

(2) Strike added Subchapter H, Chapter 911, Insurance Code.

### **Amendment No. 80**

Representative Wolens offered the following amendment to Amendment No. 79:

Amend the Kolkhorst, Eiland, Bonnen amendment to **CSSB 14** by striking Section 1(1) of added Article 5.13-2C, Insurance Code (page 1, lines 9-10, of the amendment), and renumbering the subdivisions of that section appropriately.

Amendment No. 80 was adopted without objection.

(Speaker in the chair)

Representative Smithee moved to table Amendment No. 79.

(Miller in the chair)

A record vote was requested.

The motion to table was lost by (Record 669): 19 Yeas, 118 Nays, 3 Present, not voting.

Yeas — Corte; Crabb; Edwards; Goodman; Hamric; Harper-Brown; Heflin; Hill; Hochberg; Seaman; Smithee; Talton; Taylor; Villarreal; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Nays — Allen; Alonzo; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flores; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Griggs; Guillen; Gutierrez; Haggerty; Hamilton; Hardcastle; Hartnett; Hegar; Hilderbran; Hodge; Hope; Hopson; Hughes; Hunter; Hupp; Isett; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Moreno, J.; Moreno, P.; Morrison; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Solis; Solomons; Stick; Swinford; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; West; Wilson; Wise.

Present, not voting — Mr. Speaker; Miller(C); Smith, T.

Absent, Excused — Bailey; Riddle.

Absent — Goolsby; Grusendorf; Homer; Howard; Jones, D.; Laubenberg; Mowery; Smith, W.

Amendment No. 79, as amended, was adopted without objection.

### **REGULAR ORDER OF BUSINESS SUSPENDED**

On motion of Representative Smithee and by unanimous consent, the reading and referral of bills was taken up at this time.

### **BILLS AND JOINT RESOLUTIONS ON FIRST READING AND REFERRAL TO COMMITTEES**

Bills and joint resolutions were at this time laid before the house, read first time, and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 2.)

### **COMMITTEE GRANTED PERMISSION TO MEET**

Representative Swinford requested permission for the Committee on Government Reform to meet while the house is in session.

Permission to meet was granted without objection.

### **COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Government Reform, 4 p.m. today, speakers committee room, for a formal meeting, to consider **SB 1952**.

### **CSSB 14 - (consideration continued)**

### **Amendment No. 81**

Representative Wolens offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, on page 53, line 26, before "or" by adding "the Texas Automobile Insurance Association,".

Amendment No. 81 was withdrawn.

(Speaker in the chair)

**Amendment No. 82**

Representative Villarreal offered the following amendment to **CSSB 14**:

Amend **CSSB 14** following ARTICLE 4 of the bill (page 54 between lines 18 and 19) by inserting the following new ARTICLE, appropriately numbered, and renumbering subsequent ARTICLES and SECTIONS of the bill appropriately:

ARTICLE \_\_\_\_\_. SANCTIONS FOR RATES IN VIOLATION OF CODE

SECTION \_\_\_\_\_.01. Chapter 82, Insurance Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ADDITIONAL SANCTIONS FOR RATES IN VIOLATION OF CODE

Sec. 82.101. RATE REFUND. (a) Notwithstanding any other provision of this code, the commissioner by order issued after notice and opportunity for hearing may require a company regulated by the commissioner to make a refund of an excessive premium charged.

(b) The commissioner may require a refund under this section if the commissioner finds that the premium was charged under a rate, rating manual, rating schedule, plan of rules, rating rule, classification system, territory code or description, or other similar information used by the insurer to determine the applicable premium that violates:

(1) this code or another insurance code of this state; or

(2) a rating criteria or standard established by or under this code or another insurance code of this state.

Sec. 82.102. AMOUNT OF REFUND. An insurer required to make a refund under this section shall pay to the individual who paid the premium:

(1) the total amount of premium paid in violation of a law, criteria, or standard described by Subsection (a)(1) or (2) during the entire period the excessive premium was paid; and

(2) reasonable interest on that amount, in a amount established by the commissioner, beginning on the date on which the excessive premium was paid and ending on the date the refund is paid.

Sec. 82.103. REMEDY CUMULATIVE. The sanction authorized by this subchapter is in addition to any other sanction authorized by this code or other insurance law by this state, including any other law authorizing or requiring the payment of a refund. This section does not authorize the commissioner to require a company to make more than one refund with respect to the same excessive premium.

SECTION \_\_\_\_\_.02. This article applies only to refund of premium billed on or after the effective date of this Act. Premium billed before the effective date of this Act is governed by the law as it existed at the time the premium was billed.

Amendment No. 82 was withdrawn.

### **Amendment No. 83**

Representative Turner offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, in ARTICLE 4 of the bill, by adding the following new SECTION, appropriately numbered, to read as follows:

SECTION 4. \_\_\_\_\_. Article 5.13-2, Insurance Code, is amended by adding Section 3A to read as follows:

Sec. 3A. RATE FACTORS. (a) In deciding whether a rate filing made by an insurer complies with this article, the commissioner shall consider whether:

(1) the insurer's rate complies with the rating criteria adopted under this article;

(2) the insurer's underwriting guidelines are fair and not discriminatory;

(3) the insurer has applied credit scoring in accordance with Article 21.49-2U of this code; and

(4) any applicable management fees charged by the insurer comply with law and are not unreasonable or excessive under accepted regulatory standards.

(b) The insurer must itemize any applicable management fees charged by the insurer, including an analysis of each fee that states each component of the fee, and an itemization of profit-load.

Amendment No. 83 was adopted without objection.

### **Amendment No. 84**

Representatives Eiland, Kolkhorst, Bonnen, and Delisi offered the following amendment to **CSSB 14**:

Amend **CSSB 14** (House Committee Printing) as follows:

(1) Insert the following new ARTICLE 4A to read as follows:

ARTICLE 4A. EXEMPTIONS FROM CERTAIN RATE REQUIREMENTS

SECTION 4A.01. Subchapter B, Chapter 5, Insurance Code, is amended by adding Article 5.13-2C to read as follows:

Art. 5.13-2C. EXEMPTIONS FROM RATE FILING AND APPROVAL REQUIREMENTS FOR CERTAIN INSURERS

Sec. 1. DEFINITIONS. In this article:

(1) "Credit score" has the meaning assigned by Article 21.49-2U of this code.

(2) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write residential property insurance.

(3) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a homeowners policy, including a tenants policy, a condominium owners policy, or a residential fire and allied lines policy.

Sec. 2. APPLICABILITY. (a) Except as provided by Subsection (b) of this section, this article applies only to an insurer that, during the calendar year preceding the date filing is otherwise required under Article 5.13-2 or Article 5.142 of this code, issued residential property insurance policies in this state that accounted for less than two percent of the total amount of premiums collected by insurers for residential property insurance policies issued in this state, more than 50 percent of which cover property:

(1) valued at less than \$100,000; and

(2) located in an area designated by the commissioner as underserved for residential property insurance under Article 5.35-3 of this code.

(b) If an insurer described by Subsection (a) of this section is a member of an affiliated insurance group, this article applies to the insurer only if the total aggregate premium collected by the group accounts for less than two percent of the total amount of premiums collected by insurers for residential property insurance policies issued in this state.

Sec. 3. EXEMPTION. (a) Except as provided by Subsection (b) of this section, an insurer described by Section 2 of this article is exempt from the rate filing and approval requirements of Article 5.142 of this code, and, on and after September 1, 2004, Article 5.13-2 of this code.

(b) An insurer described by Section 2 of this article that proposes to increase the premium rates charged policyholders for a residential property insurance product by 10 percent or more than the amount the insurer charged policyholders for the same or an equivalent residential property insurance product during the preceding calendar year must file the insurer's proposed rates in accordance with Article 5.142 or Article 5.13-2 of this code, as applicable, and obtain approval of the proposed rates as provided by the applicable article.

(2) Strike added Subchapter H, Chapter 911, Insurance Code.

Amendment No. 84 was withdrawn.

### **Amendment No. 85**

Representative Bohac offered the following amendment to **CSSB 14**:

Amend **CSSB 14** (House Committee Printing) as follows:

(1) In ARTICLE 4 of the bill, insert the following appropriately numbered SECTION and renumber existing SECTIONS accordingly:

SECTION 4. \_\_\_\_\_. Section 8, Article 5.13-2, Insurance Code, is amended by adding Subsection (g) to read as follows:

(g) The commissioner shall promulgate an optional residential property insurance policy endorsement that provides coverage for the repair or replacement of any part of a building necessary to repair or replace a natural gas system or appliance using natural gas, including repair of the natural gas system supplying the appliance with natural gas.



(2) In ARTICLE 4 of the bill, strike SECTION 4.06 of the bill and substitute the following:

SECTION 4.06. (a) Except as provided by Subsection (b) of this section, this article takes effect September 1, 2004.

(b) Section 8(g), Article 5.13-2, Insurance Code, as added by this act, takes effect September 1, 2003.

Amendment No. 85 was adopted without objection.

#### **Amendment No. 86**

Representative Wolens offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by striking Article 5 in its entirety.

Amendment No. 86 was withdrawn.

#### **Amendment No. 87**

Representative Peña offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by striking Article 5 in its entirety and substituting the following:

##### Article 5. Policy Forms For Certain Lines

Section 5.01. Article 5.06(3), Insurance Code, is amended to read as follows:

(3) ~~[The Board may approve the use of a policy form adopted by a national organization of insurance companies, or similar organization,]~~ An insurer may use policy forms and endorsements other than those adopted under Subsection (1) of this article if the commissioner approves the form and endorsements and if the form, with any endorsement to the form required and approved by the Board, provides coverage equivalent to the coverage provided by the form adopted by the Board under Subsection (1) of this section. The commissioner shall approve or disapprove the filing within 60 days after the filing is made.

Section 5.02. Article 5.35(c), Insurance Code, is amended to read as follows:

(c) An insurer may use ~~[The commissioner may approve the use of]~~ policy forms and endorsements other than those adopted under Subsection (a) or (b) of this article [adopted by a national organization of insurance companies or a similar organization,] if the [such] forms or endorsements are filed with and are approved by the commissioner in accordance with this article. The commissioner shall approve or disapprove the filing within 60 days after the filing is made.

Amendment No. 87 was withdrawn.

#### **Amendment No. 88**

Representative Taylor offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

Amend subsection (a) of Insurance Code article 5.73, Sec. 4A. to read:

(a) An advisory organization may file prospective loss costs, supplementary rating information, and policy forms with the commissioner under article 5.13-2 of this code and under other sections of this chapter governing the filing of rates

and policy forms by insurers. An insurer that subscribes to an advisory organization may use this information and may incorporate the information into the insurer's filings. A filing made by an advisory organization under this section is subject to the provisions of this code or the other insurance laws of this state governing rate filings.

Amendment No. 88 was withdrawn.

**Amendment No. 89**

Representative Seaman offered the following amendment to **CSSB 14**:

Amend **CSSB 14** in added Subchapter U, Chapter 5, Insurance Code by striking added Article 5.171 and substituting the following:

SUBCHAPTER U. RATING TERRITORIES FOR CERTAIN LINES

Art. 5.171. RATING TERRITORIES. Notwithstanding any other provision of this code, an insurer may not use a rating territory that is smaller than a county unless the county is subdivided and the rate for any sub-territory within that county is not greater than 15 percent higher than the rate used in any other sub-territory in the county, except that the commissioner may, by rule, allow a greater rate difference for residential property insurance or personal automobile insurance.

Representative Turner moved to table Amendment No. 89.

The motion to table was lost.

Amendment No. 89 was adopted without objection.

**Amendment No. 90**

Representative Taylor offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

Amend subsection (a) of Insurance Code article 5.73, Sec. 4A. to read:

(a) An advisory organization may file prospective loss costs, supplementary rating information, and policy forms with the commissioner under article 5.13-2 of this code and under other sections of this chapter governing the filing of rates and policy forms by insurers. An insurer that subscribes to an advisory organization may use this information and may incorporate the information into the insurer's filings. A filing made by an advisory organization under this section is subject to the provisions of this code or the other insurance laws of this state governing rate filings. Nothing herein shall permit the advisory organization to publish rates.

Amendment No. 90 was adopted without objection.

**Amendment No. 91**

Representative Villarreal offered the following amendment to **CSSB 14**:

Amend **CSSB 14** following ARTICLE 4 of the bill (page 54 between lines 18 and 19) by inserting the following new ARTICLE, appropriately numbered, and renumbering subsequent ARTICLES and SECTIONS of the bill appropriately:

ARTICLE \_\_\_\_\_. SANCTIONS FOR RATES IN VIOLATION OF CODE  
SECTION \_\_\_\_\_.01. Chapter 82, Insurance Code, is amended by adding  
Subchapter C to read as follows:

SUBCHAPTER C. ADDITIONAL SANCTIONS FOR RATES IN VIOLATION  
OF CODE

Sec. 82.101. RATE REFUND. (a) Notwithstanding any other provision of this code, the commissioner by order issued after notice and opportunity for hearing may require a company regulated by the commissioner to make a refund of an excessive premium charged.

(b) The commissioner may require a refund under this section if the commissioner finds that the premium was charged under a rate, rating manual, rating schedule, plan of rules, rating rule, classification system, territory code or description, or other similar information used by the insurer to determine the applicable premium that violates:

(1) this code or another insurance code of this state; or

(2) a rating criteria or standard established by or under this code or another insurance code of this state.

Sec. 82.102. AMOUNT OF REFUND. Except as provided by Section 82.103, an insurer required to make a refund under this section shall pay to the individual who paid the premium:

(1) the total amount of premium paid in violation of a law, criteria, or standard described by Subsection (a)(1) or (2) during the entire period the excessive premium was paid; and

(2) reasonable interest on that amount, in a amount established by the commissioner, beginning on the date on which the excessive premium was paid and ending on the date the refund is paid.

Sec. 82.103. DE MINIMUS REFUND NOT REQUIRED. The commissioner shall declare a rate found to be excessive under this subchapter by 7.5 percent or less to be de minimus. A company is not required to directly refund an overcharge of less than 7.5 percent to a person who is a policyholder at the time the refund is ordered if the company agrees to reduce future rates by the amount of the overcharge that would have otherwise been to be refunded plus the prime rate of interest, as determined by the commissioner, plus one percent.

Sec. 82.104. REMEDY CUMULATIVE. The sanction authorized by this subchapter is in addition to any other sanction authorized by this code or other insurance law by this state, including any other law authorizing or requiring the payment of a refund. This section does not authorize the commissioner to require a company to make more than one refund with respect to the same excessive premium.

SECTION \_\_\_\_\_.02. This article applies only to refund of premium billed on or after the effective date of this Act. Premium billed before the effective date of this Act is governed by the law as it existed at the time the premium was billed.

Amendment No. 91 was withdrawn.

**Amendment No. 92**

Representatives Wise and Wolens offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

(1) Strike SECTIONS 6.01-6.03 of the bill (page 56, line 8, through page 59, line 2), and substitute the following SECTIONS:

SECTION 6.01. (a) Effective June 1, 2003, Section 827.001, Insurance Code, is amended to read as follows:

Sec. 827.001. DEFINITIONS ~~[DEFINITION]~~. In this chapter:

(1) "Insurer" means an insurance company or other legal entity authorized to engage in the business of insurance in this state, including a reciprocal or interinsurance exchange, a Lloyd's plan, a farm mutual insurance company, and a county mutual insurance company. The term includes an affiliate. The term does not include an eligible surplus lines insurer regulated under Chapter 981.

(2) "Rating[, -rating] territory" means a rating territory established by the department.

(b) Until June 1, 2003, Subsection (a), Article 21.49-2C, Insurance Code, is amended by adding Subdivision (4) to read as follows:

(4) "Insurer" means an insurance company or other legal entity authorized to write insurance in this state, including a county mutual insurance company, a reciprocal or interinsurance exchange, a Lloyd's plan, and a farm mutual insurance company. This subdivision expires June 1, 2003.

SECTION 6.02. (a) Effective June 1, 2003, Section 827.002, Insurance Code, is amended to read as follows:

Sec. 827.002. EXEMPTION. This chapter does not apply to a transfer of business from an insurer to a company that:

(1) is within the same insurance group as [under common ownership with] the insurer; [and]

(2) is authorized to engage in the business of insurance in this state; and

(3) is not a reciprocal or interinsurance exchange, a Lloyd's plan, a county mutual insurance company, or a farm mutual insurance company.

(b) Until June 1, 2003, Subsection (b), Article 21.49-2C, Insurance Code, is amended to read as follows:

(b) This article does not apply to the transfer of the business from an insurer to a company that is within the same insurance group as the insurer and is [under common ownership] admitted to do business in this state. This subsection expires June 1, 2003.

SECTION 6.03. (a) Effective June 1, 2003, Section 827.003, Insurance Code, is amended to read as follows:

Sec. 827.003. WITHDRAWAL PLAN REQUIRED. An ~~[authorized]~~ insurer shall file with the commissioner a plan for orderly withdrawal if the insurer proposes to:

(1) [withdraw from writing a line of insurance in this state or] reduce the insurer's total annual premium volume by 50 ~~[75]~~ percent or more; ~~[or]~~

(2) reduce the insurer's annual premium by 75 percent or more in a line of insurance in this state; or

(3) reduce in this state, or in any applicable [~~in a~~] rating territory, the insurer's total annual premium volume in a [personal] line of personal automobile [~~motor vehicle comprehensive~~] or residential property insurance by 50 percent or more.

(b) Until June 1, 2003, Subsection (a)(1), Article 21.49-2C, Insurance Code, is amended to read as follows:

(1) This subdivision expires June 1, 2003. An ~~authorized~~ insurer shall file with the commissioner a plan for orderly withdrawal if the insurer proposes ~~[to withdraw from writing a line of insurance in this state or]~~ to reduce its total annual premium volume by 50 ~~[75]~~ percent or more, proposes to reduce the insurer's annual premium by 75 percent or more in a line of insurance in this state, or proposes, in a personal line of motor vehicle insurance ~~[comprehensive]~~ or residential property insurance, to reduce its total annual premium volume in a rating territory by 50 percent or more. The insurer's plan shall be constructed to protect the interests of the people of this state and shall indicate the date it intends to begin and complete its withdrawal plan and must contain provisions for:

(A) meeting the insurer's contractual obligations;

(B) providing service to its Texas policyholders and claimants; and

(C) meeting any applicable statutory obligations, such as the payment of assessments to the guaranty fund and participation in any assigned risk plans or joint underwriting arrangements.

SECTION 6.04. (a) Effective June 1, 2003, Section 827.005, Insurance Code, is amended to read as follows:

Sec. 827.005. APPROVAL OF WITHDRAWAL PLAN. (a) Except as provided by Subsection (b), the [The] commissioner shall approve a withdrawal plan that adequately provides for meeting the requirements prescribed by Section 827.004(3).

(b) The commissioner may modify, restrict, or limit a withdrawal plan under this section as necessary if the commissioner finds that a line of insurance subject to the withdrawal plan is not offered in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state. The commissioner may by order set the date on which the insurer's withdrawal begins.

(c) A withdrawal plan is deemed approved if the commissioner:

(1) does not hold a hearing on the plan before the 61st ~~[31st]~~ day after the date the plan is filed with the commissioner; or

(2) does not deny approval before the 61st ~~[31st]~~ day after the date a hearing on the plan is held.

(b) Until June 1, 2003, Subsections (e) and (f), Article 21.49-2C, Insurance Code, are amended to read as follows:

(e) Except as provided by Subsection (f), the [The] commissioner shall approve the plan if it adequately provides for:

(1) meeting the insurer's contractual obligations;

(2) providing service to its Texas policyholders and claimants; and

(3) meeting any applicable statutory obligations, such as the payment of assessments to the guaranty fund and participation in any assigned risk plans or joint underwriting arrangements.

(f) The commissioner may modify, restrict, or limit a withdrawal plan under this section as necessary if the commissioner finds that a line of insurance subject to the withdrawal plan is not offered in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state. The commissioner may by order set the date on which the insurer's withdrawal begins. The withdrawal plan shall be deemed approved if the commissioner has not held a hearing within 60 [~~30~~] days after the plan is filed with the commissioner or has not denied approval within 60 [~~30~~] days after the hearing. An insurer that withdraws from writing insurance in this state or that reduces its total annual premium volume by 75 percent or more in any year without receiving the commissioner's approval is subject to the civil penalties under Article 1.10 of this code.

SECTION 6.05. (a) Effective June 1, 2003, Section 827.008, Insurance Code, is amended to read as follows:

Sec. 827.008. RESTRICTION PLAN. (a) Before an insurer, in response to a catastrophic natural event that occurred during the preceding six months, may restrict writing new business in a rating territory in a [~~personal~~] line of personal automobile [~~comprehensive motor vehicle~~] or residential property insurance, the insurer must file a proposed restriction plan with the commissioner for the commissioner's review and approval [~~comment~~].

(b) The commissioner may modify, restrict, or limit a restriction plan under this section as necessary if the commissioner finds that a line of insurance subject to the restriction plan is not offered in this state in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state in light of the impact of the catastrophic natural event. The commissioner may by order set the date on which the insurer's restriction begins. [~~The commissioner's approval of a restriction plan filed under Subsection (a) is not required. An insurer that files a restriction plan may institute the plan on or after the 15th day after the date the plan is filed.~~]

(c) A [~~Notwithstanding Subsection (b), a~~] withdrawal plan must be filed and approved under Sections 827.003 and 827.004 if an insurer's decision not to accept new business in a [~~personal~~] line of personal automobile [~~comprehensive motor vehicle~~] or residential property insurance results in a reduction of the insurer's total annual premium volume by 50 percent or more.

(b) Until June 1, 2003, Subsection (a)(2), Article 21.49-2C, Insurance Code, is amended to read as follows:

(2) If within six months after a catastrophic event of natural origin an insurer, in response to such catastrophic event, wishes to restrict its writing of new business in a personal automobile [~~line of comprehensive motor vehicle~~] or residential property insurance in a rating territory, it shall prepare and file a plan as to such proposed plan of restriction with the commissioner for the commissioner's review and approval [~~comment~~]. The commissioner may modify, restrict, or limit a restriction plan under this section as necessary if the

commissioner finds that a line of insurance subject to the restriction plan is not offered in this state in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state in light of the impact of the catastrophic natural event. The commissioner may by order set the date on which the insurer's restriction begins. In [Approval of such plan is not required and the insurer may institute such plan 15 days after filing. However, in] the event of a conflict between Subsections (a)(1) and (a)(2), where not accepting new business may result in a withdrawal as defined in Subsection (a)(1), Subsection (a)(1) controls.

(2) Renumber SECTION 6.04 of the bill appropriately.

(3) Immediately following amended Article 21.49-2C(g), Insurance Code (page 60, between lines 9 and 10), insert the following new SECTION, appropriately numbered:

SECTION 6.0\_. This article applies only to a reduction of a line of insurance or a withdrawal of a line of insurance by an insurer on or after the effective date of this article. A reduction of a line of insurance or a withdrawal of a line of insurance by an insurer before the effective date of this article is governed by the law as it existed immediately before the effective date of this article, and that law is continued in effect for that purpose.

Amendment No. 92 was adopted without objection.

### **Amendment No. 93**

Representative Thompson offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, Committee Printing, as follows:

On page 60, strike lines 11–27 and substitute the following:

SECTION 7.01. Section 5, Article 21.21-6, Insurance Code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 5. SANCTIONS. (a) Any legal entity engaged in the business of insurance in this state found to be in violation of or failing to comply with this article is subject to the sanctions authorized by Chapter 82 [in Article 1.10] of this code or [including] administrative penalties authorized by Chapter 84 [under Article 1.10E] of this code. The commissioner may also utilize the cease and desist procedures authorized by Chapter 83 [Article 1.10A] of this code.

(b) It is not a defense to an action of the commissioner under Subsection (a) of this section that the contract giving rise to the alleged violation was entered into before the effective date of this article.

SECTION 7.02. Subchapter B, Chapter 21, Insurance Code, is amended by adding Article 21.21-6A to read as follows:

Art. 21.21-6A. CRIMINAL PENALTY. (a) In this article, "person" means a legal entity engaged in the business of life insurance described in Subdivisions (a), (b), (c), (f), and (j), Section 2, Article 21.21-6 of this code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, or an officer or director of one of those entities.

(b) A person commits an offense if the person with criminal negligence:

(1) offers insurance coverage at a premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin; or

(2) collects an insurance premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin.

(c) An offense under this article is a state jail felony.

SECTION 7.03. Subsection (c), Section 3, Article 21.21-8, Insurance Code, is amended to read as follows:

(c) All actions under this article must be commenced on or before the second anniversary of [within 12 months after] the date on which the plaintiff was denied insurance or the unfair act occurred or the date the plaintiff, in the exercise of reasonable diligence, should have discovered the occurrence of the unfair act.

SECTION 7.04. Section 1, Article 21.74, Insurance Code, is amended by amending Subdivision (1) and (2) and adding Subdivisions (4) to read as follows:

(1) "Holocaust victim" means a person who was killed or injured, or who lost real or personal property or financial assets, as the result of discriminatory laws, policies, or actions directed against any discrete group of which the person was a member, during the period of 1920 to 1945, inclusive, in Germany, areas occupied by Germany, ~~or~~ countries allied with Germany, or countries that were sympathizers with Germany.

(2) "Insurer" means an insurance company or other entity engaged in the business of insurance or reinsurance in this state. The term includes:

(A) a capital stock company, a mutual company, or a Lloyd's plan;  
and

(B) any parent, subsidiary, reinsurer, successor in interest, managing general agent, or affiliated company, at least 50 percent of the stock of which is in common ownership with an insurer engaged in the business of insurance in this state.

(4) "Proceeds" means the face value or other payout value of insurance policies and annuities plus reasonable interest to date of payment without diminution for wartime or immediate postwar currency devaluation.

SECTION 7.05. Article 21.74, Insurance Code, is amended by adding Section 2A and 2B to read as follows:

Sec. 2A. FILINGS AND CERTIFICATES OF INSURANCE. (a) This section applies to each insurer engaging in business in the state that, directly or through a related company, sold to persons in Europe insurance policies described by Section 1 of this article or dowry or educational insurance policies that were in effect during the period of 1920 to 1945, whether the sale occurred before or after the insurer and the related company became related.

(b) Each insurer shall file or cause to be filed with the commissioner the following information:



(1) the number of insurance policies described by Subsection (a) of this section sold by the insurer or a related company;

(2) the holder, beneficiary, and current status of the policies; and

(3) the city of origin, domicile, or address for each policyholder listed in the policies.

(c) Each insurer shall certify:

(1) that the proceeds of the policies described by Subsection (a) of this section have been paid to the designated beneficiaries or their heirs in circumstances in which that person or those persons, after diligent search, could be located and identified;

(2) that the proceeds of the policies, in circumstances in which the beneficiaries or heirs could not, after diligent search, be located or identified, have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations of the purpose of assisting Holocaust survivors;

(3) that a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders and their heirs and beneficiaries a plan for the distribution of the proceeds; or

(4) that the proceeds have not been distributed and the amount of those proceeds.

(d) The commissioner by rule shall require that insurers update the information submitted to the commissioner under this section at reasonable intervals.

Sec. 2B. ESTABLISHMENT AND MAINTENANCE OF REGISTRY; PUBLIC ACCESS. (a) The commissioner shall establish and maintain within the department a central registry containing records and information relating to insurance policies described by Section 2A(a) of this article of Holocaust victims, living and deceased. The registry shall be known as the Holocaust Era Insurance Registry.

(b) The commissioner by rule shall establish appropriate mechanisms to ensure public access to the registry.

(c) Information contained in the registry:

(1) is public information;

(2) is not subject to any exceptions to disclosure under Chapter 552, Government Code; and

(3) cannot be withheld from disclosure under any other law.

SECTION 7.06. (a) Article 21.21-6A, Insurance Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose. For the purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) Subsection (c), Section 3, Article 21.21-8, Insurance Code, as amended by this Act, applies to a cause of action for which the limitations period established under that subsection before its amendment by this Act has not expired on the effective date of this Act.

SECTION 7.07. Not later than the 180th day after the effective date of this Act, an insurer subject to Article 21.74, Insurance Code, as amended by this Act, shall file the information and certification required by Section 2A of that article.

(Speaker pro tempore in the chair)

Amendment No. 93 was withdrawn.

**Amendment No. 94**

Representative Taylor offered the following amendment to **CSSB 14**:

Amend **CSSB 14** after SECTION 7.01 of the bill (page 60, after line 27, house committee printing), by inserting the following:

SECTION 7.02. Section 4, Article 21.21-8, Insurance Code, is amended to read as follows:

Sec. 4. Affirmative Defense. A legal entity engaged in the business of insurance as specified in Section 1 of this article is not in violation of the prohibited acts defined in or determined pursuant to Section 2 of this article if the refusal to insure; the refusal to continue to insure; the limiting of the amount, extent, or kind of coverage; or the charging of an individual a different rate for the same coverage is based upon sound actuarial principles. The use of an underwriting guideline filed by an insurer and not rejected by the commissioner on or before the 60th day after the date the guideline is filed is an affirmative defense under this section.

Amendment No. 94 was withdrawn.

**Amendment No. 95**

Representative Eiland offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

Article 8. REVENUE BOND PROGRAM

Amend SECTION 8.05, Sec. 15. RETENTION OF PROFITS as follows:

"Sec. 15. RETENTION OF PROFITS. The association shall retain any profits of the association to be used for the purposes of the association. The profits of the association may not be distributed to insurers and shall be used to offset future assessments."

Amendment No. 95 was adopted without objection.

**Amendment No. 96**

Representative Rose offered the following amendment to **CSSB 14**:

Amend Proposed **CSSB 14** (House Committee Report) as follows:

(1) On Page 89, Line 16, after the semi-colon insert a new subsection (4) to read as follows:

"Section 4(i), Article 21.49-2B, Insurance Code;"

(2) Renumber the remaining Subsections accordingly.

Amendment No. 96 was withdrawn.

**Amendment No. 97**

Representative Naishtat offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by adding the following new ARTICLE, appropriately numbered, and renumbering ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. INDEPENDENT REVIEW ORGANIZATIONS

SECTION \_\_\_\_\_. Section 11, Article 21.58A, Insurance Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) When a retrospective review of the medical necessity and appropriateness of health care service is made under a health insurance policy or plan:

(1) such retrospective review shall be based on written screening criteria established and periodically updated with appropriate involvement from physicians, including practicing physicians, and other health care providers; ~~and~~

(2) the payor's system for such retrospective review of medical necessity and appropriateness shall be under the direction of a physician;

(3) the retrospective review must comply with the confidentiality provisions of Section 8 of this article in the same manner as if the person conducting the retrospective review was a utilization review agent; and

(4) the payor shall notify the enrollee or a person acting on behalf of the enrollee and the enrollee's provider of record of any adverse determination and shall notify the appealing party of the right to seek review of the adverse determination by an independent review organization under this section.

(c) A person conducting a retrospective review of the medical necessity and appropriateness of health care service under this section shall:

(1) permit any party whose appeal of an adverse determination is denied by the person to seek review of that determination by an independent review organization assigned to the appeal in accordance with Article 21.58C of this code;

(2) provide to the appropriate independent review organization not later than the third business day after the date that the person conducting the review receives a request for review a copy of:

(A) any medical records of the enrollee that are relevant to the review;

(B) any documents used by the plan in making the determination to be reviewed by the organization;

(C) a copy of a response letter issued to the enrollee or a person acting on behalf of the enrollee, and the enrollee's physician or health care provider, explaining the resolution of the appeal;

(D) any documentation and written information submitted to the person conducting the review in support of the appeal; and

(E) a list of each physician or health care provider who has provided care to the enrollee and who may have medical records relevant to the appeal;

(3) comply with the independent review organization's determination with respect to the medical necessity or appropriateness of health care items and services for an enrollee; and

(4) pay for the independent review.

SECTION \_\_\_\_\_. Section 2(c), Article 21.58C, Insurance Code, is amended to read as follows:

(c) The standards adopted under Subsection (a)(1) of this section must include standards that require each independent review organization to make its determination:

(1) not later than the earlier of:

(A) the 15th day after the date the independent review organization receives the information necessary to make the determination; or

(B) the 20th day after the date the independent review organization receives the request that the determination be made; ~~and~~

(2) in the case of a life-threatening condition, not later than the earlier of:

(A) the fifth day after the date the independent review organization receives the information necessary to make the determination; or

(B) the eighth day after the date the independent review organization receives the request that the determination be made; and

(3) in the case of a retrospective review of health care services that have been provided, not later than the earlier of:

(A) the 25th day after the date the independent review organization receives the information necessary to make the determination; or

(B) the 30th day after the date the independent review organization receives the request that the determination be made.

SECTION \_\_\_\_\_. The change in law made by this article to Articles 21.58A and 21.58C, Insurance Code, applies only to a retrospective review or independent review under those articles, as applicable, that begins on or after January 1, 2004. A retrospective review or independent review that begins before January 1, 2004, is governed by the law as it existed immediately before the effective date of this Act and that law is continued in effect for this purpose.

(Speaker in the chair)

Amendment No. 97 was withdrawn.

(J. Keffer in the chair)

### **Amendment No. 98**

Representative Villarreal offered the following amendment to **CSSB 14**:

Amend **CSSB 14** as follows:

(1) In SECTION 1.01 of the bill, in added Section 2(a)(3), Article 5.142, Insurance Code (page 3, lines 4-8), strike Paragraphs (F) and (G) and substitute the following:

(F) except as authorized by rule by the commissioner, fees and assessments paid to advisory organizations;

(G) any amount determined by the commissioner to be excess premiums charged by the insurer; and

(H) any unreasonably incurred expenses, as determined by the commissioner after notice and hearing.

(2) In SECTION 4.04 of the bill, in amended Section 3(a)(1), Article 5.13-2, Insurance Code, insert the following new paragraph, appropriately lettered:

( ) any amount determined by the commissioner to be excess premiums charged by the insurer.

Amendment No. 98 was adopted without objection.

#### **Amendment No. 99**

Representative Thompson offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, by inserting the following language at page 75, lines 16 through 18, and re-number the remaining sections accordingly:

(10) reasonable compensation for agents, except that the FAIR Plan Association shall not have the authority to regulate or limit compensation or fees agents receive from third parties;

Amendment No. 99 was withdrawn.

#### **Amendment No. 100**

Representative Taylor offered the following amendment to **CSSB 14**:

Amend **CSSB 14** (House Committee Printing) by adding the following new ARTICLE to the bill and renumbering existing ARTICLES accordingly:

ARTICLE \_\_\_\_\_. CANCELLATION OF CERTAIN INSURANCE POLICIES

SECTION \_\_\_\_\_.01. The heading to Article 21.49-2A, Insurance Code, is amended to read as follows:

Art. 21.49-2A. CANCELLATION AND NONRENEWAL OF CERTAIN LIABILITY AND COMMERCIAL PROPERTY INSURANCE COVERAGE.

SECTION \_\_\_\_\_.02. Subsections (a), Article 21.49-2A, Insurance Code, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

(2) "Insurer" means each insurance company or other entity admitted to do business and authorized to write liability or commercial property insurance in this state, including county mutual insurance companies, Lloyd's plan companies, and reciprocal or interinsurance exchanges but excluding farm mutual insurance companies and county mutual fire insurance companies writing exclusively industrial fire insurance as defined by Article 17.02 of this code.

(3) "Commercial property insurance" means insurance covering direct or indirect loss resulting from property damage to commercial property.

SECTION \_\_\_\_\_.03. Subsections (b) and (d), Article 21.49-2A, Insurance Code, are amended to read as follows:

(b) Except as provided by Section (c) of this article, an insurer may not cancel:

(1) a policy of liability or commercial property insurance that is a renewal or continuation policy; or

(2) a policy of liability or commercial property insurance that is in its initial policy period after the 60th day following the date on which the policy was issued.

(d) An insurer must deliver or mail to the first-named insured under a liability or commercial property insurance policy at the address shown on the policy written notice of cancellation of the policy not less than the 10th day before the date on which the cancellation takes effect.

SECTION \_\_\_\_ .04. Section 2, Article 21.49-2B, Insurance Code, is amended to read as follows:

Sec. 2. APPLICATION. This article applies only to:

- (1) a personal automobile insurance policy, other than a policy written through the Texas Automobile Insurance Plan;
- (2) a homeowners or farm or ranch owner's policy; and
- (3) a standard fire policy insuring a one-family dwelling, a duplex, or the contents of a one-family dwelling, a duplex, or an apartment [~~;~~ and
- (4) ~~a policy providing property and casualty coverage to a governmental unit, other than a fidelity, surety, or guaranty bond].~~

Amendment No. 100 was adopted without objection.

### **Amendment No. 101**

Representative Taylor offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by adding the following new SECTIONS to the bill, numbered appropriately, and renumbering the existing SECTIONS of the bill appropriately:

SECTION \_\_\_\_ . Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.79H to read as follows:

Art. 21.79H. RECOVERY OF CERTAIN COSTS FROM THIRD PARTY.

(a) This article applies to any insurer who delivers, issues for delivery, or renews a private passenger automobile policy of insurance in this state, including an exchange operating under Chapter 942, or a mutual, reciprocal, association, Lloyd's plan, or other insurer.

(b) In this article, "brings an action" has the meaning described by Article 21.79G(e) of this code.

(c) An insurer that brings an action against a responsible third party or that party's insurer relating to a loss covered under a private passenger automobile insurance policy is entitled to recover, in addition to payments made by the insurer or insured, the costs of bringing the action, including reasonable attorney's fees and court costs.

SECTION \_\_\_\_ . Article 5.06-3, Insurance Code, is amended by amending Subsection (c) and adding Subsection (i) to read as follows:

(c) The benefits required by this Act shall be payable without regard to the fault or non-fault of the named insured or the recipient in causing or contributing to the accident, and without regard to any collateral source of medical, hospital, or wage continuation benefits. Except as provided by Subsection (i) of this article, an [A+] insurer paying benefits pursuant to this Act shall have no right of subrogation and no claim against any other person or insurer to recover any such benefits by reason of the alleged fault of such other person in causing or contributing to the accident.

(i) An insurer paying benefits pursuant to this Act, including a county mutual insurance company, shall have a right of subrogation and a claim against a person causing or contributing to the accident if, on the date of loss, financial responsibility as required by Chapter 601, Transportation Code, has not been established for a motor vehicle involved in the accident and operated by that person or the motor vehicle operated by that person was insured by an insurer not authorized to engage in business in this state.

SECTION \_\_\_\_. Article 21.79H, Insurance Code, as added by this Act, applies only to an action commenced on or after January 1, 2004. An action commenced before that date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION \_\_\_\_. The change in law made by this Act to Article 5.06-3, Insurance Code, applies only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2004. A policy delivered, issued for delivery, or renewed before January 1, 2004, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Amendment No. 101 was adopted without objection.

#### **Amendment No. 102**

Representatives Geren and Wolens offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by adding a new Article to the bill, appropriately numbered, as follows:

#### ARTICLE \_\_\_\_\_. PRIOR APPROVAL

SECTION \_\_\_\_\_.01. Chapter 21, Insurance Code, is amended by adding new Article 21.21-F to read as follows:

Article 21.21-2F. Prior Approval. Notwithstanding any other law to the contrary, no insurer subject to this article may change a rate for residential property insurance without the express prior approval of the commissioner. This article applies to each insurer writing residential property insurance, including Lloyds plan, reciprocal, and interexchange insurers, that is within a group of affiliated companies that combined have more than 5% of the market. If the Commissioner does not disapprove the filing within 30 days after it is filed, the filing shall be considered to be approved.

Representative Taylor moved to table Amendment No. 102.

A record vote was requested.

The motion to table prevailed by (Record 670): 81 Yeas, 63 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eiland; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Goolsby; Griggs; Grusendorf; Gutierrez; Haggerty;

Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; King; Krusee; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Seaman; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; Villarreal; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Bohac; Burnam; Canales; Capelo; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Escobar; Farrar; Flores; Gallego; Garza; Geren; Giddings; Goodman; Guillen; Hamilton; Hilderbran; Hochberg; Hodge; Homer; Hopson; Kolkhorst; Kuempel; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Smith, T.; Solis; Telford; Thompson; Turner; Uresti; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Keffer, J.(C).

Absent, Excused — Bailey; Riddle.

Absent — Jones, J.; Moreno, P.

### STATEMENT OF VOTE

I was shown voting no on Record No. 670. I intended to vote yes.

Reyna

### Amendment No. 103

Representative Turner offered the following amendment to **CSSB 14**:

Amend **CSSB 14** by inserting the following new ARTICLE, appropriately numbered, and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. CERTAIN PROVISIONS AFFECTING AGENTS

SECTION \_\_\_\_\_.01. Section 3, Article 21.11-1, Insurance Code, is amended to read as follows:

Sec. 3. The provisions of this article shall not apply to the termination or suspension of an agent's contract for insolvency, abandonment, gross and willful misconduct, or failure to pay over to the company money due to the company after his receipt of a written demand therefor, or after revocation of the agent's license by the State Board of Insurance [~~; nor to the termination or suspension of agents where the policies and the insurance business is owned by the company and not by the agent~~].

A record vote was requested.

Amendment No. 103 failed of adoption by (Record 671): 55 Yeas, 87 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Burnam; Canales; Castro; Chavez; Coleman; Cook, R.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Ellis; Escobar; Farabee; Flores; Garza; Geren; Giddings; Goolsby; Guillen; Hamilton; Hochberg; Hodge; Homer; Hopson; Hughes; Jones, J.; Laney; Luna; Martinez



Fischer; McClendon; Menendez; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Telford; Turner; Uresti; Wilson; Wise; Wolens.

Nays — Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Flynn; Gattis; Goodman; Griggs; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Mabry; Madden; Marchant; McCall; McReynolds; Mercer; Merritt; Miller; Moreno, J.; Morrison; Mowery; Nixon; Oliveira; Paxton; Phillips; Pitts; Reyna; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgenuth; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Keffer, J.(C).

Absent, Excused — Bailey; Riddle.

Absent — Farrar; Gallego; Thompson; Villarreal.

#### STATEMENT OF VOTE

I was shown voting no on Record No. 671. I intended to vote yes.

Truitt

#### Amendment No. 104

Representative Smithee offered the following amendment to **CSSB 14**:

Amend **CSSB 14** in ARTICLE 2 of the bill by inserting the following appropriately numbered SECTION and renumbering SECTIONS accordingly:

SECTION 2. . Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-2W to read as follows:

Art. 21.49-2W. DISCOUNT OR UNDERWRITING REVIEW FOR PERSONAL LINES AUTHORIZED

Sec. 1. DEFINITIONS. In this article:

(1) "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information for the purpose of furnishing consumer reports to third parties.

(2) "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided in an application for personal insurance. The term does not include information that is not credit-related, regardless of whether that information is contained in a credit report or in an application for insurance coverage or is used to compute a credit score.

(3) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency that:

(A) bears on a individual's creditworthiness, credit standing, or credit capacity; and

(B) is used or expected to be used or collected in whole or in part to serve as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(4) "Credit score" means a number or rating derived from an algorithm, computer application, model, or other process that is based on credit information and used to predict the future insurance loss exposure of an individual.

(5) "Insurer" means an insurer authorized to write property and casualty insurance in this state, including an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, association, Lloyd's plan, or other entity writing personal insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write personal insurance in this state.

(6) "Personal insurance" means:

(A) a personal automobile insurance policy; or

(B) a residential property insurance policy, including a residential fire and allied lines insurance policy.

Sec. 2. DISCOUNT AUTHORIZED; RESTRICTIONS. (a) Notwithstanding Article 21.49-2U of this code, an insurer may offer a discount to an insured or an applicant for personal insurance coverage based on the insured's or applicant's credit score.

(b) An insurer may offer a discount under this article only on request initiated by the insured or applicant. If the insured or applicant does not request that a credit score be used to determine a discount under this article, the insurer may not offer or provide the discount.

Sec. 3. AMOUNT OF DISCOUNT. A discount offered under this article may vary among insureds, but must be based on sound actuarial principals. An insurer that offers a discount under this article must file with the department the guidelines the insurer uses to determine the amount of the discount and the manner in which the discount is applied.

Sec. 4. UNDERWRITING REVIEW AUTHORIZED. Notwithstanding Article 21.49-2U of this code, an insurer may offer to an applicant whose application for personal insurance has been rejected or an insured whose personal insurance has been non-renewed an underwriting review based on a positive credit score.

Sec. 5. APPLICATION FOR DISCOUNT OR UNDERWRITING REVIEW; FEE; CORRECTION OF ERRORS. (a) An insurer may charge an insured or applicant a fee, not to exceed \$15, to obtain the insured or applicant's credit score to determine whether the insured or applicant is eligible for a discount or underwriting review offered under this article.

(b) An insurer shall notify the insured or applicant of the result of applying the insured's or applicant's credit score to determine a discount or obtain an underwriting review. The insured or applicant may elect that the credit score be used to obtain the discount or underwriting review or may direct that the insurer may not use the credit score for any purpose.

(c) If the discount is reduced or eliminated or if an underwriting review is rejected because of a negative credit score, the insurer shall disclose to the insured or applicant each negative factor that influenced that action.

(c) If it is determined that the credit information of an insured or applicant used in accordance with this article was inaccurate or incomplete or could not be verified and the insurer receives notice of that determination from the consumer reporting agency or from the insured or applicant, the insurer shall re-compute the discount or reconsider the underwriting review.

Sec. 6. APPLICATION OF CREDIT SCORE ON RENEWAL. (a) On renewal of personal insurance coverage after application of a credit score to obtain a discount under this article, an insurer may:

(1) renew the insurance at the discounted rate; or

(2) compute a new credit score for the insured.

(b) An insurer may discontinue a discount based on a negative credit score obtained under Subsection (a)(2) of this section, but may not, based on the new credit score:

(1) impose a surcharge on the insurance premium; or

(2) cancel or non-renew the insurance coverage.

(c) An insurer may not charge a fee to an insured to obtain the insured's credit score under Subsection (a)(2) of this section.

Sec. 7. MINIMUM STANDARDS FOR CREDIT SCORING MODEL; UNFAIR DISCRIMINATION PROHIBITED. (a) The commissioner by rule shall establish minimum standards for a credit scoring model or other credit scoring process used by an insurer under this article. The minimum standards must establish standards for fairness and protection of consumers that are at least as stringent as the Model Act Regarding Use of Credit Information in Personal Insurance adopted by the National Conference of Insurance Legislators.

(b) A credit scoring model or other credit scoring process used by an insurer under this article may not violate Article 21.21-6, Insurance Code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995.

Sec. 8. REQUIRED FILING. (a) An insurer that uses credit scores under this article shall file the insurer's credit scoring models or other credit scoring processes with the department. Another entity may file credit scoring models on behalf of an insurer.

(b) The commissioner may reject a filing made under this section or may order that the insurer modify the filing if the commissioner finds that a discount offered under this article or the credit scoring model or other credit scoring process:

(1) is not based on sound actuarial principals;

(2) violates the minimum standards established under Section 7 of this article; or

(3) violates Article 21.21-6, Insurance Code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, or is otherwise unfairly discriminatory.

(c) A filing under this section is public information, is not confidential, and is subject to disclosure under Chapter 552, Government Code.

Sec. 9. PROHIBITIONS. An insurer may not:

(1) require an insured or applicant for personal insurance coverage to request the application of a credit score or credit information as a condition of obtaining coverage; or

(2) reject or non-renew an insured or applicant for personal insurance coverage or apply a surcharge to the premium for a personal insurance coverage policy because:

(A) the insured or applicant refused to allow the use of a credit score; or

(B) the insured or applicant has a negative credit score.

Sec. 10. INFORMATION TO APPLICANTS AND INSURED. This article does not prohibit an insured or an agent from informing an insured or applicant for personal insurance coverage of the availability of a discount or underwriting review under this article.

Sec. 11. RULES. The commissioner may adopt rules as necessary to implement this article.

Amendment No. 104 was withdrawn.

**Amendment No. 30 - Vote Reconsidered**

Representative Miller moved to reconsider the vote by which Amendment No. 30 was adopted.

A record vote was requested.

The vote of the house was taken on the motion to reconsider the vote by which Amendment No. 30 was adopted and the vote was announced yeas 74, nays 71.

A verification of the vote was requested and was granted.

The roll of those voting yeas and nays was again called and the verified vote resulted, as follows (Record 672): 72 Yeas, 65 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Dawson; Denny; Driver; Eiland; Eissler; Farabee; Flynn; Gattis; Griggs; Grusendorf; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hill; Hope; Howard; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; King; Krusee; Madden; Marchant; McReynolds; Mercer; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Seaman; Smith, T.; Smith, W.; Smithee; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Capelo; Castro; Chavez; Coleman; Davis, J.; Davis, Y.; Delisi; Deshotel; Dunnam; Dutton; Edwards; Elkins; Ellis; Escobar; Farrar; Gallego; Garza; Geren; Giddings; Goodman; Goolsby; Guillen; Gutierrez; Hamilton; Hilderbran; Hochberg; Hodge; Homer; Hopson; Hughes; Jones, J.; Kolkhorst; Kuempel; Laney; Lewis; Luna; Mabry; Martinez Fischer;

McCall; McClendon; Menendez; Merritt; Moreno, J.; Naishtat; Noriega; Oliveira; Olivo; Pickett; Quintanilla; Raymond; Ritter; Rodriguez; Rose; Solis; Solomons; Turner; Uresti; Villarreal; West; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Keffer, J.(C).

Absent, Excused — Bailey; Riddle.

Absent — Branch; Dukes; Flores; Laubenberg; Moreno, P.; Peña; Puente; Telford; Thompson.

The chair stated that the motion to reconsider failed (not receiving the necessary two-thirds vote) by the above vote.

#### **STATEMENTS OF VOTE**

I was shown voting yes on Record No. 672. I intended to vote no.

Bonnen

When Record No. 672 was taken, I was temporarily out of the house chamber. I would have voted no.

Thompson

#### **LEAVES OF ABSENCE GRANTED**

The following members were granted leaves of absence for the remainder of today because of important business in the district:

Laubenberg on motion of Dawson.

P. Moreno on motion of Solis.

Puente on motion of Uresti.

Telford on motion of Hopson.

The following members were granted leaves of absence for the remainder of today because of important business:

Branch on motion of Elkins.

Dukes on motion of Rose.

Flores on motion of McClendon.

The following member was granted leave of absence for the remainder of today because of illness:

Peña on motion of Solis.

#### **CSSB 14 - (consideration continued)**

#### **Amendment No. 105**

Representative Thompson offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, Committee Printing, as follows:

On page 60, strike lines 11-27 and substitute the following:

SECTION 7.01. Section 5, Article 21.21-6, Insurance Code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec 5. SANCTIONS. (a) Any legal entity engaged in the business of insurance in this state found to be in violation of or failing to comply with this article is subject to the sanctions authorized by Chapter 82 [in Article 1-10] of this code or [including] administrative penalties authorized by Chapter 84 [under Article 1-10E] of this code. The commissioner may also utilize the cease and desist procedures authorized by Chapter 83 [Article 1-10A] of this code.

(b) It is not a defense to an action of the commissioner under Subsection (a) of this section that the contract giving rise to the alleged violation was entered into before the effective date of this article.

SECTION 7.02. Subchapter B, Chapter 21, Insurance Code, is amended by adding Article 21.21-6A to read as follows:

Art. 21.21-6A. CRIMINAL PENALTY. (a) In this article, "person" means a legal entity engaged in the business of life insurance described in Subdivisions (a), (b), (e), (f), and (j), Section 2, Article 21.21-6 of this code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, or an officer or director of one of those entities.

(b) A person commits an offense if the person with reckless culpability:

(1) offers insurance coverage at a premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin; or

(2) collects an insurance premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin.

(c) An offense under this article is a state jail felony.

SECTION 7.03. Subsection (c), Section 3, Article 21.21-8, Insurance Code, is amended to read as follows:

(c) All actions under this article must be commenced on or before the second anniversary of [within 12 months after] the date on which the plaintiff was denied insurance or the unfair act occurred or the date the plaintiff, in the exercise of reasonable diligence, should have discovered the occurrence of the unfair act.

SECTION 7.04. Section 1, Article 21.74, Insurance Code, is amended by amending Subdivisions (1) and (2) and adding Subdivision (4) to read as follows:

(1) "Holocaust victim" means a person who was killed or injured, or who lost real or personal property or financial assets, as the result of discriminatory laws, policies, or actions directed against any discrete group of which the person was a member, during the period of 1920 to 1945, inclusive, in Germany, areas occupied by Germany, [or] countries allied with Germany, or countries that were sympathizers with Germany.

(2) "Insurer" means an insurance company or other entity engaged in the business of insurance or reinsurance in this state. The term includes:

(A) a capital stock company, a mutual company, or a Lloyd's plan;  
and

(B) any parent, subsidiary, reinsurer, successor in interest, managing general agent, or affiliated company, at least 50 percent of the stock of which is in common ownership with an insurer engaged in the business of insurance in this state.

(4) "Proceeds" means the face value or other payout value of insurance policies and annuities plus reasonable interest to date of payment without diminution for wartime or immediate postwar currency devaluation.

SECTION 7.05. Article 21.74, Insurance Code, is amended by adding Sections 2A and 2B to read as follows:

Sec. 2A. FILINGS AND CERTIFICATES OF INSURANCE. (a) This section applies to each insurer engaging in business in the state that, directly or through a related company, sold to persons in Europe insurance policies described by Section 1 of this article or dowry or educational insurance policies that were in effect during the period of 1920 to 1945, whether the sale occurred before or after the insurer and the related company became related.

(b) Each insurer shall file or cause to be filed with the commissioner the following information:

(1) the number of insurance policies described by Subsection (a) of this section sold by the insurer or a related company;

(2) the holder, beneficiary, and current status of the policies; and

(3) the city of origin, domicile, or address for each policyholder listed in the policies.

(c) Each insurer shall certify:

(1) that the proceeds of the policies described by Subsection (a) of this section have been paid to the designated beneficiaries or their heirs in circumstances in which that person or those persons, after diligent search, could be located and identified;

(2) that the proceeds of the policies, in circumstances in which the beneficiaries or heirs could not, after diligent search, be located or identified, have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations for the purpose of assisting Holocaust survivors;

(3) that a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders and their heirs and beneficiaries a plan for the distribution of the proceeds; or

(4) that the proceeds have not been distributed and the amount of those proceeds.

(d) The commissioner by rule shall require that insurers update the information submitted to the commissioner under this section at reasonable intervals.

Sec. 2B. ESTABLISHMENT AND MAINTENANCE OF REGISTRY; PUBLIC ACCESS. (a) The commissioner shall establish and maintain within the department a central registry containing records and information relating to

insurance policies described by Section 2A(a) of this article of Holocaust victims, living and deceased. The registry shall be known as the Holocaust Era Insurance Registry.

(b) The commissioner by rule shall establish appropriate mechanisms to ensure public access to the registry.

(c) Information contained in the registry:

(1) is public information;

(2) is not subject to any exceptions to disclosure under Chapter 552, Government Code; and

(3) cannot be withheld from disclosure under any other law.

SECTION 7.06. (a) Article 21.21-6A, Insurance Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose. For the purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) Subsection (c), Section 3, Article 21.21-8, Insurance Code, as amended by this Act, applies to a cause of action for which the limitations period established under that subsection before its amendment by this Act has not expired on the effective date of this Act.

SECTION 7.07. Not later than the 180th day after the effective date of this Act, an insurer subject to Article 21.74, Insurance Code, as amended by this Act, shall file the information and certification required by Section 2A of that article.

Amendment No. 105 was adopted without objection.

### **Amendment No. 106**

Representative Thompson offered the following amendment to **CSSB 14**:

Amend **CSSB 14**, Committee Printing, as follows:

On page 60, strike lines 11-27 and substitute the following:

SECTION 7.01. Subchapter B, Chapter 21, Insurance Code, is amended by adding Article 21.21-6A to read as follows:

Art. 21.21-6A. CRIMINAL PENALTY. (a) In this article, "person" means a legal entity engaged in the business of life insurance described in Subdivisions (a), (b), (e), (f), and (j), Section 2, Article 21.21-6 of this code, as added by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995, or an officer or director of one of those entities.

(b) A person commits an offense if the person with reckless culpability:

(1) offers insurance coverage at a premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin; or



(2) collects an insurance premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin.

(c) An offense under this article is a state jail felony.

SECTION 7.02. Article 21.21-6A, Insurance Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose. For the purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

Amendment No. 106 was adopted without objection.

### **Amendment No. 107**

Representative Dutton offered the following amendment to **CSSB 14**:

Amend **CSSB 14** (house committee printing) as follows:

(1) In SECTION 1.01 of the bill, in added Section 2(a)(5), Article 5.142, Insurance Code, following the colon (page 3, between lines 21 and 27), by inserting the following new paragraph, appropriately numbered and renumbering the subsequent paragraph accordingly:

( ) an insurance company described by Section 912.310 of this code;

(2) In SECTION 1.01 of the bill, in added Section 1(1), Article 5.143, Insurance Code, between "in this state." and "The term" (page 19, line 23), insert: "The term does not include an insurance company described by Section 912.310 of this code."

(3) In SECTION 4.01 of the bill, in amended Article 5.13, Insurance Code, following amended Subsection (e) (page 52, between lines 13 and 14) insert the following:

(f) Notwithstanding any other provision of this article, this subchapter does not apply to an insurance company described by Section 912.310 of this code.

(4) Insert the following new ARTICLE, appropriately numbered, and renumber ARTICLES and SECTIONS of the bill accordingly:

#### ARTICLE . INDUSTRIAL FIRE INSURANCE

SECTION \_\_\_\_\_.01. Section 912.310, Insurance Code, as effective June 1, 2003, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) A company described by Subsection (a) is not subject to Article 5.13-2 of this code.

(d) The commissioner may require a company described by Subsection (a) to file the company's forms, rates, and loss information with the department for informational purposes. Rates of a company exempt from regulation under this section may not be excessive, unreasonable, or unfairly discriminatory for the risks to which the rates apply.

(e) A company described by Subsection (a) is not subject to Article 5.142 or 5.143 of this code. This subsection expires September 1, 2004.

Amendment No. 107 was withdrawn.

**CSSB 14**, as amended, was passed to third reading. (Edwards recorded voting no)

#### **COMMITTEE GRANTED PERMISSION TO MEET**

Representative Woolley requested permission for the Committee on Calendars to meet while the house is in session.

Permission to meet was granted without objection.

#### **COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Calendars, 6:30 p.m. today, speakers committee room, for a formal meeting.

#### **HB 9 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED**

Representative Corte called up with senate amendments for consideration at this time,

**HB 9**, A bill to be entitled An Act relating to homeland security.

Representative Corte moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 9**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 9**: Flores, chair; Allen; Marchant; Corte; and Berman.

#### **HB 11 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED**

Representative Keel called up with senate amendments for consideration at this time,

**HB 11**, A bill to be entitled An Act relating to the offense of terroristic threat and to the punishment as a capital offense of murder occurring during the commission or attempted commission of terroristic threat.

Representative Keel moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 11**.

The motion prevailed without objection.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 11**: Keel, chair; Gallego; E. Jones; Berman; and Dutton.

**HB 15 - HOUSE CONCURS IN SENATE AMENDMENTS**  
**TEXT OF SENATE AMENDMENTS**

Representative Corte called up with senate amendments for consideration at this time,

**HB 15**, A bill to be entitled An Act relating to regulation of abortion; creating an offense.

On motion of Representative Corte, the house concurred in the senate amendments to **HB 15**.

**Senate Committee Substitute**

**HB 15**, A bill to be entitled An Act relating to regulation of abortion; creating an offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 171 to read as follows:

CHAPTER 171. ABORTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171.001. SHORT TITLE. This chapter may be called the Woman's Right to Know Act.

Sec. 171.002. DEFINITION. In this chapter, "abortion" means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus.

Sec. 171.003. PHYSICIAN TO PERFORM. An abortion may be performed only by a physician licensed to practice medicine in this state.

Sec. 171.004. ABORTION OF FETUS AGE 16 WEEKS OR MORE. An abortion of a fetus age 16 weeks or more may be performed only at an ambulatory surgical center or hospital licensed to perform the abortion.

Sec. 171.005. DEPARTMENT TO ENFORCE. The department shall enforce this chapter.

[Sections 171.006-171.010 reserved for expansion]

SUBCHAPTER B. INFORMED CONSENT

Sec. 171.011. INFORMED CONSENT REQUIRED. A person may not perform an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed.

Sec. 171.012. VOLUNTARY AND INFORMED CONSENT. (a) Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(1) the physician who is to perform the abortion or the referring physician informs the woman on whom the abortion is to be performed of:

(A) the name of the physician who will perform the abortion;

(B) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate:

(i) the risks of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy and of infertility; and

(iii) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;

(C) the probable gestational age of the unborn child at the time the abortion is to be performed; and

(D) the medical risks associated with carrying the child to term;

(2) the physician who is to perform the abortion or the physician's agent informs the woman that:

(A) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion;

(C) public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest; and

(D) the woman has the right to review the printed materials described by Section 171.014, that those materials have been provided by the Texas Department of Health and are accessible on an Internet website sponsored by the department, and that the materials describe the unborn child and list agencies that offer alternatives to abortion;

(3) the woman certifies in writing before the abortion is performed that the information described by Subdivisions (1) and (2) has been provided to her and that she has been informed of her opportunity to review the information described by Section 171.014; and

(4) before the abortion is performed, the physician who is to perform the abortion receives a copy of the written certification required by Subdivision (3).

(b) The information required to be provided under Subsections (a)(1) and (2) must be provided:

(1) orally by telephone or in person; and

(2) at least 24 hours before the abortion is to be performed.

(c) When providing the information under Subsection (a)(2)(D), the physician or the physician's agent must provide the woman with the address of the Internet website on which the printed materials described by Section 171.014 may be viewed as required by Section 171.014(e).

(d) The information provided to the woman under Subsection (a)(2)(B) must include, based on information available from the Office of the Attorney General and the United States Department of Health and Human Services Office of Child Support Enforcement for the three-year period preceding the publication of the information, information regarding the statistical likelihood of collecting child support.

(e) The department is not required to republish informational materials described by Subsection (a)(2)(B) because of a change in information described by Subsection (d) unless the statistical information in the materials changes by five percent or more.

Sec. 171.013. DISTRIBUTION OF STATE MATERIALS. (a) If the woman chooses to view the materials described by Section 171.014, the physician or the physician's agent shall furnish copies of the materials to her at least 24 hours before the abortion is to be performed. A physician or the physician's agent may furnish the materials to the woman by mail if the materials are mailed, restricted delivery to addressee, at least 72 hours before the abortion is to be performed.

(b) A physician or the physician's agent is not required to furnish copies of the materials if the woman provides the physician with a written statement that she chooses to view the materials on the Internet website sponsored by the department.

(c) The physician and the physician's agent may disassociate themselves from the materials and may choose to comment on the materials or to refrain from commenting.

Sec. 171.014. INFORMATIONAL MATERIALS. (a) The department shall publish informational materials that include:

(1) the information required to be provided under Sections 171.012(a)(1)(B) and (D) and (a)(2)(A), (B), and (C); and

(2) the materials required by Sections 171.015 and 171.016.

(b) The materials shall be published in:

(1) English and Spanish;

(2) an easily comprehensible form; and

(3) a typeface large enough to be clearly legible.

(c) The materials shall be available at no cost from the department on request. The department shall provide appropriate quantities of the materials to any person.

(d) The department shall annually review the materials to determine if changes to the contents of the materials are necessary. The department shall adopt rules necessary for considering and making changes to the materials.

(e) The department shall develop and maintain an Internet website to display the information required to be published under this section. In developing and maintaining the website the department shall, to the extent reasonably practicable, safeguard the website against alterations by anyone other than the department and shall monitor the website each day to prevent and correct tampering. The department shall ensure that the website does not collect or maintain information regarding access to the website.

(f) In addition to any other organization or entity, the department shall use the American College of Obstetricians and Gynecologists as the resource in developing information required to be provided under Sections 171.012(a)(1)(B) and (D), Sections 171.012(a)(2)(A), (B), and (C), and Section 171.016, and in maintaining the department's Internet website.

Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE AGENCIES. The informational materials must include either:

(1) geographically indexed materials designed to inform the woman of public and private agencies and services that:

(A) are available to assist a woman through pregnancy, childbirth, and the child's dependency, including:

(i) a comprehensive list of adoption agencies;

(ii) a description of the services the adoption agencies offer;

and

(iii) a description of the manner, including telephone numbers, in which an adoption agency may be contacted;

(B) do not provide abortions or abortion-related services or make referrals to abortion providers; and

(C) are not affiliated with organizations that provide abortions or abortion-related services or make referrals to abortion providers; or

(2) a toll-free, 24-hour telephone number that may be called to obtain an oral list and description of agencies described by Subdivision (1) that are located near the caller and of the services the agencies offer.

Sec. 171.016. INFORMATION RELATING TO CHARACTERISTICS OF UNBORN CHILD. (a) The informational materials must include materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival.

(b) The materials must include color pictures representing the development of the child at two-week gestational increments. The pictures must contain the dimensions of the unborn child and must be realistic.

(c) The materials provided under this section must be objective and nonjudgmental and be designed to convey only accurate scientific information about the unborn child at the various gestational ages.

Sec. 171.017. PERIODS RUN CONCURRENTLY. If the woman is an unemancipated minor subject to Chapter 33, Family Code, the 24-hour periods established under Sections 171.012(b) and 171.013(a) may run concurrently with the period during which actual or constructive notice is provided under Section 33.002, Family Code.

Sec. 171.018. OFFENSE. A physician who intentionally performs an abortion on a woman in violation of this subchapter commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed \$10,000. In this section, "intentionally" has the meaning assigned by Section 6.03(a), Penal Code.

SECTION 2. Section 245.004, Health and Safety Code, is amended to read as follows:

Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) The following facilities need not be licensed under this chapter:

(1) a hospital licensed under Chapter 241 (Texas Hospital Licensing Law); [✗]

(2) the office of a physician licensed under Subtitle B, Title 3, Occupations Code, unless the office is used substantially for the purpose of performing ~~[more than 300]~~ abortions; or

(3) an ambulatory surgical center licensed under Chapter 243 [in any 12-month period].

(b) For purposes of this section, a facility is used substantially for the purpose of performing abortions if the facility:

(1) is a provider for performing:

(A) at least 10 abortion procedures during any month; or

(B) at least 100 abortion procedures in a year;

(2) operates less than 20 days in a month and the facility, in any month, is a provider for performing a number of abortion procedures that would be equivalent to at least 10 procedures in a month if the facility were operating at least 20 days in a month;

(3) holds itself out to the public as an abortion provider by advertising by any public means, including advertising placed in a newspaper, telephone directory, magazine, or electronic medium, that the facility performs abortions; or

(4) applies for an abortion facility license.

(c) For purposes of this section, an abortion facility is operating if the facility is open for any period of time during a day and has on site at the facility or on call a physician available to perform abortions. [In computing the number of abortions performed in the office of a physician under Subsection (a)(2), an abortion performed in accordance with Section 245.016 is not included.]

SECTION 3. Section 245.007, Health and Safety Code, is amended to read as follows:

Sec. 245.007. FEES. The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and Chapter 171.

SECTION 4. Section 245.010(a), Health and Safety Code, is amended to read as follows:

(a) The rules must contain minimum standards to protect the health and safety of a patient of an abortion facility and must contain provisions requiring compliance with the requirements of Subchapter B, Chapter 171.

SECTION 5. The Texas Department of Health shall prepare the informational materials required by Section 171.014, Health and Safety Code, as added by this Act, and shall have the materials available for distribution as required by Chapter 171, Health and Safety Code, as added by this Act, not later than December 1, 2003.

SECTION 6. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. This Act takes effect September 1, 2003, and applies only to an abortion that is performed on or after January 1, 2004. An abortion that is performed before January 1, 2004, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

**HB 157 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Krusee called up with senate amendments for consideration at this time,

**HB 157**, A bill to be entitled An Act relating to the powers and duties of a regional mobility authority.

On motion of Representative Krusee, the house concurred in the senate amendments to **HB 157** by (Record 673): 137 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Baxter; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; King; Kolkhorst; Krusee; Kuempel; Laney; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Phillips; Pickett; Pitts; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Keffer, J.(C).

Absent, Excused — Bailey; Branch; Dukes; Flores; Laubenberg; Moreno, P.; Peña; Puente; Riddle; Telford.

Absent — Seaman.

**Senate Committee Substitute**

**HB 157**, A bill to be entitled An Act relating to the powers and duties of a regional mobility authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 361.003, Transportation Code, is amended by adding Subsections (m) and (n) to read as follows:



(m) A regional mobility authority has the same powers and duties that the commission and the department have under Subchapter E relating to the financing of a turnpike project.

(n) A regional mobility authority may not:

(1) construct, maintain, or operate a transportation project that another governmental entity has determined to be a project under Subchapter O, Chapter 451, or Chapter 452 or 453, unless the other governmental entity enters into a written agreement with the authority specifying the terms and conditions under which the project shall be undertaken; or

(2) receive or be paid revenues derived by another governmental entity operating pursuant to Subchapter O, Chapter 451, or Chapter 452 or 453, unless the other governmental entity enters into a written agreement with the authority specifying the terms and conditions under which the revenues shall be received by or paid to the authority.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

#### **Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **CSHB 157** as follows:

(1) In SECTION 1 of the bill, in added Section 361.003(m), Transportation Code (committee printing, page 1, line 18), between "project" and the period, insert the following:

", including the power to:

(1) issue turnpike revenue bonds in connection with the turnpike project;

(2) impose a toll for the use of the turnpike project; or

(3) obtain from any other source the revenue necessary to pay all or part of the principal of and interest on the turnpike revenue bonds".

(2) In SECTION 1 of the bill, in amended Section 361.003, Transportation Code (committee printing, page 1, between lines 18 and 19), insert a new Subsection (n) to read as follows:

(n) For purposes of Subsection (m), a reference in Subchapter E to the commission means the board of directors of a regional mobility authority.

(3) In SECTION 1 of the bill, in amended Section 361.003, Transportation Code (committee printing, page 1, line 19), reletter existing Subsection (n) as Subsection (o).

(4) In SECTION 1 of the bill, in added Section 361.003(n)(1), Transportation Code (committee printing, page 1, line 22), strike "project under Subchapter O, Chapter 451, or Chapter 452 or 453," and substitute "project under Chapter 451, 452, or 453,".

#### **HB 261 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Geren called up with senate amendments for consideration at this time,

**HB 261**, A bill to be entitled An Act relating to the eligibility of armed forces personnel and their family members to pay tuition and fees at the rate provided to Texas residents.

On motion of Representative Geren, the house concurred in the senate amendments to **HB 261** by (Record 674): 135 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Baxter; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flynn; Gallego; Garza; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; King; Kolkhorst; Krusee; Kuempel; Laney; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Morrison; Mowery; Naishtat; Nixon; Oliveira; Olivo; Paxton; Phillips; Pickett; Pitts; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Keffer, J.(C).

Absent, Excused — Bailey; Branch; Dukes; Flores; Laubenberg; Moreno, P.; Peña; Puente; Riddle; Telford.

Absent — Corte; Gattis; Noriega.

### **Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **HB 261** (Senate Committee Printing) as follows:

(1) In SECTION 1 of the bill, in the introductory language, immediately before "adding Subsection (j)" (page 1, at the beginning of line 13), insert "amending Subsections (c), (f), and (g) and".

(2) In SECTION 1 of the bill, immediately before proposed Subsection (j), Section 54.058, Education Code (page 1, between lines 13 and 14), insert the following:

(c) ~~The [As long as they reside continuously in Texas, the] spouse or child [and children]~~ of a member of the Armed Forces of the United States who has been assigned to duty elsewhere immediately following assignment to duty in Texas ~~is [are]~~ entitled to pay the tuition fees and other fees or charges provided for Texas residents ~~as long as the spouse or child resides continuously in Texas.~~

(f) The spouse or child ~~[and children]~~ of a member of the Armed Forces of the United States who dies or is killed ~~is [are]~~ entitled to pay the resident tuition fee if the spouse or child becomes a resident ~~[wife and children become residents]~~ of Texas within 60 days of the date of death.

(g) If a member of the Armed Forces of the United States is stationed outside Texas and the member's [his] spouse or child establishes [and children establish] residence in Texas by residing in Texas and by filing with the Texas institution of higher education at which the spouse or child plans [they plan] to register a letter of intent to establish residence in Texas, the institution of higher education shall permit the spouse or child [and children] to pay the tuition, fees, and other charges provided for Texas residents without regard to length of time that the spouse or child has [they have] resided in Texas [the state].

(3) In SECTION 2 of the bill, immediately before "Section 54.058(j)" (page 1, line 29), insert "(a)".

(4) At the end of SECTION 2 of the bill (page 1, between lines 37 and 38), insert the following:

"(b) The changes in law made by this Act to Subsections (c), (f), and (g), Section 54.058, Education Code, apply beginning with tuition charged for the 2003 fall semester."

### **HB 510 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Woolley called up with senate amendments for consideration at this time,

**HB 510**, A bill to be entitled An Act relating to the issuance of special license plates for federal administrative law judges.

On motion of Representative Woolley, the house concurred in the senate amendments to **HB 510**.

#### **Senate Committee Substitute**

**HB 510**, A bill to be entitled An Act relating to the issuance of special license plates for federal administrative law judges.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter F, Chapter 502, Transportation Code, is amended by adding Section 502.2971 to read as follows:

Sec. 502.2971. FEDERAL ADMINISTRATIVE LAW JUDGES. (a) The department shall issue specially designed license plates for a passenger car or light truck owned by a federal administrative law judge or a retired federal administrative law judge.

(b) License plates issued under this section must include the words "U.S. A.L. Judge."

(c) The department shall issue license plates under this section to a person who:

(1) applies to the department on a form prescribed by the department;

(2) furnishes evidence acceptable to the department that the person is eligible to register the vehicle under this section; and

(3) pays the fee prescribed by Section 502.161.

(d) A person may be issued three sets of license plates under this section.

(e) A registration under this section is for a registration period of 12 consecutive months or until March 31, whichever period is shorter.

(f) If the owner of a vehicle registered under this section disposes of the vehicle during the registration period, the owner shall surrender the special license plates to the department.

SECTION 2. This Act takes effect September 1, 2003.

**Senate Amendment No. 1 (Senate Floor Amendment No. 2)**

Amend **HB 510** (Committee Report) as follows:

1. On page 1, line 18, strike "or a retired federal administrative law judge".
2. On page 1, line 20, strike "U.S. A.L. Judge" and substitute "Fed. A.L. Judge".

**HB 804 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Geren called up with senate amendments for consideration at this time,

**HB 804**, A bill to be entitled An Act relating to the minimum wage.

On motion of Representative Geren, the house concurred in the senate amendments to **HB 804**.

**Senate Committee Substitute**

**HB 804**, A bill to be entitled An Act relating to the minimum wage.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 62.003(b), Labor Code, is amended to read as follows:

(b) An earnings statement must be signed by the employer or the employer's agent and must show:

- (1) the name of the employee;
- (2) the rate of pay;
- (3) the total amount of pay earned by the employee during the pay period;
- (4) any deduction made from the employee's pay and the purpose of the deduction;
- (5) the amount of pay after all deductions are made; and
- (6) the total number of:
  - (A) hours worked by the employee if the employee's pay is computed by the hour; or
  - (B) units produced by the employee during the pay period if the employee's pay is computed on a piece rate; ~~and~~

~~[(7) the words "medical certificate," if the employee is paid a wage lower than the applicable minimum wage under Section 62.055].~~

SECTION 2. Section 62.051, Labor Code, is amended to read as follows:

Sec. 62.051. MINIMUM WAGE. Except as provided by Section ~~Sections 62.055 and~~ 62.057, an employer shall pay to each employee the federal minimum wage under Section 6, Fair Labor Standards Act of 1938 (29 U.S.C. Section 206).

SECTION 3. Subchapter B, Chapter 62, Labor Code, is amended by adding Section 62.0515 to read as follows:

Sec. 62.0515. APPLICATION OF MINIMUM WAGE TO CERTAIN GOVERNMENTAL ENTITIES; CERTAIN AGREEMENTS WITH GOVERNMENTAL ENTITIES. (a) Except as otherwise provided by this section, the minimum wage provided by this chapter supersedes a wage established in an ordinance, order, or charter provision governing wages in private employment, other than wages under a public contract.

(b) This section does not apply to any state or federal job training or workforce development program.

(c) This section does not apply to a minimum wage established by a governmental entity that applies to a contract or agreement, including a non-annexation agreement, entered into by a governmental entity and a private entity. A private entity that enters into a contract or agreement, including a non-annexation agreement, with a governmental entity, under the terms of which the private entity agrees to comply with a minimum wage established by the governmental entity, is subject to the terms of that contract or agreement, and those terms apply to and may be enforced against a general contractor, subcontractor, developer, and other person with which the private entity contracts in order to comply with the provisions of the original contract or agreement.

(d) For purposes of this section, "governmental entity" includes a municipality, a county, a special district or authority, a junior college district, or another political subdivision of this state.

SECTION 4. Section 62.151, Labor Code, is amended to read as follows:

Sec. 62.151. PERSON COVERED BY FEDERAL ACT. This chapter and a municipal ordinance or charter provision governing wages in private employment, other than wages under a public contract, do ~~do~~ not apply to a person covered by the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.).

SECTION 5. Section 62.201, Labor Code, is amended to read as follows:

Sec. 62.201. CIVIL PENALTY. An employer who violates Section 62.051, 62.052, 62.053, or 62.054~~, 62.055, or 62.056~~ or Subchapter C is liable to an affected employee in the amount of the unpaid wages plus an additional equal amount as liquidated damages.

SECTION 6. Sections 62.055 and 62.056, Labor Code, are repealed.

SECTION 7. This Act takes effect September 1, 2003.

### **HB 845 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Howard called up with senate amendments for consideration at this time,

**HB 845**, A bill to be entitled An Act relating to a purchasing preference for Texas vendors.

On motion of Representative Howard, the house concurred in the senate amendments to **HB 845**.

### Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 845** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS appropriately:

SECTION \_\_\_\_\_. Section 2155.445, Government Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to the products covered by the definition adopted by rule under this section, in this section "recycled product" includes recycled steel products. The preference for recycled steel products under this section applies also to products purchased in connection with projects described by Section 2166.003.

### HB 2493 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Isett called up with senate amendments for consideration at this time,

**HB 2493**, A bill to be entitled An Act relating to consideration of a bidder's principal place of business in awarding certain municipal and school district contracts.

On motion of Representative Isett, the house concurred in the senate amendments to **HB 2493**.

### Senate Committee Substitute

**HB 2493**, A bill to be entitled An Act relating to consideration of a bidder's principal place of business in awarding certain municipal and school district contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 271.905(a) and (b), Local Government Code, are amended to read as follows:

(a) In this section, "local government" means a municipality [~~with a population of 200,000 or less~~], a county [~~with a population of 400,000 or less~~], or another political subdivision authorized under this title to purchase real property or personal property that is not affixed to real property. [~~The term does not include a school district.~~]

(b) In purchasing under this title any real property, ~~or~~ personal property that is not affixed to real property, or services other than professional services, if a local government receives one or more bids from a bidder whose principal place of business is in the local government and whose bid is within five [~~three~~] percent of the lowest bid price received by the local government from a bidder who is not a resident of the local government, the local government may enter into a contract with:

- (1) the lowest bidder; or
- (2) the bidder whose principal place of business is in the local government if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract

price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government.

SECTION 2. Section 44.031, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In awarding a contract using a method described under Subsection (a)(1) or (a)(2), a school district may consider a bidder's or offeror's principal place of business in the manner provided by Section 271.905, Local Government Code.

SECTION 3. Section 44.033, Education Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) Before the district makes a purchase from a category of personal property, the district must obtain written or telephone price quotations from at least three vendors from the list for that category. If fewer than three vendors are on the list, the district shall contact each vendor on the list. Whenever possible, telephone quotes should be confirmed in writing by mail or facsimile. The bidding records must be retained with the school's competitive bidding records and are subject to audit. Except as provided by Subsection (f), the [The] purchase shall be made from the lowest responsible bidder.

(f) In awarding a contract under this section, a school district may consider a bidder's principal place of business in the manner provided by Section 271.905, Local Government Code.

SECTION 4. This Act takes effect September 1, 2003, and applies only to a contract for which the initial notice soliciting bids or proposals is given on or after that date. A contract for which the initial notice soliciting bids or proposals is given before September 1, 2003, is governed by the law in effect when the initial notice is given, and the former law is continued in effect for that purpose.

### **Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **CSHB 2493** in SECTION 1 of the bill (committee printing page 1, lines 15-20) by striking amended Section 271.905(a), Local Government Code, and substituting the following:

(a) In this section, "local government" means a municipality with a population of 225,000 ~~[200,000]~~ or less, a county with a population of 400,000 or less, or another political subdivision authorized under this title to purchase real property or personal property that is not affixed to real property. ~~[The term does not include a school district.]~~

### **HCR 82 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Campbell called up with senate amendments for consideration at this time,

**HCR 82**, Memorializing Congress to increase Texas' share of revenue from the federal fuel tax to 95 percent.

On motion of Representative Campbell, the house concurred in the senate amendments to **HCR 82**.

**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HCR 82**, as follows:

- (1) On page 1, line 19, before "donor" insert "highway program".
- (2) On page 1, line 20, between "into" and "the" insert "the highway account of".
- (3) On page 1, line 21, between "average" and "rate" insert "highway program".
- (4) On page 2, line 1, between "percent" and the semicolon, insert "on federal highway programs".
- (5) On page 2, line 12, between "the" and "rate" insert "state's highway program".

**HB 1849 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Allen called up with senate amendments for consideration at this time,

**HB 1849**, A bill to be entitled An Act relating to the revocation process for certain persons released from the Texas Department of Criminal Justice on parole or mandatory supervision.

On motion of Representative Allen, the house concurred in the senate amendments to **HB 1849**.

**Senate Committee Substitute**

**HB 1849**, A bill to be entitled An Act relating to the revocation process for certain persons released from the Texas Department of Criminal Justice on parole or mandatory supervision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 508.251(c), Government Code, is amended to read as follows:

(c) Instead of the issuance of a warrant under this section, the division may issue to the person a summons requiring the person to appear for a hearing under Section 508.281 unless the person is a releasee who is on intensive supervision or superintensive supervision, who is an absconder, or who is determined by the division to be a threat to public safety. The summons must state the time, date, place, and purpose of the hearing.

SECTION 2. Section 508.252, Government Code, is amended to read as follows:

Sec. 508.252. GROUNDS FOR ISSUANCE OF WARRANT OR SUMMONS. A warrant or summons may be issued under Section 508.251 if:

- (1) there is reason to believe that the person has been released although not eligible for release;
- (2) the person has been arrested for an offense;
- (3) there is a document that is self-authenticating as provided by Rule 902, Texas Rules of Evidence, stating that the person violated a rule or condition of release; or



(4) there is reliable evidence that the person has exhibited behavior during the person's release that indicates to a reasonable person that the person poses a danger to society that warrants the person's immediate return to custody.

SECTION 3. Section 508.281, Government Code, is amended by adding Subsection (c) to read as follows:

(c) If a hearing before a designated agent of the board is held under this section for a releasee who appears in compliance with a summons, the sheriff of the county in which the releasee is required to appear shall provide the designated agent with a place at the county jail to hold the hearing. Immediately on conclusion of a hearing in which the designated agent determines that a releasee has violated a condition of release, a warrant may be issued requiring the releasee to be held in the county jail pending:

(1) the action of a parole panel on any recommendations made by the designated agent; and

(2) if subsequently ordered by the parole panel, the return of the releasee to the institution from which the releasee was released.

SECTION 4. Section 508.282, Government Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) In Subsections (a), ~~and~~ (b), and (f), charges against an inmate or person are disposed of when:

(1) the inmate's or person's conditional pardon, parole, or release to mandatory supervision is:

(A) revoked; or

(B) continued or modified and the inmate or person is released from the county jail;

(2) the warrant for the inmate or person issued under Section 508.251 is withdrawn; or

(3) the inmate or person is transferred to a facility described by Section 508.284 for further proceedings.

(f) A parole panel, a designee of the board, or the department shall dispose of the charges against a releasee for whom a warrant is issued under Section 508.281(c) not later than the 31st day after the date on which the warrant is issued.

SECTION 5. The change in law made by this Act applies only to a releasee who on or after the effective date of this Act is charged with a violation of release. A releasee who before the effective date of this Act is charged with a violation is covered by the law in effect when the violation is charged, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2003.

### **HB 3248 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Callegari called up with senate amendments for consideration at this time,

**HB 3248**, A bill to be entitled An Act relating to liability of the state and certain political subdivisions for certain recreational activities.

On motion of Representative Callegari, the house concurred in the senate amendments to **HB 3248**.

### Senate Committee Substitute

**HB 3248**, A bill to be entitled An Act relating to liability of the state and certain political subdivisions for certain recreational activities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 75.002(e), (f), and (g), Civil Practice and Remedies Code, are amended to read as follows:

(e) In this section, "recreation" means, in addition to its meaning under Section 75.001, the following activities only if the activities take place on premises ~~[inside a facility]~~ owned, operated, or maintained by the state or a municipality or county for the purposes of those activities:

- (1) hockey and in-line hockey; and
- (2) skating, in-line skating, roller-skating, skateboarding, and roller-blading.

(f) This section ~~[Subsection (e)]~~ limits the liability of the state or a municipality or county only for those damages arising directly from a recreational activity described in Subsection (e) but does not limit the liability of the state or a municipality or county for gross negligence or acts conducted in bad faith or with malicious intent.

(g) Any premises the state or a municipality or county ~~[that]~~ owns, operates, or maintains and on ~~[a facility in]~~ which the recreational activities described in Subsection (e) are conducted shall post and maintain a clearly readable sign in a clearly visible location on or near the premises ~~[building]~~. The sign shall contain the following warning language:

#### WARNING

TEXAS LAW (CHAPTER 75, CIVIL PRACTICE AND REMEDIES CODE) LIMITS THE LIABILITY OF THE STATE AND A MUNICIPALITY OR COUNTY FOR DAMAGES ARISING DIRECTLY FROM HOCKEY, IN-LINE HOCKEY, SKATING, IN-LINE SKATING, ROLLER-SKATING, SKATEBOARDING, OR ROLLER-BLADING ON PREMISES THAT THE STATE OR THE MUNICIPALITY OR COUNTY OWNS, OPERATES, OR MAINTAINS FOR THAT PURPOSE ~~[A FACILITY IN WHICH HOCKEY, IN-LINE HOCKEY, SKATING, IN-LINE SKATING, ROLLER SKATING, SKATEBOARDING, OR ROLLER BLADING ARE CONDUCTED FOR DAMAGES ARISING DIRECTLY FROM SUCH RECREATIONAL ACTIVITIES]~~.

SECTION 2. This Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2003.

### COMMITTEE GRANTED PERMISSION TO MEET

Representative Giddings requested permission for the Committee on Business and Industry to meet while the house is in session.

Permission to meet was granted without objection.

## COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Business and Industry, 6:45 p.m. today, speakers committee room, for a formal meeting, to consider **SB 1804** and **SCR 48**.

### **HB 1948 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Baxter called up with senate amendments for consideration at this time,

**HB 1948**, A bill to be entitled An Act relating to the membership of the electric utility restructuring legislative oversight committee.

On motion of Representative Baxter, the house concurred in the senate amendments to **HB 1948** by (Record 675): 139 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Baxter; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flynn; Gallego; Garza; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.(C); King; Kolkhorst; Krusee; Kuempel; Laney; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Phillips; Pickett; Pitts; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgenuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker.

Absent, Excused — Bailey; Branch; Dukes; Flores; Laubenberg; Moreno, P.; Peña; Puente; Riddle; Telford.

### **Senate Committee Substitute**

**HB 1948**, A bill to be entitled An Act relating to the membership of the electric utility restructuring legislative oversight committee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 39.907, Utilities Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) The committee is composed of six members as follows:

(1) ~~[the chair of the Senate Committee on Economic Development and]~~ the chair of the House Committee on Regulated Industries ~~[State Affairs, who shall serve as joint chairs of the committee];~~

(2) three ~~[two]~~ members of the senate appointed by the lieutenant governor; and

(3) two members of the house of representatives appointed by the speaker of the house of representatives.

(h) The chair of the House Committee on Regulated Industries and one of the members of the senate serving on the committee, designated by the lieutenant governor, shall serve as joint chairs of the committee.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

### **HB 2116 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative F. Brown called up with senate amendments for consideration at this time,

**HB 2116**, A bill to be entitled An Act relating to the operation of Texas Task Force 1.

On motion of Representative F. Brown, the house concurred in the senate amendments to **HB 2116** by (Record 676): 136 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Baxter; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Escobar; Farabee; Farrar; Flynn; Gallego; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; King; Kolkhorst; Krusee; Kuempel; Laney; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Phillips; Pickett; Pitts; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Keffer, J.(C).

Absent, Excused — Bailey; Branch; Dukes; Flores; Laubenberg; Moreno, P.; Peña; Puente; Riddle; Telford.

Absent — Garza; West.

### **Senate Committee Substitute**

**HB 2116**, A bill to be entitled An Act relating to the operation of Texas Task Force 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 88, Education Code, is amended by adding Subchapter D to read as follows:

#### SUBCHAPTER D. TEXAS TASK FORCE 1

Sec. 88.301. DEFINITIONS. In this subchapter:

(1) "Local government employee member" means a member employed by a local government as defined by Section 102.001, Civil Practice and Remedies Code.

(2) "Member" means an individual, other than an employee of The Texas A&M University System, who has been officially designated as a member of Texas Task Force 1.

(3) "Nongovernment member" means a member who is not a state employee member, a local government employee member, or an employee of The Texas A&M University System.

(4) "State employee member" means a member employed by an agency of the state other than a component of The Texas A&M University System.

Sec. 88.302. TEXAS TASK FORCE 1. Texas Task Force 1 is a program of the Texas Engineering Extension Service providing training and responding to assist in search, rescue, and recovery efforts following natural or man-made disasters.

Sec. 88.303. WORKERS' COMPENSATION INSURANCE COVERAGE.

(a) Notwithstanding any other law, during any period in which Texas Task Force 1 is activated by the governor's division of emergency management, or during any training session sponsored or sanctioned by Texas Task Force 1, a participating nongovernment member or local government employee member is included in the coverage provided under Chapter 501, Labor Code, in the same manner as an employee, as defined by Section 501.001, Labor Code.

(b) Service with Texas Task Force 1 by a state employee member who is activated is considered to be in the course and scope of the employee's regular employment with the state.

(c) Service with Texas Task Force 1 by an employee of The Texas A&M University System is considered to be in the course and scope of the employee's regular employment with The Texas A&M University System.

(d) Notwithstanding Section 412.0123, Labor Code, as added by Chapter 1098, Acts of the 75th Legislature, Regular Session, 1997, the governor's division of emergency management shall reimburse the State Office of Risk Management for the actual medical and indemnity benefits paid on behalf of a covered member of Texas Task Force 1 at the beginning of the next state fiscal year occurring after the date the benefits are paid.

SECTION 2. Section 408.0445, Labor Code, is amended to read as follows:

Sec. 408.0445. AVERAGE WEEKLY WAGE FOR MEMBERS OF ~~THE~~ STATE MILITARY FORCES AND TEXAS TASK FORCE 1. (a) For purposes of computing income benefits or death benefits under Section 431.104, Government Code, the average weekly wage of a member of the state military forces as defined by Section 431.001, Government Code, who is engaged in authorized training or duty is an amount equal to the sum of the member's regular weekly wage at any employment the member holds in addition to serving as a member of the state military forces, disregarding any period during which the member is not fully compensated for that employment because the member is engaged in authorized military training or duty, and the member's regular weekly wage as a member of the state military forces, except that the amount may not exceed 100 percent of the state average weekly wage as determined under Section 408.047.

(b) For purposes of computing income benefits or death benefits under Section 88.303, Education Code, the average weekly wage of a Texas Task Force 1 member, as defined by Section 88.301, Education Code, who is engaged in authorized training or duty is an amount equal to the sum of the member's regular weekly wage at any employment, including self-employment, that the member holds in addition to serving as a member of Texas Task Force 1, except that the amount may not exceed 100 percent of the state average weekly wage as determined under Section 408.047. A member for whom an average weekly wage cannot be computed shall be paid the minimum weekly benefit established by the commission.

SECTION 3. Section 501.001(5), Labor Code, is amended to read as follows:

(5) "Employee" means a person who is:

(A) in the service of the state pursuant to an election, appointment, or express oral or written contract of hire;

(B) paid from state funds but whose duties require that the person work and frequently receive supervision in a political subdivision of the state;

(C) a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under:

(i) Article 12, Code of Criminal Procedure; or

(ii) Articles 14.03(d) and (g), Code of Criminal Procedure; ~~or~~

(D) a member of the state military forces, as defined by Section 431.001, Government Code, who is engaged in authorized training or duty; or

(E) a Texas Task Force 1 member, as defined by Section 88.301, Education Code, who is activated by the governor's division of emergency management or is injured during any training session sponsored or sanctioned by Texas Task Force 1.

SECTION 4. Section 501.002, Labor Code, is amended by adding Subsection (f) to read as follows:

(f) For purposes of this chapter and Subchapter D, Chapter 88, Education Code, the Texas Engineering Extension Service of The Texas A&M University System shall perform all duties of an employer in relation to a Texas Task Force 1 member who is injured and receives benefits under this chapter.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

**HB 2192 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Keel called up with senate amendments for consideration at this time,

**HB 2192**, A bill to be entitled An Act relating to the regulation of controlled substances under the Texas Controlled Substances Act and to the prosecution of certain offenses under that Act.

On motion of Representative Keel, the house concurred in the senate amendments to **HB 2192**.

**Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 2192** by adding the following new Section 15 and renumber all subsequent sections accordingly:

SECTION 15. Section 431.112, Repeal subsections (j) and (k) as added by the enrolled version of SB 1400, passed during the regular session of the 78th Texas Legislature.

**HB 2402 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Stick called up with senate amendments for consideration at this time,

**HB 2402**, A bill to be entitled An Act relating to the compensation of district judges in Travis County.

On motion of Representative Stick, the house concurred in the senate amendments to **HB 2402**.

**Senate Committee Substitute**

**HB 2402**, A bill to be entitled An Act relating to the compensation of district judges in Collin and Travis counties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Effective September 1, 2003, Section 32.043(a), Government Code, is amended to read as follows:

(a) Notwithstanding Section 659.012, the [The] Commissioners Court of Collin County may budget for and pay the judges of the district courts having jurisdiction in the county an annual salary set by the commissioners court for services rendered and for performing administrative services.

SECTION 2. Effective September 1, 2007, Section 32.043(a), Government Code, is reenacted to read as follows:

(a) The Commissioners Court of Collin County may budget for and pay the judges of the district courts having jurisdiction in the county an annual salary set by the commissioners court for services rendered and for performing administrative services.

SECTION 3. Effective September 1, 2003, Section 32.227(a), Government Code, is amended to read as follows:

(a) Notwithstanding Section 659.012, the [The] Commissioners Court of Travis County may pay the judges of the district courts having jurisdiction in the county an annual salary in an amount set by the commissioners court for services rendered and for performing administrative duties.

SECTION 4. Effective September 1, 2007, Section 32.227(a), Government Code, is reenacted to read as follows:

(a) The Commissioners Court of Travis County may pay the judges of the district courts having jurisdiction in the county an annual salary in an amount set by the commissioners court for services rendered and for performing administrative duties.

SECTION 5. Sections 32.043(d) and 32.227(c), Government Code, are repealed.

SECTION 6. This Act takes effect September 1, 2003.

## **HB 1024 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Crossover called up with senate amendments for consideration at this time,

**HB 1024**, A bill to be entitled An Act relating to staff development requirements in public schools.

On motion of Representative Crossover, the house concurred in the senate amendments to **HB 1024**.

### **Senate Amendment No. 1 (Senate Committee Amendment No. 1)**

Amend **HB 1024** as follows:

(1) In SECTION 1 of the bill (House engrossment, page 1, line 34 and 35), strike "Sections 21.451(a) and (b), Education Code, are amended" and substitute "Section 21.451, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (d)".

(2) In SECTION 1 of the bill (House engrossment, page 2, between lines 10 and 11), insert the following:

(d) The staff development may:

(1) include training in:

(A) technology;

(B) conflict resolution; and

(C) discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37;



(2) include training that:

(A) relates to instruction of students with disabilities; and

(B) is designed for educators who work primarily outside the area of special education; and

(3) include instruction as to what is permissible under law, including opinions of the United States Supreme Court, regarding prayer in public school.

### **HR 1434 - ADOPTED**

**(by West)**

Representative West moved to suspend all necessary rules to take up and consider at this time **HR 1434**.

The motion prevailed without objection.

The following privileged resolution was laid before the house:

### **HR 1434**

BE IT RESOLVED by the House of Representatives of the State of Texas, 78th Legislature, Regular Session, 2003, That House Rule 13, Section 9(a), be suspended in part as provided by House Rule 13, Section 9(f), to enable the conference committee appointed to resolve the differences on **HB 1567**, relating to the disposal of low-level radioactive waste; authorizing the exercise of the power of eminent domain, to consider and take action on the following matters:

(1) House Rule 13, Section 9(a)(2), is suspended to permit the committee to omit "and the disposal of low-level radioactive waste under Subchapter F" from amended Section 401.104(b), Health and Safety Code.

Explanation: The omission is necessary since the Texas Commission on Environmental Quality is the agency that will issue the low-level radioactive waste disposal facility license under Subchapter F, Chapter 401, Health and Safety Code.

(2) House Rule 13, Section 9(a)(3) is suspended to permit the committee to add "the form and content of which is acceptable to the agency" to amended Section 401.109(d)(6), Health and Safety Code.

Explanation: The addition is necessary to ensure that an insurance policy provided as security by a license holder under Chapter 401, Health and Safety Code, is acceptable to the state agency issuing the license.

(3) House Rule 13, Sections 9(a)(3) and (4), are suspended to permit the committee to add text not included in either the house or senate version of the bill to proposed Section 401.229, Health and Safety Code, to read as follows:

If the commission's costs in processing an application under this subchapter exceed the \$500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application.

Explanation: The added text is necessary to allow the Texas Commission on Environmental Quality to collect additional fees from a low-level radioactive waste disposal license applicant if the additional fees are necessary to recover certain costs incurred in processing the application.

(4) House Rule 13, Section 9(a)(1) is suspended to permit the committee to change "180th" to "270th" in proposed Section 401.232(g), Health and Safety Code.

Explanation: The changed text is necessary to give the Texas Commission on Environmental Quality additional time to select an application for a low-level radioactive waste disposal facility license that has the highest comparative merit.

**HR 1434** was adopted without objection.

### **HB 1567 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative West submitted the following conference committee report on **HB 1567** :

Austin, Texas, May 19, 2003

The Honorable David Dewhurst  
President of the Senate

The Honorable Tom Craddick  
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1567** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bivins  
Whitmire  
Staples  
Armbrister

West  
W. Smith  
Chisum  
Kuempel  
Bonnen

On the part of the senate

On the part of the house

**HB 1567**, A bill to be entitled An Act relating to the disposal of low-level radioactive waste; authorizing the exercise of the power of eminent domain.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 401.003(11), Health and Safety Code, is amended to read as follows:

(11) "Perpetual care account" [~~"Fund"~~] means the radiation and perpetual care account [~~fund~~].

SECTION 2. Sections 401.052(b), (c), (d), (e), and (f), Health and Safety Code, are amended to read as follows:

(b) Rules adopted under this section for low-level radioactive waste must [~~shall~~]:

(1) to the extent practicable, be compatible with United States Department of Transportation and United States Nuclear Regulatory Commission regulations relating to the transportation of low-level radioactive waste;

(2) require each shipper and transporter of low-level radioactive waste to adopt an emergency plan approved by the department for responding to transportation accidents;

(3) require the notification and reporting of accidents to the department and to local emergency planning committees in the county where the accident occurs;

(4) require each shipper to adopt a quality control program approved by the department to verify that shipping containers are suitable for shipment to a licensed disposal facility; ~~and~~

(5) assess a fee on shippers for shipments to a Texas low-level radioactive waste disposal facility of low-level radioactive waste originating in Texas or out-of-state; ~~and~~

(6) require a transporter to carry liability insurance in an amount the board determines is sufficient to cover damages likely to be caused by a shipping accident in accordance with regulations imposed by the United States Department of Transportation and the United States Nuclear Regulatory Commission.

(c) In adopting ~~[promulgating]~~ rules under this section, the board shall consult with the advisory board and the commission.

(d)(1) Fees assessed under the rules adopted under Subsection (b)(5) ~~[this section shall]~~:

(A) may not exceed \$10 per cubic foot of shipped low-level radioactive waste;

(B) shall be collected by the compact waste disposal facility license holder under Subchapter F ~~[authority]~~ and remitted to the commission for deposit ~~[deposited]~~ to the credit of the ~~[radiation and]~~ perpetual care account ~~[fund]~~; and

(C) may be used only ~~[exclusively]~~ by the department for emergency planning for and response to transportation accidents involving low-level radioactive waste.

(2) Fee assessments under the rules adopted under Subsection (b)(5) ~~[this section]~~ shall be suspended when the amount of fees collected reaches \$500,000, except that if the balance of fees collected is reduced to \$350,000 or less, the assessments shall be reinstated to bring the balance of fees collected to \$500,000.

(e) Money expended from the ~~[radiation and]~~ perpetual care account ~~[fund]~~ to respond to accidents involving low-level radioactive waste must be reimbursed to the ~~[radiation and]~~ perpetual care account ~~[fund]~~ by the responsible shipper or transporter according to rules adopted by the board.

(f) In this section, "shipper" ~~is~~:

(1) "Shipper" means a person who generates low-level radioactive waste and ships or arranges with others to ship the waste to a disposal site.

~~(2) "Authority" means the Texas Low Level Radioactive Waste Disposal Authority.~~

SECTION 3. Subchapter C, Chapter 401, Health and Safety Code, is amended by adding Section 401.071 to read as follows:

Sec. 401.071. GENERAL POWERS OF COMMISSION IN RELATION TO LOW-LEVEL RADIOACTIVE WASTE. (a) The commission may:

(1) conduct, request, and participate in studies, investigations, and research relating to selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of disposal sites for and disposal of low-level radioactive waste; and

(2) advise, consult, and cooperate with the federal government, the state, interstate agencies, local governmental entities in this state, and private entities on matters involving the disposal of low-level radioactive waste.

(b) In carrying out its duties under this section the commission may:

(1) apply for, receive, accept, and administer gifts, grants, and other funds available from any source; and

(2) contract with the federal government, the state, interstate agencies, local governmental agencies, and private entities.

SECTION 4. Section 401.104(b), Health and Safety Code, is amended to read as follows:

(b) Except as provided by Subsection (e), the commission by rule shall provide for licensing for the disposal of radioactive material except for the disposal of by-product material defined by Section 401.003(3)(B). The department by rule shall provide for licensing the disposal of by-product material defined by Section 401.003(3)(B).

SECTION 5. Section 401.109, Health and Safety Code, is amended to read as follows:

Sec. 401.109. SECURITY. (a) The department or commission may require a holder of a license issued by the agency to provide security acceptable to the agency to assure performance of the license holder's obligations under this chapter. The department or commission shall deposit security provided under this section to the credit of the perpetual care account. The department or commission by rule shall provide that any evidence of security must be made payable to the credit of the perpetual care account.

(b) The department or commission shall require a holder of a license that authorizes the disposal of low-level radioactive waste as provided by Subchapter F to provide security acceptable to the agency to assure performance of the license holder's obligations under this chapter.

(c) The amount and type of security required shall be determined under the agency's rules in accordance with criteria that include:

(1) the need for and scope of decontamination, decommissioning, reclamation, or disposal activity reasonably required to protect the public health and safety and the environment;

(2) reasonable estimates of the cost of decontamination, decommissioning, reclamation, and disposal as provided by Section 401.303; and

(3) the cost of perpetual maintenance and surveillance, if any.

(d) ~~(e)~~ In this section "security" includes:

(1) a cash deposit;

(2) a surety bond;

(3) a certificate of deposit;

(4) an irrevocable letter of credit;

(5) a deposit of government securities;

(6) an insurance policy, the form and content of which is acceptable to the agency; and

(7) [~~(6)~~] other security acceptable to the agency.

SECTION 6. Section 401.152(b), Health and Safety Code, is amended to read as follows:

(b) The agency shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The agency shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

(1) enforce security supplied by the license holder;

(2) convert an amount of security into cash, as necessary; and

(3) disburse from the security in the perpetual care account [~~fund~~] the amount necessary to pay the costs.

SECTION 7. Subchapter F, Chapter 401, Health and Safety Code, is amended to read as follows:

SUBCHAPTER F. SPECIAL PROVISIONS CONCERNING LOW-LEVEL  
RADIOACTIVE WASTE DISPOSAL

Sec. 401.2005. DEFINITIONS. In this subchapter:

(1) "Compact waste" means low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state but has been approved for importation to this state by the compact commission under Section 3.05 of the compact established under Section 403.006.

(2) "Compact waste disposal facility" means the low-level radioactive waste disposal facility licensed by the commission under this subchapter for the disposal of compact waste.

(3) "Disposal facility site" means the tract of land on which is located the compact waste disposal facility and the federal facility waste disposal facility, if applicable. The term includes the immediate area surrounding the facility or facilities.

(4) "Federal facility waste" means low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

(5) "Federal facility waste disposal facility" means a facility for the disposal of federal facility waste licensed under Section 401.216.

(6) "Host state" has the meaning assigned by Section 2.01 of the compact established under Section 403.006.

(7) "Party state" has the meaning assigned by Section 2.01 of the compact established under Section 403.006.

Sec. 401.201. REGULATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. The commission shall directly regulate the disposal of low-level radioactive waste in accordance with this subchapter. The person making the disposal shall comply with this subchapter and commission rules.

Sec. 401.202. LICENSING AUTHORITY. (a) The commission or department, within its respective jurisdiction, may ~~shall~~ grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste from other persons and for the processing of that waste.

(b) The commission shall receive applications for and may issue not more than one license for a single compact waste disposal facility. The commission may issue the license only for a facility that meets:

(1) requirements for licensing provided by this subchapter and by commission rules; and

(2) requirements for disposal adopted by the commission that meet federal requirements for disposal.

(c) Except as provided by Section 401.216, the commission shall provide that the compact waste disposal facility license authorizes only the disposal of compact waste.

~~[Sec. 401.203. LICENSE RESTRICTED TO PUBLIC ENTITY. A low level radioactive waste disposal license may be issued only to a public entity specifically authorized by law for low level radioactive waste disposal.]~~

Sec. 401.204. ACQUISITION OF PROPERTY. (a) An application for a compact waste disposal facility license ~~[to dispose of low level radioactive waste from other persons]~~ may not be considered unless the applicant has acquired the title to and any interest in land and buildings as required by commission rule.

(b) If an applicant for a compact waste disposal license is unsuccessful in acquiring a mineral right that the rules adopted under Subsection (a) require the applicant to acquire, the commission may allow the applicant, to the extent permissible under federal law, to enter into a surface use agreement that restricts mineral access, including slant drilling and subsurface mining, to the extent necessary to prevent intrusion into the disposal facility site.

(c) If an applicant cannot reach a surface use agreement described by Subsection (b) with a private landowner, the attorney general shall, on request of the commission, institute condemnation proceedings as provided under Chapter 21, Property Code, to acquire fee simple interest in the mineral right.

Sec. 401.205. RESPONSIBILITIES OF PERSONS LICENSED TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) The compact waste disposal facility license holder ~~[A person who is licensed to dispose of low level radioactive waste from other persons]~~ shall:

(1) arrange for and pay the costs of management, control, stabilization, and disposal of compact ~~[low level radioactive]~~ waste and the decommissioning of the licensed activity;

(2) convey to the state when the license is issued all required right, title, and interest in land and buildings acquired under commission rules adopted under Section 401.204, together with requisite rights of access to that property; and

(3) formally acknowledge before termination of the license the conveyance to the state of the right, title, and interest in compact ~~[low level radioactive]~~ waste located on the property conveyed.

(b) The compact waste disposal facility license holder, if licensed under Section 401.216 to dispose of federal facility waste, shall:

(1) arrange for and pay the costs of management, control, stabilization, and disposal of federal facility waste and the decommissioning of the licensed federal facility waste disposal activity;

(2) on decommissioning of the licensed federal facility waste disposal activity, convey to the federal government, as provided by the federal Nuclear Waste Policy Act of 1982, Subtitle D (42 U.S.C. Section 10171 et seq.), as amended, all required right, title, and interest in land and buildings acquired under commission rules under Section 401.204, together with requisite rights of access to that property;

(3) formally acknowledge before termination of the license the conveyance to the federal government of the right, title, and interest in radioactive waste located on the property conveyed; and

(4) before accepting federal facility waste, submit to the commission a written agreement, signed by an official of the federal government, stating that the federal government will assume all required right, title, and interest in land and buildings acquired under commission rules under Section 401.204 for the disposal of federal facility waste, together with requisite rights of access to the land and buildings, in accordance with the federal Nuclear Waste Policy Act of 1982, Subtitle D (42 U.S.C. Section 10171 et seq.), as amended.

Sec. 401.2051. CONVEYANCE OF WASTE. (a) The compact waste disposal facility license holder shall convey to the state at no cost to the state title to the compact waste delivered to the disposal facility for disposal at the time the waste is accepted at the site. Acceptance occurs when the acceptance criteria specified in the license have been satisfied. This section does not apply to federal facility waste accepted at a federal facility waste disposal facility.

(b) The title and all related rights and interest in compact waste conveyed under this section are the property of the commission on the state's behalf. The commission may administer the waste as property in the name of the state.

Sec. 401.206. RESIDENT INSPECTOR. (a) The compact waste disposal facility license holder ~~[of a license to dispose of low level radioactive waste from other persons]~~ shall reimburse the commission for the salary and other expenses of two or more [a] resident inspectors [inspector] employed by the commission.

(b) The commission may require that the compact waste disposal facility license holder provide facilities at the [a] disposal site for the resident inspectors [inspector].

Sec. 401.207. OUT-OF-STATE WASTE. The compact waste disposal facility [A] license holder may not accept low-level radioactive waste generated in another state for ~~[processing or]~~ disposal under a license issued by the commission unless the waste is:

(1) accepted under a compact to which the state is a contracting party;

(2) federal facility waste that the license holder is licensed to dispose of under Section 401.216 ~~[from a state having an operating low level radioactive waste disposal site at which that state is willing to accept low level radioactive waste generated in this state];~~ or

(3) generated from manufactured sources or devices originating in this state.

Sec. 401.209. ACQUISITION AND OPERATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITES. (a) The commission may acquire the fee simple title in land, affected mineral rights, and buildings at which low-level radioactive waste can be or is being disposed of in a manner consistent with public health and safety and the environment.

(b) Property acquired under this section may be used only for disposing of low-level radioactive waste until the commission determines that another use would not endanger the health, safety, or general welfare of the public or the environment.

(c) The commission may lease property acquired under this section for operating a disposal site [~~sites~~] for low-level radioactive waste.

(d) The right, title, and interest in low-level radioactive waste accepted for disposal at property and facilities acquired under this section and any other interest acquired under this chapter are the property of the commission, acting on behalf of the state, and shall be administered and controlled by the commission in the name of the state.

(e) A right, title, or interest acquired under this chapter does not vest in any fund created by the Texas Constitution.

Sec. 401.210. TRANSFER COSTS OF PROPERTY. Low-level radioactive waste and land and buildings transferred to the state or to the federal government under this chapter shall be transferred to the state or to the federal government without cost, other than administrative and legal costs incurred in making the transfer.

Sec. 401.211. LIABILITY. (a) The transfer [~~to the state~~] of the title to low-level radioactive waste and land and buildings to the state or to the federal government does not relieve a license holder of liability for any act or omission [~~fraudulent or negligent acts~~] performed before the transfer or while the low-level radioactive waste or land and buildings are in the possession and control of the license holder.

(b) The acceptance, storage, or disposal of federal facility waste by the compact waste disposal facility license holder at a federal facility waste disposal facility does not create any liability under state law on the part of the state, or on the part of any officer or agency of the state, for damages, removal, or remedial action with respect to the land, the facility, or the waste accepted, stored, or disposed of.

(c) The compact waste disposal facility license must require the license holder to indemnify the state for any liability imposed on the state under state or federal law, as required by the commission for the disposal of federal facility waste.

Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. The commission may undertake monitoring, maintenance, and emergency measures that are necessary to protect the public health and safety and the environment in connection with low-level radioactive waste and property for which it has assumed custody.



Sec. 401.213. INTERSTATE COMPACTS. The commission shall cooperate with and encourage the use of interstate compacts, including the Southern States Energy Board, to develop regional sites that divide among the states the disposal burden of low-level radioactive waste generated in the region.

Sec. 401.214. REGIONAL DISPOSAL FACILITY UNDER COMPACT. The compact waste disposal facility licensed under this subchapter is the regional disposal facility established and operated under the compact established under Chapter 403 for purposes of the federal Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE. Subject to limitations provided by Sections 401.207 and 401.248, the compact waste disposal facility shall accept for disposal all compact waste that is presented to it and that is properly processed and packaged.

Sec. 401.216. FEDERAL FACILITY WASTE DISPOSAL. (a) The commission may license the compact waste disposal facility license holder to dispose of federal facility waste. The commission may license federal facility waste disposal only at a separate and distinct facility that is operated exclusively for the disposal of federal facility waste and that is adjacent to the compact waste disposal facility.

(b) For the first five years after a license under this section is issued, the commission shall limit the overall capacity of the federal facility waste disposal facility to not more than three million cubic yards. Of that amount, the commission shall limit the total volume of waste accepted at the federal facility waste disposal facility that must be disposed of in accordance with Section 401.218 to not more than 300,000 cubic yards.

(c) Unless the commission makes an affirmative finding that increasing the capacity of the federal facility waste disposal facility would pose a significant risk to human health, public safety, or the environment, on the fifth anniversary of the date the license under this section is issued, the commission shall increase the overall capacity of the federal facility waste disposal facility by three million cubic yards, for a total capacity of six million cubic yards, and shall increase the acceptable volume of waste that must be disposed of in accordance with Section 401.218 by 300,000 cubic yards, for a total volume of 600,000 cubic yards.

(d) The commission may not allow commingling of compact waste and federal facility waste.

(e) The compact waste disposal facility license holder may not accept federal facility waste at a federal facility waste disposal facility until the license holder begins accepting compact waste at the compact waste disposal facility.

Sec. 401.217. LOCATION OF DISPOSAL FACILITY SITE. The commission may not issue a license for a compact waste disposal facility or license the operation of a federal facility waste disposal facility if the disposal facility site is located:

(1) in a county any part of which is located 62 miles or less from an international boundary;

(2) in a county in which the average annual rainfall is greater than 20 inches;

(3) in a county that adjoins river segment 2309, 2310, or 2311 as identified by the commission in the Texas Surface Water Quality Standards, 30 T.A.C. Section 307.10(3);

(4) in a 100-year flood plain; or

(5) less than 20 miles upstream of or up-drainage from the maximum elevation of the surface of a reservoir project that:

(A) has been constructed or is under construction by the United States Bureau of Reclamation or the United States Army Corps of Engineers; or

(B) has been approved for construction by the Texas Water Development Board as part of the state water plan under Subchapter C, Chapter 16, Water Code.

Sec. 401.218. DISPOSAL OF CERTAIN WASTE. (a) In this section, "Class A low-level radioactive waste," "Class B low-level radioactive waste," and "Class C low-level radioactive waste" have the meanings assigned by commission rule.

(b) The compact waste disposal facility license holder shall dispose of Class B low-level radioactive waste and Class C low-level radioactive waste:

(1) within a reinforced concrete container and within a reinforced concrete barrier or within containment structures made of materials technologically equivalent or superior to reinforced concrete; and

(2) in such a manner that the waste can be monitored and retrieved.

(c) The commission by rule may require a compact waste disposal facility license holder to dispose of certain Class A low-level radioactive wastes that present a hazard because of their high radiation levels in the manner required for Class B low-level radioactive waste and Class C low-level radioactive waste under Subsection (b). To the extent practicable, rules adopted under this subsection shall be consistent with federal rules regarding classification of low-level radioactive waste under 10 C.F.R. Part 61.

Sec. 401.219. TECHNIQUES FOR MANAGING LOW-LEVEL RADIOACTIVE WASTE. (a) As a condition for obtaining a compact waste disposal facility license, an applicant must submit to the commission or its designee evidence relating to the reasonableness of any technique for managing low-level radioactive waste to be practiced at the proposed disposal facility or facilities.

(b) Before determining the techniques to be used for managing low-level radioactive waste, an applicant shall study alternative techniques, including:

(1) waste processing and reduction at the site of waste generation and at the disposal facility; and

(2) the use of aboveground isolation facilities.

Sec. 401.220. DESIGN OF FACILITY. The design of a disposal facility should incorporate, to the extent practicable, safeguards against hazards resulting from local meteorological conditions, including phenomena such as hurricanes, tornados, earthquakes, earth tremors, violent storms, and susceptibility to flooding.

Sec. 401.221. MIXED WASTE. (a) In this section, "mixed waste" means a combination of hazardous waste as defined by Chapter 361 and low-level radioactive waste and includes federal mixed waste.

(b) The compact waste disposal facility license holder in accepting mixed waste at the compact waste disposal facility or a federal facility waste disposal facility shall comply with Chapter 361, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended, and this chapter.

Sec. 401.222. TERM OF LICENSE. The compact waste disposal facility license issued under this subchapter expires on the 15th anniversary of its date of issuance and may be renewed for one or more terms of 10 years.

Sec. 401.223. HEALTH SURVEILLANCE SURVEY. The commission, the department, and local public health officials shall develop a health surveillance survey for the population located in the vicinity of the disposal facility site.

Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The department shall adopt rules relating to the packaging of radioactive waste.

Sec. 401.225. SHIPMENT OF LOW-LEVEL RADIOACTIVE WASTE. (a) On arrival of a shipment of low-level radioactive waste at the compact waste disposal facility or a federal facility waste disposal facility, the compact waste disposal facility license holder must determine that the waste complies with all laws, rules, and standards relating to processing and packaging of low-level radioactive waste before the waste is accepted for disposal at the facility.

(b) A person making a shipment of low-level radioactive waste that is in excess of 75 cubic feet shall give the compact waste disposal facility license holder written notice of the shipment at least 72 hours before shipment to the compact waste disposal facility or a federal facility waste disposal facility begins. The written notice must contain information required by the department.

Sec. 401.226. IMPROPERLY PROCESSED OR PACKAGED LOW-LEVEL RADIOACTIVE WASTE. (a) If low-level radioactive waste that is not properly processed or packaged arrives at the compact waste disposal facility or a federal facility waste disposal facility, the compact waste disposal facility license holder shall properly process and package the waste for disposal and charge the person making the shipment a fee to have the low-level radioactive waste properly processed and packaged.

(b) The compact waste disposal facility license holder shall report to the federal and state agencies that establish rules and standards for processing, packaging, and transporting low-level radioactive waste any person who delivers to the compact waste disposal facility or a federal facility waste disposal facility low-level radioactive waste that is not properly processed or packaged.

Sec. 401.227. SELECTION OF APPLICATION FOR COMPACT WASTE DISPOSAL FACILITY LICENSE. (a) In selecting an application for the compact waste disposal facility license, the commission shall:

(1) issue notice of the opportunity to submit an application to dispose of low-level radioactive waste in accordance with Section 401.228;

(2) review all applications received under Subdivision (1) for administrative completeness;

(3) evaluate all administratively complete applications in accordance with the evaluation criteria established by Sections 401.233-401.236 and shall select the application that has the highest comparative merit in accordance with Section 401.232; and

(4) review the selected application under Subdivision (3) for technical completeness and issue a draft license in accordance with Sections 401.237 and 401.238.

(b) If the selected application is rejected or denied by the commission, the commission may select the next highest comparative merit application and proceed in accordance with Subsection (a)(4).

Sec. 401.228. NOTICE TO RECEIVE APPLICATIONS. Not later than January 1, 2004, the commission shall give to the secretary of state for publication in the Texas Register notice that:

(1) the commission will accept applications for a 30-day period, beginning 180 days after the date of the Texas Register notice, for the siting, construction, and operation of a facility or facilities for disposal of low-level radioactive waste;

(2) applications must comply with Chapter 401, Health and Safety Code, the rules of the commission, and any other applicable requirements in the commission's discretion;

(3) applications must include a nonrefundable \$500,000 application processing fee;

(4) applications received within the 30-day application receipt period will be evaluated by the commission for administrative completeness;

(5) applications deemed administratively complete will be evaluated by the commission in accordance with the statutory evaluation criteria under Sections 401.233-401.236; and

(6) based on the commission's evaluation, one application will be selected to be processed by the commission.

Sec. 401.229. APPLICATION PROCESSING FEE. An application for a compact waste disposal facility license must include payment to the commission of an application processing fee of \$500,000. The commission may not review an application for administrative completeness until the commission receives the application processing fee. The application processing fee is nonrefundable. If the commission's costs in processing an application under this subchapter exceed the \$500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application.

Sec. 401.230. RECEIPT OF APPLICATIONS. (a) For a 30-day period beginning 180 days after the date notice is published under Section 401.228, the commission shall accept applications for a compact waste disposal facility license.

(b) Not later than the 45th day after the date an application is received, the commission shall issue an administrative notice of deficiency to each applicant whose application is timely submitted but is determined by the commission to be administratively incomplete.

(c) The commission shall provide an applicant for whom an administrative notice of deficiency is issued not more than three 30-day opportunities to cure the noted deficiencies in the application.

(d) The commission shall reject any application that, after the period for correcting deficiencies has expired, is not administratively complete.

Sec. 401.231. ADMINISTRATIVELY COMPLETE APPLICATION. The commission shall consider as administratively complete an application for which the commission has received the portions of the application necessary to allow the commission to review the technical merits of the application, including:

(1) the identity and qualifications of the applicant;

(2) a description of the proposed disposal facility or facilities and disposal facility site;

(3) a description of the character of the proposed activities and the types and quantities of waste to be managed at the disposal facility or facilities;

(4) a description of the proposed schedules for construction, receipt of waste, and closure;

(5) a description of the financial assurance mechanism to be used;

(6) a description of the design features of the facility or facilities, along with a description of the methods of construction and operation of the facility or facilities;

(7) a characterization of the area and disposal facility site characteristics, including ecology, geology, soils, hydrology, natural radiation background, climatology, meteorology, demography, and current land uses;

(8) a description of the safety programs to be used at the proposed facility or facilities;

(9) a copy of the warranty deed or other conveyance showing required right, title, and interest in the land and buildings on which the facility or facilities are proposed to be located is owned in fee by the applicant as required by Section 401.204;

(10) an application processing fee in the amount prescribed by Section 401.229 and proof of additional funds sufficient to cover any further costs of processing the application as estimated by the commission; and

(11) a copy of a resolution of support of the proposed facility or facilities from the commissioners court of the county in which the facility or facilities are proposed to be located.

Sec. 401.232. EVALUATION OF APPLICATIONS; COMMISSION SELECTION. (a) The commission shall have prepared by commission personnel or an independent contractor a written evaluation of each administratively complete application in terms of the criteria established under Sections 401.233-401.236.

(b) The commission shall conduct at least one public meeting in the county or counties where a compact waste disposal facility or federal facility waste disposal facility is to be located to receive public comments on the administratively complete applications. The commission shall set the time and place of the meetings as soon as practicable after the close of the period for administrative review of the applications.

(c) The commission may issue a request for further information to each applicant whose application is determined by the commission to be insufficient for the purposes of the commission's evaluation.

(d) The commission shall provide an applicant for whom a request for further information is issued two 30-day opportunities to adequately respond in the discretion of the commission.

(e) The commission shall use the written evaluations and application materials to evaluate each application according to the statutory criteria established by Sections 401.233-401.236. The commission shall evaluate each application for each statutory criterion for purposes of comparing the relative merit of the applications, giving:

(1) equal weight to each criterion within a tier of criteria; and

(2) the greatest weight to tier 1 criteria, greater weight to tier 2 criteria than to tier 3 criteria, and the least weight to tier 4 criteria.

(f) Before publication of the notice of the commission's intention to accept applications under Section 401.228, the commission by rule may adopt criteria in addition to the criteria under Sections 401.233-401.236 by which the commission may evaluate applications. The criteria must be consistent with those sections.

(g) Not later than the 270th day after it receives the last timely filed application, the commission, based on the written evaluations and application materials, shall select the application that has the highest comparative merit.

Sec. 401.233. TIER 1 CRITERIA. (a) The commission shall consider as tier 1 criteria:

(1) the natural characteristics of the disposal facility site for a proposed disposal facility or facilities;

(2) the adequacy of the proposed facility or facilities and activities to safely isolate, shield, and contain low-level radioactive waste from mankind and mankind's environment; and

(3) the adequacy of financial assurance related to the proposed activities.

(b) Natural characteristics of the disposal facility site include:

(1) the suitability of the site for the proposed activities, including the site's:

(A) geological characteristics;

(B) topography, including features relating to erosion;

(C) surface and underground hydrology;

(D) meteorological factors; and

(E) natural hazards;

(2) the compatibility of disposal activities with any uses of land near the site that could affect the natural performance of the site or that could affect monitoring of the disposal facility or facilities and disposal facility site;

(3) the adequacy of plans for the collection of prelicense monitoring data and background monitoring plans for the disposal facility site, including analysis of the ambient conditions of the site and established trends of the site's natural parameters, including:

(A) natural background radioactivity levels;

(B) radon gas levels;

(C) air particulate levels;

(D) soil characteristics, including chemical characteristics;

(E) surface water and groundwater characteristics; and

(F) flora and fauna at the site;

(4) the possible effects of disposal activities on flora and fauna at or near the site; and

(5) the ease of access to the site.

(c) Adequacy of the proposed disposal facility or facilities and activities includes:

(1) the capability of the proposed facility or facilities and activities to isolate, shield, and contain low-level radioactive waste in conformity with federal standards;

(2) acceptable operational safety; and

(3) acceptable long-term safety as demonstrated by analysis or study.

(d) Financial assurance criteria include:

(1) adequacy of the applicant's financial qualifications to:

(A) conduct the licensed activities as proposed, including:

(i) any required decontamination, decommissioning, reclamation, or disposal; and

(ii) control and maintenance of the disposal facility site and facility or facilities after the cessation of active operations; and

(B) address any unanticipated extraordinary events that would pose a risk to public health and safety and the environment and that may occur at the disposal facility site after decommissioning and closure of the disposal facility or facilities;

(2) the adequacy of the applicant's financial assurance in an amount and type acceptable to the commission and adequate to cover potential injury to any property or person;

(3) the adequacy of the applicant's financial security, as required by commission rules; and

(4) the degree of certainty that the applicant will be able to maintain adequate financial security.

Sec. 401.234. TIER 2 CRITERIA. The commission shall consider as tier 2 criteria:

(1) the suitability of facilities at the site that are associated with proposed activities and the adequacy of their engineering and design; and

(2) the suitability of the proposed disposal facility or facilities for the chemical, radiological, and biological characteristics of the low-level radioactive waste as classified under the system established under Section 401.053.

Sec. 401.235. TIER 3 CRITERIA. The commission shall consider as tier 3 criteria the applicant's:

(1) technical qualifications to receive, store, process, and dispose of low-level radioactive waste;

(2) experience in management and disposal of low-level radioactive waste and other radioactive materials;

(3) previous operating practices in this state and elsewhere, including the practices of a parent, subsidiary, or affiliated entity of the applicant, related to radioactive materials;

(4) record of compliance with environmental statutes, rules, and licenses in this state and in any other jurisdiction, including the records of a parent or subsidiary of the applicant, subject to Section 401.243;

(5) training programs proposed for its employees whose duties relate to the proposed disposal facility site and activities;

(6) monitoring, recordkeeping, and reporting plans;

(7) low-level radioactive waste spill detection and cleanup plans for the proposed disposal facility site and activities;

(8) decommissioning and postclosure plans;

(9) security plans;

(10) monitoring and protection plans for workers;

(11) emergency plans;

(12) plans for background monitoring during the license period, including analysis of the ambient conditions of the disposal facility site and analysis of established trends of the disposal facility site's natural parameters, including:

(A) natural background radioactivity levels;

(B) radon gas levels;

(C) air particulate levels;

(D) soil characteristics, including chemical characteristics;

(E) surface water and groundwater characteristics; and

(F) flora and fauna at the site; and

(13) ability to adequately manage the proposed disposal facility or facilities and activities for the term of the license.

Sec. 401.236. TIER 4 CRITERIA. The commission shall consider as tier 4 criteria:

(1) the compatibility of uses of land near the proposed disposal facility site that could be affected by the construction and operation of the disposal facility or facilities; and

(2) possible socioeconomic effects on communities in the host county of:

(A) the proposed disposal facility or facilities;

(B) the operation of the proposed disposal facility or facilities; and



(C) related transportation of low-level radioactive waste to the disposal facility or facilities.

Sec. 401.237. TECHNICAL REVIEW. (a) Immediately on the commission's selection of the application that has the highest comparative merit in accordance with Section 401.232, the commission shall begin a technical review of the selected application.

(b) The commission shall complete the technical review and prepare a draft license not later than the 15th month after the month in which the technical review begins.

(c) The commission shall give priority to the review of the selected application over all other radioactive materials and waste licensing and registration matters pending before the commission, except those the executive director of the commission determines necessary to avert or address a health and safety emergency.

Sec. 401.238. NOTICE OF DRAFT LICENSE AND OPPORTUNITY FOR HEARING. On completion of the technical review of the selected application and preparation of the draft license, the commission shall publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. The notice shall include a statement that the draft license is available for review on the commission's website and that the draft license and the application materials are available for review at the offices of the commission and in the county or counties in which the proposed disposal facility site is located. Notice shall be published in the Texas Register and in a newspaper of general circulation in each county in which the proposed disposal facility site is located. The applicant shall mail the notice by certified mail to each person who owns land adjacent to the proposed disposal facility site.

Sec. 401.239. CONTESTED CASE; FINAL ACTION ON APPLICATION. (a) An administrative law judge of the State Office of Administrative Hearings shall conduct a contested case hearing on the application and draft license if the applicant or a person affected requests a hearing.

(b) The administrative law judge may not admit as a party to the contested case hearing a person other than the applicant, the executive director of the commission, or a person affected.

(c) The administrative law judge shall issue a proposal for decision not later than the first anniversary of the publication date of the notice of draft license published under Section 401.238.

(d) The commission shall take final action on the proposal for decision of the administrative law judge not later than the 90th day after the date the proposal is issued.

Sec. 401.240. JUDICIAL REVIEW. (a) Notwithstanding any other law, a person affected by an action of the commission under this subchapter may file a petition for judicial review of the action only after the commission takes final action on a license application under Section 401.239(d). A petition must be filed not later than the 30th day after the date of the final action.

(b) In its review of an action under this subchapter, a court may not substitute its judgment for the judgment of the commission on the weight of the evidence the commission considered, but:

(1) may affirm the action in whole or in part; and

(2) shall reverse or remand the case for further proceedings if substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions:

(A) are in violation of a constitutional or statutory provision;

(B) are in excess of the commission's statutory authority;

(C) are made through unlawful procedure;

(D) are affected by other error of law;

(E) are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(F) are arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Sec. 401.241. SECURITY. (a) In determining the amount of security required of a compact waste disposal facility license holder under Section 401.109, the commission shall also consider the need for financial security to address and prevent unplanned events that pose a risk to public health and safety and that may occur after the decommissioning and closure of the compact waste disposal facility or a federal facility waste disposal facility licensed under Section 401.216.

(b) The amount of security required of a license holder under this section may not be less than \$20 million at the time the disposal facility site is decommissioned. The commission shall use interest earned on the security to offset any other financial obligations incurred by the license holder to the commission. The commission shall establish a schedule for the total payment of the amount of the security required under this section based on:

(1) the amount of low-level radioactive waste received at the site;

(2) the long-term risk to health, safety, and the environment posed by the waste; and

(3) the need to address and prevent unplanned events that pose a risk to public health and safety.

(c) The payment schedule required under this section must be sufficient to ensure that the amount of security provided by the license holder at any time between the issuance of the license and the time at which the facility is decommissioned is sufficient to:

(1) address any increase in the risk to public health and safety that accompanies an increase in the volume of waste accepted by the license holder; and

(2) meet the requirements of the commission for addressing unplanned events that may occur after the site has been closed.

(d) The commission may require a license holder under this subchapter to provide security in the forms listed under Section 401.109(d).

Sec. 401.242. ACCEPTANCE OF WASTE. (a) The commission shall require the compact waste disposal facility license holder to follow, as closely as is possible, the schedule submitted to the commission under Section 401.231. If the compact waste disposal facility license holder holds a permit to process, store, or dispose of hazardous waste under Chapter 361, the license holder may accept hazardous waste according to the schedule under Section 401.231 before the compact waste disposal facility begins operation.

(b) If the commission finds that the compact waste disposal facility license holder has violated this chapter or any commission rule in a manner that may endanger public health or safety, the commission may prohibit the license holder from accepting low-level radioactive waste at either the compact waste disposal facility or the federal facility waste disposal facility until the commission finds that the license holder is in compliance with the statute or rule found to be violated.

Sec. 401.243. COMPLIANCE HISTORY. After an opportunity for a hearing, the commission shall deny an application for a license under this subchapter or an amendment or renewal for a license under this subchapter if the applicant's compliance history reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through a history of violations of this chapter or the commission's rules under this chapter.

SECTION 8. Section 402.252, Health and Safety Code, is transferred to Subchapter F, Chapter 401, Health and Safety Code, renumbered as Section 401.244, and amended to read as follows:

Sec. 401.244 [~~402.252~~]. HOST COUNTY [~~LOCAL~~] PUBLIC PROJECTS. (a) The compact waste disposal facility license holder each quarter [~~The board~~] shall [~~quarterly~~] transfer [~~money in the low level radioactive waste fund generated by planning and implementation fee surcharges under Sections 402.2721(e) and (f), and that portion of waste disposal fees identifiable as adopted for the purposes of Sections 402.273(a)(3) and (b)]~~] to the commissioners court of the host county five percent of the gross receipts from:

(1) compact waste received at the compact waste disposal facility; and  
(2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.

(b) The commissioners court of the host county may:  
(1) spend the money for [~~local~~] public projects in the host county; or  
(2) disburse the money to other local entities or to public nonprofit corporations to be spent for local public projects.

(c) Money received from the compact waste disposal facility license holder [~~low level radioactive waste fund~~] under this section may be spent only for [~~local~~] public projects in the host county that are for the use and benefit of the public at large. [~~The board shall adopt guidelines for the expenditure of money received under this section, and the commissioners court shall spend or disburse the money for use according to those guidelines.~~]

(d) Money received by the commissioners court of the host county under this section is not a loan or grant-in-aid subject to review by a regional planning commission under Chapter 391, Local Government Code. [Annually the commissioners court shall provide to the board a detailed accounting of the money held, expended, or disbursed by the county.]

SECTION 9. Subchapter F, Chapter 401, Health and Safety Code, is amended by adding Section 401.2445 to read as follows:

Sec. 401.2445. STATE FEE. The compact waste disposal facility license holder each quarter shall transfer to the state general revenue fund five percent of the gross receipts from:

- (1) compact waste received at the compact waste disposal facility; and
- (2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.

SECTION 10. Section 402.219, Health and Safety Code, is transferred to Subchapter F, Chapter 401, Health and Safety Code, renumbered as Section 401.248, and amended to read as follows:

Sec. 401.248 [~~402.219~~]. LIMITATIONS ON LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. (a) [~~Except as provided by an interstate compact, a disposal site may accept only low-level radioactive waste that is generated in this state.~~

~~(b)~~ The commission [~~board~~] by rule shall exclude from a disposal facility [~~site~~] certain types of low-level radioactive waste that are incompatible with disposal operations.

~~(b)~~ [~~(e)~~] The state may enter into compacts with another state or several states for the disposal in this state of low-level radioactive waste only if the compact:

- (1) limits the total volume of all low-level radioactive waste to be disposed of in this state from the other state or states to 20 percent of the annual average of low-level radioactive waste that the governor projects will be produced in this state from the years 1995 through 2045;
- (2) gives this state full administrative control over management and operation of the compact waste disposal facility [site];
- (3) requires the other state or states to join this state in any legal action necessary to prevent states that are not members of the compact from disposing of low-level radioactive waste at the compact waste disposal facility [site];
- (4) allows this state to charge a fee for the disposal of low-level radioactive waste at the compact waste disposal facility [site];
- (5) requires the other state or states to join in any legal action involving liability from the compact waste disposal facility [site];
- (6) requires the other state or states to share the full cost of constructing the compact waste disposal facility [site];
- (7) allows this state to regulate, in accordance with federal law, the means and routes of transportation of the low-level radioactive waste in this state;
- (8) requires the other state or states to pay for community assistance projects selected by the host county in an amount not less than \$1 million or 10 percent of the amount contributed by the other state or states;

(9) is agreed to by the Texas Legislature, the legislature of the other state or states, and the United States Congress; and

(10) complies with all applicable federal law.

(c) ~~(d)~~ This section does not affect the ability of this state to transfer low-level radioactive waste to another state.

(d) ~~(e)~~ If this state enters into a compact with another state and the terms of the compact conflict with this section, the terms of the compact control.

SECTION 11. Sections 402.272, 402.273, and 402.276, Health and Safety Code, are transferred to Subchapter F, Chapter 401, Health and Safety Code, renumbered as Sections 401.245, 401.246, and 401.247, and amended to read as follows:

Sec. 401.245 ~~[402.272]~~. COMPACT WASTE DISPOSAL FEES. (a) A compact waste disposal facility license holder who receives low-level radioactive waste for disposal pursuant to the Texas Low-Level Radioactive Waste Disposal Compact established under Chapter 403 ~~[The board]~~ shall have collected a waste disposal fee to be paid by each person who delivers low-level radioactive waste to the compact waste disposal facility ~~[authority]~~ for disposal.

(b) The commission ~~[board]~~ by rule shall adopt and periodically revise compact waste disposal fees according to a schedule that is based on the projected annual volume of low-level radioactive waste received, the relative hazard presented by each type of low-level radioactive waste that is generated by the users of radioactive materials, and the costs identified in Section 401.246 ~~[402.273]~~.

(c) In determining relative hazard, the commission ~~[board]~~ shall consider the radioactive, physical, and chemical properties of each type of low-level radioactive waste.

(d) Rules adopted under this section may include provisions establishing:

- (1) classification of customers and services; and
- (2) applicability of fees.

(e) Fees adopted under this section must be consistent with the criteria listed under Section 401.246.

(f) A rule or order adopted by the commission under this section may not conflict with a ruling of a federal regulatory body.

Sec. 401.246 ~~[402.273]~~. WASTE DISPOSAL FEE CRITERIA. (a) Compact waste ~~[Waste]~~ disposal fees adopted by the commission ~~[board]~~ must be sufficient to:

(1) allow the compact waste facility license holder ~~[authority]~~ to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility ~~[maintenance costs]~~;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;

(3) provide an amount to fund local public projects under Section 401.244 ~~[Subchapter I]~~;

(4) provide a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at the compact waste disposal facility; and ~~[an amount sufficient to fund, in whole or in part, a rangeland and wildlife management plan;]~~

(5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, and to provide security for the compact waste disposal facility as required by the commission under law and commission rules~~;~~ and

~~[(6) provide an amount necessary to fund debt service and necessary fees and charges, including insurance premiums and similar costs, associated with the issuance and payment of bonds under Subchapter K].~~

(b) To the extent practicable, the commission shall use the methods used by the Public Utility Commission of Texas under Sections 36.051, 36.052, and 36.053, Utilities Code, when establishing overall revenues, reasonable return, and invested capital for the purpose of setting fees under Subsection (a). ~~[This subsection applies only if the authority does not issue bonds under Subchapter K. The waste disposal fees must also include an amount sufficient to allow the authority to recover expenses incurred before beginning operation of the disposal site amortized over a period of not more than 20 years beginning on the first day of operation of the disposal site. The fees must be sufficient to recover the depository interest that the general revenue fund would have earned had the fund not been used to pay expenses incurred before the disposal site begins operation. Depository interest recovered under this subsection shall be deposited to the credit of the general revenue fund. Principal recovered under this subsection shall be deposited to the credit of the general revenue fund until the amount deposited has fully reimbursed the fund for expenses paid from the fund before the disposal site begins operation. The remainder of the principal shall be deposited as provided by Section 402.272(a).~~

~~[(e) The amount required by Subsection (a)(3) may not be less than 10 percent of the annual gross receipts from waste received at the disposal site.]~~

Sec. 401.247 ~~[402.276]~~. REASONABLE AND NECESSARY EXPENSES. Fees paid under this subchapter are reasonable and necessary expenses for ratemaking purposes.

SECTION 12. Section 402.275, Health and Safety Code, is transferred to Subchapter F, Chapter 401, Health and Safety Code, renumbered as Section 401.249, and amended to read as follows:

Sec. 401.249 ~~[402.275]~~. LOW-LEVEL RADIOACTIVE WASTE FUND. (a) The low-level radioactive waste fund is in the state treasury.

(b) The low-level radioactive waste fund is an interest-bearing fund. Interest earned on money in the fund shall be deposited to the credit of the fund.

(c) Except as otherwise provided by this chapter, money ~~[Money received by the authority, including waste disposal fees, planning and implementation fees, surcharges on planning and implementation fees, processing and packaging fees, civil penalties, payments made by a party state to a low-level radioactive waste compact entered into under Section 402.219(e), and other receipts]~~ collected by the commission, including fees collected under Section 401.229, any additional

fees collected to recover costs of processing a license application, annual fees, and any other fees necessary to administer ~~[authority under]~~ this subchapter ~~[chapter]~~ shall be deposited to the credit of the low-level radioactive waste fund.

(d) Section 403.095, Government Code, does not apply to the low-level radioactive waste fund. ~~[Except as provided by Subsection (f), money in the low level radioactive waste fund may be used to pay:~~

- ~~(1) operating and maintenance costs of the authority;~~
- ~~(2) future costs of decommissioning, closing, and postclosure maintenance and surveillance of the disposal site;~~
- ~~(3) licensing fees and to provide security required by the commission;~~
- ~~(4) money judgments rendered against the authority that are directed by a court of this state to be paid from this fund;~~
- ~~(5) expenses associated with implementation of the rangeland and wildlife management plan;~~
- ~~(6) funds for local public projects under Subchapter I;~~
- ~~(7) debt service and necessary fees and charges, including insurance premiums and similar costs, associated with the issuance and payment of bonds under Subchapter K; and~~
- ~~(8) expenses for any other purpose under this chapter.]~~

(e) ~~[A payment for debt service and related costs under Subsection (d)(7) has priority for payment from the low-level radioactive waste fund over a payment for another expense authorized by Subsection (d).~~

~~[(f)]~~ The commission ~~[authority]~~ may transfer money from the low-level radioactive waste fund to the [radiation and] perpetual care account ~~[fund]~~ to make payments required by the commission under Section 401.303.

SECTION 13. Subchapter F, Chapter 401, Health and Safety Code, is amended by adding Section 401.250 to read as follows:

Sec. 401.250. PAYMENTS BY PARTY STATES. (a) Notwithstanding any other provision of law, Act of the legislature or the executive branch, or any other agreement, the initial payment of \$12.5 million due from each nonhost party state under Section 5.01 of the compact established under Section 403.006 is due not later than November 1, 2003.

(b) This section prevails over any other law or agreement in conflict or inconsistent with this section.

SECTION 14. Section 401.270(e), Health and Safety Code, is amended to read as follows:

(e) The department shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The department shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

- (1) enforce security supplied by the licensee;
- (2) convert an amount of security into cash, as necessary; and
- (3) disburse from the security in the perpetual care account ~~[fund]~~ the amount necessary to pay the costs.

SECTION 15. Section 401.301(b), Health and Safety Code, is amended to read as follows:

(b) The board by rule shall set the fee in an amount that may not exceed the actual expenses annually incurred to:

- (1) process applications for licenses or registrations;
- (2) amend or renew licenses or registrations;
- (3) make inspections of license holders and registrants; and
- (4) enforce this chapter and rules, orders, licenses, and registrations

under this chapter~~;~~~~and~~

~~[(5) collect payments to the low-level radioactive waste fund and general revenue as provided by Section 402.272].~~

SECTION 16. Section 401.301(d), Health and Safety Code, is amended to read as follows:

(d) The department may require that each person who holds a specific license issued by the department annually pay to the department an additional five percent of the appropriate annual fee set under Subsection (b). Fees collected under this subsection shall be deposited to the credit of the ~~[radiation and]~~ perpetual care account ~~[fund]~~. The fees are not refundable.

SECTION 17. Section 401.303(g), Health and Safety Code, is amended to read as follows:

(g) If a license holder satisfies the obligations under this chapter, the issuing agency shall have the comptroller promptly refund to the license holder from the perpetual care account ~~[fund]~~ the excess of the amount of all payments made by the license holder to the issuing agency and the investment earnings of those payments over the amount determined to be required for the continuing maintenance and surveillance of land, buildings, and radioactive material conveyed to the state.

SECTION 18. Section 401.305, Health and Safety Code, is amended to read as follows:

Sec. 401.305. RADIATION AND PERPETUAL CARE ACCOUNT ~~[FUND]~~. (a) The radiation and perpetual care account is an account in the general revenue fund ~~[is in the state treasury]~~.

(b) The department and commission each shall deposit to the credit of the perpetual care account ~~[fund]~~ money and security they receive under this chapter, including an administrative penalty collected by the department under Sections 401.384-401.390 but excluding fees collected under Sections 401.301(a)-(c) and 401.302. Interest earned on money in the perpetual care account ~~[fund]~~ shall be credited to the perpetual care account ~~[fund]~~.

(c) Money and security in the perpetual care account ~~[fund]~~ may be administered by the department or commission only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive material for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the perpetual care account ~~[fund]~~ may not be used for normal operating expenses of the department or commission.

(e) The department may use money in the perpetual care account ~~[fund]~~ to pay for measures:



(1) to prevent or mitigate the adverse effects of abandonment of radioactive materials, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the department to meet the requirements of this chapter or department rules; and

(2) to assure the protection of the public health and safety and the environment from the adverse effects of ionizing radiation.

(f) The department may provide, by the terms of a contract or lease entered into between the department and any person or by the terms of a license issued by the department to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to department jurisdiction under this chapter as needed to carry out the purpose of this chapter.

(g) The existence of the ~~[radiation and]~~ perpetual care account ~~[fund]~~ does not make the department liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive material arising from a license holder's abandonment of radioactive material, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or department rules.

SECTION 19. Section 401.342(b), Health and Safety Code, is amended to read as follows:

(b) The attorney general may petition the court for:

(1) an order enjoining the act or practice or an order directing compliance and reimbursement of the perpetual care account ~~[fund]~~, if applicable;

(2) civil penalties as provided by Section 401.381; or

(3) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person engaged in or is about to engage in any of the acts or practices.

SECTION 20. Section 401.343(a), Health and Safety Code, is amended to read as follows:

(a) The department shall seek reimbursement, either by an order of the department or a suit filed by the attorney general at the department's request, of security from the perpetual care account ~~[fund]~~ used by the department to pay for actions, including corrective measures, to remedy spills or contamination by radioactive material resulting from a violation of this chapter relating to an activity under the department's jurisdiction or a rule, license, registration, or order adopted or issued by the department under this chapter.

SECTION 21. Section 403.001(a), Health and Safety Code, is amended to read as follows:

(a) The governor shall appoint six members to represent this state on the commission established by Article III of the Texas Low-Level Radioactive Waste Disposal Compact. One of the voting members of the compact commission shall be a legal resident of the host county ~~[Hudspeth County, Texas]~~.

SECTION 22. Section 5.013(a), Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

(4) the determination of the feasibility of certain federal projects;

(5) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;

(6) conduct of the state's hazardous spill prevention and control program;

(7) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;

(8) the administration of a portion of the state's injection well program;

(9) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;

(10) the state's responsibilities relating to regional waste disposal;

(11) the responsibilities assigned to the commission by Chapters 361, 363, 382, and 401, [~~and 402,~~] Health and Safety Code;

(12) the administration of the national flood insurance program;

(13) administration of the state's water rate program under Chapter 13 of this code; and

(14) any other areas assigned to the commission by this code and other laws of this state.

SECTION 23. Section 7.033, Water Code, is amended to read as follows:

Sec. 7.033. RECOVERY OF SECURITY FOR CHAPTER 401, HEALTH AND SAFETY CODE, VIOLATION. The commission shall seek reimbursement, either by a commission order or by a suit filed under Subchapter D by the attorney general at the commission's request, of security from the radiation and perpetual care account [~~fund~~] used by the commission to pay for actions, including corrective measures, to remedy spills or contamination by radioactive material resulting from a violation of Chapter 401, Health and Safety Code, relating to an activity under the commission's jurisdiction or a rule adopted or a license, registration, or order issued by the commission under that chapter.

SECTION 24. Sections 401.153 and 401.306, Health and Safety Code, Chapter 402, Health and Safety Code, and Section 51.0511, Natural Resources Code, are repealed.

SECTION 25. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

**HB 1567 - POINT OF ORDER**

Representative Burnam raised a point of order against further consideration of **HB 1567** under Rule 13, Section 9(a) and (f) of the House Rules on the grounds that the conference committee did not limit their discussion to only the differences between the two houses and that the resolution does not address all of the matters taken up by the conference committee.

The chair overruled the point of order.

Representative West moved to adopt the conference committee report on **HB 1567**.

A record vote was requested.

The motion prevailed by (Record 677): 92 Yeas, 42 Nays, 3 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Dutton; Eiland; Eissler; Elkins; Farabee; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hill; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; King; Kolkhorst; Krusee; Kuempel; Laney; Lewis; Luna; Madden; Marchant; McCall; McReynolds; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Pickett; Pitts; Quintanilla; Reyna; Ritter; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Taylor; Van Arsdale; West; Wohlgemuth; Wong; Woolley.

Nays — Alonzo; Brown, B.; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dunnam; Edwards; Ellis; Farrar; Gallego; Garza; Giddings; Goodman; Guillen; Hilderbran; Hochberg; Hodge; Jones, J.; Mabry; Martinez Fischer; McClendon; Menendez; Moreno, J.; Naishtat; Oliveira; Olivo; Phillips; Raymond; Rodriguez; Rose; Talton; Truitt; Uresti; Villarreal; Wilson; Wise; Wolens; Zedler.

Present, not voting — Mr. Speaker; Keffer, J.(C); Noriega.

Absent, Excused — Bailey; Branch; Dukes; Flores; Laubenberg; Moreno, P.; Peña; Puente; Riddle; Telford.

Absent — Escobar; Thompson; Turner.

**STATEMENT OF VOTE**

I was shown voting no on Record No. 677. I intended to vote yes.

B. Brown

**COMMITTEE MEETING ANNOUNCEMENTS**

The following committee meetings were announced:

Economic Development, upon final adjournment today, Desk 149, for a formal meeting, to consider **SB 770** and pending business.

Regulated Industries, upon final adjournment today, Desk 82, for a formal meeting, to consider pending business.

Transportation, upon final adjournment today, Desk 46, for a formal meeting, to consider legislation before the committee.

### **REGULAR ORDER OF BUSINESS SUSPENDED**

On motion of Representative Marchant and by unanimous consent, the reading and referral of bills was taken up at this time.

### **RESOLUTIONS REFERRED TO COMMITTEES CORRECTIONS IN REFERRAL**

Resolutions were at this time laid before the house and referred to committees. Pursuant to Rule 1, Section 4 of the House Rules, the chair at this time corrected the referral of measures to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

### **COMMITTEE MEETING ANNOUNCEMENTS**

The following committee meetings were announced:

Border and International Affairs, will not meet tonight.

Human Services, upon final adjournment today, Desk 114, for a formal meeting, to consider **SB 58**, **SB 1219**, and **SB 1742**.

Public Education, upon final adjournment today, Desk 27, for a formal meeting, to consider pending business.

Judicial Affairs, upon final adjournment today, Desk 70, for a formal meeting.

Border and International Affairs, 9:30 a.m. tomorrow, Desk 75, for a formal meeting.

### **PROVIDING FOR ADJOURNMENT**

Representative Hardcastle moved that, at the conclusion of the reading of bills and resolutions on first reading and referral to committees, the house adjourn until 11 a.m. tomorrow in memory of Lloyd Orrin Osborne of Vernon.

The motion prevailed without objection.

### **BILLS AND JOINT RESOLUTIONS ON FIRST READING AND REFERRAL TO COMMITTEES**

Bills and joint resolutions were at this time laid before the house, read first time, and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 3.)

### **ADJOURNMENT**

In accordance with a previous motion, the house, at 7:33 p.m., adjourned until 11 a.m. tomorrow.

---

**ADDENDUM**

---

**REFERRED TO COMMITTEES**

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

**List No. 1**

**HCR 262** (By T. Smith), Honoring Bob and Betty Stewart of Bedford on their 50th wedding anniversary.

To Rules and Resolutions.

**HR 1409** (By Hochberg), In memory of Patricia Jeanne Deeds of Houston.

To Rules and Resolutions.

**HR 1412** (By Solis), Congratulating the City of San Benito on the notable growth in its city sales tax revenue.

To Rules and Resolutions.

**HR 1413** (By Wong), Honoring Christina Wai-Yun Wong on her graduation from The University of Texas Medical School at Houston.

To Rules and Resolutions.

**HR 1414** (By Wong), Recognizing the opening of Pillsbury Winthrop LLP's Houston office.

To Rules and Resolutions.

**HR 1415** (By Wong), Commending the participants in the Whittier Elementary School Family Literacy Program.

To Rules and Resolutions.

**HR 1416** (By Wong), Commending the participants in the Oates Elementary School Family Literacy Program.

To Rules and Resolutions.

**HR 1417** (By Wong), Commending the participants in the Pleasantville Elementary School Family Literacy Program.

To Rules and Resolutions.

**HR 1418** (By Wong), Commending the participants in the R. P. Harris Elementary School Family Literacy Program.

To Rules and Resolutions.

**HR 1419** (By Wong), Honoring Michael Cemo on his receipt of a Houston Alumni Organization Distinguished Alumnus Award.

To Rules and Resolutions.

**HR 1420** (By Wong), Honoring Vidal Martinez on his receipt of a Houston Alumni Organization Distinguished Alumnus Award.

To Rules and Resolutions.

**HR 1421** (By Wong), Honoring Thaddeus "Bo" and Josanna Smith on their receipt of a Houston Alumni Organization Distinguished Service Award.

To Rules and Resolutions.

**HR 1422** (By Wong), Honoring Larry and Joanne Doherty on their receipt of a Houston Alumni Organization Distinguished Service Award.

To Rules and Resolutions.

**HR 1423** (By Wong), Honoring Donald McKusker on his receipt of a Houston Alumni Organization Outstanding Alumni Volunteer Award.

To Rules and Resolutions.

**HR 1424** (By Wong), Honoring Wilhelmina "Beth" Robertson on her receipt of a Houston Alumni Organization President's Award.

To Rules and Resolutions.

**HR 1425** (By Wong), Honoring Dr. Kathryn Stripling on her receipt of a Houston Alumni Organization Distinguished Alumna Award.

To Rules and Resolutions.

**HR 1426** (By Wong), Honoring the Houston Parks and Recreation Department, the Harris County Flood Control District, and the Texas Parks and Wildlife Department for receiving the 2003 Partnership Award.

To Rules and Resolutions.

**HR 1427** (By Wong), Congratulating Robert Rayburn on receiving The Park People of Houston 2003 Sandy Reed Memorial Award.

To Rules and Resolutions.

**HR 1428** (By Wong), Congratulating JPMorgan Chase for receiving The Park People of Houston 2003 Park Project Award.

To Rules and Resolutions.

**HR 1430** (By Wong), Congratulating Dr. John P. McGovern and Friends of Hermann Park for receiving The Park People of Houston 2003 Leadership Award.

To Rules and Resolutions.

**HR 1431** (By Martinez Fischer), Honoring Grace Villarreal of San Antonio on her retirement from Mildred Baskin Elementary School.

To Rules and Resolutions.

**HR 1432** (By Martinez Fischer), In memory of Dr. Enrique M. Galan of San Antonio.

To Rules and Resolutions.

**HR 1433** (By Kolkhorst), Commending the Sheriff's Association of Texas for creating the Texas Peacemaker Award.

To Rules and Resolutions.

**HR 1435** (By Wong), Recognizing the Youth Leadership Council's 15th annual Leadership Conference.

To Rules and Resolutions.

**HR 1436** (By Wong), Commending Bracewell & Patterson L.L.P. for sponsoring the Big Book Party literacy event.

To Rules and Resolutions.

**HR 1437** (By Crownover), Congratulating the Denton Ryan High School Raider football team on winning the 2002 UIL Class 4A, Division II, state championship.

To Rules and Resolutions.

**HR 1439** (By Truitt), Congratulating RE/MAX Associates Realty in Colleyville.

To Rules and Resolutions.

**HR 1440** (By Gattis), Honoring Jewel Carver Clark of Milam County on her 100th birthday.

To Rules and Resolutions.

**HR 1441** (By Gattis), Honoring USAF Captain Nathan Howard, recipient of the Distinguished Flying Cross.

To Rules and Resolutions.

**HR 1442** (By Gattis), In memory of Judge Robert "Skip" Morse of Georgetown.

To Rules and Resolutions.

**HR 1443** (By Chavez), Congratulating Rufino Carbajal, Jr., of El Paso on his receipt of the Herb Wegner Memorial Individual Achievement Award from the National Credit Union Foundation.

To Rules and Resolutions.

**HR 1444** (By Chavez), Honoring Major General Richard D. "Dick" Murray of El Paso for his outstanding contributions to this state and nation.

To Rules and Resolutions.

**HR 1445** (By J. Jones), Honoring Media Joyce Smith as the Duncanville ISD secondary school teacher of the year for 2003.

To Rules and Resolutions.

**HR 1449** (By Krusee), In memory of David Paton "Mac" McIntire of Austin.

To Rules and Resolutions.

**HR 1452** (By Hardcastle), Honoring Virginia Melugin on her 100th birthday.

To Rules and Resolutions.

Pursuant to Rule 1, Section 4 of the House Rules, the chair corrects the referral of the following bills and resolutions:

**SB 1181** to Public Education.

**List No. 2**

**SB 1952** to Government Reform.

**List No. 3**

**SB 627** to Financial Institutions.

**SB 1341** to County Affairs.

**SB 1943** to Urban Affairs.

**SB 1951** to Land and Resource Management.

**MESSAGES FROM THE SENATE**

The following messages from the senate were today received by the house:

**Message No. 2**

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Friday, May 23, 2003 - 2

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 623** Goolsby SPONSOR: Carona  
Relating to the regulation of motor vehicle title services.  
(Amended)

**HB 755** Chisum SPONSOR: Jackson  
Relating to the offense of failing to certify compliance of an underground storage tank before accepting delivery of the regulated substance to be stored in the tank.

**HB 1765** Smith, Wayne SPONSOR: Jackson  
Relating to requiring financial assurance as a condition of issuing a permit or registration to haulers of certain solid wastes.

**HB 1831** Harper-Brown SPONSOR: Deuell  
Relating to specific logo information signs.

**HB 1886** Zedler SPONSOR: Nelson  
Relating to the assessment of fees for the regulation of code enforcement officers.

**HB 1989** Ellis SPONSOR: Staples  
Relating to hunting and fishing stamps issued by the Parks and Wildlife Department; providing a penalty.

**HB 2158** Hartnett SPONSOR: West  
Relating to the regulation of political contributions to judicial candidates and officeholders.

**HB 2546** Bonnen SPONSOR: Janek



Relating to the land application of certain sludge.

**HB 3028** Moreno, Joe E. SPONSOR: Hinojosa  
Relating to certain purchasing contracts of certain navigation districts and port authorities.  
(Committee Substitute)

**HB 3184** Hill SPONSOR: Barrientos  
Relating to the financing, construction, improvement, maintenance, and operation of toll facilities by the Texas Department of Transportation.  
(Committee Substitute/Amended)

**HCR 255** Craddick SPONSOR: Bivins  
Honoring James L. Haley for his literary and historical achievements.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

**SB 542** (30 Yeas, 0 Nays)

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 3**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Friday, May 23, 2003 - 3

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 722** Guillen SPONSOR: Zaffirini  
Relating to the powers of the commissioners court in certain counties that have no incorporated municipality.

**HB 729** Goodman SPONSOR: Shapiro  
Relating to the adoption of the Uniform Parentage Act regarding gestational agreements.

**HB 1152** Puente SPONSOR: Estes  
Relating to the authority of certain nonprofit water supply corporations and sewer service corporations to establish and enforce customer water conservation measures.

**HB 1537** Dukes SPONSOR: Barrientos

Relating to a fee for statues of Barbara Jordan and Cesar Chavez and related scholarships at The University of Texas at Austin.

**HB 1985** Casteel SPONSOR: Wentworth  
Relating to the immunity of guardians ad litem in certain guardianship proceedings from liability for certain damages.

**HB 2058** Villarreal SPONSOR: Zaffirini  
Relating to a study regarding goals, outcome standards, and objectives in certain contracts with the Department of Protective and Regulatory Services.

**HB 2130** Kuempel SPONSOR: Wentworth  
Relating to the exemptions from requirements applicable to local permits.  
(Amended)

**HB 2295** Thompson SPONSOR: Ellis, Rodney  
Relating to the level of municipal participation in contracts with developers for public improvements.  
(Committee Substitute/Amended)

**HB 2361** Bailey SPONSOR: Gallegos  
Relating to the investigation of a firefighter or police officer in certain municipalities.

**HB 2533** Brown, Betty SPONSOR: Staples  
Relating to the creation of Lake View Management and Development District in Henderson County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.  
(Committee Substitute/Amended)

**HB 2905** Phillips SPONSOR: Deuell  
Relating to the granting of variances to certain requirements concerning specific information logo signs, major agricultural interest signs, and major shopping area guide signs.  
(Amended)

**HB 3555** Thompson SPONSOR: Whitmire  
Relating to the creation of the Harris County Road Improvement District No. 2; providing authority to impose a tax and issue bonds.  
(Amended)

**HJR 59** Uresti SPONSOR: Van de Putte  
Proposing a constitutional amendment authorizing the legislature to permit a person to assume an office of a political subdivision without an election if the person is the only candidate to qualify in an election for that office.  
(Amended)

**HJR 62** Truitt SPONSOR: Nelson  
Proposing a constitutional amendment authorizing the legislature to permit a person to take office without an election if the person is the only candidate to qualify in an election for that office.  
(Amended)

**SB 627** Shapleigh  
Relating to financial literacy programs for consumers.

**SB 1341** Jackson  
Relating to the duty of a seller to give notice of certain purchases of land; providing an administrative penalty.

**SB 1943** Ellis, Rodney  
Relating to the creation of the Montrose Museum Community Improvement District; providing the authority to impose taxes and issue bonds.

**SB 1951** Ratliff  
Relating to the sale of certain land dedicated to the permanent school fund.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

**SB 501** (viva-voce vote)

**SB 917** (30 Yeas, 0 Nays)

THE SENATE HAS REFUSED TO CONCUR IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**SB 280**  
Senate Conferees: Nelson - Chair/Brimer/Ellis, Rodney/Shapleigh/Wentworth

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**SB 104** (30 Yeas, 0 Nays)

Respectfully,  
Patsy Spaw  
Secretary of the Senate

---

## APPENDIX

---

### STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

**May 22**

Agriculture and Livestock - **SB 1828**

Business and Industry - **SB 820**

Civil Practices - **HCR 163, HCR 209, HCR 223**

Corrections - **SB 921, SB 1678**

County Affairs - **SB 18, SB 1118, SB 1120, SB 1229, SB 1303, SB 1559, SB 1632, SB 1885**

Criminal Jurisprudence - **SB 405, SB 1179, SB 1477, SJR 3**

Defense Affairs and State-Federal Relations - **SB 1288**

Financial Institutions - **SB 1778**

Government Reform - **SB 1152, SB 1701**

Human Services - **SB 810, SB 1743**

Judicial Affairs - **SB 266**

Land and Resource Management - **SB 755, SB 1765, SB 1937**

Law Enforcement - **SB 1252, SB 1597**

Licensing and Administrative Procedures - **SB 292, SB 1387**

Natural Resources - **SB 5, SB 738**

Pensions and Investments - **SB 977, SB 1442**

Public Education - **SB 16, SB 186, SB 265, SB 346, SB 396, SB 578, SB 596, SB 618, SB 688, SB 805, SB 893, SB 929, SB 1109, SB 1366**

Public Health - **SB 216, SB 355, SB 356, SB 474, SB 739, SB 769, SB 864, SB 1225, SB 1315, SB 1357, SB 1414, SB 1419, SB 1571, SB 1826, SCR 14, SCR 49**

State Affairs - **SB 19**

State Cultural and Recreational Resources - **HCR 208, HCR 256, SB 1154, SB 1582, SCR 51**

State Health Care Expenditures, Select - **HCR 247, SB 493, SB 865, SB 1173**

Transportation - **SB 485, SB 1706, SB 1715**

#### **ENROLLED**

**May 22 - HB 292, HB 462, HB 883, HB 887, HB 980, HB 1460, HB 1701, HB 2940, HB 3149, HCR 50, HCR 52, HCR 53, HCR 71, HCR 127, HCR 128, HCR 149, HCR 160**

#### **SENT TO THE GOVERNOR**

**May 22 - HB 178, HB 211, HB 258, HB 276, HB 472, HB 543, HB 591, HB 608, HB 627, HB 671, HB 769, HB 776, HB 821, HB 839, HB 861, HB 873, HB 886, HB 889, HB 904, HB 940, HB 941, HB 1014, HB 1030, HB 1032, HB 1061, HB 1066, HB 1076, HB 1078, HB 1117, HB 1120, HB 1153, HB 1221, HB 1306, HB 1328, HB 1344, HB 1452, HB 1472, HB 1531, HB 1631, HB 1735, HB 1771, HB 1832, HB 1836, HB 1875, HB 1878, HB 2012, HB 2074, HB 2126, HB 2132, HB 2334, HB 2385, HB 2396, HB 2498, HB 2567, HB 2582, HB 2676, HB 2952, HB 3126, HB 3414, HB 3484, HB 3491, HB 3506, HB 3507, HB 3508, HCR 13, HCR 14, HCR 151, HCR 257**