HOUSE JOURNAL

SEVENTY-NINTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

SEVENTY-NINTH DAY — FRIDAY, MAY 27, 2005

The house met at 10 a.m., and at the request of the speaker, was called to order by Representative Keel.

The roll of the house was called and a quorum was announced present (Record 887).

Present — Mr. Speaker; Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Absent, Excused, Committee Meeting — Pitts.

Absent — Martinez Fischer.

The invocation was offered by Coby Shorter III, pastor, Rosewood Avenue Baptist Church, Austin, as follows:

O God, our father, creator of the heavens and the earth, the supply and supplier of all that we need, we gather in this chamber with great faith in your ability to provide the clarity needed in seeking a common, yet higher good for our state. Give these men and women the clarity of mind needed to rise to the authority entrusted to them. May they each find comfort in your care. May they find peace in your purpose. May they find direction in your path.

Your word teaches us that our steps are ordered by you. In the freshness of this day, please be the lamp to their feet, and in the stillness of the coming night, be the light for their path. In all that they do let them acknowledge you and keep

them mindful of their calling to serve in "such a time as this." May your goodness and mercy follow them. May your peace be upon them. May your hand be their guide. May your voice be their comfort.

We petition you this day in great reverence and great confidence that you will give us this day our daily bread. Keep us in your care and in the shadow of your grace.

O God, please bless America. O God, please bless Texas. To thee we pray. Amen.

The chair recognized Representative Edwards who led the house in the pledges of allegiance to the United States and Texas flags.

CAPITOL PHYSICIAN

The chair recognized Representative McCall who presented Dr. Christopher Crow of Plano as the "Doctor for the Day."

The house welcomed Dr. Crow and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

HCR 225 - ADOPTED
(by West)

Representative West moved to suspend all necessary rules to take up and consider at this time **HCR 225**.

The motion prevailed.

The following resolution was laid before the house:

HCR 225

WHEREAS, The House of Representatives of the State of Texas has passed **HB 872** and returned it to the Senate of the State of Texas; and

WHEREAS, Further consideration of the bill by the house is necessary; now, therefore, be it

RESOLVED by the House of Representatives of the State of Texas, the Senate of the State of Texas concurring, That the house hereby respectfully requests that the Secretary of the Senate be authorized to return **HB 872** to the house for further consideration.

HCR 225 was read and was adopted.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today because of appropriations business:

Pitts on motion of Denny.

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. 1).

COMMITTEE GRANTED PERMISSION TO MEET

Representative Hegar requested permission for the conference committee on **HB 2702** to meet while the house is in session for the remainder of the session.

Permission to meet was granted.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Conference Committee on **HB 2702**, 10 a.m. today, 2E.20.

LEAVES OF ABSENCE GRANTED

The followings members were granted leaves of absence temporarily for today to attend a meeting of the conference committee on **HB 2702**:

R. Cook on motion of Hamric.

Hegar on motion of Hamric.

Hill on motion of Hamric.

Krusee on motion of Hamric.

Phillips on motion of Hamric.

HR 1369 - ADOPTED
(by Hunter, Solis, Griggs, McReynolds, and Laney)

Representative Hunter moved to suspend all necessary rules to take up and consider at this time **HR 1369**.

The motion prevailed.

The following resolution was laid before the house:

HR 1369, Honoring Bobby Morrow on the golden anniversary of his three gold medal victories in the Olympic Games in Melbourne, Australia.

HR 1369 was read and was adopted.

On motion of Representative Hunter, the names of all the members of the house were added to **HR 1369** as signers thereof.

INTRODUCTION OF GUEST

The chair recognized Representative Hunter who introduced Bobby Morrow who briefly addressed the house.

HR 2103 - READ
(by Strama)

The chair laid out and had read the following previously adopted resolution:

HR 2103, Congratulating the 2004-2005 Science Olympiad team of Park Crest Middle School in Pflugerville on its achievements.

HR 2103 - MOTION TO ADD NAMES

On motion of Representative Strama, the names of all the members of the house were added to **HR 2103** as signers thereof.

(Nixon in the chair)

HCR 214 - ADOPTED
(by Hilderbran)

Representative Hilderbran moved to suspend all necessary rules to take up and consider at this time **HCR 214**.

The motion prevailed.

The following resolution was laid before the house:

HCR 214, Recognizing the 2005 and 2006 appointments of State Poet Laureate, State Musician, and State Visual Artists.

HCR 214 was read and was adopted.

On motion of Representative Miller, the names of all the members of the house were added to **HCR 214** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Hilderbran who introduced Alan Birklebach, Kathy Vargas, Sharon Koptiva, and Red Steagall.

HR 2132 - READ
(by Anchia)

The chair laid out and had read the following previously adopted resolution:

HR 2132, Honoring Matthew S. Murphy for his efforts in behalf of his Northwest Dallas neighborhood.

HR 2132 - MOTION TO ADD NAMES

On motion of Representative Anchia, the names of all the members of the house were added to **HR 2132** as signers thereof.

HR 2119 - READ
(by Gallego)

The chair laid out and had read the following previously adopted resolution:

HR 2119, Honoring the members of the Moreno/Rangel Legislative Leadership Program Class of 2005.

HR 2119 - MOTION TO ADD NAMES

On motion of Representative Alonzo, the names of all the members of the house were added to **HR 2119** as signers thereof.

HR 1718 - READ
(by Callegari)

The chair laid out and had read the following previously adopted resolution:

HR 1718, In memory of Jerry L. Carswell.

HR 1718 - MOTION TO ADD NAMES

On motion of Representative Miller, the names of all the members of the house were added to **HR 1718** as signers thereof.

HR 2071 - READ
(by Swinford)

The chair laid out and had read the following previously adopted resolution:

HR 2071, Honoring the Texas A&M University Agricultural and Natural Resources Policy Internship Program on its 15th anniversary and commending the ANRP interns of the 79th Texas Legislature.

HR 2071 - MOTION TO ADD NAMES

On motion of Representative Eissler, the names of all the members of the house were added to **HR 2071** as signers thereof.

(Krusee now present)

INTRODUCTION OF GUESTS

The chair recognized Representative Swinford who introduced Cady Auckerman and Courtney Trollinger.

HR 1402 - READ
(by Krusee)

The chair laid out and had read the following previously adopted resolution:

HR 1402, In memory of Jerry Leroy Mehevec of Taylor.

HR 1402 - MOTION TO ADD NAMES

On motion of Representative Gattis, the names of all the members of the house were added to **HR 1402** as signers thereof.

HR 2072 - READ
(by Swinford)

The chair laid out and had read the following previously adopted resolution:

HR 2072, Congratulating Steven V. Tays on his election as the FFA state officer for Area VII.

INTRODUCTION OF GUEST

The chair recognized Representative Swinford who introduced Steven Tays.

HR 2072 - MOTION TO ADD NAMES

On motion of Representative Callegari, the names of all the members of the house were added to **HR 2072** as signers thereof.

HR 2078 - ADOPTED
(by Edwards)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 2078**.

The motion prevailed.

The following resolution was laid before the house:

HR 2078, Recognizing the creation of the Houston Fire Museum Education Center.

HR 2078 was read and was adopted.

On motion of Representative Turner, the names of all the members of the house were added to **HR 2078** as signers thereof.

HR 1905 - ADOPTED
(by Baxter)

Representative Baxter moved to suspend all necessary rules to take up and consider at this time **HR 1905**.

The motion prevailed.

The following resolution was laid before the house:

HR 1905, Congratulating Julie Salmon on being named Miss Austin USA.

HR 1905 was read and was adopted.

INTRODUCTION OF GUEST

The chair recognized Representative Baxter who introduced Julie Salmon.

HR 2179 - ADOPTED
(by Hamric)

Representative Hamric moved to suspend all necessary rules to take up and consider at this time **HR 2179**.

The motion prevailed.

The following resolution was laid before the house:

HR 2179, Recognizing the efforts of the House parking attendants during the 79th legislative session.

HR 2179 was read and was adopted.

On motion of Representative Hardcastle, the names of all the members of the house were added to **HR 2179** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Hamric who introduced Jerry Amaya, Napolean Colombo, Jose Leos, Charles McGuire, Billy Moore, Ralph Rios, LeRoy Swyhart, and Frank Wilson.

(Edwards in the chair)

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today to attend a meeting of the conference committee on **HB 2702**:

Krusee on motion of Keel.

CONGRATULATORY AND MEMORIAL CALENDAR

The following congratulatory resolutions were laid before the house:

HR 1794 (by B. Cook), Honoring Gioia Keeney of Corsicana on the occasion of her 80th birthday for her significant contributions to the community.

HR 1796 (by Hopson), Honoring the 55th anniversary of the oldest operating Dairy Queen in Texas.

HR 1801 (by Paxton), Congratulating the Visual Arts Guild of Frisco on the grand opening of its new headquarters.

HR 1802 (by Paxton), Honoring the Texas Tornado Hockey Club for winning back-to-back national championship titles.

HR 1803 (by West), Honoring Jim Schaefer on his retirement from CenterPoint Energy.

HR 1804 was previously adopted.

HR 1805 (by Flynn), Honoring Prairie Grove Missionary Baptist Church in Rains County on its 126th anniversary.

HR 1806 (by Hughes), Honoring William Hampton of Hawkins on being named a Distinguished Alumnus of Jarvis Christian College.

HR 1807 (by Hughes), Honoring Clements Realtors of Winnsboro on the occasion of its 50th anniversary.

HR 1808 (by Hughes), Honoring The Winnsboro News as it begins its 98th year of publication in 2005.

HR 1810 (by Nixon), Congratulating Christina Lee Angelo on her graduation from The University of Texas at Austin.

HR 1811 (by Madden), Honoring Murry K. and Gwendolyn I. Nance of San Antonio on the occasion of their 50th wedding anniversary.

HR 1816 (by Hopson), Honoring Rodney Williams of Carthage for his work with the March of Dimes WalkAmerica event.

HR 1818 (by Escobar), Honoring Zeke Cavazos of Raymondville on being named Fire Fighter of the Year by the Rio Grande Valley Fire Fighters/Fire Marshals Association.

HR 1819 (by Escobar), Honoring Anna Bernice Owens of La Feria for her contributions as a journalist.

HR 1820 (by Wong), Congratulating Klotz Associates, Inc., on the firm's 20th anniversary.

HR 1822 was previously adopted.

HR 1825 (by Talton, et al.), Honoring Whitney Smith-Nelson on her college graduation.

HR 1826 (by B. Brown), Honoring Judge Jack H. Holland of Henderson County on the occasion of his retirement from the 173rd Judicial District Court of the State of Texas.

HR 1829 (by Harper-Brown), Commending Irving for its efforts to promote transportation awareness and for hosting the Eighth Annual Texas Transportation Summit.

HR 1830 (by Harper-Brown), Honoring M. C. Lively Elementary School in Irving on the occasion of its 50th anniversary.

HR 1831 (by Harper-Brown, et al.), Honoring Ebby Halliday of Dallas on being named a 2005 Distinguished American by the Horatio Alger Association.

HR 1832 (by Hughes), Honoring the Winnsboro Post Office on the occasion of its 150th anniversary.

HR 1834 (by Hunter), Congratulating Betty-Erle and Wesley Lee Rhodes on their 50th anniversary.

HR 1835 was previously adopted.

HR 1836 (by Hunter), Congratulating Abilene Christian University on its 100th Anniversary.

HR 1841 (by Flynn), Congratulating Bob Adkisson of Wills Point on his 90th birthday.

HR 1844 (by Solis), Honoring Siria G. Sierra of Los Fresnos on her retirement from Palmer-Laakso Elementary School.

HR 1845 (by Escobar), Honoring U.S. Army veteran Cruz Mata of Kingsville.

HR 1846 (by Escobar), Congratulating Sergio Munoz for his educational achievement as a graduate of The University of Texas at Austin.

HR 1850 was previously adopted.

HR 1851 was previously adopted.

HR 1875 (by Castro), Honoring Jennifer Elswood of San Antonio on receiving the Girl Scout Gold Award.

HR 1877 (by Oliveira), Commending the Texas Foreign Language Association.

HR 1878 was previously adopted.

HR 1880 (by Escobar), Recognizing Mikail Davenport and the Capitol Ride '05.

HR 1881 (by B. Brown), Congratulating Amanda Blakely of Crandall on winning a Robert F. Kennedy Memorial Journalism Award.

HR 1882 (by B. Brown), Congratulating the Trinity Valley Community College Cardinal cheerleaders on winning the 2005 National Cheerleaders Association Junior College Division championship.

HR 1887 (by Peña), Honoring Aguilar's Meat Market for its service to the Edinburg community.

HR 1888 (by Escobar), Commending the Texas Association of Addiction Professionals and the recipient of the first John Austin Pena Scholarship Award.

HR 1889 (by T. Smith), Honoring Nathan Benjamin Brooks as a top 10 graduate of Trinity High School for 2005.

HR 1890 (by T. Smith), Honoring Kirby Don Jacobson as a top 10 graduate of Trinity High School for 2005.

HR 1891 (by T. Smith), Honoring Faizan Anwar Ali as a top 10 graduate of Trinity High School for 2005.

HR 1892 (by T. Smith), Honoring Michael Steven Horstmeyer as a top 10 graduate of Trinity High School for 2005.

HR 1893 (by T. Smith), Honoring Brandon James Beberwyck as a top 10 graduate of Trinity High School for 2005.

HR 1894 (by T. Smith), Honoring Nickolas Boutris as a top 10 graduate of Trinity High School for 2005.

HR 1895 (by T. Smith), Honoring Brian David Burton as a top 10 graduate of Trinity High School for 2005.

HR 1896 (by T. Smith), Honoring Adam Wayne Jaster as a top 10 graduate of Trinity High School for 2005.

HR 1897 (by T. Smith), Honoring Brett Ryan Pinholster as a top 10 graduate of Trinity High School for 2005.

HR 1898 (by T. Smith), Honoring Melissa Ann Bro as a top 10 graduate of Trinity High School for 2005.

HR 1899 (by Bohac), Honoring Carol Bunte of Houston on her 25 years as a teacher at Clay Road Baptist School.

HR 1900 (by Escobar), Honoring Connie James of Harlingen for her many contributions to the community.

HR 1901 (by Wong), Congratulating the R Club of Houston on its 10th anniversary.

HR 1902 (by Branch), Congratulating Highland Park High School in Dallas on its national recognition for academics and athletics.

HR 1903 was previously adopted.

HR 1904 (by Baxter), Congratulating Jennifer and Michael Aragon on the birth of their daughter, Tatum.

HR 1905 was previously adopted.

HR 1906 (by Dunnam), Honoring former State Representative Miguel David Wise and Erin Duffy Wise of Weslaco on their 20th wedding anniversary.

HR 1909 (by Hunter), Commending Wayne James on his retirement from the association management profession.

HR 1910 (by Hughes), Congratulating Deborah Bell of Gilmer on being named a winner in the 2005 Johnson & Johnson Remarkable Women awards.

HR 1911 (by Hughes), Congratulating Mr. and Mrs. Horace Cantrell of Mineola on their 55th wedding anniversary.

HR 1918 (by Wong), Honoring C. C. and Elsie Huang of Houston on their 50th wedding anniversary.

HR 1919 (by Escobar), Honoring Roberto A. Hernandez of Raymondville on attaining the rank of Eagle Scout.

HR 1920 (by Escobar), Congratulating Adam Hernandez of Raymondville High School for winning gold in the 800-meter event at the 2005 state track and field championships.

HR 1922 was previously adopted.

HR 1925 (by Rodriguez), Honoring Shelbi McNew on her graduation from the Texas School for the Deaf.

HR 1926 (by Bohac), Honoring Josh Elton Cribbs of Houston on attaining the rank of Eagle Scout.

HR 1927 (by Rodriguez), Congratulating Jeffrey Wesley on his graduation from the Texas School for the Deaf.

HR 1928 (by Rodriguez), Congratulating Rosario Perez on her graduation from the Texas School for the Deaf.

HR 1930 (by Farabee), Congratulating Clayton Cotton and Travis Stegner for winning the 2005 UIL Class 4A boys' doubles tennis championship.

HR 1932 (by Alonzo), Congratulating Lupita Colmenero of El Hispano News in Dallas on her election as president of the National Association of Hispanic Publications, Inc., in March 2005.

HR 1933 (by Alonzo), Commemorating Cinco de Mayo, 2006.

HR 1934 (by Alonzo), Commemorating February 2, 1848, the date the Treaty of Guadalupe Hidalgo was signed, ending the Mexican War.

HR 1935 (by Alonzo), Honoring the life of Cesar E. Chavez on March 31, 2006, the 79th anniversary of his birth.

HR 1936 (by Alonzo), Honoring Oak Cliff on the occasion of the 103rd anniversary of its annexation to Dallas.

HR 1937 (by Alonzo), Honoring the life of Benito Juárez on March 21, 2006, the 200th anniversary of his birth.

HR 1938 (by Alonzo), Recognizing Diez y Seiz de Septiembre (Mexican Independence Day).

HR 1939 (by Elkins), Congratulating Uchenna and Joyce Ekemezie of Houston on winning The Amazing Race 7.

HR 1946 (by J. Jones), Honoring the members of the Miller-King Sunday School Class of the Good Street Baptist Church in Dallas for their service to their congregation and their community.

HR 1947 (by Dawson), Recognizing October 15, 2005, as Pregnancy and Infant Loss Remembrance Day in Texas.

HR 1948 (by Martinez Fischer), Honoring Consuelo D. Rocha for her service to the citizens of San Antonio.

HR 1949 (by Farrar), Commemorating the 75th anniversary of Theodore Roosevelt Elementary School in Houston.

HCR 194 (by J. Jones), Designating July 2005 as Lawn Mower Safety Awareness Month.

HCR 214 was previously adopted.

The resolutions were adopted.

The following memorial resolutions were laid before the house:

HR 175 (by Baxter), In memory of Thomas Anthony Korioth of Austin.

HR 1800 (by Baxter), In memory of Cherie Shelton Von Dohlen of Austin and Goliad.

HR 1814 (by Ritter), In memory of Evan H. "Slats" Wathen of Beaumont.

HR 1833 was previously adopted.

HR 1840 (by Hilderbran), In memory of Patricia Lewis Zoch Tate.

HR 1843 (by Gonzalez Toureilles, Herrero, and Escobar), Paying tribute to the life of U.S. Army Private Felix Longoria of Three Rivers for his heroism in World War II.

HR 1852 was previously adopted.

HR 1886 (by Peña), In memory of Canuto Garcia, Jr., of Edinburg.

HR 1907 (by Woolley), In memory of Cheryl Courrege Burguieres of Houston.

HR 1908 (by Dutton), In memory of Willie Hall of Houston.

HR 1921 (by Frost), In memory of U.S. Army Staff Sergeant Samuel Tyrone Castle of Naples.

HR 1923 (by Woolley), In memory of Billie Maurine King Ramsey of Houston.

HR 1924 (by Rodriguez), In memory of Ashlyn Leigh Shoemaker.

HR 1929 (by Denny), In memory of Marion Allen Groff, Jr., of Pilot Point.

HR 1931 (by Chisum), In memory of Fred Brook of Pampa.

HR 1941 (by Gallego), In memory of Carol Dacus of Brewster County.

HCR 189 (by Homer), In memory of J. E. "Gene" Buster of Paris.

HCR 190 (by Homer), In memory of Floyd Weger of Paris.

HCR 205 (by Homer), In memory of Stanley and Jake Avery of Sulphur Springs.

The resolutions were unanimously adopted by a rising vote.

RESOLUTIONS ADOPTED

All necessary rules were suspended in order to take up and consider at this time **HR 2177**, **HR 2172**, **HR 2153**, **HR 2145**, **HR 2142**, **HR 2138**, **HR 2136**, **HR 2135**, **HR 2122**, **HR 2121**, **HR 2111**, **HR 2106**, **HR 2104**, **HR 2099**, **HR 2083**, **HR 2082**, **HR 2081**, **HR 2077**, **HR 2069**, **HR 2066**, **HR 2052**, **HR 2051**, **HR 2050**, **HR 2049**, **HR 2036**, **HR 2034**, **HR 2033**, **HR 2028**, and **HCR 226**.

The following resolutions were laid before the house:

HR 2177 (by Farrar), In memory of Frank Perez, Sr., of Houston.

HR 2172 (by Hupp), In memory of Fred E. Lowe of Lampasas.

HR 2153 (by Raymond), In memory of Andrea Liendo of Laredo.

HR 2145 (by Flores), Paying tribute to the memory of Elia Gonzalez of Mission.

HR 2142 (by Taylor), In memory of Johannus L. Faison of Hitchcock.

HR 2138 (by Phillips), In memory of Pat Richardson of Sherman.

HR 2136 (by Gallego), In memory of Manuel F. Dominguez of Marfa.

HR 2135 (by Guillen), In memory of Marta Graciela Gonzalez of Rio Grande City.

HR 2122 (by Hopson), In memory of the Honorable Travis A. Peeler of Corpus Christi.

HR 2121 (by Menendez and Howard), In memory of Doris Poole Morris of Houston.

HR 2111 (by Merritt), In memory of John Wayne Gregory of Baytown.

HR 2106 (by McReynolds), In memory of Colonel Vardaman F. Johnson of Lufkin.

HR 2104 (by T. Smith), In memory of Marcella C. Ridgway of Bedford.

HR 2099 (by Escobar), In memory of Rodolfo "Rudy" M. Garcia of Falfurrias.

HR 2083 (by Rose), In memory of Joe Douglas Moore of Wimberley.

HR 2082 (by Anderson), In memory of James A. Hall of Woodway.

HR 2081 (by Anderson), In memory of LaJoy Willhelm of Waco.

HR 2077 (by Woolley), In memory of Denise Ann Krause Srinivasan, mayor of Hedwig Village.

HR 2069 (by Escobar), In memory of Rachel S. Alaniz of Kingsville.

HR 2066 (by Eiland), In memory of U.S. Army Private First Class Wesley Robert Riggs of Beach City.

HR 2052 (by Chisum), In memory of J. B. Noland of Hereford.

HR 2051 (by Gattis), In memory of Seth Dockery, Jr., of Cameron.

HR 2050 (by R. Cook), In memory of Leon Anton Sevcik, Jr., of Bryan.

HR 2049 (by R. Cook), In memory of Gardner Golston Osborn of Bryan.

HR 2036 (by Hilderbran), In memory of U.S. Marine Lance Corporal Mathew Davis Puckett of Mason.

HR 2034 (by Hilderbran), In memory of Juana Aguilar Rubio of Leakey.

HR 2033 (by Hilderbran), In memory of U.S. Army Captain Andrew R. Houghton.

HR 2028 (by Escobar), In memory of Ezequiel C. Cavazos of Raymondville.

HCR 226 (by Homer), In memory of Billy T. Burney of Sulphur Springs.

The resolutions were unanimously adopted by a rising vote.

HR 1845 - MOTION TO ADD NAMES

On motion of Representative Deshotel, the names of all the members of the house were added to **HR 1845** as signers thereof.

HR 1888 - MOTION TO ADD NAMES

On motion of Representative Deshotel, the names of all the members of the house were added to **HR 1888** as signers thereof.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, Senate List No. 31).

(Harper-Brown in the chair)

HB 2266 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Baxter called up with senate amendments for consideration at this time,

HB 2266, A bill to be entitled An Act relating to the authority of municipalities to enact a requirement that establishes the sales price for certain housing units or residential lots.

Representative Baxter moved to concur in the senate amendments to **HB 2266**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: A. Allen, Farrar, Herrero, Leibowitz and Solis recorded voting no.)

Senate Committee Substitute

CSHB 2266, A bill to be entitled An Act relating to the authority of municipalities to enact a requirement that establishes the sales price for certain housing units or residential lots.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter Z, Chapter 214, Local Government Code, is amended by adding Section 214.904 to read as follows:

Sec. 214.904. PROHIBITION OF CERTAIN MUNICIPAL REQUIREMENTS REGARDING SALES OF HOUSING UNITS OR RESIDENTIAL LOTS. (a) A municipality may not adopt a requirement in any form, including through an ordinance or regulation or as a condition for granting a building permit, that establishes a maximum sales price for a privately produced housing unit or residential building lot.

(b) This section does not affect any authority of a municipality to create or implement an incentive, contract commitment, density bonus, or other voluntary program designed to increase the supply of moderate or lower cost housing units.

(c) This section does not apply to a requirement adopted by a municipality for an area as a part of a development agreement entered into before September 1, 2005.

SECTION 2. This Act takes effect September 1, 2005.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 2266**, on page 1, lines 22-25, by striking proposed subsection (b), and substituting new subsection (b), to read as follows:

(b) This section does not affect any authority of a municipality to:

(1) create or implement an incentive, contract commitment, density bonus, or other voluntary program designed to increase the supply of moderate or lower cost housing units, or

(2) adopt a requirement applicable to an area served under the provisions of Subtitle A, Title 12, Local Government Code, Chapter 373A, which authorizes Homestead Preservation Districts, if such chapter is created by an Act of the legislature.

Senate Amendment No. 2 (Senate Floor Amendment No. 4)

Amend **HB 2266** in SECTION 1 of the bill, by adding a new Subsection (d) to added Section 214.904, Local Government Code, (page 1, between lines 28 and 29, Senate committee printing) to read as follows:

(d) This section does not apply to property that is part of an urban land bank program.

HB 3485 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Oliveira called up with senate amendments for consideration at this time,

HB 3485, A bill to be entitled An Act relating to the establishment of criminal law hearing officers in Cameron County.

Representative Oliveira 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 3485**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3485**: Oliveira, chair; Solis; Escobar; Herrero; and F. Brown.

HB 1606 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Thompson called up with senate amendments for consideration at this time,

HB 1606, A bill to be entitled An Act relating to the level of municipal participation in contracts with developers for public improvements.

Representative Thompson moved to concur in the senate amendments to **HB 1606**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 888): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Harper-Brown(C).

Absent, Excused, Committee Meeting — Cook, R.; Hegar; Hill; Krusee; Phillips; Pitts.

Absent — Martinez Fischer.

STATEMENT OF VOTE

When Record No. 888 was taken, I was in the house but away from my desk. I would have voted yes.

Martinez Fischer

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1606** on page 1, between lines 15 and 16 by inserting the following:

"(3) In addition, if the municipality has a population of 1.8 million or more, the municipality may participate at a level not to exceed 100 percent of the total contract price for all required drainage improvements related to the development and construction of affordable housing. Under this subsection, affordable housing is defined as housing which is equal to or less than the median sales price, as determined by the Real Estate Center at Texas A&M University, of a home in the Metropolitan Statistical Area (MSA) in which the municipality is located."

Renumber remaining sections accordingly.

HB 541 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Flores called up with senate amendments for consideration at this time,

HB 541, A bill to be entitled An Act relating to the types of nonprofit organizations that may conduct raffles.

Representative Flores moved to concur in the senate amendments to **HB 541**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 889): 132 Yeas, 3 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Coleman; Cook, B.; Corte; Crownover; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Herrero; Hilderbran; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden;

Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Crabb; Davis, J.; Hartnett.

Present, not voting — Mr. Speaker; Harper-Brown(C).

Absent, Excused, Committee Meeting — Cook, R.; Hegar; Hill; Krusee; Phillips; Pitts.

Absent — Chisum; Eiland; Keffer, J.; Kolkhorst; Martinez Fischer; Mowery.

STATEMENT OF VOTE

When Record No. 889 was taken, I was in the house but away from my desk. I would have voted yes.

Martinez Fischer

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 541** by inserting the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION __. Section 2002.056, Occupations Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsections (b-1) and [~~Subsection~~] (c), the value of a prize offered or awarded at a raffle that is purchased by the organization or for which the organization provides any consideration may not exceed $50,000.

(b-1) The value of a residential dwelling offered or awarded as a prize at a raffle that is purchased by the organization or for which the organization provides any consideration may not exceed $250,000.

SECTION __. The change in law made by this Act to Section 2002.056, Occupations Code, applies to a raffle conducted under Chapter 2002, Occupations Code, only if the prizes are awarded on or after the effective date of this Act. A raffle for which the prizes are awarded before the effective date of this Act is covered by the law in effect when the prizes were awarded, and the former law is continued in effect for purposes of any criminal liability arising under that law before the effective date of this Act.

(Hill now present)

HB 412 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Turner called up with senate amendments for consideration at this time,

HB 412, A bill to be entitled An Act relating to the use of credit scoring and credit history by certain telecommunications and electric service providers.

Representative Turner moved to concur in the senate amendments to **HB 412**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 890): 139 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Merritt.

Present, not voting — Mr. Speaker; Harper-Brown(C).

Absent, Excused, Committee Meeting — Cook, R.; Hegar; Krusee; Phillips; Pitts.

Absent — Gonzalez Toureilles; Martinez Fischer.

STATEMENTS OF VOTE

When Record No. 890 was taken, I was in the house but away from my desk. I would have voted yes.

Gonzalez Toureilles

When Record No. 890 was taken, I was in the house but away from my desk. I would have voted yes.

Martinez Fischer

I was shown voting no on Record No. 890. I intended to vote yes.

Merritt

Senate Committee Substitute

CSHB 412, A bill to be entitled An Act relating to the use of credit scoring and credit history by certain telecommunications and electric service providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 17, Utilities Code, is amended by adding Sections 17.008, 17.009, and 17.010 to read as follows:

Sec. 17.008. PROTECTION OF RESIDENTIAL ELECTRIC SERVICE APPLICANTS AND CUSTOMERS. (a) In this section, Section 17.009, and Section 17.010:

(1) "Credit history":

(A) means information regarding an individual's past history of:

(i) financial responsibility;

(ii) payment habits; or

(iii) creditworthiness; and

(B) does not include an individual's outstanding balance for retail electric or telecommunications service.

(2) "Credit score" means a score, grade, or value that is derived by a consumer reporting agency, as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)), using data from a credit history in any type of model, method, or program for the purpose of grading or ranking credit report data, whether derived electronically, from an algorithm, through a computer software application model or program, or through any other analogous process.

(3) "Electric service provider" includes:

(A) a retail electric provider;

(B) an electric utility;

(C) an electric cooperative; or

(D) a municipally owned electric utility that serves retail customers.

(4) "Satisfactory electric bill payment history" means verifiable information showing that the customer or applicant:

(A) has been a customer of one or more electric service providers in this state during the entire 12-month period preceding the request for electric service;

(B) is not delinquent in payment of any electric service account; and

(C) during the preceding 12-month period of service was not late in paying an electric service bill more than twice.

(5) "Utility payment data" means a measure that is derived by a consumer reporting agency, as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)), from a model specifically designed to correlate to utility payment histories.

(b) A retail electric provider may not deny an applicant's request to become a residential electric service customer on the basis of the applicant's credit history or credit score if:

(1) the applicant provides satisfactory electric bill payment history as provided by Subsection (f); or

(2) the database described by Section 17.010 is being maintained and the database demonstrates that the applicant has a satisfactory electric bill payment history.

(c) Notwithstanding Subsection (b), while a retail electric provider is required to provide price to beat service to a geographic area as the affiliated retail electric provider, the provider may not deny an applicant's request to become a residential electric service customer within that geographic area on the basis of the applicant's credit history, credit score, or retail electric service payment history, unless the applicant has an outstanding balance.

(d) A retail electric provider may not use a credit score, a credit history, or utility payment data as the basis for determining the price for month-to-month electric service or electric service that includes a fixed price commitment of 12 months or less:

(1) for an existing residential electric service customer; or

(2) in response to an applicant's request to become a residential electric service customer.

(e) If a retail electric provider is otherwise required to provide to an applicant for residential electric service written notice of adverse action the provider has taken based on the applicant's credit score or credit history, the written notice must include information on how an applicant may overcome that adverse action by providing satisfactory electric bill payment history under Subsection (b).

(f) On request by a customer or former customer in this state, an electric service provider shall timely provide to the customer or former customer bill payment history information with the electric service provider during the preceding 12-month period. Bill payment history information may be obtained by the customer or former customer once during each 12-month period without charge. If additional copies of bill payment history information are requested during a 12-month period, the electric service provider may charge the customer or former customer a reasonable fee for each copy.

(g) On request by a retail electric provider, an electric service provider shall timely verify information that purports to show the service and bill payment history of a customer or former customer in this state with the electric service provider.

(h) Subsections (e), (f), and (g) apply only if the database described by Section 17.010 is not being maintained.

(i) This section does not limit a retail electric provider's authority to require a deposit or advance payment as a condition of service.

(j) Notwithstanding Subsection (d), a retail electric provider may provide rewards, benefits, or credits to residential electric service customers on the basis of the customer's payment history for retail electric service to that provider.

(k) On notice to the office and opportunity for hearing, the commission shall exempt a retail electric provider from Subsection (b) if the retail electric provider demonstrates that actual customer bill payment history is not as predictive of payment behavior as the credit scoring methodology used by the retail electric provider.

Sec. 17.009. PROTECTION OF RESIDENTIAL TELEPHONE SERVICE APPLICANTS AND CUSTOMERS. (a) A provider of local exchange telephone service may not deny an applicant's request to become a residential customer on the basis of the applicant's credit history or credit score.

(b) A provider of local exchange telephone service may not use a credit score or credit history as the basis for determining price for service:

(1) for an existing residential customer; or

(2) in response to an applicant's request to become a residential customer.

(c) This section does not limit the authority of a provider of local exchange telephone service to require a deposit, advance payment, or credit limit as a condition of service.

Sec. 17.010. DATABASE. (a) The commission may require residential electric service providers to submit to an independent third party approved by the commission customer information that is necessary to determine whether a customer has a satisfactory electric bill payment history if:

(1) the commission determines that the cost to residential electric service providers for submitting data to the independent third party is reasonable in comparison to the benefit to be gained by customers who have a satisfactory electric bill payment history but an inadequate credit score or credit history;

(2) the commission determines that the cost of accessing information to determine whether a customer has a satisfactory electric bill payment history does not exceed one-half of the average cost of obtaining an individual customer's credit score;

(3) information in the database may only be accessed by:

(A) residential retail electric providers; and

(B) an individual customer for information specific to the customer; and

(4) information in the database is reliable from both the perspective of the customer and a residential retail electric provider.

(b) A retail electric provider may not use information in the database for purposes of targeted marketing to specific customers.

(c) On notice to the office and opportunity for hearing, the commission shall withdraw approval of the database described by this section if the commission determines that the database does not meet the criteria established in Subsection (a).

(d) Except as provided by Subsection (b), this section does not limit the provision or use of information in excess of the minimum required to determine whether a customer has a satisfactory electric bill payment history.

SECTION 2. If the Public Utility Commission of Texas has not approved a database described by Section 17.010, Utilities Code, as added by this Act, by September 1, 2006, the commission shall report that fact and the reason for it to the governor, the lieutenant governor, and the speaker of the house of representatives not later than October 1, 2006.

SECTION 3. This Act takes effect September 1, 2005.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 412** (Senate committee printing) by striking SECTIONS 1 and 2 of the bill (page 1, line 13 through page 3, line 39) and substituting the following:

SECTION 1. Subchapter A, Chapter 17, Utilities Code, is amended by adding Sections 17.008 and 17.009 to read as follows:

Sec. 17.008. PROTECTION OF RESIDENTIAL ELECTRIC SERVICE APPLICANTS AND CUSTOMERS. (a) In this section and in Section 17.009:

(1) "Credit history":

(A) means information regarding an individual's past history of:

(i) financial responsibility;

(ii) payment habits; or

(iii) creditworthiness; and

(B) does not include an individual's outstanding balance for retail electric or telecommunications service.

(2) "Credit score" means a score, grade, or value that is derived by a consumer reporting agency, as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)), using data from a credit history in any type of model, method, or program for the purpose of grading or ranking credit report data, whether derived electronically, from an algorithm, through a computer software application model or program, or through any other analogous process.

(3) "Utility payment data" means a measure that is derived by a consumer reporting agency, as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)), from a model specifically designed to correlate to utility payment histories.

(b) A retail electric provider may not deny an applicant's request to become a residential electric service customer on the basis of the applicant's credit history or credit score, but may use the applicant's utility payment data until the later of January 1, 2007, or the date on which the price to beat is no longer in effect in the geographic area in which the customer is located.

(c) Notwithstanding Subsection (b), while a retail electric provider is required to provide service to a geographic area as the affiliated retail electric provider, the provider may not deny an applicant's request to become a residential electric service customer within that geographic area on the basis of the applicant's credit history, credit score, or utility payment data.

(d) After the date described in Subsection (b), a retail electric provider, including an affiliated retail electric provider, may not deny an applicant's request to become a residential electric service customer on the basis of the applicant's credit history, credit score, or utility payment data but may use the applicant's electric bill payment history.

(e) A retail electric provider may not use a credit score, a credit history, or utility payment data as the basis for determining the price for month-to-month electric service or electric service that includes a fixed price commitment of 12 months or less:

(1) for an existing residential customer; or

(2) in response to an applicant's request to become a residential electric service customer.

(f) After the date described in Subsection (b), on request by a customer or former customer in this state, a retail electric provider or electric utility shall timely provide to the customer or former customer bill payment history information with the retail electric provider or electric utility during the preceding 12-month period. Bill payment history information may be obtained by the customer or former customer once during each 12-month period without charge. If additional copies of bill payment history information are requested during a 12-month period, the electric service provider may charge the customer or former customer a reasonable fee for each copy.

(g) On request by a retail electric provider, another retail electric provider or electric utility shall timely verify information that purports to show a customer's service and bill payment history with the retail electric provider or electric utility.

(h) This section does not limit a retail electric provider's authority to require a deposit or advance payment as a condition of service.

(i) Notwithstanding Subsection (e), a retail electric provider may provide rewards, benefits, or credits to residential electric service customers on the basis of the customer's payment history for retail electric service to that provider.

Sec. 17.009. PROTECTION OF RESIDENTIAL TELEPHONE SERVICE APPLICANTS AND CUSTOMERS. (a) A provider of basic local telecommunications services and nonbasic network services may not deny an applicant's request to become a residential customer on the basis of the applicant's credit history or credit score.

(b) A provider of basic local telecommunications services and nonbasic network services may not use a credit score or credit history as the basis for determining price for service:

(1) for an existing residential customer; or

(2) in response to an applicant's request to become a residential customer.

(c) This section does not limit the authority of a provider of basic local telecommunications services and nonbasic network services to require a deposit, advance payment, or credit limit as a condition of service.

SECTION 2. (a) The Public Utility Commission of Texas shall conduct one or more public workshops to consider the merits of both voluntary and mandatory databases that are used to determine whether a customer has a satisfactory electric bill payment history. The commission shall report its conclusions to the governor, the lieutenant governor, and the speaker of the house of representatives not later than January 15, 2007.

(b) This Act does not prevent or prohibit the creation or use of one or more databases to determine whether a customer has a satisfactory electric bill payment history, provided that the database, including the use of the database, is not discriminatory and does not otherwise violate the Public Utility Regulatory Act (Title 2, Utilities Code).

HB 916 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Woolley called up with senate amendments for consideration at this time,

HB 916, A bill to be entitled An Act relating to creating the Governor's Health Care Coordinating Council.

Representative Woolley moved to concur in the senate amendments to **HB 916**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 891): 135 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Corte; Crabb; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Harper-Brown(C).

Absent, Excused, Committee Meeting — Cook, R.; Hegar; Krusee; Phillips; Pitts.

Absent — Crownover; Driver; Giddings; Martinez Fischer; Morrison; Taylor; Thompson.

STATEMENT OF VOTE

When Record No. 891 was taken, I was in the house but away from my desk. I would have voted yes.

Martinez Fischer

Senate Committee Substitute

CSHB 916, A bill to be entitled as An Act relating to creating the Texas Health Care Policy Council.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle E, Title 2, Health and Safety Code, is amended by adding Chapter 113 to read as follows:

CHAPTER 113. TEXAS HEALTH CARE POLICY COUNCIL

Sec. 113.001. DEFINITIONS. In this chapter:

(1) "Council" means the Texas Health Care Policy Council.

(2) "Partnership" means the Texas Health Workforce Planning Partnership.

Sec. 113.002. COMPOSITION OF COUNCIL. (a) The council is within the office of the governor and shall report to the governor or the governor's designee.

(b) The council is composed of the administrative head of the following agencies or that person's designee:

(1) the Health and Human Services Commission;

(2) the Department of State Health Services;

(3) the Department of Aging and Disability Services;

(4) the Texas Workforce Commission;

(5) the Texas Higher Education Coordinating Board;

(6) the Texas Department of Insurance;

(7) the Employees Retirement System of Texas;

(8) the Teacher Retirement System of Texas;

(9) each health care related licensing agency identified by the governor; and

(10) any other state agency or system of higher education identified by the governor that purchases or provides health care services.

Sec. 113.003. ADVISORY COMMITTEES AND AD HOC COMMITTEES; TEXAS HEALTH WORKFORCE PLANNING PARTNERSHIP. (a) The council may form advisory and ad hoc committees as necessary to accomplish the council's purpose, including committees composed of health care experts from the public and private sectors to review policy matters related to the council's purpose.

(b) The Texas Health Workforce Planning Partnership is a standing subcommittee of the council and is composed of:

(1) the members of the council representing:

(A) the Health and Human Services Commission;

(B) the Department of State Health Services;

(C) the Texas Workforce Commission;

(D) the Texas Higher Education Coordinating Board; and

(E) any other state agency or system of higher education identified by the governor that impacts health care workforce planning; and

(2) the administrative head of the following agencies or that person's designee:

(A) the Health Professions Council; and

(B) the Office of Rural Community Health Affairs.

(c) The partnership shall monitor the health care workforce needs of the state, including monitoring the number and type of health care workers in the state by region and the health care workforce needs of the state, identifying any changes in the number of health care workers or health care workforce needs, and monitoring the quality of care provided by the health care workforce.

(d) The partnership shall:

(1) undertake and implement appropriate health care workforce planning activities; and

(2) research and identify ways to increase funding for health care, including obtaining money from federal, state, private, or public sources.

Sec. 113.004. COMPENSATION AND EXPENSES. Service on the council or the partnership is an additional duty of a member's office or employment. A member of the council or the partnership is not entitled to compensation but is entitled to reimbursement of travel expenses incurred by the member while conducting the business of the council or the partnership, as provided in the General Appropriations Act.

Sec. 113.005. MEETINGS. (a) The council shall meet at least once each year. The council may meet at other times at the call of the presiding officer or as provided by the rules of the council.

(b) The council is a governmental body for purposes of the open meetings law, Chapter 551, Government Code.

Sec. 113.006. DIRECTOR; STAFF. (a) The council shall, subject to the approval of the governor, hire a director to serve as the chief executive officer of the council and to perform the administrative duties of the council.

(b) The director serves at the will of the council.

(c) The director may hire staff within guidelines established by the council.

Sec. 113.007. FUNDING. Each state agency represented on the council shall provide funds for the support of the council and to implement this chapter. The council, with the governor's approval, shall establish a funding formula to determine the level of support each state agency must provide.

Sec. 113.008. EQUAL EMPLOYMENT OPPORTUNITY. (a) The director or the director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the council to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the council's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the civil rights division of the Texas Workforce Commission for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Sec. 113.009. QUALIFICATIONS AND STANDARDS OF CONDUCT. The director or the director's designee shall provide to members of the council and to council employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 113.010. RESEARCH PROJECTS; REPORT. (a) The council shall identify gaps, flaws, inefficiencies, or problems in the health care system that create systemic or substantial negative impacts on the participants in the health care system, study those problems, and identify possible solutions for the state or other participants in the system.

(b) Not later than September 1 after each regular session of the legislature, the speaker of the house of representatives and the lieutenant governor may submit health care related issues to the governor for referral to the council. The health care related issues may include:

(1) disparities in quality and levels of care;

(2) problems for uninsured individuals;

(3) the cost of pharmaceuticals;

(4) the cost of health care;

(5) access to health care;

(6) the quality of health care; or

(7) any other issue related to health care.

(c) The governor shall refer health care related issues to the council for research and analysis. The governor shall prioritize the issues for the council. The council shall study those issues identified by the governor and identify possible solutions for the state or other participants in the health care system.

(d) Not later than December 31 of each even-numbered year, the council shall submit a report of the council's findings and recommendations to the governor, lieutenant governor, and speaker of the house of representatives.

(e) The report submitted under Subsection (d) must include recommendations from the partnership and any other advisory body formed under Section 113.003.

Sec. 113.011. PURCHASE OF HEALTH CARE PRODUCTS OR SERVICES. The council shall ensure the most effective collaboration among state agencies in the purchase of health care products or services. As a state agency develops an expertise in purchasing health care products or services, that agency shall assist other agencies in the purchase of the same products or services.

Sec. 113.012. USE OF TECHNOLOGY IN HEALTH CARE. (a) The council shall facilitate and promote the use of technology in the health care system as a way to decrease administrative costs and to increase and improve the quality of health care.

(b) The council shall monitor, research, and promote initiatives relating to patient safety and the use of telemedicine and telehealth.

(c) The council shall coordinate its activities with other offices and state agencies that are primarily focused on the use of technology or the use of technology in health care.

Sec. 113.013. INFORMATION RESOURCE. (a) The council shall establish a clearinghouse of information to assist communities in assessing the needs of local health care systems. The council shall:

(1) collect information on innovative health care service delivery models and make that information available to communities;

(2) provide information on grants and technical assistance in the application process; and

(3) collect information on the development and testing of quality measures.

(b) The council shall investigate the best ways to collect, compare, and communicate the information to local communities.

Sec. 113.014. COORDINATION WITH OTHER ORGANIZATIONS. (a) The council may coordinate its research and reporting activities with other public or private entities performing research on health care policy or other topics related to the mission of the council, including academic institutions and nonprofit organizations.

(b) The council may contract with public or private entities to perform its research and reporting activities.

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, 2005.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 916** by adding the following appropriately numbered section to the bill, and renumber subsequent sections as appropriate:

SECTION __. (a) In this Act, "medically underserved community" means a community that has been designated under state or federal law as a health professional shortage area.

(b) The statewide health coordinating council in conjunction with area health education centers shall study the health care delivery system in five geographically diverse medically underserved communities of the state who request to be part of the study. Four of the communities must be located in a county with a population of 50,000 or less. One of the communities must be located in an urban county. As part of the study the Department of State Health Services shall:

(1) identify the ways in which nonphysician health care providers are being used to supplement the provision of health care services in medically underserved communities;

(2) determine which medically underserved communities of the state have been successful and unsuccessful in recruiting and retaining physicians to practice in the community;

(3) identify the nonphysician health care providers who could, within the scope of the health care providers' license, certification, or registration, supplement the provision of health care services in medically underserved communities;

(4) examine whether alternative supervision of nonphysician health care providers or delivery of services by nonphysician health care providers in nontraditional settings would provide a benefit in the delivery of health care services in medically underserved communities;

(5) examine whether each community is medically underserved as a result of a shortage of providers, a shortage of appropriate health care facilities, or both; and

(6) evaluate the measures each medically underserved community has taken to resolve the health professional shortage in the community, determine whether those measures have been successful in reducing the shortage, and identify innovative solutions that should be replicated.

(c) In performing the study under Subsection (b) of this section, the Department of State Health Services shall consult with a variety of the health care practitioners in medically underserved communities, including emergency medical service providers, physicians, nonphysician health care providers, rural hospitals, rural health clinics, and family planning clinics.

(d) The Department of State Health Services shall seek the participation of, and consult with, representatives of each medically underserved community in the study to develop ways the community can improve the delivery of health care services.

(e) Not later than January 1, 2007, the Department of State Health Services shall report the results of the study conducted under this section in writing to the lieutenant governor, the speaker of the house of representatives, and the members and members-elect of the 80th Legislature. The report must include any proposed legislation the department, through this study, determines will facilitate the improvement of the delivery of health care in medically underserved communities.

(f) This Act expires September 1, 2007.

HB 916 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE WOOLLEY: I believe in the current system of health care delivery. The study is intended to explore how to best utilize the resouces that we have here in Texas.

It is important to note that physician involvement is still the "gold standard" for patient care in Texas. It is expressed in my bill by assuring the continued supervision by physicians. The study is to explore how to best use our physicians in conjunction with our other health care providers to extend safe, quality medical care to our needy constituents.

The study is not a mandate for change for the sake of change nor is it to be construed as a pilot program for unsupervised care. It is a sincere expression of concern and desire to find ways in which we can fully utilize our current resources to deliver safe and effective medical care to our entire state.

This study is not to be construed as a vehicle to change the current scope of health care providers' license, certification, or registration. It is a study on how to best use our physicians and other health care providers.

REMARKS ORDERED PRINTED

Representative Woolley moved to print her remarks on **HB 916**.

The motion prevailed.

HB 3539 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Hupp called up with senate amendments for consideration at this time,

HB 3539, A bill to be entitled An Act relating to the composition of the board of directors of the Saratoga Underground Water Conservation District.

Representative Hupp 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 3539**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3539**: Hupp, chair; Miller; Callegari; Bonnen; and Martinez.

HB 1068 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Driver called up with senate amendments for consideration at this time,

HB 1068, A bill to be entitled An Act relating to the collection and analysis of evidence and testimony based on forensic analysis, crime laboratory accreditation, DNA testing, and the creation and maintenance of DNA records; providing a penalty.

Representative Driver 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 1068**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1068**: Driver, chair; Bailey; McCall; Madden; and Corte.

HB 2217 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative McCall called up with senate amendments for consideration at this time,

HB 2217, A bill to be entitled An Act relating to the management of public school land and the permanent school fund.

Representative McCall 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 2217**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2217**: McCall, chair; Hamric; Woolley; Eiland; and Ritter.

HB 164 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Berman called up with senate amendments for consideration at this time,

HB 164, A bill to be entitled An Act relating to the civil and criminal consequences of engaging in certain conduct related to the manufacture of methamphetamine and to the distribution and retail sales of pseudoephedrine; providing penalties.

Representative Berman moved to concur in the senate amendments to **HB 164**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 892): 136 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chavez; Coleman; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Harper-Brown(C).

Absent, Excused, Committee Meeting — Cook, R.; Hegar; Krusee; Phillips; Pitts.

Absent — Blake; Burnam; Chisum; Keffer, J.; Laney; Martinez Fischer.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 892. I intended to vote no.

Hupp

When Record No. 892 was taken, I was in the house but away from my desk. I would have voted yes.

Martinez Fischer

Senate Committee Substitute

CSHB 164, A bill to be entitled An Act relating to the civil and criminal consequences of engaging in conduct related to the manufacture of methamphetamine and to the distribution and retail sales of certain chemical substances.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 99.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 99.003. STRICT LIABILITY AND MINIMUM DAMAGES FOR EXPOSURE. A person who manufactures methamphetamine is strictly liable for any exposure by an individual to the manufacturing process, including exposure to the methamphetamine itself or any of the byproducts or waste products incident to the manufacture, for the greater of:

(1) actual damages for personal injury, death, or property damage as a result of the exposure; or

(2) $20,000 [~~$10,000~~] for each incident of exposure.

SECTION 2. Section 262.104, Family Code, is amended to read as follows:

Sec. 262.104. TAKING POSSESSION OF A CHILD IN EMERGENCY WITHOUT A COURT ORDER. (a) If there is no time to obtain a temporary restraining order or attachment before taking possession of a child consistent with the health and safety of that child, an authorized representative of the Department of Family and Protective [~~and Regulatory~~] Services, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions, only:

(1) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(2) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

(3) on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse;

(4) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse; or

(5) on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the parent or person who has

possession of the child is currently using a controlled substance as defined by Chapter 481, Health and Safety Code, and the use constitutes an immediate danger to the physical health or safety of the child.

(b) An authorized representative of the Department of Family and Protective Services, a law enforcement officer, or a juvenile probation officer may take possession of a child under Subsection (a) on personal knowledge or information furnished by another, that has been corroborated by personal knowledge, that would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine.

SECTION 3. Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Section 481.0721 to read as follows:

Sec. 481.0721. OVER-THE-COUNTER SALES OF EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE. (a) In this section, "ephedrine," "pseudoephedrine," and "norpseudoephedrine" mean any compound, mixture, or preparation containing any detectable amount of that substance, including its salts, optical isomers, and salts of optical isomers. The term does not include any compound, mixture, or preparation that is in liquid, liquid capsule, or liquid gel capsule form.

(b) A business establishment may engage in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine only if the establishment:

(1) operates a pharmacy licensed by the Texas State Board of Pharmacy;

(2) engages only in direct retail sales to patrons of the establishment for the patrons' personal use; and

(3) complies with the requirements of this section.

(c) A business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine as the only active ingredient shall maintain those products behind the pharmacy counter.

(d) A business establishment that engages in over-the-counter sales of products that contain ephedrine, pseudoephedrine, or norpseudoephedrine combined with at least one other active ingredient shall maintain those products:

(1) behind the pharmacy counter; or

(2) in a locked case within 30 feet and in a direct line of sight from the pharmacy counter staffed by an employee of the establishment.

(e) Before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, a business establishment shall:

(1) require the person purchasing the product to:

(A) display a driver's license or other form of identification containing the person's photograph and date of birth; and

(B) sign for the purchase;

(2) make a record of the sale, including the name and date of birth of the person making the purchase, the date of purchase, and the item and number of grams purchased; and

(3) take actions necessary to prevent a person who makes over-the-counter purchases of one or more products containing ephedrine, pseudoephedrine, or norpseudoephedrine from obtaining from the establishment in a single transaction more than:

(A) two packages of those products; or

(B) six grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances.

(f) The business establishment shall maintain each record made under Subsection (e)(2) for at least two years after the date the record is made and shall make each record available on request by the department or the Texas State Board of Pharmacy.

SECTION 4. Section 481.077(l), Health and Safety Code, is amended to read as follows:

(l) This section does not apply to the sale or transfer of any compound, mixture, or preparation containing [~~a nonnarcotic product that:~~

[~~(1) includes:~~

[~~(A)~~] ephedrine,[~~;~~

[~~(B)~~] pseudoephedrine, or[~~;~~

[~~(C)~~] norpseudoephedrine that is in liquid, liquid capsule, or liquid gel capsule form[~~; or~~

[~~(D) phenylpropanolamine; and~~

[~~(2) is sold with a prescription or over the counter in accordance with a federal statute or rule~~].

SECTION 5. Subchapter C, Chapter 481, Health and Safety Code, is amended by adding Section 481.0771 to read as follows:

Sec. 481.0771. RECORDS AND REPORTS ON PSEUDOEPHEDRINE. (a) A wholesaler who sells, transfers, or otherwise furnishes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer shall:

(1) before delivering the product, obtain from the retailer the retailer's address, area code, and telephone number; and

(2) make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(b) The wholesaler shall make all records available to the director in accordance with department rule, including:

(1) the information required by Subsection (a)(1);

(2) the amount of the product containing ephedrine, pseudoephedrine, or norpseudoephedrine delivered; and

(3) any other information required by the director.

(c) Not later than five business days after receipt of an order for a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that requests delivery of a suspicious quantity of the product as determined by department rule, a wholesaler shall submit to the director a report of the order in accordance with department rule.

(d) A wholesaler who, with reckless disregard for the duty to report, fails to report as required by Subsection (c) may be subject to disciplinary action in accordance with department rule.

SECTION 6. Section 481.124(b), Health and Safety Code, is amended to read as follows:

(b) For purposes of this section, an intent to unlawfully manufacture the controlled substance methamphetamine is presumed if the actor possesses or transports:

(1) anhydrous ammonia in a container or receptacle that is not designed and manufactured to lawfully hold or transport anhydrous ammonia;

(2) lithium metal removed from a battery and immersed in kerosene, mineral spirits, or similar liquid that prevents or retards hydration; or

(3) in one container, vehicle, or building, phenylacetic acid, or more than nine grams, three containers packaged for retail sale, or 300 tablets or capsules of a product containing ephedrine or pseudoephedrine, and:

(A) anhydrous ammonia;

(B) at least three of the following categories of substances commonly used in the manufacture of methamphetamine:

(i) lithium or sodium metal or red phosphorus, iodine, or iodine crystals;

(ii) lye, sulfuric acid, hydrochloric acid, or muriatic acid;

(iii) an organic solvent, including ethyl ether, alcohol, or acetone;

(iv) a petroleum distillate, including naphtha, paint thinner, or charcoal lighter fluid; or

(v) aquarium, rock, or table salt; or

(C) at least three <u>of the following</u> items<u>:</u>

<u>(i) an item</u> of equipment subject to regulation under Section 481.080, if the person is not registered under Section 481.063<u>; or</u>

<u>(ii) glassware, a plastic or metal container, tubing, a hose, or other item specially designed, assembled, or adapted for use in the manufacture, processing, analyzing, storing, or concealing of methamphetamine.</u>

SECTION 7. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1245 to read as follows:

<u>Sec. 481.1245. OFFENSE: POSSESSION OR TRANSPORT OF ANHYDROUS AMMONIA; USE OF OR TAMPERING WITH EQUIPMENT. (a) A person commits an offense if the person:</u>

<u>(1) possesses or transports anhydrous ammonia in a container or receptacle that is not designed or manufactured to hold or transport anhydrous ammonia;</u>

<u>(2) uses, transfers, or sells a container or receptacle that is designed or manufactured to hold anhydrous ammonia without the express consent of the owner of the container or receptacle; or</u>

<u>(3) tampers with equipment that is manufactured or used to hold, apply, or transport anhydrous ammonia without the express consent of the owner of the equipment.</u>

<u>(b) An offense under this section is a felony of the third degree.</u>

SECTION 8. Section 22.041, Penal Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) For purposes of Subsection (c), it is presumed that a person engaged in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if the person manufactured the controlled substance methamphetamine in the presence of the child.

SECTION 9. Chapter 504, Health and Safety Code, is repealed.

SECTION 10. (a) Section 99.003, Civil Practice and Remedies Code, as amended by this Act, applies only to a cause of action that accrues on or after September 1, 2005. An action that accrued before September 1, 2005, is governed by the law applicable to the action immediately before September 1, 2005, and that law is continued in effect for that purpose.

(b) The changes in law made by this Act in amending Section 481.124(b), Health and Safety Code, in adding Section 481.1245, Health and Safety Code, and Section 22.041(c-1), Penal Code, and in repealing Chapter 504, Health and Safety Code, apply only to an offense committed on or after September 1, 2005. An offense committed before September 1, 2005, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2005, if any element of the offense was committed before that date.

(c) The director of the Department of Public Safety of the State of Texas shall adopt any rules necessary to administer and enforce Section 481.0771, Health and Safety Code, as added by this Act, not later than September 1, 2005.

SECTION 11. This Act takes effect August 1, 2005, 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 to take effect on that date, this Act takes effect September 1, 2005.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 164** (Senate committee printing) as follows:

(1) Strike SECTION 3 of the bill on page 2, lines 3-55.

(2) Add appropriately numbered SECTIONS of the bill to read as follows:

SECTION ___. Section 481.136(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person sells, transfers, furnishes, or receives a chemical precursor subject to Section 481.077(a) and the person:

(1) does not hold a chemical precursor transfer permit as required by Section 481.078 at the time of the transaction;

(2) does not comply with Section 481.077 or 481.0771;

(3) knowingly makes a false statement in a report or record required by Section 481.077, 481.0771, or 481.078; or

(4) knowingly violates a rule adopted under Section 481.077, 481.0771, or 481.078.

SECTION ___. Subtitle C, Title 6, Health and Safety Code, is amended by adding Chapter 486 to read as follows:

CHAPTER 486. OVER-THE-COUNTER SALES OF EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 486.001. DEFINITIONS. (a) In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Council" means the State Health Services Council.

(3) "Department" means the Department of State Health Services.

(4) "Ephedrine, "pseudoephedrine," and "norpseudoephedrine" mean any compound, mixture, or preparation containing any detectable amount of that substance, including its salts, optical isomers, and salts of optical isomers. The term does not include any compound, mixture, or preparation that is in liquid, liquid capsule, or liquid gel capsule form.

(5) "Sale" includes a conveyance, exchange, barter, or trade.

(b) A term that is used in this chapter but is not defined by Subsection (a) has the meaning assigned by Section 481.002.

Sec. 486.002. APPLICABILITY. This chapter does not apply to the sale of any product dispensed or delivered by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose and in the course of professional practice.

Sec. 486.003. RULES. The council shall adopt rules necessary to implement and enforce this chapter.

Sec. 486.004. FEES. (a) The department shall collect fees for:

(1) the issuance of a certificate of authority under this chapter; and

(2) an inspection performed in enforcing this chapter and rules adopted under this chapter.

(b) The commissioner by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing applications for the issuance of a certificate of authority under this chapter;

(2) issuing certificates of authority under this chapter;

(3) inspecting and auditing a business establishment that is issued a certificate of authority under this chapter; and

(4) otherwise implementing enforcing this chapter.

(c) Fees collected under this section shall be deposited to the credit of a special account in the general revenue fund and appropriated to the department to implement and enforce this chapter.

Sec. 486.005. STATEWIDE APPLICATION AND UNIFORMITY. (a) To ensure uniform and equitable implementation and enforcement throughout this state, this chapter constitutes the whole field of regulation regarding over-the-counter sales of products that contain ephedrine, pseudoephedrine, or norpseudoephedrine.

(b) This chapter preempts and supersedes a local ordinance, rule, or regulation adopted by a political subdivision of this state pertaining to over-the-counter sales of products that contain ephedrine, pseudoephedrine, or norpseudoephedrine.

(c) This section does not preclude a political subdivision from imposing administrative sanctions on the holder of a business or professional license or permit issued by the political subdivision who engages in conduct that violates this chapter.

[Sections 486.006-486.010 reserved for expansion]

SUBCHAPTER B. OVER-THE-COUNTER SALES

Sec. 486.011. SALES BY PHARMACIES. A business establishment that operates a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine.

Sec. 486.012. SALES BY ESTABLISHMENTS OTHER THAN PHARMACIES; CERTIFICATE OF AUTHORITY. (a) A business establishment that does not operate a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of ephedrine, pseudoephedrine, or norpseudoephedrine only if the establishment holds a certificate of authority issued under this section.

(b) The department may issue a certificate of authority to engage in over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine to a business establishment that does not operate a pharmacy licensed by the Texas State Board of Pharmacy if the establishment:

(1) applies to the department for the certificate in accordance with department rule; and

(2) complies with the requirements established by the department for issuance of a certificate.

(c) The department by rule shall establish requirements for the issuance of a certificate of authority under this section. The rules must include a consideration by the department of whether the establishment:

(1) complies with the requirements of the Texas State Board of Pharmacy for the issuance of a license to operate a pharmacy;

(2) sells a wide variety of healthcare products; and

(3) employs sales techniques and other measures designed to deter the theft of products containing ephedrine, pseudoephedrine, or norpseudoephedrine and other items used in the manufacture of methamphetamine.

(d) The department may inspect or audit a business establishment that is issued a certificate of authority under this section at any time the department determines necessary.

Sec. 486.013. RESTRICTION OF ACCESS TO EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE. A business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine shall:

(1) if the establishment operates a pharmacy licensed by the Texas State Board of Pharmacy, maintain those products:

(A) behind the pharmacy counter; or

(B) in a locked case within 30 feet and in a direct line of sight from a pharmacy counter staffed by an employee of the establishment; or

(2) if the establishment does not operate a pharmacy licensed by the Texas State Board of Pharmacy, maintain those products:

(A) behind a sales counter; or

(B) in a locked case within 30 feet and in a direct line of sight from a sales counter continuously staffed by an employee of the establishment.

Sec. 486.014. PREREQUISITES TO SALE. Before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, a business establishment that engages in those sales shall:

(1) require the person making the purchase to:

(A) display a driver's license or other form of identification containing the person's photograph and indicating that the person is 16 years of age or older; and

(B) sign for the purchase;

(2) make a record of the sale, including the name of the person making the purchase, the date of the purchase, and the item and number of grams of purchased; and

(3) take actions necessary to prevent a person who makes over-the-counter purchases of one or more products containing ephedrine, pseudoephedrine, or norpseudoephedrine from obtaining from the establishment in a single transaction more than:

(A) two packages of those products; or

(B) six grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances.

Sec. 486.015. MAINTENANCE OF RECORDS. The business establishment shall maintain each record made under Section 486.014(2) until at least the second anniversary of the date the record is made and shall make each record available on request by the department or the Department of Public Safety.

[Sections 486.016-486.020 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PENALTY

Sec. 486.021. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person who violates this chapter.

Sec. 486.022. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $20,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Sec. 486.023. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 486.024. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Before the 21st day after the date the person receives notice under Section 486.023, the person in writing may:

(1) accept the determination and recommended penalty; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner by order shall approve the determination.

Sec. 486.025. HEARING. (a) If the person requests a hearing, the commissioner shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Sec. 486.026. DECISION. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the commissioner's order under Subsection (a) that is sent to the person in the manner provided by Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Sec. 486.027. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Before the 31st day after the date the order under Section 486.026 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the order contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 486.028. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 486.027, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the commissioner by certified mail.

(b) Following receipt of a copy of an affidavit under Subsection (a)(2), the commissioner may file with the court, before the sixth day after the date of receipt, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Sec. 486.029. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Sec. 486.030. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Sec. 486.031. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person before the 31st day after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 486.032. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Sec. 486.033. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty under this subchapter is considered to be a contested case under Chapter 2001, Government Code.

(3) In SECTION 5 of the bill, in proposed Section 481.0771(c), Health and Safety Code, on page 3, line 18, strike "five business days" and substitute "10 business days".

(4) Renumber existing SECTIONS of the bill as appropriate.

Senate Amendment No. 2 (Senate Floor Amendment No. 2)

Amend **HB 164** by adding the following appropriately numbered sections to the bill and renumbering existing sections accordingly:

SECTION ____. (a) The heading to Subchapter I, Chapter 431, Health and Safety Code, is amended to read as follows:

SUBCHAPTER I. WHOLESALE [~~DRUG~~] DISTRIBUTORS OF NONPRESCRIPTION DRUGS

(b) Section 431.201, Health and Safety Code, is amended to read as follows:

Sec. 431.201. DEFINITIONS. In this subchapter:

(1) "Nonprescription drug" means any drug that is not a prescription drug as defined by Section 431.401.

(2) "Place of business" means each location at which a drug for wholesale distribution is located.

(3) "Wholesale distribution" means distribution to a person other than a consumer or patient, and includes distribution by a manufacturer, repackager [~~repacker~~], own label distributor, broker, jobber, warehouse, or wholesaler.

[~~(2) "Place of business" means each location at which a drug for wholesale distribution is located.~~]

(c) Subchapter I, Chapter 431, Health and Safety Code, is amended by adding Section 431.2011 to read as follows:

Sec. 431.2011. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the wholesale distribution of nonprescription drugs.

(d) Section 431.202, Health and Safety Code, is amended to read as follows:

Sec. 431.202. LICENSE [~~STATEMENT~~] REQUIRED. (a) A person may not engage in wholesale distribution of nonprescription drugs in this state unless the person holds a wholesale drug distribution license issued by the department under this subchapter or Subchapter N [~~has filed with the commissioner a signed and verified license statement on a form furnished by the commissioner~~].

(b) An applicant for a license under this subchapter must submit an application to the department on the form prescribed by the department or electronically on the TexasOnline Internet website [~~The license statement must be filed annually~~].

(c) A license issued under this subchapter expires on the second anniversary of the date of issuance.

(e) Section 431.204, Health and Safety Code, is amended to read as follows:

Sec. 431.204. FEES. (a) The department [~~board~~] shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.206; and

(3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The executive commissioner of the Health and Human Services Commission [~~board may charge annual fees.~~

[~~(c) The board~~] by rule shall set the fees in amounts that allow the department to recover [~~at least 50 percent of~~] the biennial [~~annual~~] expenditures of state funds by the department in:

(1) reviewing and acting on a license;

(2) amending and renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(c) [~~(d)~~] Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and [~~may be~~] appropriated to the department [~~only~~] to carry out the administration and enforcement of this chapter.

(f) Sections 431.206 and 431.207, Health and Safety Code, are amended to read as follows:

Sec. 431.206. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the licensee shall notify the department [~~commissioner or the commissioner's designee~~] in writing of the licensee's intent to change the location of a licensed place of business.

(b) The notice shall include the address of the new location, and the name and residence address of the individual in charge of the business at the new location.

(c) Not more than 10 days after the completion of the change of location, the licensee shall notify the department [~~commissioner or the commissioner's designee~~] in writing to confirm the completion of [~~verify~~] the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent[~~, the address of the new location, and the name and residence address of the individual in charge of the business at the new address~~].

(d) The notice and confirmation required by this section are [~~Notice will be~~] deemed adequate if the licensee sends [~~provides~~] the [~~intent and verification~~] notices [~~to the commissioner or the commissioner's designee~~] by certified mail, return receipt requested, [~~mailed~~] to the central office of the department or submits them electronically through the TexasOnline Internet website.

Sec. 431.207. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The commissioner of state health services may refuse an application for a license or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs; [~~or~~]

(5) has not complied with this chapter or the [~~board's~~] rules implementing this chapter;

(6) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483;

(8) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain; or

(9) fails to complete a license application or submits an application that contains false, misleading, or incorrect information or contains information that cannot be verified by the department.

(b) The executive commissioner of the Health and Human Services Commission by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter [~~may refuse an application for a license or may suspend or revoke a license if the commissioner determines from evidence presented during a hearing that the applicant or licensee:~~

[~~(1) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;~~

[~~(2) has violated Chapter 481 (Texas Controlled Substances Act) or 483 (Dangerous Drugs); or~~

[~~(3) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain~~].

(c) The refusal to license an applicant or the suspension or revocation of a license by the department [~~commissioner~~] and the appeal from that action are governed by [~~the board's formal hearing procedures and~~] the procedures for a contested case hearing under Chapter 2001, Government Code.

(g) Chapter 431, Health and Safety Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. WHOLESALE DISTRIBUTORS OF PRESCRIPTION DRUGS

Sec. 431.401. DEFINITIONS. In this subchapter:

(1) "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree for the drug has occurred.

(2) "Authorized distributor of record" means a distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's products in accordance with Section 431.4011.

(3) "Chain pharmacy warehouse" means a location for which a person holds a wholesale drug distribution license under this subchapter, that serves primarily as a central warehouse for drugs or devices, and from which intracompany sales or transfers of drugs or devices are made to a group of pharmacies under common ownership and control.

(4) "Logistics provider" means a person that receives prescription drugs only from the original manufacturer, delivers the prescription drugs at the direction of that manufacturer, and does not purchase, sell, trade, or take title to any prescription drug.

(5) "Normal distribution chain" means a chain of custody for a drug from:

(A) a manufacturer to an authorized distributor of record or to a wholesale distributor licensed under this subchapter to a pharmacy or practitioner to a patient;

(B) a manufacturer to an authorized distributor of record to one other authorized distributor of record to a pharmacy or practitioner to a patient; or

(C) a manufacturer to an authorized distributor of record to a chain pharmacy warehouse to a pharmacy or practitioner to a patient.

(6) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of a prescription drug, from sale by a manufacturer, through acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the prescription drug.

(7) "Place of business" means each location at which a drug for wholesale distribution is located.

(8) "Prescription drug" has the meaning assigned by 21 C.F.R. Section 203.3.

(9) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling of a drug to further the distribution of a prescription drug. The term does not include repackaging by a pharmacist to dispense a drug to a patient.

(10) "Repackager" means a person who engages in repackaging.

(11) "Wholesale distribution" means distribution to a person other than a consumer or patient, and includes distribution by a manufacturer, repackager, own label distributor, broker, jobber, warehouse, retail pharmacy that conducts wholesale distribution, or wholesaler. The term does not include:

(A) intracompany sales of prescription drugs, which means transactions or transfers of prescription drugs between a division, subsidiary, parent, or affiliated or related company that is under common ownership and control of a corporate entity;

(B) the sale, purchase, distribution, trade, or transfer of prescription drugs or the offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons;

(C) the distribution of prescription drug samples by a representative of a manufacturer;

(D) the return of drugs by a hospital, health care entity, retail pharmacy, chain pharmacy warehouse, or charitable institution in accordance with 21 C.F.R. Section 203.23; or

(E) the delivery by a retail pharmacy of a prescription drug to a patient or a patient's agent under the lawful order of a licensed practitioner.

Sec. 431.4011. ONGOING RELATIONSHIP. In this subchapter, "ongoing relationship" means an association that exists when a manufacturer and distributor enter into a written agreement under which the distributor is authorized to distribute the manufacturer's products for a period of time or for a number of shipments. If the distributor is not authorized to distribute the manufacturer's entire product line, the agreement must identify the specific drug products that the distributor is authorized to distribute.

Sec. 431.4012. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the wholesale distribution of prescription drugs.

Sec. 431.402. LICENSE REQUIRED. (a) A person may not engage in wholesale distribution of prescription drugs in this state unless the person holds a wholesale drug distribution license under this subchapter for each place of business.

(b) A license issued under this subchapter expires on the second anniversary of the date of issuance.

Sec. 431.403. EXEMPTION FROM LICENSING. (a) A person who engages in wholesale distribution of prescription drugs in this state for use in humans is exempt from this subchapter if the person is exempt under:

(1) the Prescription Drug Marketing Act of 1987 (21 U.S.C. Section 353(c)(3)(B));

(2) the regulations adopted by the secretary to administer and enforce that Act; or

(3) the interpretations of that Act set out in the compliance policy manual of the United States Food and Drug Administration.

(b) An exemption from the licensing requirements under this section does not constitute an exemption from the other provisions of this chapter or the rules adopted under this chapter to administer and enforce the other provisions of this chapter.

Sec. 431.4031. EXEMPTION FROM CERTAIN PROVISIONS FOR CERTAIN WHOLESALE DISTRIBUTORS. A wholesale distributor that distributes prescription drugs that are medical gases or a wholesale distributor that is a logistics provider on behalf of a manufacturer is exempt from Sections 431.404(b) and (c), 431.405, 431.407, 431.408, 431.412, and 431.413.

Sec. 431.404. LICENSE APPLICATION. (a) An applicant for a license under this subchapter must submit an application to the department on the form prescribed by the department. The application must contain:

(1) all trade or business names under which the business is conducted;

(2) the address and telephone number of each place of business that is licensed;

(3) the type of business and the name and residence address of:

(A) the proprietor, if the business is a proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) the date and place of incorporation, if the business is a corporation;

(5) the names and business addresses of the individuals in an administrative capacity showing:

(A) the managing proprietor, if the business is a proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association;

(6) the name, telephone number, and any information necessary to complete a criminal history record check on a designated representative of each place of business;

(7) the state of incorporation, if the business is a corporation;

(8) a list of all licenses and permits issued to the applicant by any other state under which the applicant is permitted to purchase or possess prescription drugs; and

(9) the name of the manager for each place of business.

(b) Each person listed in Subsections (a)(6) and (a)(9) shall provide the following to the department:

(1) the person's places of residence for the past seven years;

(2) the person's date and place of birth;

(3) the person's occupations, positions of employment, and offices held during the past seven years;

(4) the business name and address of any business, corporation, or other organization in which the person held an office under Subdivision (3) or in which the person conducted an occupation or held a position of employment;

(5) a statement of whether during the preceding seven years the person was the subject of a proceeding to revoke a license and the nature and disposition of the proceeding;

(6) a statement of whether during the preceding seven years the person has been enjoined, either temporarily or permanently, by a court from violating any federal or state law regulating the possession, control, or distribution of prescription drugs, including the details concerning the event;

(7) a written description of any involvement by the person with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, that manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which the businesses were named as a party;

(8) a description of any felony offense for which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere;

(9) a description of any criminal conviction of the person under appeal, a copy of the notice of appeal for that criminal offense, and a copy of the final written order of an appeal not later than the 15th day after the date of the appeal's disposition; and

(10) a photograph of the person taken not earlier than 30 days before the date the application was submitted.

(c) The information submitted under Subsection (b) must be attested to under oath.

(d) An applicant or license holder shall file with the department a written notice of any change in the information required under this section.

Sec. 431.405. QUALIFICATIONS FOR LICENSE. To qualify for the issuance or renewal of a wholesale distributor license under this subchapter, the designated representative of an applicant or license holder must:

(1) be at least 21 years of age;

(2) have been employed full-time for at least three years by a pharmacy or a wholesale distributor in a capacity related to the dispensing or distributing of prescription drugs, including recordkeeping for the dispensing or distributing of prescription drugs;

(3) be employed by the applicant full-time in a managerial-level position;

(4) be actively involved in and aware of the actual daily operation of the wholesale distributor;

(5) be physically present at the applicant's place of business during regular business hours, except when the absence of the designated representative is authorized, including sick leave and vacation leave;

(6) serve as a designated representative for only one applicant at any one time;

(7) not have been convicted of a violation of any federal, state, or local laws relating to wholesale or retail prescription drug distribution or the distribution of controlled substances; and

(8) not have been convicted of a felony under a federal, state, or local law.

Sec. 431.406. EFFECT OF OPERATION IN OTHER JURISDICTIONS; REPORTS. (a) A person who engages in the wholesale distribution of drugs outside this state may engage in the wholesale distribution of drugs in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with this subchapter and the minimum standards adopted under this subchapter.

(c) The department may issue a license to a person who engages in the wholesale distribution of drugs outside this state to engage in the wholesale distribution of drugs in this state if, after an examination of the reports of the person's compliance history and current compliance record, the department determines that the person is in compliance with this subchapter and the rules adopted under this subchapter.

(d) The department shall consider each license application and any related documents or reports filed by or in connection with a person who wishes to engage in wholesale distribution of drugs in this state on an individual basis.

Sec. 431.407. CRIMINAL HISTORY RECORD INFORMATION. The department shall submit to the Department of Public Safety the fingerprints provided by a person with an initial or a renewal license application to obtain the person's criminal history record information and may forward the fingerprints to the Federal Bureau of Investigation for a federal criminal history check.

Sec. 431.408. BOND. (a) A wholesale distributor applying for or renewing a license shall submit payable to this state a bond or other equivalent security acceptable to the department, including an irrevocable letter of credit or a deposit in a trust account or financial institution, in the amount of $100,000 payable to this state.

(b) The bond or equivalent security submitted under Subsection (a) shall secure payment of any fines or penalties imposed by the department or imposed in connection with an enforcement action by the attorney general, any fees or other enforcement costs, including attorney's fees payable to the attorney general, and any other fees and costs incurred by this state related to that license holder, that are authorized under the laws of this state and that the license holder fails to pay before the 30th day after the date a fine, penalty, fee, or cost is assessed.

(c) The department or this state may make a claim against a bond or security submitted under Subsection (a) before the first anniversary of the date a license expires or is revoked under this subchapter.

(d) The department shall deposit the bonds and equivalent securities received under this section in a separate account.

Sec. 431.409. FEES. (a) The department shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.410; and

(3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The executive commissioner of the Health and Human Services Commission by rule shall set the fees in amounts that are reasonable and necessary and allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing and acting on a license;

(2) amending and renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(c) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and appropriated to the department to carry out this chapter.

Sec. 431.410. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the license holder shall notify the department in writing of the license holder's intent to change the location of a licensed place of business.

(b) The notice shall include the address of the new location and the name and residence address of the individual in charge of the business at the new location.

(c) Not more than 10 days after the completion of the change of location, the license holder shall notify the department in writing to confirm the completion of the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent.

(d) The notice and confirmation required by this section are considered adequate if the license holder sends the notices by certified mail, return receipt requested, to the central office of the department or submits the notices electronically through the TexasOnline Internet website.

Sec. 431.411. MINIMUM RESTRICTIONS ON TRANSACTIONS. (a) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or chain pharmacy warehouse in accordance with the terms and conditions of the agreement between the wholesale distributor and the pharmacy or chain pharmacy warehouse. The returns or exchanges received by the wholesale distributor as provided by this subsection are not subject to the pedigree requirement under Section 431.412. In connection with the returned goods process, a wholesale distributor should establish appropriate business practices and exercise due diligence designed to prevent the entry of adulterated or counterfeit drugs into the distribution channel.

(b) A manufacturer or wholesale distributor may distribute prescription drugs only to a person licensed by the appropriate state licensing authorities or authorized by federal law to receive the drug. Before furnishing prescription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor must verify that the person is legally authorized by the appropriate state licensing authority to receive the prescription drugs or authorized by federal law to receive the drugs.

(c) Except as otherwise provided by this subsection, prescription drugs distributed by a manufacturer or wholesale distributor may be delivered only to the premises listed on the license. A manufacturer or wholesale distributor may distribute prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(1) the identity and authorization of the recipient is properly established; and

(2) delivery is made only to meet the immediate needs of a particular patient of the authorized person.

(d) Prescription drugs may be distributed to a hospital pharmacy receiving area if a pharmacist or an authorized receiving person signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug received. Any discrepancy between the receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor not later than the next business day after the date of delivery to the pharmacy receiving area.

Sec. 431.412. PEDIGREE REQUIRED. (a) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager but excluding the original manufacturer and the original labeler of a prescription drug, shall provide a pedigree for each prescription drug that is not distributed through the normal distribution chain and is sold, traded, or transferred to any other person.

(b) A pharmacy that sells a drug to a person other than the final consumer shall provide a pedigree to the person acquiring the prescription drug. The sale of a reasonable quantity of a drug to a practitioner for office use is not subject to this subsection.

(c) The sale, trade, or transfer of a prescription drug between license holders with common ownership or for an emergency is not subject to this section.

(d) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager, and who is in possession of a pedigree for a prescription drug must verify before distributing the prescription drug that each transaction listed on the pedigree has occurred.

Sec. 431.413. PEDIGREE CONTENTS. (a) A pedigree must include all necessary identifying information concerning each sale in the product's chain of distribution from the manufacturer, through acquisition and sale by a wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the drug. At a minimum, the chain of distribution information must include:

(1) the name, address, telephone number, and, if available, the e-mail address of each person who owns or possesses the prescription drug, except common carriers and logistics providers;

(2) the signature of each owner of the prescription drug;

(3) the name and address of each location from which the product was shipped, if different from the owner's name and address;

(4) the transaction dates; and

(5) certification that each recipient has authenticated the pedigree.

(b) The pedigree must include, at a minimum, the:

(1) name of the prescription drug;

(2) dosage form and strength of the prescription drug;

(3) size of the container;

(4) number of containers;

(5) lot number of the prescription drug; and

(6) name of the manufacturer of the finished dosage form.

(c) Each pedigree statement must be:

(1) maintained by the purchaser and the wholesale distributor for at least three years; and

(2) available for inspection and photocopying on a request by the department or a peace officer in this state.

(d) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this section.

(e) The department shall:

(1) conduct a study on the implementation of electronic pedigrees;

(2) in conducting the study under Subdivision (1), consult with manufacturers, distributors, and pharmacies responsible for the sale and distribution of prescription drugs in this state; and

(3) based on the results of the study, establish an implementation date, which may not be earlier than December 31, 2007, for electronic pedigrees.

(f) Subsection (e) and this subsection expire January 1, 2009.

Sec. 431.414. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The commissioner of state health services may refuse an application for a license or may suspend or revoke a license if the applicant or license holder:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this subchapter or the rules implementing this subchapter;

(6) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483; or

(8) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or license holder to maintain.

(b) The executive commissioner of the Health and Human Services Commission by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

(c) The department shall deny a license application that is incomplete, contains false, misleading, or incorrect information, or contains information that cannot be verified by the department.

(d) The refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Sec. 431.415. ORDER TO CEASE DISTRIBUTION. (a) The commissioner of state health services shall issue an order requiring a person, including a manufacturer, distributor, or retailer of a prescription drug, to immediately cease distribution of the drug if the commissioner determines there is a reasonable probability that:

(1) a wholesale distributor has:

(A) violated this subchapter;

(B) falsified a pedigree; or

(C) sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use that could cause serious adverse health consequences or death; and

(2) other procedures would result in unreasonable delay.

(b) An order under Subsection (a) must provide the person subject to the order with an opportunity for an informal hearing on the actions required by the order to be held not later than the 10th day after the date of issuance of the order.

(c) If, after providing an opportunity for a hearing, the commissioner of state health services determines that inadequate grounds exist to support the actions required by the order, the commissioner shall vacate the order.

(h) Section 431.059, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) A person commits an offense if the person violates any of the provisions of Section 431.021 relating to unlawful or prohibited acts. A first offense under this subsection is a Class A misdemeanor unless it is shown on the trial of an offense under this subsection that the defendant was previously convicted of an offense under this subsection, in which event the offense is a state jail felony. In a criminal proceeding under this section, it is not necessary to prove intent, knowledge, recklessness, or criminal negligence of the defendant beyond the degree of culpability, if any, stated in Subsection (a-2) or Section 431.021, as applicable, to establish criminal responsibility for the violation.

(a-1) A person commits an offense if the person engages in the wholesale distribution of prescription drugs in violation of Subchapter N. An offense under this subsection is punishable by a fine not to exceed $50,000.

(a-2) A person commits an offense if the person knowingly engages in the wholesale distribution of prescription drugs in violation of Subchapter N. An offense under this subsection is punishable by imprisonment for not more than 15 years, a fine not to exceed $500,000, or both imprisonment and a fine.

(i) Section 431.021, Health and Safety Code, is amended to read as follows:

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted

under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042-431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

(j) the use, removal, or disposal of a detained or embargoed article in violation of Section 431.048;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

(l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the commissioner, an authorized agent, a health authority or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042-431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1) of this subsection; or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the federal Act;

(w) except as provided under Subchapter M of this chapter and Section 562.1085, Occupations Code, the acceptance by a person of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold;

(x) engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without obtaining a license issued by the department under Subchapter I, L, or N [~~filing a licensing statement with the commissioner as required by Section 431.202 or having a license as required by Section 431.272~~], as applicable;

(y) engaging in the manufacture of food in this state or operating as a warehouse operator in this state without having a license as required by Section 431.222 or operating as a food wholesaler in this state without having a license under Section 431.222 or being registered under Section 431.2211, as appropriate;

(z) unless approved by the United States Food and Drug Administration pursuant to the federal Act, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder or condition; [~~or~~]

(aa) making a false statement or false representation in an application for a license or in a statement, report, or other instrument to be filed with or requested by the department [~~the board, the commissioner, or the department~~] under this chapter;

(bb) failing to comply with a requirement or request to provide information or failing to submit an application, statement, report, or other instrument required by the department;

(cc) performing, causing the performance of, or aiding and abetting the performance of an act described by Subdivision (x);

(dd) purchasing or otherwise receiving a prescription drug from a pharmacy in violation of Section 431.411(a);

(ee) selling, distributing, or transferring a prescription drug to a person who is not authorized under state or federal law to receive the prescription drug in violation of Section 431.411(b);

(ff) failing to deliver prescription drugs to specified premises as required by Section 431.411(c);

(gg) failing to maintain or provide pedigrees as required by Section 431.412 or 431.413;

(hh) failing to obtain, pass, or authenticate a pedigree as required by Section 431.412 or 431.413; or

(ii) the introduction or delivery for introduction into commerce of a drug or prescription device at a flea market.

(j) Section 411.110, Government Code, is amended to read as follows:

Sec. 411.110. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: [~~TEXAS~~] DEPARTMENT OF STATE HEALTH SERVICES. (a) The [~~Texas~~] Department of State Health Services is entitled to obtain from the department criminal history record information maintained by the department that relates to:

(1) a person who is:

(A) [~~(1)~~] an applicant for a license or certificate under the Emergency Medical Services Act (Chapter 773, Health and Safety Code);

(B) [~~(2)~~] an owner or manager of an applicant for an emergency medical services provider license under that Act; or

(C) [~~(3)~~] the holder of a license or certificate under that Act; or

(2) an applicant for a license or a license holder under Subchapter N, Chapter 431, Health and Safety Code.

(b) Criminal history record information obtained by the [~~Texas~~] Department of State Health Services under Subsection (a) may not be released or disclosed to any person except on court order, with the written consent of the person or entity that is the subject of the criminal history record information, or as provided by Subsection (e).

(c) After an entity is licensed or certified, the [~~Texas~~] Department of State Health Services shall destroy the criminal history record information that relates to that entity.

(d) The Department of State Health Services [~~Texas Board of Health~~] shall destroy criminal history record information that relates to an applicant that is not certified.

(e) The Department of State Health Services [~~Texas Board of Health~~] is not prohibited from disclosing criminal history record information obtained under Subsection (a) in a criminal proceeding or in a hearing conducted by the [~~Texas~~] Department of State Health Services.

(k) Sections 431.2021 and 431.205, Health and Safety Code, are repealed.

(l) Not later than January 1, 2006, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this section by amending Subchapter I, Chapter 431, Health and Safety Code, and adding Subchapter N, Chapter 431, Health and Safety Code.

(m) Not later than January 1, 2006, the Department of State Health Services shall prescribe the forms required to implement the changes in law made by this section by the amendment of Subchapter I, Chapter 431, Health and Safety Code, and the addition of Subchapter N, Chapter 431, Health and Safety Code.

(n) The change in law made by this section applies only to an offense committed on or after March 1, 2006. An offense committed before that date is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before March 1, 2006, if any element of the offense was committed before that date.

(o) Except as provided by Subsection (p) of this section, this section takes effect September 1, 2005.

(p) Subsections (a) through (i) of this section take effect March 1, 2006.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today to attend his daughter's graduation:

Blake on motion of Laney.

(R. Cook, Pitts, and Phillips now present)

(Speaker in the chair)

HB 1006 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Isett called up with senate amendments for consideration at this time,

HB 1006, A bill to be entitled An Act relating to certain limitations on the ad valorem tax rates of certain taxing units.

Representative Isett 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 1006**.

A record vote was requested.

The motion prevailed by (Record 893): 102 Yeas, 28 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Chisum; Cook, B.; Cook, R.; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Flynn; Frost; Gattis; Geren; Griggs; Grusendorf; Guillen; Hamilton; Hamric; Harper-Brown; Herrero; Hilderbran; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Madden; McCall; Menendez; Merritt; Miller; Morrison; Naishtat; Nixon; Oliveira; Orr; Otto; Paxton; Peña; Phillips;

Pickett; Puente; Raymond; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Turner; Uresti; Van Arsdale; Vo; West; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Casteel; Castro; Chavez; Coleman; Davis, Y.; Dukes; Dunnam; Farrar; Flores; Gallego; Gonzales; Gonzalez Toureilles; Hardcastle; Hill; Hochberg; Keel; Luna; McClendon; Moreno, P.; Mowery; Noriega, M.; Olivo; Rodriguez; Smithee; Veasey; Villarreal.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Hegar; Krusee.

Absent — Corte; Giddings; Goodman; Goolsby; Haggerty; Hartnett; Hughes; King, T.; Martinez; Martinez Fischer; McReynolds; Pitts; Quintanilla; Truitt.

STATEMENTS OF VOTE

I was shown voting no on Record No. 893. I intended to vote yes.

Hochberg

When Record No. 893 was taken, I was in the house but away from my desk. I would have voted yes.

Martinez Fischer

When Record No. 893 was taken, I was in the house but away from my desk. I would have voted present, not voting.

Quintanilla

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1006**: Isett, chair; Baxter; Otto; Nixon; and Hopson.

HJR 80 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Ritter called up with senate amendments for consideration at this time,

HJR 80, A joint resolution proposing a constitutional amendment clarifying that certain economic development programs do not constitute a debt.

Representative Ritter 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 **HJR 80**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HJR 80**: Krusee, chair; Geren; Hartnett; Martinez Fischer; and Keel.

RECESS

At 12:39 p.m., the speaker announced that the house would stand recessed until 1:45 p.m. today.

(J. Keffer in the chair)

AFTERNOON SESSION

The house met at 1:45 p.m. and was called to order by the chair.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 53).

HR 2178 - ADOPTED
(by Y. Davis)

Representative Turner moved to suspend all necessary rules to take up and consider at this time **HR 2178**.

The motion prevailed.

The following resolution was laid before the house:

HR 2178, In memory of the Reverend Cecil Eugene McNealy, Jr., of Dallas.

HR 2178 was unanimously adopted by a rising vote.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today to attend a meeting of the conference committee on **SB 1**:

Pitts on motion of Keel.

HB 2376 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Elkins called up with senate amendments for consideration at this time,

HB 2376, A bill to be entitled An Act relating to the environmental regulation and remediation of dry cleaning facilities; imposing a penalty.

Representative Elkins moved to concur in the senate amendments to **HB 2376**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 2376**, in SECTION 10 of the bill, immediately after amended Subsection (b), Section 374.104, Health and Safety Code, (Senate committee printing page 4, between lines 45 and 46) by adding the following:

(b-1) An owner of a dry cleaning facility who files an option not to participate in accordance with Subsection (b) is entitled to a credit against future registration fees under Section 374.102, Health and Safety Code, to the extent that a registration fee paid in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility or drop station.

HB 2491 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Puente called up with senate amendments for consideration at this time,

HB 2491, A bill to be entitled An Act relating to the administration and collection of ad valorem taxes, including the transfer of an ad valorem tax lien and a contract for foreclosure of an ad valorem tax lien; amending, correcting, and clarifying the Tax Code, Property Code, and Civil Practice and Remedies Code.

Representative Puente 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 2491**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2491**: Puente, chair; Paxton; Otto; Rodriguez; and Crabb.

HB 2808 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Morrison called up with senate amendments for consideration at this time,

HB 2808, A bill to be entitled An Act relating to the duties of the P-16 Council.

Representative Morrison moved to concur in the senate amendments to **HB 2808**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 2808, A bill to be entitled An Act relating to the P-16 Council and to the functioning of certain educational programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 61.076, Education Code, is amended to read as follows:

Sec. 61.076. P-16 COUNCIL [~~COOPERATION BETWEEN STATE AGENCIES OF EDUCATION~~]. (a) It is the policy of the State of Texas that the entire system of education supported with public funds be coordinated to provide the citizens with efficient, effective, and high quality educational services and activities. The P-16 Council [~~board and the State Board of Education~~], in conjunction with [~~such~~] other agencies as may be appropriate, shall ensure that long-range plans and educational programs for the state [~~established by the boards~~] complement the functioning of the entire system of public education, extending from early childhood education through postgraduate study. [~~In assuring that plans and programs are coordinated, the boards shall use the P-16 Council established under Section 61.077.~~]

(b) The P-16 Council is composed of the commissioner of education, the commissioner of higher education, the executive director of the Texas Workforce Commission, the executive director of the State Board for Educator Certification, and the commissioner of assistive and rehabilitative services. The commissioner of higher education and the commissioner of education shall serve as co-chairs of the council.

(c) The co-chairs may appoint three additional members who are education professionals, business representatives, or other members of the community. Members appointed to the council under this subsection serve two-year terms expiring February 1 of each odd-numbered year.

(d) The council shall meet at least once each calendar quarter and may hold other meetings as necessary at the call of the co-chairs. Each member of the council or the member's designee shall make a report of the council's activities at least twice annually to the governing body of the member's agency, except that the commissioner of education or that commissioner's designee shall report to the State Board of Education and the commissioner of assistive and rehabilitative services or that commissioner's designee shall report to the executive commissioner of the Health and Human Services Commission.

(e) The council shall coordinate plans and programs [~~of the two boards~~], including curricula, instructional programs, research, and other functions as appropriate. This coordination shall include the following areas:

(1) equal educational opportunity for all Texans;

(2) college recruitment, with special emphasis on the recruitment of minority students;

(3) preparation of high school students for further study at colleges and universities;

(4) reduction of the dropout rate and dropout prevention;

(5) teacher education, recruitment, and retention;

(6) testing and assessment; and

(7) adult education programs.

(f) The council shall examine and make recommendations regarding the alignment of secondary and postsecondary education curricula and testing and assessment. This subsection does not require the council to establish curriculum or testing or assessment standards.

(g) The council shall advise the board and the State Board of Education on the coordination of postsecondary career and technology activities, career and technology teacher education programs offered or proposed to be offered in the colleges and universities of this state, and other relevant matters, including:

(1) coordinating postsecondary career and technology education and the articulation between postsecondary career and technology education and secondary career and technology education;

(2) facilitating the transfer of responsibilities for the administration of postsecondary career and technology education from the State Board of Education to the board in accordance with Section 111(a)(I) of the Carl D. Perkins Vocational Education Act (Pub. L. No. 98–524);

(3) advising the State Board of Education, when it acts as the State Board for Career and Technology Education, on the following:

(A) the transfer of federal funds to the board for allotment to eligible public postsecondary institutions of higher education;

(B) the career and technology education funding for projects and institutions as determined by the board when the State Board for Career and Technology Education is required by federal law to endorse those determinations;

(C) the development and updating of the state plan for career and technology education and the evaluation of programs, services, and activities of postsecondary career and technology education and amendments to the state plan for career and technology education as may relate to postsecondary education;

(D) other matters related to postsecondary career and technology education; and

(E) the coordination of curricula, instructional programs, research, and other functions as appropriate, including school-to-work and school-to-college transition programs and professional development activities; and

(4) advising the Texas Workforce Investment Council on educational policy issues related to workforce preparation.

(h) On or before January 1, 2007, the P-16 Council shall:

(1) review existing school district programs that provide high school students with the opportunity to enroll in advanced academic courses offered through dual credit and concurrent enrollment programs, including reviewing courses currently approved by districts and offered by institutions of higher education for dual and concurrent enrollment credit;

(2) review the high school curriculum required for the recommended high school program under Section 28.025 and study the feasibility of offering a revised curriculum that would provide graduating high school students with at least 12 hours of advanced academic courses or college-level coursework offered through dual credit and concurrent enrollment programs provided under agreements between high schools and institutions of higher education; and

(3) prepare and deliver a report based on the review and study to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of the standing committee of each house of the legislature with primary jurisdiction over public education.

(i) Subsection (h) and this subsection expire January 2, 2007.

SECTION 2. (a) Section 61.077, Education Code, as amended by Chapters 61, 818, and 820, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

(b) To the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 3. Not later than September 1, 2006, the Legislative Budget Board shall:

(1) study the resource needs of high-quality early childhood care and education programs, including Head Start, Early Head Start, prekindergarten, after-school programs, and licensed child-care programs; and

(2) report the board's findings and recommendations to the P-16 Council, the governor, the lieutenant governor, the speaker of the house of representatives, and the 79th Legislature regarding:

(A) the results of the study described by Subdivision (1);

(B) recommended options to secure additional funding for the programs described by Subdivision (1); and

(C) a recommended plan to implement, in phases, full-day prekindergarten programs for at-risk children and to expand the eligibility criteria for those programs.

SECTION 4. This Act takes effect September 1, 2005.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 2808** (senate committee printing) in Section 1 of the bill, in added Subsection (c), Section 61.076, Education Code (page 1, line 36), between "education professionals," and "business representatives" by inserting "agency representatives,".

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).

HB 3093 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Peña called up with senate amendments for consideration at this time,

HB 3093, A bill to be entitled An Act relating to ex parte petitions for the expunction of criminal records and files.

Representative Peña moved to concur in the senate amendments to **HB 3093**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 3093** by adding the following appropriately numbered SECTIONS to the bill and renumbering existing SECTIONS of the bill accordingly:

SECTION ____. Section 411.081, Government Code, is amended by amending Subsections (d), (g), and (h) and by adding Subsections (g-1), (g-2), (i), and (j) to read as follows:

(d) Notwithstanding any other provision of this subchapter, if a person is placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, subsequently receives a discharge and dismissal under Section 5(c), Article 42.12, and satisfies the requirements of Subsection (e), the person may petition the court that placed the defendant on deferred adjudication for an order of nondisclosure under this subsection. Except as provided by Subsection (e), a person may petition the court under this subsection regardless of whether the person has been previously placed on deferred adjudication community supervision for another offense. After notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. A criminal justice agency may disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order [~~an individual or agency described by Section 411.083(b)(1), (2), or (3)~~]. A person may petition the court that placed the person on deferred adjudication for an order of nondisclosure on payment of a $28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. The payment may be made only on or after:

(1) the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor other than a misdemeanor described by Subdivision (2);

(2) the second [~~fifth~~] anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor under Chapter 20, 21, 22, 25, 42, or 46, Penal Code; or

(3) the fifth [~~10th~~] anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a felony.

(g) When an order of nondisclosure is issued under this section [~~subsection~~], the clerk of the court shall send a copy of the order by certified mail, return receipt requested, to the Crime Records Service of the Department of Public Safety. Not later than 10 business days after receipt of the order, the [~~The~~] Department of Public Safety shall seal any criminal history record information maintained by the department that is the subject of the order. The department shall also send a copy of the order by mail or electronic means to all:

(1) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;

(2) [~~, and to all~~] central federal depositories of criminal records that there is reason to believe have criminal history record information that is the subject of the order; and

(3) private entities that purchase criminal history record information from the department.

(g-1) Not later than 30 business days after receipt of an order from the Department of Public Safety under Subsection (g), an individual or entity described by Subsection (g)(1) shall seal any criminal history record information maintained by the individual or entity that is the subject of the order.

(g-2) A person whose criminal history record information has been sealed under this section is not required in any application for employment, information, or licensing to state that the person has been the subject of any criminal proceeding related to the information that is the subject of an order issued under this section.

(h) The clerk of a court that collects a fee under Subsection (d) shall remit the fee to the comptroller not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and the comptroller shall deposit the fee in the general revenue fund. The Department of Public Safety shall submit a report to the legislature not later than December 1 of each even-numbered year that includes information on:

(1) the number of petitions for nondisclosure and orders of nondisclosure received by the department in each of the previous two years;

(2) the actions taken by the department with respect to the petitions and orders received; [~~and~~]

(3) the costs incurred by the department in taking those actions; and

(4) the number of persons who are the subject of an order of nondisclosure and who became the subject of criminal charges for an offense committed after the order was issued.

(i) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure to the following noncriminal justice agencies or entities only:

(1) the State Board for Educator Certification;

(2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;

(3) the Texas State Board of Medical Examiners;

(4) the Texas School for the Blind and Visually Impaired;

(5) the Board of Law Examiners;

(6) the State Bar of Texas;

(7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;

(8) the Texas School for the Deaf;

(9) the Department of Family and Protective Services;

(10) the Texas Youth Commission;

(11) the Department of Assistive and Rehabilitative Services;

(12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;

(13) the Texas Private Security Board;

(14) a municipal or volunteer fire department;

(15) the Board of Nurse Examiners;

(16) a safe house providing shelter to children in harmful situations;

(17) a public or nonprofit hospital or hospital district;

(18) the Texas Juvenile Probation Commission;

(19) the securities commissioner, the banking commissioner, the savings and loan commissioner, or the credit union commissioner;

(20) the Texas State Board of Public Accountancy; and

(21) the Texas Department of Licensing and Regulation.

(j) If the Department of Public Safety receives information indicating that a private entity that purchases criminal history record information from the department has been found by a court to have committed five or more violations of Section 552.1425 by compiling or disseminating information with respect to which an order of nondisclosure has been issued, the department may not release any criminal history record information to that entity until the first anniversary of the date of the most recent violation.

SECTION ____. Article 35.12, Code of Criminal Procedure, is amended to read as follows:

Art. 35.12. MODE OF TESTING. (a) In testing the qualification of a prospective juror after the juror [~~he~~] has been sworn, the juror [~~he~~] shall be asked by the court, or under its direction:

1. Except for failure to register, are you a qualified voter in this county and state under the Constitution and laws of this state?

2. Have you ever been convicted of theft or any felony?

3. Are you under indictment or legal accusation for theft or any felony?

(b) In testing the qualifications of a prospective juror, with respect to whether the juror has been the subject of an order of nondisclosure or has a criminal history that includes information subject to that order, the juror may state only that the matter in question has been sealed.

SECTION ____. The changes in law made by this Act relating to a person's eligibility for an order of nondisclosure apply to criminal history record information related to a deferred adjudication or similar procedure described by Subsection (f), Section 411.081, Government Code, regardless of whether the deferred adjudication or procedure is entered before, on, or after the effective date of this Act.

Senate Amendment No. 2 (Senate Floor Amendment No. 2)

Amend the West floor amendment to **HB 3093**, on page 5, line 4, following subsection (21), add the following:

(22) the Health and Human Services Commission; and
(23) the Department of Aging and Disability Services".

HB 2335 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Baxter called up with senate amendments for consideration at this time,

HB 2335, A bill to be entitled An Act relating to certain duties of state agencies with regard to members of the United States armed forces and their dependents and the communities in which they reside.

Representative Baxter 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 2335**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2335**: Corte, chair; Chavez; Delisi; Seaman; and M. Noriega.

HB 955 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Solomons called up with senate amendments for consideration at this time,

HB 955, A bill to be entitled An Act relating to the regulation of financial businesses and practices; providing civil penalties.

Representative Solomons 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 955**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 955**: Solomons, chair; Orr; Guillen; Homer; and Elkins.

HB 1238 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Paxton called up with senate amendments for consideration at this time,

HB 1238, A bill to be entitled An Act relating to distribution of certain child support payments by the state disbursement unit.

Representative Paxton moved to concur in the senate amendments to **HB 1238**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 1238** as follows:

(1) In SECTION 1 of the bill, in the introductory language (Senate committee printing page 1, line 12), strike "Subsection (d)" and substitute "Subsections (d) and (e)".

(2) In SECTION 1 of the bill, in added Section 234.008(d), Family Code (Senate committee printing page 1, line 19), strike "The" and substitute "Subject to Subsection (e), the".

(3) In SECTION 1 of the bill, immediately following added Section 234.008(d), Family Code (Senate committee printing page 1, between lines 30 and 31), insert the following:

(e) If the Title IV-D agency is notified by the Federal Office of Child Support Enforcement that Subsection (d) results in the Title IV-D agency's failure to meet the requirements of 42 U.S.C. Sections 654a(e) and 654b related to the establishment and operation of the state case registry and state disbursement unit, Subsection (d) is null and void and the Title IV-D agency shall publish in the Texas Register notice that Subsection (d) is not effective.

HB 602 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Eissler called up with senate amendments for consideration at this time,

HB 602, A bill to be entitled An Act relating to the designation of a weight enforcement officer by a commissioners court in certain counties.

Representative Eissler moved to concur in the senate amendments to **HB 602**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 894): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon;

McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Hegar; Krusee; Pitts.

Absent — Geren; Hope; King, T.; Martinez Fischer.

STATEMENT OF VOTE

When Record No. 894 was taken, I was in the house but away from my desk. I would have voted yes.

Martinez Fischer

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 602**, on page 2, line 3 by adding a new subsection (1) and renumbering the subsequent subsections accordingly:

"(1) that is a county with a population of 1 million or more and is within 200 miles of an internation border, or"

Senate Amendment No. 2 (Senate Floor Amendment No. 1)

Amend **HB 602** (Senate Committee Report), as follows:

(1) On page 1, line 36, between "COURT." and "A", insert "(a)".

(2) On page 1, between lines 46 and 47, insert the following:

(b) A constable or deputy constable designated under this Section shall be subject to the requirements of Subchapter C, Chapter 644, Transportation Code.

HB 2257 - HOUSE CONCURS IN SENATE AMENDMENTS

Representative Gallego called up with senate amendments for consideration at this time,

HB 2257, A bill to be entitled An Act relating to the speed limit on certain highways in rural counties.

Representative Gallego moved to concur in the senate amendments to **HB 2257**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.) (The vote was reconsidered later today, and the house concurred in senate amendments to **HB 2257** by Record No. 899.)

HB 2339 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Baxter called up with senate amendments for consideration at this time,

HB 2339, A bill to be entitled An Act relating to the provision of mail ballots to overseas voters and to conforming adjustments to related dates, deadlines, and procedures.

Representative Baxter moved to concur in the senate amendments to **HB 2339**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 2339** as follows:

On page 11, lines 15-25, strike Subsection (a) and substitute the following Subsection (a):

(a) Except as provided by Subsection (f), a [~~A~~] candidate's application for a place on a special election ballot must be filed not later than:

(1) 5 p.m. of the 67th day before election day, if election day is on or after the 70th day after the date the election is ordered;

(2) 5 p.m. of the 31st day before election day, if election day is on or after the 36th day and before the 70th day after the date the election is ordered; or

(3) [~~(2)~~] 5 p.m. of a day fixed by the authority ordering the election, which day must be not earlier than the fifth day after the date the election is ordered and not later than the 20th day before election day, if election day is before the 36th day after the date the election is ordered.

Senate Amendment No. 2 (Senate Floor Amendment No. 3)

Amend **HB 2339** (senate committee printing) by adding the following appropriately number SECTION to the bill and renumbering the remaining SECTIONS of the bill appropriately:

SECTION ___. Subchapter D, Chapter 11, Education Code, is amended by adding Section 11.168 to read as follows:

Sec. 11.168. ELECTIONEERING PROHIBITED. Notwithstanding any other law, the board of trustees of an independent school district may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party.

HB 1207 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Haggerty called up with senate amendments for consideration at this time,

HB 1207, A bill to be entitled An Act relating to the deadline for filing a petition to exclude land from a water district with outstanding bonds for failure to provide sufficient services.

Representative Haggerty 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 1207**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1207**: Haggerty, chair; Bonnen; Hardcastle; Puente; and Callegari.

HB 2525 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Callegari called up with senate amendments for consideration at this time,

HB 2525, A bill to be entitled An Act relating to contracts by governmental entities for construction projects and related professional services and to public works performance and payment bonds.

Representative Callegari 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 2525**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2525**: Callegari, chair; W. Smith; Anderson; Frost; and Rodriguez.

HB 2668 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Dutton called up with senate amendments for consideration at this time,

HB 2668, A bill to be entitled An Act relating to the performance by a private entity of the functions of a local child support registry or a child support enforcement agency and to the receipt, disbursement, and monitoring of child support payments.

Representative Dutton 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 2668**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2668**: Dutton, chair; Goodman; Nixon; Paxton; and Strama.

HB 3112 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Campbell called up with senate amendments for consideration at this time,

HB 3112, A bill to be entitled An Act relating to the security of computer networks in state government.

Representative Campbell moved to concur in the senate amendments to **HB 3112**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 3112** (House engrossment) as follows:

(1) In Section 1 of the bill, in added Subchapter B, Chapter 2059, Government Code (page 2, between lines 4 and 5), insert a new Section 2059.052 to read as follows:

Sec. 2059.052. SERVICES PROVIDED TO INSTITUTIONS OF HIGHER EDUCATION. The department may provide network security services to an institution of higher education, and may include an institution of higher education in a center, only if and to the extent approved by the Information Technology Council for Higher Education.

(2) Renumber the sections of Subchapter B, Chapter 2059, Government Code, and cross-references to those sections accordingly.

Senate Amendment No. 2 (Senate Committee Amendment No. 2)

Amend **HB 3112** (Engrossed Version) as follows:

On Page 7, beginning on line 13, strike Section 2059.106 (Engrossed version) and substitute the following:

"Sec. 2059.106. PRIVATE VENDOR. The department may contract with a private vendor to build and operate the center and act as an authorized agent to acquire, install, integrate, maintain, configure, and monitor the network security services and security infrastructure elements."

Senate Amendment No. 3 (Senate Floor Amendment No. 1)

Amend **HB 3112** (Senate committee printing) in Section 1 of the bill by striking added Section 2059.054, Government Code (page 2, lines 4-8), and substituting the following:

Sec. 2059.054. RESTRICTED INFORMATION. (a) Confidential network security information may be released only to officials responsible for the network, law enforcement, the state auditor's office, and agency or elected officials designated by the department.

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

HB 3426 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Miller called up with senate amendments for consideration at this time,

HB 3426, A bill to be entitled An Act relating to the establishment of a binational alcohol and substance abuse task force.

Representative Miller moved to concur in the senate amendments to **HB 3426**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 3426, A bill to be entitled An Act relating to the establishment of a binational alcohol and substance abuse task force.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter F, Chapter 12, Health and Safety Code, is amended by adding Section 12.072 to read as follows:

Sec. 12.072. BINATIONAL ALCOHOL AND SUBSTANCE ABUSE TASK FORCE. (a) The binational alcohol and substance abuse task force is created to study:

(1) the effect of substance abuse on residents living near the border, with emphasis on residents who are at least 14 years of age but younger than 26 years of age;

(2) hereditary factors that may contribute to a predisposition to alcohol dependency;

(3) the contributing factors of binge drinking by both minors and persons of legal drinking age and the effects on health and the community of binge drinking; and

(4) the effect on the community of drug traffickers using young residents living near the border to transport illegal drugs into the United States.

(b) The task force consists of:

(1) five members of the house of representatives each of whom represents a district wholly or partly located 25 miles or less from the international border, appointed by the speaker of the house of representatives;

(2) five members of the senate each of whom represents a district wholly or partly located 25 miles or less from the international border, appointed by the lieutenant governor;

(3) three district attorneys or their representatives from different locations along the international border;

(4) the commissioner of the Department of State Health Services or a representative of the commissioner designated by the commissioner;

(5) the public safety director of the Department of Public Safety or a representative of the public safety director designated by the public safety director;

(6) three representatives of the public from different locations along the international border who have significant experience working in substance abuse and intervention programs in a county on that border;

(7) three representatives employed by a local law enforcement agency that has jurisdiction extending to the international border;

(8) one member from each of the following organizations:

(A) the State Bar of Texas;

(B) the Mexican American Bar Association; and

(C) a nonprofit organization with significant experience in issues prevalent in the border region; and

(9) three licensed physicians from different locations along the international border.

(c) The task force may invite individuals from any state in the United Mexican States that borders Texas, with qualifications similar to those of members of the task force, to participate as members of the task force in task force activities.

(d) The task force may invite federal agencies with jurisdiction over alcohol and illegal drug laws to participate as members of the task force in task force activities.

(e) The task force has a chairperson and vice chairperson as presiding officers. The chairperson and vice chairperson alternate each year between the two membership groups appointed by the lieutenant governor and the speaker. The chairperson and vice chairperson may not be from the same membership group. The lieutenant governor shall designate a presiding officer from the appointed senate membership group and the speaker shall designate the other presiding officer from the appointed house of representatives membership group. The speaker of the house of representatives shall appoint the first chairperson, who will serve until January 1, 2007.

(f) The chairperson and vice chairperson shall nominate the members of the task force in Subsections (b)(3) and (6) through (9). Those members of the task force are appointed if a majority of the other members of the task force approve their appointment.

(g) The task force may seek and accept grants and donations to fulfill its duties.

(h) Not later than November 1 of each even-numbered year, the task force shall submit a report to the governor and the legislature regarding any recommendations or findings related to the duties of the task force.

(i) This section expires and the task force is abolished January 1, 2009.

SECTION 2. This Act takes effect September 1, 2005.

HB 908 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Turner called up with senate amendments for consideration at this time,

HB 908, A bill to be entitled An Act relating to the use of the reverse auction procedure by the Texas Building and Procurement Commission and other state agencies.

Representative Turner moved to concur in the senate amendments to **HB 908**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 908** as follows:

In Section 1, Subsection (a), strike "Except as provided by Subsection (e), in".

In Section 1, Subsection (a), replace "[In]" with "In".

In Section 1, strike Subsection (e).

Senate Amendment No. 2 (Senate Floor Amendment No. 1)

Amend Floor Amendment 1 to **HB 908** as follows:

In Section 2, Sec. 2155.085(1) strike "except as provide by Section 2055.062(e),".

HB 2593 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Baxter called up with senate amendments for consideration at this time,

HB 2593, A bill to be entitled An Act relating to the TexasOnline project, the TexasOnline Authority, and related powers and fees.

Representative Baxter moved to concur in the senate amendments to **HB 2593**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 895): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Hegar; Krusee; Pitts.

Absent — Deshotel; Edwards; Martinez Fischer.

STATEMENT OF VOTE

When Record No. 895 was taken, I was in the house but away from my desk. I would have voted yes.

Martinez Fischer

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 2593** (engrossed) as follows:

In Section 6, add a new subsection (d) to Sec. 2054.2591 to read as follows:

(d) No fee may be charged to a person authorized to file electronically under Section 195.003, Local Government Code, for filing, recording, access to or electronic copies of a real property record subject to the provisions of Chapter 195, Local Government Code, except as provided in Sections 195.006 or 195.007, Local Government Code.

HB 823 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Keel called up with senate amendments for consideration at this time,

HB 823, A bill to be entitled An Act relating to the applicability of the offense of unlawful carrying of weapons to certain persons and to the consequence of certain presumptions in the prosecution of a criminal offense.

HB 823 - POINT OF ORDER

Representative Burnam raised a point of order against further consideration of **HB 823** under Rule 8, Section 3 of the House Rules on the grounds that the bill contains two subjects.

The chair overruled the point of order, speaking as follows:

Representative Burnam raised a point of order against further consideration of **HB 823**. The chair finds that the subject of the bill is the standards and limitations applicable to the carrying of a handgun. This is sufficient to comply with Rule 8, Section 3 of the House Rules.

Representative Keel moved to concur in the senate amendments to **HB 823**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: Uresti recorded voting no.)

HB 823 - STATEMENT OF LEGISLATIVE INTENT

It is well established in Texas that a person who is traveling has a right to possess a handgun for personal protection. The practical problem with this right has historically been that courts have disagreed on the definition of "traveling". The legislature has likewise never defined "traveling" because a definition invariably has the unintended effect of unfairly limiting the term to a narrow set of circumstances.

HB 823 shores up the right of citizens to carry a concealed handgun while traveling by further underscoring the inapplicability of the offense of unlawfully carrying a weapon ("UCW") (Penal Code §46.02) to persons under particular factual circumstances. It does this by providing for a legal presumption in favor of citizens that they are travelers if they are in a private vehicle with a handgun that is not in plain view, they are not otherwise engaged in unlawful activity nor otherwise prohibited by law from possessing a firearm, and they are not a member of a criminal street gang.

In plain terms, a law-abiding person should not fear arrest if they are transporting a concealed pistol in a motor vehicle. There is no longer the need for a law enforcement officer to apply a subjective definition of what constitutes "traveling" where the citizen is cloaked with the presumption per the terms of the new statute. Under those circumstances the citizen should be allowed to proceed on their way.

HB 823 represents the first time a presumption has been crafted in favor of a defendant in the modern penal code of Texas. The presumption applies unless the prosecution proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist. If the state fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed fact exists. By enacting this unprecedented evidentiary standard under §2.05 in conjunction with the substantive terms of the presumption in §46.15, the legislation is intended to have the practical effect of preventing in the first place the arrest of citizens who meet the newly specified prerequisites of being a presumed traveler.

It should be noted that the very real problem of citizens having to prove their innocence *after arrest* by the assertion of their right to carry a firearm while traveling was the reason the 75th Legislature replaced the "defense" of traveling with a classification of the statute of UCW as instead entirely "inapplicable" to a

traveler. This change was well-intentioned but did not have the intended effect of protecting honest citizens from potential arrest because the term "traveling" was still left to individual police or judicial officials to define on a case-by-case basis. As a consequence, law-abiding citizens who availed themselves of their right to have a handgun while traveling continued to face arrest and often later prevailed only in a court of law after proving that they were indeed traveling. As originally filed, **HB 823** proposed to classify traveling as an "exception" (per Penal Code §2.02) to prosecution for UCW. However, after further consideration, the Criminal Jurisprudence Committee concluded that such an approach would be as ineffective as the 1997 change for the very same reasons.

In passing **HB 823**, this legislature, like all previous legislatures, has declined to define traveling, avoiding limiting the term to a narrow set of particular circumstances. For example, to require someone to have an overnight stay in a journey in order to be classified as a traveler would be unfair to persons traveling great distances in one day. Likewise, a requirement that a citizen be "crossing county lines" may make no sense, such as in areas of Texas where travelers drive hundreds of miles without leaving a single county. Moreover, the ability of police to elicit such evidence and consistently apply its subjective terms on the street in a traffic stop has not proven practical, at all. **HB 823** instead focuses on creating a specific set of relevant, objective facts that are capable of being determined on the spot by law officers.

There are several additional important points that should be made in regard to the enactment of **HB 823** and its interface with current law.

HB 823 does not give "everyone the right to carry a gun in a car". State and federal laws applicable to firearms must be noted in conjunction with the new statute's terms, particularly the limitation of the presumption to persons who are "not otherwise prohibited by law from possessing a firearm." For example, persons subject to an active protective order are not covered by the presumption, nor are persons with any felony conviction or even some misdemeanor convictions for offenses, e.g., family violence. The presumption is likewise inapplicable to persons associated with a criminal street gang, even if they have no conviction for any offense. These as well as all other existing limitations on firearm ownership and/or possession make the new statute inapplicable to persons covered by such prohibitions.

Furthermore, as stated in the statute, the presumption will not apply to persons who are otherwise engaged in any criminal conduct. This would include persons who are driving while intoxicated, driving recklessly, committing criminal mischief, or committing *any other criminal offense* outside that of a minor traffic infraction.

The presumption also does not apply where the gun is openly displayed. This was added by the Senate in response to concerns that citizens would otherwise possibly inadvertently have a weapon visible in a fast food or bank drive thru, etcetera, and alarm others. (Note, however, that the requirement that the gun be concealed is pertinent only to the issue of whether the defendant is eligible to receive a presumption instruction per the new terms of §2.05. It is not a new element required of a person who is traveling within the context of §46.15).

The enactment of **HB 823** was the culmination of study, committee hearings and debate by the House Committee on Criminal Jurisprudence. The new law is intended to assist law enforcement in doing its job while at the same time

protecting law-abiding citizens from the threat of arrest for merely exercising their right to arm themselves while traveling–a right to which they are already entitled.

Terry Keel, Chair
Criminal Jurisprudence Committee

Senate Committee Substitute

CSHB 823, A bill to be entitled An Act relating to the applicability of the offense of unlawful carrying of weapons to certain persons and to the consequence of certain presumptions in the prosecution of a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 46.15, Penal Code, is amended by adding Subsection (i) to read as follows:

(i) For purposes of Subsection (b)(3), a person is presumed to be traveling if the person is:

(1) in a private motor vehicle;

(2) not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic;

(3) not otherwise prohibited by law from possessing a firearm; and

(4) not a member of a criminal street gang, as defined by Section 71.01.

SECTION 2. Section 2.05, Penal Code, is amended to read as follows:

Sec. 2.05. PRESUMPTION. (a) Except as provided by Subsection (b), when [~~When~~] this code or another penal law establishes a presumption with respect to any fact, it has the following consequences:

(1) if there is sufficient evidence of the facts that give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted to the jury, the court shall charge the jury, in terms of the presumption and the specific element to which it applies, as follows:

(A) that the facts giving rise to the presumption must be proven beyond a reasonable doubt;

(B) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find;

(C) that even though the jury may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense charged; and

(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose.

(b) When this code or another penal law establishes a presumption in favor of the defendant with respect to any fact, it has the following consequences:

(1) if there is sufficient evidence of the facts that give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted to the jury, the court shall charge the jury, in terms of the presumption, that:

(A) the presumption applies unless the state proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist;

(B) if the state fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed fact exists;

(C) even though the jury may find that the presumed fact does not exist, the state must prove beyond a reasonable doubt each of the elements of the offense charged; and

(D) if the jury has a reasonable doubt as to whether the presumed fact exists, the presumption applies and the jury must consider the presumed fact to exist.

SECTION 3. The changes in law made by this Act apply 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 covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 4. This Act takes effect September 1, 2005.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 823** (Senate committee printing), in SECTION 1 of the bill, in proposed Subsection (i), Section 46.15, Penal Code, as follows:

(1) On page 1, at the end of line 23, strike "and".

(2) On page 1, immediately preceding the period at the end of line 25, insert:

; and

(5) not carrying a handgun in plain view

HB 580 - MOTION TO CALL UP WITH SENATE AMENDMENTS

Representative W. Smith called up with senate amendments for consideration at this time,

HB 580, A bill to be entitled An Act relating to the authority of a county to provide hazardous materials services.

HB 580 - POINT OF ORDER

Representative Nixon raised a point of order against further consideration of **HB 580** under Rule 11, Sections 2 and 3 of the House Rules on the grounds that the senate amendments are not germane to the bill.

(Martinez Fischer now present)

The chair sustained the point of order.

The ruling precluded further consideration of **HB 580**. (The point of order was withdrawn later today, and the house appointed conferees to **HB 580**.)

HB 2928 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Kolkhorst called up with senate amendments for consideration at this time,

HB 2928, A bill to be entitled An Act relating to projects that may be undertaken by certain development corporations with respect to business enterprises or business development.

Representative Kolkhorst 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 2928**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2928**: Kolkhorst, chair; Ritter; Chisum; B. Cook; and McReynolds.

HB 2120 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative R. Allen called up with senate amendments for consideration at this time,

HB 2120, A bill to be entitled An Act relating to the efficient administration and certain powers of county government.

Representative R. Allen 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 2120**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2120**: R. Allen, chair; Nixon; Hamric; Rose; and Truitt.

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).

HB 266 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative W. Smith called up with senate amendments for consideration at this time,

HB 266, A bill to be entitled An Act relating to the time for processing a county building permit.

Representative W. Smith 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 266**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 266**: W. Smith, chair; Mowery; Harper-Brown; Naishtat; and Blake.

HB 616 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Callegari called up with senate amendments for consideration at this time,

HB 616, A bill to be entitled An Act relating to a landowner's liability for injuries incurred during certain recreational activities.

Representative Callegari moved to concur in the senate amendments to **HB 616**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 616, A bill to be entitled An Act relating to a landowner's liability for injuries incurred during certain recreational activities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (3), Section 75.001, Civil Practice and Remedies Code, is amended to read as follows:

(3) "Recreation" means an activity such as:

(A) hunting;

(B) fishing;

(C) swimming;

(D) boating;

(E) camping;

(F) picnicking;

(G) hiking;

(H) pleasure driving, including off-road motorcycling and off-road automobile driving and the use of all-terrain vehicles;

(I) nature study, including bird-watching;

(J) cave exploration;

(K) waterskiing and other water sports; [~~or~~]

(L) any other activity associated with enjoying nature or the outdoors;

(M) bicycling and mountain biking;

(N) disc golf; or

(O) on-leash and off-leash walking of dogs.

SECTION 2. Subsections (e), (f), and (g), Section 75.002, 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 owned, operated, or maintained by a governmental unit [~~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; and

(3) soap box derby use.

(f) Notwithstanding Subsections (b) and (c), if a person enters premises owned, operated, or maintained by a governmental unit and engages in recreation on those premises, the governmental unit does not owe to the person a greater degree of care than is owed to a trespasser on the premises [~~This section 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 a governmental unit [~~the state or a municipality or county~~] owns, operates, or maintains and on which the recreational activities described in Subsections [~~Subsection~~] (e)(1) and (2) are conducted shall post and maintain a clearly readable sign in a clearly visible location on or near the premises. The sign shall contain the following warning language:

WARNING

TEXAS LAW (CHAPTER 75, CIVIL PRACTICE AND REMEDIES CODE) LIMITS THE LIABILITY OF A GOVERNMENTAL UNIT [~~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, OR SOAP BOX DERBY USE ON PREMISES THAT THE GOVERNMENTAL UNIT [~~STATE OR THE MUNICIPALITY OR COUNTY~~] OWNS, OPERATES, OR MAINTAINS FOR THAT PURPOSE.

SECTION 3. 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 4. 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, 2005.

HB 765 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Menendez called up with senate amendments for consideration at this time,

HB 765, A bill to be entitled An Act relating to notice of coverage under certain group health insurance policies and standard health benefit plans.

Representative Menendez moved to concur in the senate amendments to **HB 765**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 765** as follows:

In Section 2 of the bill, delete subsection c in its entirety.

HB 790 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Crownover called up with senate amendments for consideration at this time,

HB 790, A bill to be entitled An Act relating to the conduct of newborn screening by the Department of State Health Services.

Representative Crownover moved to concur in the senate amendments to **HB 790**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 790, A bill to be entitled An Act relating to the conduct of newborn screening by the Department of State Health Services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 33, Health and Safety Code, is amended to read as follows:

CHAPTER 33. PHENYLKETONURIA, OTHER HERITABLE DISEASES, [~~AND~~] HYPOTHYROIDISM, AND CERTAIN OTHER DISORDERS

SECTION 2. Subchapter A, Chapter 33, Health and Safety Code, is amended by adding Section 33.004 to read as follows:

Sec. 33.004. STUDY ON NEWBORN SCREENING METHODOLOGY AND EQUIPMENT. (a) Not later than March 1, 2006, the department shall:

(1) conduct a study to determine the most cost–effective method of conducting newborn screening, including screening for disorders listed in the core uniform panel of newborn screening conditions recommended in the 2005 report by the American College of Medical Genetics entitled "Newborn Screening: Toward a Uniform Screening Panel and System" or another report determined by the department to provide more appropriate newborn screening guidelines, to protect the health and welfare of this state's newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening;

(2) determine the disorders to be studied under Subdivision (1) and ensure the study does not examine screening and services provided under Chapter 47; and

(3) obtain proposals or information regarding the conduct of newborn screening and compare the costs of the department performing newborn screening services to the costs of outsourcing screening to a qualified laboratory with at least two years' experience performing newborn screening tests.

(a-1) Not later than October 1, 2005, the department shall review and study the National Newborn Screening and Genetics Resources Center's assessment of the screening program in this state. Based on the findings and recommendations in the assessment, the executive commissioner of the Health and Human Services Commission may adopt rules for the department to implement a newborn screening program. In adopting rules for the newborn screening program, the department and the executive commissioner:

(1) may seek input during the rulemaking process from individuals and groups with an interest or expertise in newborn screening;

(2) may use informal conferences or consultations to obtain opinions on the program as provided by Section 2001.031, Government Code; and

(3) must provide an opportunity for the individuals and groups described by Subdivision (1) to appear before the department before a notice of proposed rules is given as required by Section 2001.023, Government Code.

(a-2) This subsection and Subsection (a-1) expire January 1, 2007.

(b) In accordance with rules adopted by the executive commissioner of the Health and Human Services Commission, the department may implement a newborn screening program.

(b-1) Not later than March 1, 2006, the department shall file with the governor's office a written report of the results and conclusions of the study conducted by the department under Subsection (a). This subsection expires January 1, 2007.

(c) If the department determines under Subsection (a) that the department's performance of newborn screening services is more cost-effective than outsourcing newborn screening, the department shall obtain the use of screening methodologies, including tandem mass spectrometers, and hire the employees necessary to administer newborn screening under this chapter.

(d) If the department determines under Subsection (a) that outsourcing of newborn screening is more cost-effective, the department shall contract for the resources and services necessary to conduct newborn screening using a competitive procurement process.

(e) The department shall periodically review the newborn screening program as revised under this section to determine the efficacy and cost-effectiveness of the program and determine whether adjustments to the program are necessary to protect the health and welfare of this state's newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening.

(f) The department may adjust the amounts charged for newborn screening fees, including fees assessed for follow-up services, tracking confirmatory testing, and diagnosis.

SECTION 3. Section 33.011, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The physician attending a newborn child or the person attending the delivery of a newborn child that is not attended by a physician shall subject the child to screening tests approved by the department for phenylketonuria, other heritable diseases, [~~and~~] hypothyroidism, and other disorders for which screening is required by the department.

(a-1) To the extent funding is available for the screening, the department shall require newborn screening tests to screen for disorders listed in the core uniform panel of newborn screening conditions recommended in the 2005 report by the American College of Medical Genetics entitled "Newborn Screening: Toward a Uniform Screening Panel and System" or another report determined by the department to provide more appropriate newborn screening guidelines to protect the health and welfare of this state's newborns.

SECTION 4. Section 33.014(a), Health and Safety Code, is amended to read as follows:

(a) If, because of an analysis of a specimen submitted under Section 33.011, the department reasonably suspects that a newborn child may have phenylketonuria, another heritable disease, [~~or~~] hypothyroidism, or another disorder for which the screening tests are required, the department shall notify the person who submits the specimen that the results are abnormal and provide the test results to that person. The department may notify one or more of the following that the results of the analysis are abnormal and recommend [~~that~~] further testing when [~~is~~] necessary:

(1) the physician attending the newborn child or the physician's designee;

(2) the person attending the delivery of the newborn child that was not attended by a physician;

(3) the parents of the newborn child;

(4) the health authority of the jurisdiction in which the newborn child was born or in which the child resides, if known; or

(5) physicians who are cooperating pediatric specialists for the program.

SECTION 5. Section 33.031(a), Health and Safety Code, is amended to read as follows:

(a) All newborn children and other individuals under 21 years of age who have been screened, have been found to be presumptively positive through the newborn screening program for phenylketonuria, other heritable diseases, hypothyroidism, or another disorder for which the screening tests are required, and may be financially eligible may be referred to the department's services program for children with special health care needs.

SECTION 6. Section 33.032(a), Health and Safety Code, is amended to read as follows:

(a) Within the limits of funds available for this purpose and in cooperation with the individual's physician, the department may provide services directly or through approved providers to individuals of any age who meet the eligibility criteria specified by board rules on the confirmation of a positive test for phenylketonuria, other heritable diseases, [~~or~~] hypothyroidism, or another disorder for which the screening tests are required.

SECTION 7. Not later than November 1, 2006, the Department of State Health Services shall implement the expanded newborn screening program using the most cost-effective methods as determined by the department under Section 33.004, Health and Safety Code, as added by this Act.

SECTION 8. This Act takes effect September 1, 2005.

HB 809 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Hilderbran called up with senate amendments for consideration at this time,

HB 809, A bill to be entitled An Act relating to excepting certain motor vehicles owned by an individual and used for the production of income from required rendition for ad valorem tax purposes.

Representative Hilderbran moved to concur in the senate amendments to **HB 809**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 809, A bill to be entitled An Act relating to excepting certain motor vehicles owned by an individual and used for the production of income from required rendition for ad valorem tax purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 22.01, Tax Code, is amended by adding Subsection (k) to read as follows:

(k) Notwithstanding Subsections (a) and (b), an individual who owns and is the primary operator of one or more passenger cars or light trucks in the course of the individual's occupation or profession and also operates those vehicles for personal activities that do not involve the production of income is not required to render the vehicles for taxation. In this subsection, "passenger car" and "light truck" have the meanings assigned by Section 502.001, Transportation Code.

SECTION 2. The change in law made by this Act applies only to the rendition of property for an ad valorem tax year that begins on or after January 1, 2006.

SECTION 3. This Act takes effect January 1, 2006.

HB 831 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Gonzales called up with senate amendments for consideration at this time,

HB 831, A bill to be entitled An Act relating to the eligibility of certain appellate judges to retire with full benefits.

Representative Gonzales moved to concur in the senate amendments to **HB 831**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 831, A bill to be entitled An Act relating to the eligibility of certain judges to retire with full benefits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 839.101(a), Government Code, is amended to read as follows:

(a) A member is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system;

(2) is at least 65 years old and has at least 12 years of service credited in the retirement system, regardless of whether the member currently holds a judicial office;

(3) is at least 55 years old and has at least 20 years of service credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(4) has served at least 12 years [~~two full terms~~] on an appellate court and the sum of the member's age and amount of service credited in the retirement system equals or exceeds the number 70, regardless of whether the member currently holds a judicial office.

SECTION 2. Section 834.101(a), Government Code, is amended to read as follows:

(a) A member is eligible to retire and receive a base service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system;

(2) is at least 65 years old and has at least 12 years of service credited in the retirement system, regardless of whether the member currently holds a judicial office; [~~or~~]

(3) has at least 20 years of service credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(4) has served at least 12 years on an appellate court and the sum of the member's age and amount of service credited in the retirement system equals or exceeds the number 70, regardless of whether the member currently holds a judicial office.

SECTION 3. This Act takes effect September 1, 2005.

HB 975 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Madden called up with senate amendments for consideration at this time,

HB 975, A bill to be entitled An Act relating to a deposition taken of a witness in a criminal action.

Representative Madden moved to concur in the senate amendments to **HB 975**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 975** by inserting the following after the period on page 2, line 25: "This provision is limited to the purposes stated in Section 39.01.".

HB 1092 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative W. Smith called up with senate amendments for consideration at this time,

HB 1092, A bill to be entitled An Act relating to the authority of certain counties to remove property from county roads.

Representative W. Smith moved to concur in the senate amendments to **HB 1092**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1092** as follows:

On page 1, line 16, after "right-of-way" insert "for at least six hours"

HB 1353 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative R. Cook called up with senate amendments for consideration at this time,

HB 1353, A bill to be entitled An Act relating to creation and operation of a guaranty fund for certain groups certified to self insure for workers' compensation insurance coverage and to service companies that administer the guaranty fund.

Representative R. Cook moved to concur in the senate amendments to **HB 1353**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1353**, Engrossed Version, on page 2, line 6 (Sec. 407A.453(b)(2), by deleting Subdivision (2) and inserting a new Subdivision (2) as follows:

"(2) one member to represent wage earners designated by the commission;"

HB 1610 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Chisum called up with senate amendments for consideration at this time,

HB 1610, A bill to be entitled An Act relating to a county fee for an activity that excavates or cuts the surface of a county road.

Representative Chisum 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 1610**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1610**: Chisum, chair; R. Allen; W. Smith; Olivo; and Farabee.

(Speaker in the chair)

HB 580 - POINT OF ORDER WITHDRAWN

Representative Nixon withdrew his point of order on **HB 580**.

HB 580 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative W. Smith called up with senate amendments for consideration at this time,

HB 580, A bill to be entitled An Act relating to the authority of a county to provide hazardous materials services.

Representative W. Smith 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 580**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 580**: W. Smith, chair; Bonnen; T. King; Howard; and R. Allen.

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. 4).

(J. Keffer in the chair)

HB 1800 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Denny called up with senate amendments for consideration at this time,

HB 1800, A bill to be entitled An Act relating to corrected reports, registrations, and statements filed with the Texas Ethics Commission.

Representative Denny 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 1800**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1800**: Denny, chair; J. Jones; Hughes; Keel; and Madden.

HB 1890 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Smithee called up with senate amendments for consideration at this time,

HB 1890, A bill to be entitled An Act relating to the operation and funding of the Texas Windstorm Insurance Association, including funding of coverage for certain catastrophic events through the establishment of a revenue bond program.

Representative Smithee 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 1890**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1890**: Smithee, chair; Eiland; B. Keffer; Escobar; and Taylor.

HB 2180 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Anderson called up with senate amendments for consideration at this time,

HB 2180, A bill to be entitled An Act relating to donees of anatomical gifts.

Representative Anderson moved to concur in the senate amendments to **HB 2180**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 2180, A bill to be entitled An Act relating to donees of anatomical gifts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 692.005, Health and Safety Code, is amended to read as follows:

Sec. 692.005. PERSONS WHO MAY BECOME DONEES. (a) The following persons may be donees of gifts of bodies or parts of bodies:

(1) a qualified organ procurement organization, for distribution to another person who may be a donee under this section, to be used for transplantation;

(2) a hospital or physician, to be used only for therapy or transplantation;

(3) a bank or storage facility, to be used only for therapy or transplantation;

(4) a person specified by a physician, to be used only for therapy or transplantation needed by the person;

(5) an eye bank the medical activities of which are directed by a physician;

(6) a forensic science program at:

(A) a general academic teaching institution, as defined by Section 61.003(3), Education Code; or

(B) a private or independent institution of higher education, as defined by Section 61.003(15), Education Code; or

(7) [~~(6)~~] the Anatomical Board of the State of Texas.

(b) Except for donations to a forensic science program under Subsection (a)(6), the [~~The~~] Anatomical Board of the State of Texas shall be the donee of gifts of bodies or parts of bodies made for education or research, which are subject to distribution by that board under Chapter 691.

(c) A forensic science program that receives a donation under Subsection (a)(6) must submit a report to the Anatomical Board of the State of Texas on a quarterly basis that lists:

(1) the number of bodies or parts of bodies the forensic science program received; and

(2) the method in which the forensic science program used the bodies or parts of bodies for education or research.

SECTION 2. This Act takes effect September 1, 2005.

HB 2267 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative W. Smith called up with senate amendments for consideration at this time,

HB 2267, A bill to be entitled An Act relating to the powers of the Coastal Water Authority; providing the authority to impose a tax; affecting the authority to issue bonds.

Representative W. Smith moved to concur in the senate amendments to **HB 2267**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 896): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Hegar; Krusee; Pitts.

Senate Committee Substitute

CSHB 2267, A bill to be entitled An Act relating to the powers of the Coastal Water Authority; providing the authority to impose a tax; affecting the authority to issue bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Chapter 601, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

Sec. 3. The Authority shall have and exercise and is hereby vested with all of the rights, powers and privileges, authorities and functions conferred and imposed by the general laws of this state now in force or hereafter enacted applicable to water control and improvement districts and municipal utility districts created under authority of Section 59 of Article XVI, Constitution of Texas, but to the extent that the provisions of such general laws may be in conflict or inconsistent with the provisions of this Act, the provisions of this Act shall prevail. All such general laws are hereby adopted and incorporated by reference with the same effect as if incorporated in full in this Act. Without in any way limiting the generalization of the foregoing, it is expressly provided that the Authority shall have and exercise, and is hereby vested with, all of the rights, powers and privileges, authorities and functions conferred by Chapters 51 and 54, Title 4, Water Code, together with all amendments thereof and additions thereto. The Authority shall have the power to make, construct, or otherwise acquire improvements either within or without the boundaries thereof necessary to carry out the powers and authority granted by this Act and said general laws. Not by way of limitation, the Authority shall be authorized and empowered to conserve, store, transport, treat and purify, distribute, sell and deliver water, whether [~~both~~] surface, [~~and~~] underground, desalinated, or reclaimed, to persons, corporations, both public and private, political subdivisions of the state and others, and may purchase, construct or lease all property, works and facilities, both within and without the Authority, necessary for such purposes. The Authority is expressly authorized to acquire water supplies from sources both within and without the boundaries of the Authority and to sell, transport and deliver water to customers situated within and without the Authority and to acquire all properties and facilities necessary for such purposes, and for any and all of such purposes may enter into contracts with persons, with municipal, public and private corporations, including the City of Houston, and any political subdivision of the state for such periods of time, not exceeding forty (40) years, and on such terms and conditions as its Board of Directors may deem desirable, fair and advantageous and to which the parties may agree; provided, that such contracts may provide that they shall continue in effect until bonds issued by the Authority to finance the cost of the Authority's improvements, [~~water system~~] facilities, and other properties, and refunding bonds issued in lieu thereof, are paid. In addition, the Authority shall have the power to contract with others to transport their water and the power to act jointly with others in the performance of all functions and purposes of the Authority. Provided that the Authority has no existing contractual obligation to any person, corporation or political subdivision to use a particular canal, lateral or ditch to transport or deliver water, the Authority is expressly authorized to abandon, sell, release or deconstruct that canal, ditch or lateral if any of the following conditions apply: (i) the Authority has not used the canal, ditch or lateral to transport or deliver water to persons, corporations or political subdivisions of the state for a period of five (5) years; (ii) there are intervening

gaps between the canal, ditch or lateral the Authority wishes to abandon, sell, release or deconstruct and the Authority's primary canal serving that canal, lateral or ditch; or (iii) an adjoining landowner has requested in writing that the Authority abandon, sell, release or deconstruct the canal, ditch or lateral and no other adjoining landowner has objected within thirty (30) days after receiving notice from the Authority of its intent to abandon, sell, release or deconstruct the canal, ditch or lateral. Nothing herein contained shall preclude the Authority from acquiring water rights under any law or permits heretofore or hereafter issued, provided acquisition of the same is approved by order or subsequent permit from the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality. The Authority must secure the approval of the mayor and the city council of the City of Houston, Texas, before the Authority acquires any water rights.

SECTION 2. Chapter 601, Acts of the 60th Legislature, Regular Session, 1967, is amended by adding Sections 3A, 3B, 3C, and 3D to read as follows:

Sec. 3A. The Authority may develop and generate electric energy for use by the Authority or the City of Houston by wind turbines or hydroelectric facilities.

Sec. 3B. (a) The Authority is a local government for purposes of Chapter 431, Transportation Code.

(b) The Authority may create a nonprofit corporation in the manner provided by Chapter 431, Transportation Code, to aid and act on behalf of the Authority in implementing an Authority project. A corporation created under this section has all the powers of and receives the same tax exemptions as a local government corporation created and operating under Chapter 431, Transportation Code.

(c) A corporation created under this section is governed in the same manner as a local government corporation created by a municipality or county, except that the board of the Authority shall appoint the board of the corporation. The board of the corporation serves at the will of the board of the Authority.

(d) The Authority has complete governmental and supervisory control of a corporation created under this section.

(e) A local government corporation created by the Authority may not exercise the powers of a municipality or county and may only become involved in projects which the Authority can perform. A local government corporation created by the Authority may not levy ad valorem taxes or acquire, construct or operate parks or recreational facilities.

Sec. 3C. If the Authority secures a bed and banks permit from the Texas Commission on Environmental Quality, the Authority may use the bed and banks of the navigable and nonnavigable bayous, rivers, and streams of this state to transport and convey water. The Authority may construct and install improvements and facilities in the bayous, rivers, and streams if:

(1) the construction does not interfere with rights of private property owners; and

(2) the Authority receives any required state or federal permits.

Sec. 3D. The Authority may issue unrated bond anticipation notes to finance the cost of an Authority project without obtaining ratings for the notes. The notes are obligations as defined by Section 1371.001, Government Code, and may be issued and secured as provided by Chapter 1371, Government Code.

SECTION 3. Section 4, Chapter 601, Acts of the 60th Legislature, Regular Session, 1967, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d) of this section, the [~~The~~] Authority shall have no power or authority to levy and collect taxes on any property, real, personal or mixed, nor shall the Authority have power and authority to issue bonds or create indebtedness which would in any way be payable from ad valorem taxes levied upon property within the Authority. The Authority shall have no power or authority to limit, regulate or control the pumping, withdrawal or use of subsurface ground water by any person, firm or corporation, nor shall the Authority be authorized to construct, acquire, own or operate facilities for the navigation of public waters except as the Authority may be a lessor of such facilities.

The enactment of this law shall not have the effect of preventing the organization of conservation districts or of preventing boundary changes of such districts within the boundaries of the Authority as authorized in Article XVI, Section 59 and Article III, Section 52 of the Constitution of Texas.

(d) The Authority may incur indebtedness as provided in Article III, Section 52, Texas Constitution, for the purpose of improvement of rivers, creeks and streams to prevent overflows or in aid of such purpose. Any ad valorem taxes or bonds or other indebtedness for this purpose must be approved by two-thirds majority of the voting qualified voters of the Authority.

SECTION 4. (a) All acts and proceedings of the Coastal Water Authority or the board of directors of the Coastal Water Authority taken before the effective date of this Act are validated and confirmed in all respects as if the actions had been done as authorized by law.

(b) A governmental act or proceeding of the authority occurring after an act or proceeding validated by this Act may not be held invalid on the ground that the prior act or proceeding, in the absence of this Act, was invalid.

(c) This section does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

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, 2005.

HB 2344 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Luna called up with senate amendments for consideration at this time,

HB 2344, A bill to be entitled An Act relating to the Council on Cardiovascular Disease and Stroke.

Representative Luna moved to concur in the senate amendments to **HB 2344**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 2344** as follows:

1. On page 9, line 22 insert the following:

(d) The council shall collaborate with the Governor's EMS and Trauma Advisory Council, the American Stroke Association and other stroke experts to make recommendations to the department for rules on the recognition and rapid transportation of stroke patients to health care facilities capable of treating strokes twenty-four hours a day and recording stroke patients outcomes.

(Hegar now present)

HB 2381 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Hegar called up with senate amendments for consideration at this time,

HB 2381, A bill to be entitled An Act relating to posting on the Internet the notice of a meeting of the governing body of a county and certain districts and political subdivisions.

Representative Hegar moved to concur in the senate amendments to **HB 2381**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 2381** (Engrossed Version) as follows:

(1) Strike SECTIONS 2, 3, and 4 and renumber subsequent SECTIONS of the bill accordingly.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today to attend a meeting of the conference committee on **HB 2702**:

Hegar on motion of Keel.

HB 2430 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Puente called up with senate amendments for consideration at this time,

HB 2430, A bill to be entitled An Act relating to the establishment of a rainwater harvesting evaluation committee.

Representative Puente moved to concur in the senate amendments to **HB 2430**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 897): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Hegar; Krusee; Pitts.

Senate Committee Substitute

CSHB 2430, A bill to be entitled An Act relating to the establishment of a rainwater harvesting evaluation committee and to standards for harvested rainwater.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS

SECTION 1. (a) The Texas Water Development Board shall establish a Rainwater Harvesting Evaluation Committee to study the feasibility of using rainwater as a source of water supply.

(b) The committee is composed of four members as follows:

(1) a representative of the Texas Water Development Board, appointed by the board;

(2) a representative of the Texas Commission on Environmental Quality, appointed by the commission;

(3) a representative of the Department of State Health Services, appointed by the commissioner of state health services; and

(4) a representative of the Texas section of the American Water Works Association's Conservation and Reuse Division, appointed by the governing body of that section.

(c) The representative from the Texas Water Development Board is the presiding officer of the committee.

(d) The committee may request the assistance of outside experts or consultants, as necessary.

(e) Not later than December 1, 2006, the committee shall provide a report to the lieutenant governor and the speaker of the house of representatives. The report must:

(1) evaluate the potential for rainwater harvesting in this state; and

(2) recommend:

(A) minimum water quality guidelines and standards for potable and nonpotable indoor uses of rainwater;

(B) treatment methods for potable and nonpotable indoor uses of rainwater;

(C) ways, such as dual plumbing systems, to use rainwater harvesting systems in conjunction with existing municipal water systems for residential, industrial, community, or public water supplies; and

(D) ways that the state can further promote rainwater harvesting.

SECTION 2. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Section 341.042 to read as follows:

Sec. 341.042. STANDARDS FOR HARVESTED RAINWATER. The commission shall establish recommended standards relating to the domestic use of harvested rainwater, including health and safety standards for treatment and collection methods for harvested rainwater intended for drinking, cooking, or bathing.

SECTION 3. (a) Not later than December 1, 2006, the Texas Commission on Environmental Quality shall adopt standards as required by Section 341.042, Health and Safety Code, as added by this Act.

(b) The commission shall coordinate with the Rainwater Harvesting Evaluation Committee in developing the recommended standards established and adopted under Section 341.042, Health and Safety Code.

SECTION 4. Section 1 of this Act expires and the Rainwater Harvesting Evaluation Committee is abolished January 1, 2007.

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, 2005.

HB 2630 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Hill called up with senate amendments for consideration at this time,

HB 2630, A bill to be entitled An Act relating to procedures regarding the removal and storage of vehicles.

Representative Hill moved to concur in the senate amendments to **HB 2630**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: Herrero and Leibowitz recorded voting no.)

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 2630** as follows:

(1) Strike the prefatory language to SECTION 9 of the bill (House engrossment, page 5, lines 24 and 25) and substitute:

"Section 2303.152, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:".

(2) In SECTION 9 of the bill (House engrossment, page 6, between lines 13 and 14), insert:

(e) Notice to the registered owner and the primary lienholder of a vehicle towed to a vehicle storage facility may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

(1) the vehicle does not display a license plate or a vehicle inspection certificate indicating the state of registration;

(2) the identity of the registered owner cannot reasonably be determined by the operator of the storage facility; or

(3) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(3) Strike SECTION 11 of the bill (House engrossment, page 6, line 22 through page 7, line 2) and substitute:

SECTION 11. Sections 2303.155(e) and (f), Occupations Code, are amended to read as follows:

(e) The operator of a vehicle storage facility or governmental vehicle storage facility may charge a daily storage fee under Subsection (b):

(1) for not more than five days before the date notice is mailed or published under this subchapter, if the vehicle is registered in this state; [~~and~~]

(2) for not more than five days before the date the request for owner information is sent to the appropriate governmental entity as required by this subchapter, if the vehicle is registered in another state; and

(3) for each day the vehicle is in storage after the date the notice is mailed or published until the vehicle is removed and all accrued charges are paid.

(f) The operator of a vehicle storage facility or governmental vehicle storage facility may not charge an additional fee related to the storage of a vehicle other than a fee authorized by this section or a towing fee authorized by Chapter 643, Transportation Code [~~that is similar to a notification, impoundment, or administrative fee~~].

(4) Add the following appropriately numbered SECTION to the bill and renumber existing SECTIONS accordingly:

SECTION __. Subchapter D, Chapter 2303, Occupations Code, is amended by adding Section 2303.158 to read as follows:

Sec. 2303.158. FORMS OF PAYMENT OF CHARGES. (a) The operator of a vehicle storage facility shall accept payment by an electronic check, debit card, or credit card for any charge associated with delivery or storage of a vehicle.

(b) In this section, "vehicle storage facility" includes a governmental vehicle storage facility as defined by Section 2303.155.

HB 2639 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Geren called up with senate amendments for consideration at this time,

HB 2639, A bill to be entitled An Act relating to the powers and duties of the Tarrant Regional Water District.

Representative Geren 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 2639**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2639**: Geren, chair; Hardcastle; Puente; R. Cook; and Solis.

HB 2694 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Anchia called up with senate amendments for consideration at this time,

HB 2694, A bill to be entitled An Act relating to the eligibility of certain counties to use the competitive proposal procedure for certain purchases.

Representative Anchia moved to concur in the senate amendments to **HB 2694**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No.1 (Senate Committee Amendment No. 1)

Amend **HB 2694** (Engrossed) by striking "two million", (line 7, page 1), and substituting "one million".

HB 2759 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Taylor called up with senate amendments for consideration at this time,

CSHB 2759, A bill to be entitled An Act relating to the maximum number of registered voters that may be contained in a county election precinct.

Representative Taylor moved to concur in the senate amendments to **HB 2759**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 2759, A bill to be entitled An Act relating to requirements for county election precincts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 42.001, Election Code, is amended to read as follows:

Sec. 42.001. PRECINCTS ESTABLISHED BY COMMISSIONERS COURT. (a) Each commissioners court by order shall divide all the territory of the county into county election precincts in accordance with this subchapter. The precincts must be compact and contiguous.

(b) In a county with a population of more than 175,000, in establishing a county election precinct, the commissioners court shall consider the availability of buildings to use as polling places so that a voter of the precinct will not have to travel more than 25 miles from the voter's residence to reach the polling place for the precinct.

SECTION 2. Section 42.006(d), Election Code, is amended to read as follows:

(d) In a county in which a voting system has been adopted for use in the general election for state and county officers, the maximum number of registered voters a precinct may contain is 5,000[~~:~~

[~~(1) 3,000, in a county with a population of 250,000 or more;~~

[~~(2) 4,000, in a county with a population of 175,000 or more but less than 250,000; and~~

[~~(3) 5,000, in a county with a population of less than 175,000~~].

SECTION 3. Section 43.002, Election Code, is amended by adding Subsection (c) to read as follows:

(c) In making a designation under this section, the commissioners court of a county with a population of more than 175,000 may not designate a location as a polling place that would require a voter in the precinct to travel more than 25 miles from the voter's residence to the polling place.

SECTION 4. This Act takes effect September 1, 2005.

HB 2819 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Rose called up with senate amendments for consideration at this time,

HB 2819, A bill to be entitled An Act relating to access to state electronic and information resources by individuals with disabilities.

Representative Rose moved to concur in the senate amendments to **HB 2819**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 2819** (Senate committee printing) as follows:

(1) In Section 1 of the bill, in the title to added Section 2054.453, Government Code (page 1, line 34), strike "FEDERAL STANDARDS" and substitute "FEDERAL STANDARDS AND LAWS".

(2) In Section 1 of the bill, in added Section 2054. 453, Government Code (page 1, between lines 42 and 43), insert a new Subsection (c) to read as follows:

(c) This subchapter does not require the state to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) to the extent it is not required by federal law.

(3) In Section 1 of the bill, in added Section 2054.454(a), Government Code (page 1, line 43), strike "Each" and substitute "If required by the department, each".

(4) In Section 1 of the bill, in added Section 2054.456(a), Government Code, after the period (page 1, line 61), insert:

Subject to Section 2054.460, the agency shall take reasonable steps to ensure that a disabled employee had reasonable access to perform the employee's duties.

(5) In Section 1 of the bill, strike added Section 2054.456(b), Government Code (page 1, line 62 through page 2, line 3), and substitute:

(b) This section does not require a state agency to install specific accessibility-related software or attach and assistive technology device at a workstation of a state employee.

(6) In Section 1 of the bill, strike added Section 2054.460(a), Government Code (page 2, lines 32-44), and substitute:

(a) If compliance with a provision of this subchapter imposes a significant difficulty or expense on a state agency, the agency is not required to comply with that provision, but the agency may provide individuals with disabilities an alternate method of access under Subsection (b).

(7) In Section 1 of the bill, in added Section 2054.460(b)), Government Code (page 2, line 46), strike "shall" and substitute "may".

(8) In Section 1 of the bill, strike added Section 2054.460(d), Government Code (page 2, lines 57-63), and substitute:

(d) The department shall adopt rules to implement this section.

(e) The executive director of the state agency shall make the final decision on whether this section applies. The decision may not be appealed.

(9) In Section 1 of the bill, in added Subchapter M, Chapter 2054, Government Code (page 3, between lines 19 and 20), add a new Section 2054.465 to read as follows:

Sec. 2054.465. NO CAUSE OF ACTION CREATED. This subchapter does not create a cause of action.

HB 3469 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Hochberg called up with senate amendments for consideration at this time,

HB 3469, A bill to be entitled An Act relating to the establishment of a program to provide grants to be used to reduce emissions of diesel exhaust from school buses and to the use of the Texas emissions reduction plan to fund the program.

Representative Hochberg moved to concur in the senate amendments to **HB 3469**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 898): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee;

Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Hegar; Krusee; Pitts.

Absent — Quintanilla.

Senate Committee Substitute

CSHB 3469, A bill to be entitled An Act relating to the establishment of a program to provide grants to be used to reduce emissions of diesel exhaust from school buses and to the use of the Texas emissions reduction plan to fund the program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 386.051(b), Health and Safety Code, is amended to read as follows:

(b) Under the plan, the commission and the comptroller shall provide grants or other funding for:

(1) the diesel emissions reduction incentive program established under Subchapter C, including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D; [~~and~~]

(3) the new technology research and development program established under Chapter 387; and

(4) the clean school bus program established under Chapter 390.

SECTION 2. Section 386.052(b), Health and Safety Code, is amended to read as follows:

(b) Appropriate commission objectives include:

(1) achieving maximum reductions in oxides of nitrogen to demonstrate compliance with the state implementation plan;

(2) preventing areas of the state from being in violation of national ambient air quality standards; [~~and~~]

(3) achieving cost-saving and multiple benefits by reducing emissions of other pollutants; and

(4) achieving reductions of emissions of diesel exhaust from school buses.

SECTION 3. Section 386.252, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which not more than four percent may be used for the clean school bus program and not more than 10 percent may be used for on-road diesel purchase or lease incentives;

(2) for the new technology research and development program, 9.5 percent of the money in the fund, of which up to $250,000 is allocated for administration, up to $200,000 is allocated for a health effects study, $500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, and not less than 20 percent is to be allocated each year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston; and

(3) for administrative costs incurred by the commission and the laboratory, three percent.

(c) Money in the fund may be allocated to the clean school bus program only if:

(1) the money is available for that purpose after money is allocated for the other purposes of the fund as required by the state implementation plan; or

(2) the amount of money deposited to the credit of the fund in a state fiscal year exceeds the amount the comptroller's biennial revenue estimate shows as the comptroller's estimated amount to be deposited to the credit of the fund in that year.

SECTION 4. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 390 to read as follows:

CHAPTER 390. CLEAN SCHOOL BUS PROGRAM

Sec. 390.001. DEFINITIONS. In this chapter:

(1) "Diesel exhaust" means one or more of the air pollutants emitted from an engine by the combustion of diesel fuel, including particulate matter, nitrogen oxides, volatile organic compounds, air toxics, and carbon monoxide.

(2) "Incremental cost" has the meaning assigned by Section 386.001.

(3) "Program" means the clean school bus program established under this chapter.

(4) "Qualifying fuel" includes any liquid or gaseous fuel or additive registered or verified by the United States Environmental Protection Agency, other than standard gasoline or diesel, that is ultimately dispensed into a school bus that provides reductions of emissions of particulate matter.

(5) "Retrofit" has the meaning assigned by Section 386.101.

Sec. 390.002. PROGRAM. (a) The commission shall establish and administer a clean school bus program designed to reduce the exposure of school children to diesel exhaust in and around diesel-fueled school buses. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of diesel exhaust.

(b) Projects that may be considered for a grant under the program include:

(1) diesel oxidation catalysts for school buses built before 1994;

(2) diesel particulate filters for school buses built from 1994 to 1998;

(3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;

(4) the use of qualifying fuel; and

(5) other technologies that the commission finds will bring about significant emissions reductions.

Sec. 390.003. APPLICATION FOR GRANT. (a) A school district in this state that operates one or more diesel-fueled school buses or a transportation system provided by a countywide school district may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to also apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

Sec. 390.004. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission by rule shall establish criteria for setting priorities for projects eligible to receive grants under this chapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A school bus proposed for retrofit must be used on a regular, daily route to and from a school and have at least five years of useful life remaining unless the applicant agrees to remove the retrofit device at the end of the life of the bus and reinstall the device on another bus.

Sec. 390.005. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the project for which the grant is made, which may include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

Sec. 390.006. EXPIRATION. This chapter expires August 31, 2013.

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, 2005.

HB 3518 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Coleman called up with senate amendments for consideration at this time,

HB 3518, A bill to be entitled An Act relating to the creation of the Harris County Improvement District No. 6; providing authority to impose a tax and issue bonds.

Representative Coleman 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 3518**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3518**: Coleman, chair; R. Allen; W. Smith; Talton; and Olivo.

HB 148 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Harper-Brown called up with senate amendments for consideration at this time,

HB 148, A bill to be entitled An Act relating to the probationary period of persons appointed to beginning positions in certain fire or police departments.

Representative Harper-Brown moved to concur in the senate amendments to **HB 148**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: Herrero recorded voting no.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 148** on page 1, line 10, after the period, strike "The", and insert "In a municipality with a population less than 1.9 million, the".

HB 2257 - VOTE RECONSIDERED

Representative Gallego moved to reconsider the vote by which the house concurred in senate amendments to **HB 2257**.

The motion to reconsider prevailed.

HB 2257 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Gallego moved to concur in the senate amendments to **HB 2257**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 899): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst;

Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Smithee; Solis; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Hegar; Krusee; Pitts.

Absent — Brown, B.; Seaman; Solomons; Villarreal.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 2257** by adding the following to SECTION 1 of the bill:

SECTION 1. Section 545.353, Transportation Code, is amended by amending Subsections (h) to read as follows:

(h) Notwithstanding Section 454.352 (b), the commission may establish a speed limit of 75 miles per hour in daytime on a part of the highway system if:

(1) the commission determines that 75 miles per hour in daytime is a reasonable and safe speed for that part of the highway system; and

(2) that part of the highway is located in a county with a population density of less than 15 [~~10~~] persons per square mile.

HB 178 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Denny called up with senate amendments for consideration at this time,

HB 178, A bill to be entitled An Act relating to the use of electronically readable information from a driver's license or personal identification card in an election.

Representative Denny moved to concur in the senate amendments to **HB 178**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 178, A bill to be entitled An Act relating to the use of electronically readable information from a driver's license or personal identification card in an election.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 63, Election Code, is amended by adding Section 63.0102 to read as follows:

Sec. 63.0102. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION. (a) An election officer may access electronically readable information on a driver's license or personal identification card for proof of identification when determining whether a voter shall be accepted for voting.

(b) The secretary of state shall prescribe any necessary procedures to implement this section.

SECTION 2. Section 521.126(d), Transportation Code, is amended to read as follows:

(d) The prohibition provided by Subsection (b) does not apply to a person who accesses, uses, compiles, or maintains a database of the information for a law enforcement or governmental purpose, including:

(1) an officer or employee of the department carrying out [~~who accesses or uses the information for~~] law enforcement or government purposes;

(2) a peace officer, as defined by Article 2.12, Code of Criminal Procedure, acting in the officer's official capacity;

(3) a license deputy, as defined by Section 12.702, Parks and Wildlife Code, issuing a license, stamp, tag, permit, or other similar item through use of a point-of-sale system under Section 12.703, Parks and Wildlife Code; [~~or~~]

(4) a person acting as authorized by Section 109.61, Alcoholic Beverage Code; or

(5) a person establishing the identity of a voter under Chapter 63, Election Code.

SECTION 3. This Act takes effect September 1, 2005.

HB 731 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Jackson called up with senate amendments for consideration at this time,

HB 731, A bill to be entitled An Act relating to an electronic requisition system for counties.

Representative Jackson moved to concur in the senate amendments to **HB 731**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 900): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst;

Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Hegar; Krusee; Pitts.

Absent — Escobar; Moreno, P.

Senate Committee Substitute

CSHB 731, A bill to be entitled An Act relating to an electronic requisition system for counties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 113.901, Local Government Code, is amended by amending Subsection (b) and adding Subsections (d) and (e) to read as follows:

(b) The requisition must be made, signed, and approved in triplicate. The original must be delivered to the person from whom the purchase is to be made before the purchase is made. The duplicate copy must be filed with the county auditor. The triplicate copy must remain with the officer requesting the purchase. This subsection does not apply to a county that operates an electronic requisition system.

(d) The commissioners court of a county may establish an electronic requisition system to perform the functions required by Subsection (a). The county auditor, subject to the approval of the commissioners court, shall establish procedures for administering the system.

(e) An electronic requisition system established under this section must be able to electronically transmit data to and receive data from the county's financial system in a manner that meets professional, regulatory, and statutory requirements and standards, including those related to purchasing, auditing, and accounting.

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, 2005.

HB 1294 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Rose called up with senate amendments for consideration at this time,

HB 1294, A bill to be entitled An Act relating to permissive interlocutory appeals in civil actions.

Representative Rose moved to concur in the senate amendments to **HB 1294**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 901): 111 Yeas, 30 Nays, 1 Present, not voting.

Yeas — Allen, R.; Anderson; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Eiland; Eissler; Elkins; Farabee; Flynn; Frost; Gattis; Geren; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hilderbran; Hill; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.(C); King, P.; Kolkhorst; Kuempel; Laney; Laubenberg; Madden; McCall; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Phillips; Pickett; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Truitt; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Alonzo; Anchia; Bailey; Davis, Y.; Dutton; Edwards; Farrar; Flores; Gallego; Giddings; Gonzales; Gonzalez Toureilles; Herrero; Hochberg; Hodge; King, T.; Leibowitz; Luna; Martinez; Martinez Fischer; McClendon; McReynolds; Peña; Puente; Riddle; Solis; Thompson; Turner; Uresti.

Present, not voting — Mr. Speaker.

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Hegar; Krusee; Pitts.

Absent — Escobar; Menendez; Moreno, P.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 901. I intended to vote no.

Castro

I was shown voting yes on Record No. 901. I intended to vote no.

Dunnam

When Record No. 901 was taken, my vote failed to register. I would have voted no.

Menendez

I was shown voting yes on Record No. 901. I intended to vote no.

Raymond

Senate Committee Substitute

CSHB 1294, A bill to be entitled An Act relating to interlocutory appeals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.014, Civil Practice and Remedies Code, is amended by amending Subsections (d) and (e) to read as follows:

(d) A district court, county court at law, or county court may issue a written order for interlocutory appeal in a civil action not otherwise appealable under this section if:

(1) the parties agree that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion;

(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation; and

(3) the parties agree to the order.

(e) An appeal under Subsection (d) does not stay proceedings in the trial [~~district~~] court unless the parties agree and the trial court [~~the district court~~], the court of appeals, or a judge of the court of appeals orders a stay of the proceedings.

SECTION 2. Section 51.014(f), Civil Practice and Remedies Code, is repealed.

SECTION 3. (a) Except as provided by this section, the change in law made by this Act applies to an action filed before, on, or after the effective date of this Act.

(b) The change in law made by this Act does not apply to an interlocutory order issued under Section 51.014, Civil Practice and Remedies Code, before the effective date of this Act. An interlocutory order issued under that section 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 4. 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, 2005.

HB 1366 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative R. Allen called up with senate amendments for consideration at this time,

HB 1366, A bill to be entitled An Act relating to the regulation of nursing.

Representative R. Allen moved to concur in the senate amendments to **HB 1366**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1366** as follows:

(1) Strike Section 6 of the bill, adding proposed Section 301.354, Occupations Code (house engrossment page 3, line 27, through page 4, line 6).

(2) Strike Section 7 of the bill (house engrossment page 4, lines 7 and 8) and substitute the following appropriately numbered section:

SECTION___. Section 304.010, Occupations Code, is repealed.

(3) Renumber the sections of the bill accordingly.

HB 1399 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Dutton called up with senate amendments for consideration at this time,

HB 1399, A bill to be entitled An Act relating to notice of a landlord's motor vehicle towing or parking rules and policies and to liability arising from certain actions of a towing service; providing a civil penalty.

Representative Dutton moved to concur in the senate amendments to **HB 1399**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 1399, A bill to be entitled An Act relating to notice of a landlord's motor vehicle towing or parking rules and policies and to liability arising from certain actions of a towing service; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 92.013(a), Property Code, is amended to read as follows:

(a) A landlord shall give prior written notice to a tenant regarding a landlord rule or policy change that is not included in the lease agreement and that will affect any personal property owned by the tenant that is located outside the tenant's dwelling. A landlord shall provide to the tenant in a multiunit complex, as that term is defined by Section 92.151, a copy of any applicable[~~, including any change in~~] vehicle towing or parking rules or policies of the landlord and any changes to those rules or policies as provided by Section 92.0131.

SECTION 2. Subchapter A, Chapter 92, Property Code, is amended by adding Section 92.0131 to read as follows:

Sec. 92.0131. NOTICE REGARDING VEHICLE TOWING OR PARKING RULES OR POLICIES. (a) This section applies only to a tenant in a multiunit complex, as that term is defined by Section 92.151.

(b) If at the time a lease agreement is executed a landlord has vehicle towing or parking rules or policies that apply to the tenant, the landlord shall provide to the tenant a copy of the rules or policies before the lease agreement is executed. The copy of the rules or policies must be:

(1) signed by the tenant;

(2) included in a lease agreement signed by the tenant; or

(3) included in an attachment to the lease agreement that is signed by the tenant, but only if the attachment is expressly referred to in the lease agreement.

(c) If the rules or policies are contained in the lease agreement or an attachment to the lease agreement, the title to the paragraph containing the rules or policies must read "Parking" or "Parking Rules" and be capitalized, underlined, or printed in bold print.

(d) If a landlord changes the vehicle towing or parking rules or policies during the term of the lease agreement, the landlord shall provide written notice of the change to the tenant before the tenant is required to comply with the rule or policy change. The landlord has the burden of proving that the tenant received a copy of the rule or policy change. The landlord may satisfy that burden of proof by providing evidence that the landlord:

(1) delivered the notice by certified mail, return receipt requested, addressed to the tenant at the tenant's dwelling; or

(2) made a notation in the landlord's files of the time, place, and method of providing the notice and the name of the person who delivered the notice by:

(A) hand delivery to the tenant or any occupant of the tenant's dwelling over the age of 16 years at the tenant's dwelling;

(B) facsimile to a facsimile number the tenant provided to the landlord for the purpose of receiving notices; or

(C) taping the notice to the inside of the main entry door of the tenant's dwelling.

(e) If a rule or policy change is made during the term of the lease agreement, the change:

(1) must:

(A) apply to all of the landlord's tenants in the same multiunit complex and be based on necessity, safety or security of tenants, reasonable requirements for construction on the premises, or respect for other tenants' parking rights; or

(B) be adopted based on the tenant's written consent; and

(2) may not be effective before the 14th day after the date notice of the change is delivered to the tenant, unless the change is the result of a construction or utility emergency.

(f) A landlord who violates Subsection (b), (c), (d), or (e) is liable for a civil penalty in the amount of $100 plus any towing or storage costs that the tenant incurs as a result of the towing of the tenant's vehicle. The nonprevailing party in a suit under this section is liable to the prevailing party for reasonable attorney's fees and court costs.

(g) A landlord is liable for any damage to a tenant's vehicle resulting from the negligence of a towing service that contracts with the landlord or the landlord's agent to remove vehicles that are parked in violation of the landlord's rules and policies if the towing company that caused the damage does not carry insurance that covers the damage.

SECTION 3. (a) The change in law made by Section 92.0131(b), Property Code, as added by this Act, applies only to a lease agreement entered into or renewed on or after January 1, 2006. A lease agreement entered into or renewed before January 1, 2006, is governed by the law in effect when the lease was entered into or renewed, and the former law is continued in effect for that purpose.

(b) The change in law made by Section 92.0131(g), Property Code, as added by this Act, applies only to a negligent act that occurs on or after January 1, 2006. A negligent act that occurs before January 1, 2006, is governed by the law in effect when the negligent act occurred, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect January 1, 2006.

HB 840 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Riddle called up with senate amendments for consideration at this time,

HB 840, A bill to be entitled An Act relating to the forfeiture of contraband used to facilitate or intended to be used to facilitate the commission of certain criminal offenses.

Representative Riddle moved to concur in the senate amendments to **HB 840**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 840, A bill to be entitled An Act relating to the forfeiture of contraband used to facilitate or intended to be used to facilitate the commission of certain criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 59.01(1), Code of Criminal Procedure, is amended to read as follows:

(1) "Attorney representing the state" means the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held under this chapter or, in a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(v) [~~(2)(B)(iv)~~] of this article, the city attorney of a municipality if the property is seized in that municipality by a peace officer employed by that municipality and the governing body of the municipality has approved procedures for the city attorney acting in a forfeiture proceeding. In a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(vii) of this article, the term includes the attorney general.

SECTION 2. Article 59.01(2), Code of Criminal Procedure, as amended by Section 2.141, Chapter 198, Section 17, Chapter 257, and Section 3, Chapter 649, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code; or

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code; [~~or~~]

(vii) any felony under Chapter 31, 32, or 37, Penal Code, that involves the state Medicaid program, or any felony under Chapter 36, Human Resources Code; or

(viii) [~~(vii)~~] a Class B misdemeanor under Section 35.58, Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) [~~(B)(vii)~~] of this subdivision, or a crime of violence; [~~or~~]

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) [~~(B)(vii)~~] of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

SECTION 3. The change in law made by this Act in adding Article 59.01(2)(E), Code of Criminal Procedure, applies only to the forfeiture of contraband used to facilitate or intended to be used to facilitate the commission of an offense under Section 15.031 or 43.25, Penal Code, committed on or after the effective date of this Act. Forfeiture of contraband used to facilitate or intended to be used to facilitate the commission of an offense under Section 15.031 or 43.25, Penal Code, committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

HB 1718 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Zedler called up with senate amendments for consideration at this time,

HB 1718, A bill to be entitled An Act relating to the regulation of certain nursing practices.

Representative Zedler moved to concur in the senate amendments to **HB 1718**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

On page 2, line 24, amend **HB 1718** (Engrossed) by adding new SECTION 2 to read as follows and renumber the subsequent sections appropriately:

SECTION 2. Subchapter B, Chapter 241, Health and Safety Code, is amended by adding Section 241.0262 to read as follows:

Section 241.0262. CIRCULATING DUTIES FOR SURGICAL SERVICES. Circulating duties in the operating room must be performed by qualified registered nurses. In accordance with approved medical staff policies and procedures, licensed vocational nurses and surgical technologists may assist in circulatory duties under the direct supervision of a qualified registered nurse circulator.

(Hegar now present)

HB 1737 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Flores called up with senate amendments for consideration at this time,

HB 1737, A bill to be entitled An Act relating to the establishment of a dual usage educational complex by a junior college district and other political subdivisions or institutions of higher education.

Representative Flores moved to concur in the senate amendments to **HB 1737**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 902): 138 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar;

Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Cook, R.; Dukes; Hartnett; Hegar; Jackson; King, T.

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1737** as follows:

In SECTION 1 of the bill, in Subsection (a), Section 130.0103 of the Education Code (page 1, lines 22 and 23 of the Engrossed Version), strike "With the approval of the Texas Higher Education Coordinating Board,".

HB 1740 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Seaman called up with senate amendments for consideration at this time,

HB 1740, A bill to be entitled An Act relating to authorizing the City of Aransas Pass to acquire certain state property.

Representative Seaman moved to concur in the senate amendments to **HB 1740**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 903): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst;

Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Escobar; Hegar; Moreno, P.

Senate Committee Substitute

CSHB 1740, A bill to be entitled An Act relating to authorizing the City of Aransas Pass to acquire certain state property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The City of Aransas Pass may acquire all right, title, and interest of the State of Texas in and to the real property described by Section 4 of this Act in exchange for conveyance to the State of Texas, for the benefit of the Permanent School Fund, of the real property described by Section 5 of this Act; provided, however, that the State of Texas, for the benefit of the Permanent School Fund, shall retain any and all oil, gas, and other minerals and mineral royalty rights in and to the property described in Section 4 of this Act, and that the State of Texas waives its right to use the surface of such property for the purpose of exploration and development of the reserved oil, gas, and other minerals and mineral royalty rights, which shall be accomplished by directional drilling or pooling; unless the City of Aransas Pass and the commissioner of the General Land Office mutually agree not later than August 31, 2009, to enter into a lease agreement affecting the property described in Section 4 of this Act.

SECTION 2. Simultaneously with the conveyance of real property described by Section 5 of this Act, together with execution of a quitclaim deed of any interest of the City of Aransas Pass in and to 9,644 acres, more or less, consisting of that portion of Special Award No. 1, dated May 22, 1944, save and except the tract of land described in Section 4 of this Act, to the General Land Office for the use and benefit of the Permanent School Fund, and, solely if necessary under the terms of this Act, delivery of additional consideration by the City of Aransas Pass, the commissioner of the General Land Office shall convey on behalf of the state the state's right, title, and interest in and to the property described by Section 4 of this Act, subject to the mineral and royalty reservation set forth in Section 1 of this Act.

SECTION 3. The commissioner of the General Land Office and the City of Aransas Pass shall follow the procedures outlined in this section. The tracts described in Sections 4 and 5 of this Act shall be appraised by an appraiser acceptable to both the City of Aransas Pass and the commissioner of the General Land Office, with the cost of such appraisals paid by the General Land Office. In

the event that the City of Aransas Pass and the commissioner of the General Land Office cannot agree on the market value of the tracts described in Sections 4 and 5 of this Act, the City of Aransas Pass and the commissioner of the General Land Office shall submit the question of market value to a mutually acceptable mediator, with the cost of the mediator paid by the General Land Office, who shall determine the market value of the tracts described in Sections 4 and 5 of this Act. The mediator's determination of market value shall be binding on both the City of Aransas Pass and the General Land Office. In the event that the market value of the tract described in Section 4 of this Act is determined to exceed the market value of the tract described in Section 5 of this Act, the City of Aransas Pass and the commissioner of the General Land Office shall negotiate an agreement whereby additional consideration, which may take the form of cash, a lien, or similar encumbrance in favor of the Permanent School Fund, or some combination thereof, sufficient to equal the difference in value between the tract described in Section 4 of this Act and the tract described in Section 5 of this Act, as well as the cost of any survey and appraisal performed and mediator retained in accordance with the terms of this Act, shall be provided to the commissioner of the General Land Office for the benefit of the Permanent School Fund, with the cash component of such consideration, including installment payments, if any, to be deposited in the special fund account of the Permanent School Fund created pursuant to Section 51.401, Natural Resources Code, in order to effect the conveyances of property contemplated by this Act.

SECTION 4. The real property referred to in Sections 1 and 2 of this Act is the real property described as Tracts 3, 4, 7 and 8 of the Bullitt-Hutchins, Inc. appraisal dated April 24, 2000, performed for the General Land Office under GLO Contract No. 00-229R and on file in the records of the General Land Office, comprising 115 acres, more or less, which property shall be surveyed at the cost of the General Land Office prior to the appraisal described in Section 3 of this Act.

SECTION 5. The real property described in Sections 1 and 2 of this Act is the following described land and sea bottom below high tide:

Beginning in the North line of a survey in the name of Wm. Docker, assignee of Lewis Von Zacharias as called for by Letters Patent issued February 7th, 1842, Abstract No. 272, said point being in the Southeast line of State F. M. Road No. 2725;

THENCE, with the North line of said Wm. Docker Survey, Abstract No. 272, N. 88 deg. 27 min. 53 sec. East 1013.81 feet set a 2 inch iron pipe and a cedar post for the Northeast corner of said Wm. Docker Survey and a corner of this tract;

THENCE, S. 21 deg. 12 min. 53 sec. West 166.67 feet along the Southeast line of said Docker Survey to the Northwest corner of a survey made in the name of Samuel Kenney, Abstract No. 182 as called for in Letters Patent dated Dec. 4th, 1907;

THENCE, N. 88 deg. 27 min. 53 sec. East along the North line of said Samuel Kenney Survey at 2247.22 feet the Northeast corner of said Kenney Survey, and an internal corner of the Edmond St. John Survey, Abstract No. 250,

as called for by Letters Patent dated July 17th, 1880, and continuing along same course a total distance of 3533.19 feet to the East line of said Edmond St. John Survey in the shoreline of Red Fish Bay for the Northeast corner of this tract;

THENCE, S. 35 deg. 27 min. 53 sec. West along the shoreline 1089.37 feet;

THENCE, S. 01 deg. 32 min. 07 sec. West along the shoreline 305.55 feet;

THENCE, S. 30 deg. 27 min. 53 sec. West along the shoreline 26.41 feet to the Southeast corner of this tract;

THENCE, S. 88 deg. 27 min. 53 sec. West 2905.53 feet to the most Southerly Southwest corner of this tract;

THENCE, N. 01 deg. 32 min. 07 sec. East 1097.95 feet to a corner in the Southeast line of said Wm. Docker Abstract No. 272;

THENCE, N. 46 deg. 02 min. 07 sec. West 215.5 feet to a corner;

THENCE, S. 88 deg. 27 min. 53 sec. West 829.05 feet to a corner, the most Westerly Southwest corner of this tract in the Southeast boundary line of State F. M. Road No. 2725;

THENCE, N. 34 deg. 28 min. 19 sec. East along said road boundary line 123.62 feet to the POINT OF BEGINNING, containing 89.5288 acres, more or less, and being partly out of the Wm. Docker Survey Abstract No. 272, partly out of the Edmond St. John Survey Abstract No. 250 and partly out of the Samuel Kenney Survey Abstract No. 182;

SAVE AND EXCEPT THEREFROM the area contained in a narrow strip out of the Northeast corner of the Wm. Docker Survey, Abstract No. 272, which is more fully described in one certain Warranty Deed dated January 15, 1969, executed by INGLESIDE LAND COMPANY, to NATIONAL STEEL CORPORATION, recorded in Volume 382, Page 452, Deed Records, San Patricio County, Texas, reference here being made to Exhibit A, Tract 10, and being page 9 of said deed, for all purposes.

EXCEPTIONS:

(1) Right-of-way Easement executed by SAN PATRICIO COUNTY NAVIGATION DISTRICT No. 1, to CENTRAL POWER AND LIGHT COMPANY, dated June 17, 1982, recorded in Volume 650, Page 493, Deed Records, San Patricio County, Texas.

(2) Any visible and apparent roadways or easements over or across the subject property, the existence of which does not appear of record.

(3) Spoils Disposal Easement granted by INGLESIDE LAND COMPANY, to Nueces County Navigation District No. 1, by instrument dated April 22, 1952, recorded in Volume 177, Page 07, Deed Records, San Patricio County, Texas.

(4) Those certain erosions thereof by the water of Red Fish Bay and/or Red Fish Cove.

(5) Easement executed by INGLESIDE LAND COMPANY, to UNITED STATES OF AMERICA, for the Gulf Intracoastal Waterway, dated September 11, 1958.

(6) Any and all easements and sites for storage tanks, separators, flow lines and roadways in the development and operation of outstanding Mineral Lease recorded in Volume 173, Page 468, Deed Records, San Patricio County, Texas.

(7) Pipeline Right-of-way dated December 11, 1950, executed by INGLESIDE LAND COMPANY, to HUMBLE PIPE LINE COMPANY, recorded in Volume 168, Page 192, Deed Records, San Patricio County, Texas.

(8) Pipeline Right-of-way dated June 8, 1965, executed by INGLESIDE LAND COMPANY, to SHELL OIL COMPANY, recorded in Volume 318, Page 144, Deed Records, San Patricio County, Texas.

(9) Reservation of all of the oil, gas and other minerals by virtue of the wording "Surface Estate Only" in Deed dated January 15, 1969, executed by INGLESIDE LAND COMPANY, to NATIONAL STEEL CORPORATION, recorded in Volume 382, Page 452 et seq., Deed Records, San Patricio County, Texas. Title to said interest not investigated subsequent to said date.

SECTION 6. This Act shall only apply to lands granted pursuant to special awards issued by the commissioner of the General Land Office prior to January 1, 1945.

SECTION 7. If the appraisals, surveys, conveyances, and transactions contemplated by this Act do not occur prior to August 31, 2009, this Act shall expire and be void.

SECTION 8. 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, 2005.

HB 1767 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative R. Cook called up with senate amendments for consideration at this time,

HB 1767, A bill to be entitled An Act relating to the regulation of veterinary medicine.

Representative R. Cook moved to concur in the senate amendments to **HB 1767**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 1767, A bill to be entitled An Act relating to the regulation of veterinary medicine.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 801.351, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) <u>A person may not practice veterinary medicine unless a veterinarian-client-patient relationship exists.</u> A veterinarian-client-patient relationship exists if the veterinarian:

(1) assumes responsibility for medical judgments regarding the health of an animal and a client, who is the owner or other caretaker of the animal, agrees to follow the veterinarian's instructions;

(2) possesses sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition; and

(3) is readily available to provide, or has provided, follow-up medical care in the event of an adverse reaction to, or a failure of, the regimen of therapy provided by the veterinarian.

(c) A veterinarian-client-patient relationship may not be established solely by telephone or electronic means.

SECTION 2. Section 801.353, Occupations Code, is amended by adding Subsection (f) to read as follows:

(f) A veterinarian does not violate this section by providing the name or address of a client to a health authority, veterinarian, or physician who requests the identity of the client to obtain information for:

(1) the verification of a rabies vaccination; or

(2) other treatment involving a life-threatening situation.

SECTION 3. Sections 801.357(a) and (d), Occupations Code, are amended to read as follows:

(a) A veterinarian may dispose of an animal that is abandoned in the veterinarian's care if the veterinarian:

(1) gives the client, by certified mail to the client's last known address, notice of the veterinarian's intention to dispose of the animal; and

(2) allows the client to retrieve the animal during the 10 [~~12~~] days after the date the veterinarian mails the notice.

(d) An animal is considered abandoned on the 11th [~~13th~~] day after the date the veterinarian mails the notice under Subsection (a) unless an agreement is made to extend the care for the animal.

SECTION 4. Subchapter H, Chapter 801, Occupations Code, is amended by adding Section 801.3585 to read as follows:

Sec. 801.3585. LIABILITY FOR REPORTING ANIMAL CRUELTY; IMMUNITY. A veterinarian who in good faith and in the normal course of business reports to the appropriate governmental entity a suspected incident of animal cruelty under Section 42.09, Penal Code, is immune from liability in a civil or criminal action brought against the veterinarian for reporting the incident.

SECTION 5. Subchapter H, Chapter 801, Occupations Code, is amended by adding Section 801.362 to read as follows:

Sec. 801.362. AUTHORITY TO DISPENSE DRUGS PRESCRIBED BY ANOTHER VETERINARIAN IN EMERGENCY. (a) A veterinarian may dispense a drug, other than a controlled substance, prescribed by another veterinarian if:

(1) failure to dispense the drug could interrupt a therapeutic regimen or cause a patient to suffer;

(2) the prescribing veterinarian informs the dispensing veterinarian that the drug is appropriate and necessary for the animal;

(3) the quantity of the dispensed drug does not exceed a five-day supply for each animal annually;

(4) the annual total of dosage units of drugs dispensed under this subsection is not more than five percent of the total dosage units of drugs the veterinarian dispenses in a year; and

(5) the veterinarian maintains records of dispensing activities under this section consistent with board rules.

(b) A veterinarian does not violate Section 801.402 by ordering a prescription drug in compliance with this section for the treatment of an animal without first establishing a veterinarian-client-patient relationship.

(c) The board may adopt rules to implement this section.

SECTION 6. Section 801.504, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) Venue for the prosecution of an offense under this section that consists of the violation of Section 801.251 is in a district court in Travis County or the county in which the offense occurred.

SECTION 7. A veterinarian is not required to maintain the records required by Section 801.362(a), Occupations Code, as added by this Act, until September 1, 2006.

SECTION 8. (a) Section 801.504(c), Occupations Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(c) For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

SECTION 9. This Act takes effect September 1, 2005.

HB 1773 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Miller called up with senate amendments for consideration at this time,

HB 1773, A bill to be entitled An Act relating to the authority of certain counties to impose a hotel occupancy tax.

Representative Miller 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 1773**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1773**: Miller, chair; Hill; Hamilton; Quintanilla; and Uresti.

HB 1986 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Solomons called up with senate amendments for consideration at this time,

HB 1986, A bill to be entitled An Act relating to the administration and powers of a coordinated county transportation authority.

Representative Solomons moved to concur in the senate amendments to **HB 1986**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: Herrero and Leibowitz recorded voting no.)

Senate Committee Substitute

CSHB 1986, A bill to be entitled An Act relating to the administration and powers of a coordinated county transportation authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 224.153(b), Transportation Code, is amended to read as follows:

(b) The department may enter into an agreement with a transit authority under Chapter 451, 452, or 453, a regional mobility authority under Chapter 361, a coordinated county transportation authority under Chapter 460, a municipality, or a transportation corporation for the design, construction, operation, or maintenance of a high occupancy vehicle lane.

SECTION 2. Section 460.054, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) The county judge may fill a vacancy in a position described by Subsection (b)(3) by naming a person nominated under Subsection (c) for the unexpired term.

SECTION 3. Section 460.105(a), Transportation Code, is amended to read as follows:

(a) An authority may:

(1) acquire, construct, develop, plan, own, operate, and maintain a public transportation system in the territory of the authority, including the territory of a political subdivision or municipality partially located in the territory of the authority;

(2) contract with a municipality, county, or other political subdivision for the authority to provide public transportation services outside the authority;

(3) lease all or part of the public transportation to, or contract for the operation of all or a part of the public transportation system by, an operator; [~~and~~]

(4) contract with a political subdivision or governmental entity to provide public transportation services inside the authority consistent with rules and regulations established by the authority, including capital, maintenance, operation, and other costs specifically approved and audited by the authority; and

(5) acquire, construct, develop, plan, own, operate, maintain, or manage a public transportation system or project not located in the territory of the authority if the system or project provides a service, benefit, or convenience to the people in the territory of the authority.

SECTION 4. Section 460.201(c), Transportation Code, is amended to read as follows:

(c) Except as provided by Section 460.2015, a [~~A~~] vacancy on the board of directors [~~executive committee~~] is filled in the same manner as the original appointment to the interim executive committee.

SECTION 5. Subchapter D, Chapter 460, Transportation Code, is amended by adding Section 460.2015 to read as follows:

Sec. 460.2015. MEMBERSHIP OF BOARD OF DIRECTORS. (a) The board of directors of an authority confirmed under Subchapter B may increase the population amount stated by Section 460.054(b)(1) in increments of up to 5,000. If the board increases that population amount, the board shall also increase each population amount stated by Sections 460.054(b)(3) and 460.054(c) by the same amount.

(b) The board of directors may act under Subsection (a) only once a year.

(c) A municipality that has appointed a member to the board of directors under Section 460.054(b)(1) before the effective date of an increase under Subsection (a) may continue to appoint a member to the board of directors.

SECTION 6. Section 460.405(a), Transportation Code, is amended to read as follows:

(a) Federal funds and appropriated state funds may not be spent by [~~An employee, agent, or person receiving compensation from~~] or on behalf of an authority to influence or [~~may not attempt to~~] affect the award or outcome of a state or federal contract, loan, or cooperative agreement [~~proposed legislation~~].

SECTION 7. This Act takes effect September 1, 2005.

HB 1959 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative McReynolds called up with senate amendments for consideration at this time,

HB 1959, A bill to be entitled An Act relating to the hunting of deer with dogs and the taking of wildlife resources without the consent of the landowner; providing penalties.

Representative McReynolds moved to concur in the senate amendments to **HB 1959**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 1959, A bill to be entitled An Act relating to the hunting of deer with dogs and the taking of wildlife resources without the consent of the landowner; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. It is the intent of the legislature by passage of this Act to provide an enforcement tool to deter the unlawful hunting of deer with dogs in certain East Texas counties where the activity has historically occurred. This Act is not intended to prevent a person from engaging in lawful hunting activities, including hunting waterfowl, feral hogs, white-tailed deer, and red or gray squirrels, or trailing a wounded deer in counties where that is lawful.

SECTION 2. Subchapter A, Chapter 62, Parks and Wildlife Code, is amended by adding Section 62.0065 to read as follows:

Sec. 62.0065. HUNTING DEER WITH DOGS. (a) Except as provided by Subsection (d), a person may not recklessly use a dog to hunt or pursue a deer in this state.

(b) Subject to Subsection (a), the commission by rule may prescribe the type of firearm that may be possessed during an open deer season by a person who is in actual or constructive possession of a dog while in the field on another person's land or property in Angelina, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, or Walker County.

(c) It is not a defense to prosecution under Subsection (a) or to prosecution for violation of a rule adopted under Subsection (b) that the defendant was not the owner or in immediate possession of the dog or that the offense or violation was committed without the effective consent of the dog's owner.

(d) The commission by rule may authorize the use of dogs to trail wounded deer.

SECTION 3. Sections 62.013(b) and (c), Parks and Wildlife Code, are amended to read as follows:

(b) A person who violates Section 62.003, 62.004, 62.005, 62.0065, or 62.011(c), or a rule adopted under Section 62.0065 [~~of this code~~] commits an offense that is a Class A Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant for a violation of that section or rule, as appropriate, that the defendant has been convicted one or more times before the trial date of a violation of that section or rule, as appropriate, in which case the offense is a Parks and Wildlife Code state jail felony.

(c) In addition to the punishments provided in Subsections (a) and (b), a person who violates Section 62.003, 62.004, 62.005, 62.0065, or 62.011(c), or a rule adopted under Section 62.0065 [~~of this code~~] is punishable by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

SECTION 4. Sections 62.017(a) and (c), Parks and Wildlife Code, are amended to read as follows:

(a) If a person is finally convicted of an offense under Section 61.022, 62.003, 62.004, 62.005, 62.0065, or 62.011(c), or violation of a rule adopted under Section 62.0065, the court entering judgment of conviction may order any weapon or other personal property used in the commission of the offense or violation destroyed or forfeited to the department.

(c) This section does not apply to a vehicle, aircraft, [~~or~~] vessel, or dog.

SECTION 5. Sections 12.5015(a), (b), and (c), Parks and Wildlife Code, are amended to read as follows:

(a) Except as provided by this section, any hunting or fishing license or permit issued by the department to a person is automatically revoked on final conviction of the person of an offense under Section 61.022, 62.003, 62.004, 62.005, 62.0065, 62.011, 66.004(a), or 66.004(c) or a violation of a rule adopted under Section 62.0065.

(b) If the holder of a lifetime license is finally convicted of an offense under Section 61.022, 62.003, 62.004, 62.005, 62.0065, 62.011(c), 66.004(a), or 66.004(c), or a violation of a rule adopted under Section 62.0065, the person's lifetime license is automatically suspended. The suspension is for a period set by the court of not less than one year or more than five years. If the court does not set a period, the suspension is for one year from the date the conviction becomes final.

(c) On conviction of a person for an offense under Section 61.022, 62.003, 62.004, 62.005, 62.0065, 62.011(c), 66.004(a), or 66.004(c), or a violation of a rule adopted under Section 62.0065, the court shall set a period of not less than one year and not more than five years during which the department may not issue that person a license, tag, or stamp under Chapter 42, 46, or 50. If the court does not set a period, the department may not issue that person a license, tag, or stamp under Chapter 42, 46, or 50 before the first anniversary of the date the conviction becomes final.

SECTION 6. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and that law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2005.

HB 2309 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Denny called up with senate amendments for consideration at this time,

HB 2309, A bill to be entitled An Act relating to certain election processes and procedures.

Representative Denny 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 2309**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2309**: Denny, chair; Nixon; Bohac; Straus; and Anderson.

HB 2463 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Villarreal called up with senate amendments for consideration at this time,

HB 2463, A bill to be entitled An Act relating to the creation of a Medicaid health literacy pilot program and health care funding districts in certain counties and authorizing the districts to impose taxes on certain institutional health care providers located in the districts.

Representative Villarreal moved to concur in the senate amendments to **HB 2463**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 904): 137 Yeas, 3 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Harper-Brown; Phillips; Truitt.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Dutton; Gallego; Goodman; Hochberg.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 904. I intended to vote no.

B. Keffer

I was shown voting yes on Record No. 904. I intended to vote no.

Laubenberg

I was shown voting yes on Record No. 904. I intended to vote no.

Paxton

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 2463** (House Engrossed Version) as follows:

(1) In Section 1 of the bill, strike Subsection (f) of added Section 288.201, Health and Safety Code (page 8, lines 22 through 24).

(2) In Section 1 of the bill, in Subdivision (2) of added Section 288.203, Health and Safety Code (page 9, line 20), strike "health care services" and substitute "programs".

(3) In Section 1 of the bill, after added Section 288.204, Health and Safety Code, (between page 9, line 25, and page 10, line 1), add Sections 288.205 and 288.206, Health and Safety Code, to read as follows:

Sec. 288.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Sec. 288.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

(4) In Section 1 of the bill, in Subsection (b) of added Section 289.051, Health and Safety Code (page 11, lines 10 and 11), strike "any remaining members who meet" and substitute "one member who meets".

(5) In Section 1 of the bill, in Subsection (b) of added Section 289.051, Health and Safety Code (page 11, line 13), strike "one member who meets" and substitute "any remaining members who meet".

(6) In Section 1 of the bill, strike Subsection (f) of added Section 289.201, Health and Safety Code, (page 17, lines 11-13).

(7) In Section 1 of the bill, after added Section 289.204, Health and Safety Code (page 18, between lines 14 and 15), add Sections 289.205 and 289.206, Health and Safety Code, to read as follows:

Sec. 289.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Sec. 289.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

(8) In Section 1 of the bill, strike Subsection (f) of added Section 290.201, Health and Safety Code (page 25, lines 24-26).

(9) In Section 1 of the bill, after added Section 290.204, Health and Safety Code (between page 26, line 27, and page 27, line 1), add Sections 290.205 and 290.206, Health and Safety Code, to read as follows:

Sec. 290.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Sec. 290.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

HB 2772 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Farabee called up with senate amendments for consideration at this time,

HB 2772, A bill to be entitled An Act relating to health savings accounts and high-deductible health plans implemented as a part of the group benefits program of the Employees Retirement System of Texas.

Representative Farabee moved to concur in the senate amendments to **HB 2772**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 905): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Callegari; Gallego; Hochberg; Puente.

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 2772** (house engrossment printing) in SECTION 1 of the bill (page 1, lines 8-9) by striking "health savings accounts and high-deductible health plans" and substituting "a health reimbursement account program or a health savings account and high-deductible health plan program".

HB 3482 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Hegar called up with senate amendments for consideration at this time,

HB 3482, A bill to be entitled An Act relating to the creation of the North Fort Bend Water Authority; providing authority to issue bonds; granting the power of eminent domain; providing an administrative penalty.

Representative Hegar 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 3482**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3482**: Hegar, chair; Callegari; Olivo; Howard; and Puente.

HB 3528 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Bailey called up with senate amendments for consideration at this time,

HB 3528, A bill to be entitled An Act relating to property exemptions in, and the validation of certain acts of, the Greater Greenspoint Management District of Harris County.

Representative Bailey moved to concur in the senate amendments to **HB 3528**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 906): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Woolley.

Senate Committee Substitute

CSHB 3528, A bill to be entitled An Act relating to property exemptions in, and the validation of certain acts of, the Greater Greenspoint Management District of Harris County.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3803.156, Special District Local Laws Code, is amended to read as follows:

Sec. 3803.156. PROPERTY EXEMPT FROM ASSESSMENT AND IMPACT FEES. Because the district is created in an area that is devoted primarily to commercial and business activity, the district may not impose an impact fee or assessment on a detached single-family residential property or a residential duplex, triplex, fourplex, or condominium. A condominium is exempt under this section only if for the year in which the impact fee or assessment is imposed on the condominium, the condominium receives a residence homestead exemption under Section 11.13, Tax Code.

SECTION 2. (a) The legislature validates and confirms all governmental acts and proceedings of the Greater Greenspoint Management District of Harris County, including acts of the district's board of directors, that occurred before April 15, 2005.

(b) This section does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final court judgment; or

(2) has been held invalid by a final court judgment.

SECTION 3. 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, 2005.

HB 3563 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Swinford called up with senate amendments for consideration at this time,

HB 3563, A bill to be entitled An Act relating to the use of anabolic steroids by public school students.

Representative Swinford 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 3563**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3563**: P. King, chair; Bailey; Straus; Luna; and Swinford.

HB 34 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Eissler called up with senate amendments for consideration at this time,

HB 34, A bill to be entitled An Act relating to erecting an off-premise sign adjacent to and visible from certain roads.

Representative Eissler moved to concur in the senate amendments to **HB 34**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 34, A bill to be entitled An Act relating to erecting an off-premise sign adjacent to and visible from certain roads.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 391.252(a), Transportation Code, is amended to read as follows:

(a) A [~~Subsequent to the effective date of this subchapter, a~~] person may not erect an off-premise sign that is adjacent to and visible from:

(1) U.S. Highway 290 between the western city limits of the city of Austin and the eastern city limits of the city of Fredericksburg;

(2) State Highway 317 between the northern city limits of the city of Belton to the southern city limits of the city of Valley Mills;

(3) State Highway 16 between the northern city limits of the city of Kerrville and Interstate Highway 20;

(4) U.S. Highway 77 between State Highway 186 and State Highway 44;

(5) U.S. Highway 281 between State Highway 186 and Interstate Highway 37;

(6) State Highway 17 between State Highway 118 and U.S. Highway 90;

(7) State Highway 67 between U.S. Highway 90 and Farm-to-Market Road 170;

(8) Farm-to-Market Road 170 between State Highway 67 and State Highway 118;

(9) State Highway 118 between Farm-to-Market Road 170 and State Highway 17;

(10) State Highway 105 between the western city limits of the city of Sour Lake to the eastern city limits of the city of Cleveland;

(11) State Highway 73 between the eastern city limits of the city of Winnie to the western city limits of the city of Port Arthur;

(12) State Highway 21 between the southern city limits of the city of College Station and U.S. Highway 290; [~~or~~]

(13) a highway located in:

(A) the Sabine National Forest;

(B) the Davy Crockett National Forest; or

(C) the Sam Houston National Forest; or

(14) Farm-to-Market Road 2978 between Farm-to-Market Road 1488 and the boundary line between Harris and Montgomery Counties.

SECTION 2. This Act takes effect September 1, 2005.

HB 51 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative T. Smith called up with senate amendments for consideration at this time,

HB 51, A bill to be entitled An Act relating to the punishment prescribed for and conditions of community supervision imposed on certain persons who commit intoxication offenses.

Representative T. Smith moved to concur in the senate amendments to **HB 51**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 51** as follows:

(1) In Section 1, Subsection (d), (page 1, line 9), strike "~~Article 67011-1, Article 67011-2, Revised Statutes, as that law existed before January 1, 1984, Section 19.05(a)(2), as that law existed before September 1, 1994, or~~".

(2) In Section 1, Subsection (d), (page 1, line 13), after "49.08" insert "that occurs on or after September 1, 1994,"

HB 677 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Thompson called up with senate amendments for consideration at this time,

HB 677, A bill to be entitled An Act relating to emergency services for sexual assault survivors.

Representative Thompson moved to concur in the senate amendments to **HB 677**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: Anderson, Flynn, Miller, and Talton recorded voting no.)

Senate Committee Substitute

CSHB 677, A bill to be entitled An Act relating to emergency services for sexual assault survivors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle G, Title 4, Health and Safety Code, is amended by adding Chapter 322 to read as follows:

CHAPTER 322. EMERGENCY SERVICES FOR SURVIVORS OF SEXUAL ASSAULT

Sec. 322.001. DEFINITIONS. In this chapter:

(1) "Community-wide plan" means an agreement entered into between one or more health care facilities, entities administering a sexual assault program, district attorney's offices, or law enforcement agencies that designates one or more health care facilities in the community as a primary health care facility to furnish emergency medical services and evidence collection to sexual assault survivors on a community or area-wide basis.

(2) "Department" means the Department of State Health Services.

(3) "Health care facility" means a general or special hospital licensed under Chapter 241 or a general or special hospital owned by this state.

(4) "Sexual assault" means any act as described by Section 22.011 or 22.021, Penal Code.

(5) "Sexual assault survivor" means an individual who is a victim of a sexual assault, regardless of whether a report is made or a conviction is obtained in the incident.

Sec. 322.002. PLAN FOR EMERGENCY SERVICES. (a) At the request of the department, a health care facility shall submit to the department for approval a plan for providing the services required by Section 322.004 to sexual assault survivors who arrive for treatment at the emergency department of the health care facility.

(b) The department shall adopt procedures for submission, approval, and modification of a plan required under this section.

(c) A health care facility shall submit the plan required by this section not later than the 60th day after the date the department requests the plan.

(d) The department shall approve or reject the plan not later than the 120th day after the date the plan is submitted.

Sec. 322.003. REJECTION OF PLAN. (a) If a plan required under Section 322.002 is not approved, the department shall:

(1) return the plan to the health care facility; and

(2) identify the specific provisions under Section 322.004 with which the plan conflicts or does not comply.

(b) Not later than the 90th day after the date the department returns a plan to a health care facility under Subsection (a), the facility shall correct and resubmit the plan to the department for approval.

Sec. 322.004. MINIMUM STANDARDS FOR EMERGENCY SERVICES. (a) After a sexual assault survivor arrives at a health care facility following an alleged sexual assault, the facility shall:

(1) provide care to the survivor in accordance with Subsection (b); or

(2) stabilize and transfer the survivor to a health care facility designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors, which shall provide care to the survivor in accordance with Subsection (b).

(b) A health care facility providing care to a sexual assault survivor shall provide the survivor with:

(1) a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been approved by a law enforcement agency;

(2) a private area, if available, to wait or speak with the appropriate medical, legal, or sexual assault crisis center staff or volunteer until a physician, nurse, or physician assistant is able to treat the survivor;

(3) access to a sexual assault program advocate, if available, as provided by Article 56.045, Code of Criminal Procedure;

(4) the information form required by Section 322.005;

(5) a private treatment room, if available;

(6) if indicated by the history of contact, access to appropriate prophylaxis for exposure to sexually transmitted infections; and

(7) the name and telephone number of the nearest sexual assault crisis center.

(c) A health care facility must obtain documented consent before providing the forensic medical examination and treatment.

Sec. 322.005. INFORMATION FORM. (a) The department shall develop a standard information form for sexual assault survivors that must include:

(1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;

(2) information regarding treatment of sexually transmitted infections and pregnancy, including:

(A) generally accepted medical procedures;

(B) appropriate medications; and

(C) any contraindications of the medications prescribed for treating sexually transmitted infections and preventing pregnancy;

(3) information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;

(4) information regarding crime victims compensation, including:

(A) a statement that a law enforcement agency will pay for the forensic portion of the examination; and

(B) reimbursement information for the medical portion of the examination;

(5) an explanation that consent for the forensic medical examination may be withdrawn at any time during the examination;

(6) the name and telephone number of sexual assault crisis centers statewide; and

(7) information regarding postexposure prophylaxis for HIV infection.

(b) A health care facility shall use the standard form developed under this section.

(c) An individual employed by or under contract with a health care facility may refuse to provide the information form required by this section for ethical or religious reasons. If an individual employed by or under contract with a health care facility refuses to provide the survivor with the information form, the health care facility must ensure that the information form is provided without delay to the survivor by another individual employed by or under contract with the facility.

Sec. 322.006. INSPECTION. The department may conduct an inspection of a health care facility to ensure compliance with this chapter.

SECTION 2. This Act takes effect September 1, 2005.

HB 853 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Solomons called up with senate amendments for consideration at this time,

HB 853, A bill to be entitled An Act relating to the return of merchandise; providing a civil penalty.

Representative Solomons moved to concur in the senate amendments to **HB 853**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 853, A bill to be entitled An Act relating to the return of merchandise; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.581 to read as follows:

(a) A merchant or a third party under contract with a merchant who requires a consumer returning an item of merchandise to provide the consumer's driver's license or social security number may use the number or numbers provided by the consumer solely for identification purposes if the consumer does not have a valid receipt for the item being returned and is seeking a cash, credit, or store credit refund.

(b) A merchant or third party under contract with a merchant may not disclose a consumer's driver's license or social security number to any other merchant or third party not involved in the initial transaction.

(c) A merchant or third party under contract with a merchant may only use a consumer's driver's license or social security number to monitor, investigate, or prosecute fraudulent return of merchandise.

(d) A merchant or third party under contract with a merchant shall destroy or arrange for the destruction of records containing the consumer's driver's license or social security number at the expiration of six months from the date of the last transaction.

(e) A person who violates this section is liable to the state for a civil penalty in an amount not to exceed $500 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring suit to recover the civil penalty imposed under this section.

(f) The attorney general may bring an action in the name of the state to restrain or enjoin a person from violating this section.

SECTION 2. Section 35.581, Business & Commerce Code, as added by this Act, applies only to an item of merchandise that is returned on or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2005.

HB 698 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative McCall called up with senate amendments for consideration at this time,

HB 698, A bill to be entitled An Act relating to the disposal of certain business records that contain personal identifying information; providing a civil penalty.

Representative McCall 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 698**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 698**: McCall, chair; Paxton; Keel; Giddings; and Eiland.

HB 934 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Taylor called up with senate amendments for consideration at this time,

HB 934, A bill to be entitled An Act relating to notice requirements in certain proceedings relating to charitable trusts.

Representative Taylor moved to concur in the senate amendments to **HB 934**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 934, A bill to be entitled An Act relating to notice requirements in certain proceedings relating to charitable trusts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 123.003(a) and (b), Property Code, are amended to read as follows:

(a) Any party initiating a proceeding involving a charitable trust shall give notice of the proceeding to the attorney general by sending to the attorney general, by registered or certified mail, a true copy of the petition or other instrument initiating the proceeding involving a charitable trust within 30 days of

the filing of such petition or other instrument, but no less than 25 [~~10~~] days prior to a hearing in such a proceeding. This subsection does not apply to a proceeding that:

(1) is initiated by an application that exclusively seeks the admission of a will to probate, regardless of whether the application seeks the appointment of a personal representative, if the application is uncontested; or

(2) is not a proceeding under Section 83, Texas Probate Code.

(b) Notice shall be given to the attorney general of any pleading which adds new causes of action or additional parties to a proceeding involving a charitable trust in which the attorney general has previously waived participation or in which the attorney general has otherwise failed to intervene. Notice shall be given by sending to the attorney general by registered or certified mail a true copy of the pleading within 30 days of the filing of the pleading, but no less than 25 [~~10~~] days prior to a hearing in the proceeding.

SECTION 2. The change in law made by this Act applies only to a petition, instrument, or pleading that is filed in a proceeding involving a charitable trust on or after the effective date of this Act. A petition, instrument, or pleading that is filed in a proceeding involving a charitable trust before the effective date of this Act is governed by the law in effect at the time the petition, instrument, or pleading is filed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2005.

HB 1012 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Nixon called up with senate amendments for consideration at this time,

HB 1012, A bill to be entitled An Act relating to the offense of abuse of a corpse and to the offense of criminal mischief in certain circumstances; providing a criminal penalty.

Representative Nixon moved to concur in the senate amendments to **HB 1012**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 907): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden;

Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Dutton; Mowery; Smith, T.

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1012** (Engrossed) on page 1, line 24 by striking "state jail felony" and inserting "Class A misdemeanor."

HB 1114 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Nixon called up with senate amendments for consideration at this time,

HB 1114, A bill to be entitled An Act relating to contributions by and benefits for certain members and retirees under the Judicial Retirement System of Texas Plan Two.

Representative Nixon moved to concur in the senate amendments to **HB 1114**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 908): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Davis, J.; Davis, Y.; Dawson; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Crownover; Delisi; Keel.

STATEMENT OF VOTE

When Record No. 908 was taken, I was in the house but away from my desk. I would have voted present, not voting.

Keel

Senate Committee Substitute

CSHB 1114, A bill to be entitled An Act relating to contributions by and benefits for certain members and retirees under the Judicial Retirement System of Texas Plan One and Plan Two.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 833, Government Code, is amended by adding Section 833.1035 to read as follows:

Sec. 833.1035. SERVICE IN EXCESS OF 20 YEARS. (a) Subject to the limitation on the amount of a retirement annuity under Section 834.102(c), an eligible member may establish service credit in the retirement system for service in excess of 20 years performed before September 1, 2005.

(b) A member eligible to establish credit under Subsection (a) is one who elects to make contributions under Section 835.1015.

(c) A member may not establish more than 120 months of service credit under this section.

(d) A member may establish credit under this section by depositing with the retirement system a contribution computed for each month of qualifying service claimed at the rate of six percent of the member's current monthly state salary.

(e) The board of trustees may adopt rules to administer this section.

SECTION 2. Section 834.102, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The service retirement annuity of a member qualifying for retirement under Section 834.101(a) is the applicable state salary under Subsection (a), multiplied by a percentage amount that is the sum of 50 percent plus the product of two percent multiplied by the number of years of subsequent service credit the member accrues under Section 835.1015(a). After including any increase under Subsection (b), the service retirement annuity under this subsection may not be an amount that is greater than 80 percent of the applicable salary under Subsection (a).

SECTION 3. Subsection (c), Section 835.101, Government Code, is amended to read as follows:

(c) Except as provided by Section 835.1015, a [~~A~~] member who accrues 20 years of service credit in the retirement system ceases making contributions under this section.

SECTION 4. Subchapter B, Chapter 835, Government Code, is amended by adding Section 835.1015 to read as follows:

Sec. 835.1015. CONTRIBUTIONS AFTER 20 YEARS OF SERVICE CREDIT. (a) A judicial officer who is a member of the retirement system and who accrues 20 years of service credit in the retirement system may elect to make contributions for each subsequent year of service credit that the member accrues by filing an application with the retirement system.

(b) A member who elects to make contributions under Subsection (a) shall contribute six percent of the member's state compensation for each payroll period in the manner provided by Sections 835.101(a) and (b).

(c) A member may not make contributions under this section for more than 10 years of subsequent service credit that the member accrues.

SECTION 5. Subchapter B, Chapter 838, Government Code, is amended by adding Section 838.1035 to read as follows:

Sec. 838.1035. SERVICE IN EXCESS OF 20 YEARS. (a) Subject to the limitation on the amount of a retirement annuity under Section 839.102(d), an eligible member may establish service credit in the retirement system for service in excess of 20 years performed before September 1, 2005.

(b) A member eligible to establish credit under Subsection (a) is one who elects to make contributions under Section 840.1025.

(c) A member may not establish more than 120 months of service credit under this section.

(d) A member may establish credit under this section by depositing with the retirement system a contribution computed for each month of qualifying service claimed at the rate of six percent of the member's current monthly state salary.

(e) The board of trustees may adopt rules to administer this section.

SECTION 6. Section 839.102, Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsections (b), [~~and~~] (c), and (d), the standard service retirement annuity is an amount equal to 50 percent of the state salary being paid at the time the member retires to a judge of a court of the same classification as the last court to which the retiring member was elected or appointed.

(d) The service retirement annuity of a member qualifying for retirement under Section 839.101(a) is the applicable state salary under Subsection (a) multiplied by a percentage amount that is the sum of 50 percent plus the product of two percent multiplied by the number of years of subsequent service credit the member accrues under Section 840.1025(a). After including any increase under Subsection (b), the service retirement annuity under this subsection may not be an amount that is greater than 80 percent of the applicable salary under Subsection (a).

SECTION 7. Subsection (g), Section 840.102, Government Code, is amended to read as follows:

(g) Except as provided by Section 840.1025, a [~~A~~] member who accrues 20 years of service credit in the retirement system ceases making contributions under this section but is considered a contributing member for all other purposes under this subtitle.

SECTION 8. Subchapter B, Chapter 840, Government Code, is amended by adding Section 840.1025 to read as follows:

Sec. 840.1025. CONTRIBUTIONS AFTER 20 YEARS OF SERVICE CREDIT. (a) A judicial officer who is a member of the retirement system and who accrues 20 years of service credit in the retirement system may elect to make contributions for each subsequent year of service credit that the member accrues by filing an application with the retirement system.

(b) A member who elects to make contributions under Subsection (a) shall contribute six percent of the member's state compensation for each payroll period in the manner provided by Sections 840.102(b)-(f).

(c) A member may not make contributions under this section for more than 10 years of subsequent service credit that the member accrues.

SECTION 9. Sections 834.102 and 839.102, Government Code, as amended by this Act, apply only to a benefit payment made by the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two on or after September 1, 2005.

SECTION 10. This Act takes effect September 1, 2005.

HB 1582 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Chavez called up with senate amendments for consideration at this time,

HB 1582, A bill to be entitled An Act relating to a study of residential foreclosures in certain counties.

Representative Chavez moved to concur in the senate amendments to **HB 1582**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 909): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.;

Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Baxter; Coleman; Veasey.

STATEMENTS OF VOTE

When Record No. 909 was taken, I was in the house but away from my desk. I would have voted yes.

Baxter

When Record No. 909 was taken, I was in the house but away from my desk. I would have voted yes.

Veasey

Senate Committee Substitute

CSHB 1582, A bill to be entitled An Act relating to a study of residential foreclosures in certain counties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter K, Chapter 2306, Government Code, is amended by adding Section 2306.260 to read as follows:

Sec. 2306.260. STUDY REGARDING RESIDENTIAL FORECLOSURES. (a) The department shall conduct a study to examine mortgage foreclosure rates in Bexar, Cameron, Dallas, El Paso, Harris and Travis Counties and shall establish an advisory committee to direct the focus of the study. The advisory committee shall be composed of:

(1) the director or the director's representative;

(2) the savings and loan commissioner or the commissioner's representative;

(3) four members appointed by the director who represent community and consumer interests;

(4) four members appointed by the savings and loan commissioner who represent the mortgage lending industry; and

(5) a representative of the Texas Housing Research Consortium at The University of Texas at Austin.

(b) The representative of the Texas Housing and Research Consortium at The University of Texas at Austin serves as chair of the advisory committee.

(c) The advisory committee established under Subsection (a) shall address the following topics in the study:

(1) the extent to which the terms of mortgages are related to the foreclosure rate and whether the terms could be offered in a manner to reduce the likelihood of foreclosures;

(2) the socioeconomic and geographic elements characterizing foreclosures;

(3) the securitization of mortgages in the secondary market and its effect on foreclosures;

(4) consumer education efforts to prevent foreclosures; and

(5) recommendations to reduce foreclosures and the foreclosure rate across this state.

(d) The advisory committee shall determine the methodology to be used in conducting the study. The methodology used to study the topics listed in Subsections (c)(1), (2), and (3) must include a statistically significant sample size.

(e) All findings of the advisory committee must be approved by a majority of the members of the advisory committee.

(f) To obtain information to conduct the study, the department may contract with appropriate organizations, public or private institutions of higher education, and entities with experience in conducting real estate or mortgage research. All state agencies, boards, commissions, and institutions of higher education shall comply with requests from the department for information or assistance in conducting the study.

(g) All information used to conduct the study must be accessible to the department, the Savings and Loan Department, and the legislature. The department shall prepare a consolidated analysis and recapitulation of the information used to conduct the study and shall make the analysis and recapitulation available to the public. The department shall ensure that the analysis and recapitulation of the information used to conduct the study contain only aggregate data and do not contain data specific to any mortgage.

(h) Except as provided by other law, private, confidential, and privileged information obtained for the production of any public reports is the property of the parties to the mortgage and is not subject to the disclosure provisions of Chapter 552.

(i) The department shall report to the governor, the lieutenant governor, and the speaker of the house of representatives on the study and its results not later than September 1, 2006.

(j) To conduct the study, the department may use money available under Section 1372.006(a-1), and the department or advisory committee may seek and accept grants and donations.

(k) This section expires February 1, 2007.

SECTION 2. Section 1372.006, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) In addition to being used in the affordable housing research and information program under Section 2306.259, money transferred to the Texas Department of Housing and Community Affairs may be used by the department to conduct the study regarding residential foreclosures, as provided by Section 2306.260. This subsection expires February 1, 2007.

SECTION 3. 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, 2005.

HB 1672 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Howard called up with senate amendments for consideration at this time,

HB 1672, A bill to be entitled An Act relating to disposition of costs imposed in connection with the collection and enforcement of certain tolls.

Representative Howard moved to concur in the senate amendments to **HB 1672**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 910): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Casteel; Driver.

STATEMENT OF VOTE

When Record No. 910 was taken, my vote failed to register. I would have voted yes.

Casteel

Senate Committee Substitute

CSHB 1672, A bill to be entitled An Act relating to costs imposed in connection with the collection and enforcement of certain tolls.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 284.2031, Transportation Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) In a county with a population of 3.3 million or more, money [~~Money~~] collected under Subsection (a) shall be deposited in the county treasury in a special fund to be administered by the county attorney or district attorney. Expenditures from this fund shall be at the sole discretion of the attorney and may be used only to defray the salaries and expenses of the prosecutor's office, but in no event may the county attorney or district attorney supplement his or her own salary from this fund.

(d) In a county with a population of less than 3.3 million, money collected under Subsection (a) shall be deposited in the general fund of the county.

SECTION 2. (a) Subchapter D, Chapter 284, Transportation Code, is amended by adding Section 284.2032 to read as follows:

Sec. 284.2032. ADDITIONAL ADMINISTRATIVE COST IN CERTAIN COUNTIES. (a) A county with a population of 3.3 million or more may impose, in addition to other costs, $1 as an administrative cost associated with collecting a toll or charge for each event of nonpayment of a required toll or charge imposed under Section 284.069.

(b) Money collected under Subsection (a) shall be deposited in the county treasury in a special fund to be administered by the county attorney. Expenditures from the fund shall be at the sole discretion of the attorney and may be used only to defray the salaries and expenses of the attorney's office, but in no event may the county attorney supplement his or her own salary from the fund.

(b) Sections 284.208(d) and (e), Transportation Code, are repealed.

(c) The change in law made by this section applies only to an event of nonpayment of a required toll or charge occurring on or after the effective date of this section. An event of nonpayment of a required toll or charge occurring before the effective date of this section is covered by the law in effect when the event occurred, and the former law is continued in effect for that purpose.

(d) This section takes effect September 1, 2005.

SECTION 3. 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, 2005.

HB 1575 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Dutton called up with senate amendments for consideration at this time,

HB 1575, A bill to be entitled An Act relating to juvenile delinquency; providing a criminal penalty.

Representative Dutton moved to concur in the senate amendments to **HB 1575**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 911): 139 Yeas, 2 Nays, 2 Present, not voting.

Yeas — Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Nays — Harper-Brown; Phillips.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Allen, A.; Griggs; Hardcastle.

STATEMENT OF VOTE

When Record No. 911 was taken, my vote failed to register. I would have voted yes.

Griggs

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1575** in SECTION 37 of the bill, in amended Section 25.0951(a), Education Code (page 37, line 13), by striking "two" and substituting "seven".

HB 1449 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Dutton called up with senate amendments for consideration at this time,

HB 1449, A bill to be entitled An Act relating to suits affecting the parent-child relationship, including proceedings for the establishment, modification, and enforcement of child support; providing a civil penalty.

Representative Dutton 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 1449**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1449**: Dutton, chair; Goodman; Strama; Castro; and Nixon.

HB 1829 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Wong called up with senate amendments for consideration at this time,

HB 1829, A bill to be entitled An Act relating to authorizing certain institutions of higher education to charge fees for processing or handling certain payments or payment transactions.

Representative Wong moved to concur in the senate amendments to **HB 1829**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 912): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Brown, B.; Kuempel.

STATEMENT OF VOTE

When Record No. 912 was taken, my vote failed to register. I would have voted yes.

Kuempel

Senate Committee Substitute

CSHB 1829, A bill to be entitled An Act relating to authorizing certain institutions of higher education to charge fees for processing or handling certain payments or payment transactions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9461 to read as follows:

Sec. 51.9461. CHARGES AND FEES FOR CERTAIN PAYMENTS AT PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "private or independent institution of higher education" has the meaning assigned by Section 61.003.

(b) This section applies only to a payment of tuition, a fee, or another charge made by or on behalf of a student, including a person admitted but not yet enrolled, of a private or independent institution of higher education if the payment is made or authorized in person, by mail, by telephone call, or through the Internet by means of:

(1) an electronic funds transfer; or

(2) a credit card.

(c) A private or independent institution of higher education may charge a fee or other amount in connection with a payment to which this section applies, in addition to the amount of the tuition, fee, or other charge being paid, including:

(1) a discount, convenience, or service charge for the transaction; or

(2) a service charge in connection with a payment transaction that is dishonored or refused for lack of funds or insufficient funds.

(d) A fee or other charge under this section must be in an amount reasonable and necessary to reimburse the institution for the expense incurred by the institution in processing and handling the payment or payment transaction.

(e) Before accepting a payment by credit card, the institution shall notify the student or other person making the payment of any fee to be charged under this section.

SECTION 2. Section 54.5011(c), Education Code, is amended to read as follows:

(c) A fee or other charge under this section must be in an amount reasonable and necessary to reimburse the institution for [~~reasonably related to~~] the expense incurred by the institution in processing and handling the payment or payment transaction.

SECTION 3. 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, 2005.

HB 1799 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Denny called up with senate amendments for consideration at this time,

HB 1799, A bill to be entitled An Act relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.

Representative Denny moved to concur in the senate amendments to **HB 1799**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 1799, A bill to be entitled An Act relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Election Code is amended by adding Title 17 to read as follows:

TITLE 17. LOCAL OPTION ELECTIONS

CHAPTER 501. LOCAL OPTION ELECTIONS ON SALE OF ALCOHOLIC BEVERAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Alcoholic beverage," "beer," "commission," "liquor," "mixed beverage," and "wine and vinous liquor" have the meanings assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(3) "Premises" has the meaning assigned by Section 11.49, Alcoholic Beverage Code.

Sec. 501.002. REFERENCES IN OTHER LAW. A reference in law to an election or a local option election held under Chapter 251, Alcoholic Beverage Code, means an election held under this chapter.

Sec. 501.003. ENFORCEMENT. The enforcement provisions of the Alcoholic Beverage Code that relate generally to a violation of a provision of that code, including Chapter 101, Alcoholic Beverage Code, apply to a violation of a provision of this chapter.

[Sections 501.004-501.020 reserved for expansion]

SUBCHAPTER B. MANNER OF CALLING ELECTION

Sec. 501.021. ELECTION TO BE HELD. On proper petition by the required number of voters of a county, justice precinct, or municipality in the county, the commissioners court shall order a local option election in the political subdivision to determine whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision.

Sec. 501.022. QUALIFICATIONS FOR NEW POLITICAL SUBDIVISION TO HOLD ELECTION. (a) A political subdivision must have been in existence for at least 18 months before a local option election to legalize or prohibit the sale of liquor in the political subdivision may be held.

(b) The political subdivision must include substantially all the area encompassed by the political subdivision at the time of its creation and may include any other area subsequently annexed by or added to the political subdivision.

(c) This section does not apply to a municipality incorporated before December 1, 1971.

Sec. 501.023. APPLICATION FOR PETITION. (a) If 10 or more qualified voters of any county, justice precinct, or municipality file a written application and provide proof of publication in a newspaper of general circulation in that political subdivision, the county clerk of the county shall issue to the applicants a petition to be circulated among the qualified voters of the political subdivision for the signatures of those qualified voters who desire that a local option election be called for the purpose of determining whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the political subdivision.

(b) Not later than the fifth day after the date the petition is issued, the county clerk shall notify the commission and the secretary of state that the petition has been issued.

Sec. 501.024. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO PROHIBIT. (a) An application for a petition seeking an election to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed: "Application for Local Option Election Petition to Prohibit."

(b) The application must contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the application; and

(2) one of the issues listed in Section 501.035.

Sec. 501.025. HEADING, STATEMENT, AND ISSUE ON APPLICATION FOR PETITION TO LEGALIZE. (a) An application for a petition seeking an election to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed: "Application for Local Option Election Petition to Legalize."

(b) The application must contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the application; and

(2) one of the issues listed in Section 501.035.

Sec. 501.026. PETITION REQUIREMENTS. A petition must show the date the petition is issued by the county clerk and be serially numbered. Each page of a petition must bear the same date and serial number and the actual seal of the county clerk rather than a facsimile of that seal.

Sec. 501.027. HEADING AND STATEMENT ON PETITION TO PROHIBIT. (a) Each page of the petition for a local option election seeking to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed "Petition for Local Option Election to Prohibit."

(b) The petition must contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the petition; and

(2) one of the issues listed in Section 501.035.

Sec. 501.028. HEADING AND STATEMENT ON PETITION TO LEGALIZE. (a) Each page of the petition for a local option election seeking to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents must be headed "Petition for Local Option Election to Legalize."

(b) The petition must contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above."

(c) The issue to be voted on must be:

(1) clearly stated in the petition; and

(2) one of the issues listed in Section 501.035.

Sec. 501.029. OFFENSE: MISREPRESENTATION OF PETITION. (a) A person commits an offense if the person misrepresents the purpose or effect of a petition issued under this chapter.

(b) An offense under this section is a Class B misdemeanor.

Sec. 501.030. COPIES OF PETITION. (a) The county clerk shall supply as many copies of the petition as may be required by the applicants but not to exceed more than one page of the petition for every 10 registered voters in the county, justice precinct, or municipality. Each copy must bear the date, number, and seal on each page as required on the original petition.

(b) The county clerk shall keep a copy of each petition and a record of the applicants for the petition.

Sec. 501.031. VERIFICATION OF PETITION. (a) The voter registrar of the county shall check the names of the signers of petitions and the voting precincts in which the signers reside to determine whether the signers were qualified voters of the county, justice precinct, or municipality at the time the petition was issued. The political subdivision may use a statistical sampling method to verify the signatures, except that on written request from a citizen of the political subdivision for which an election is sought, the political subdivision shall verify each signature on the petition. The citizen making the request shall pay the reasonable cost of the verification. The registrar shall certify to the commissioners court the number of qualified voters signing the petition.

(b) A petition signature may not be counted unless the signature is the actual signature of the purported signer and the petition:

(1) contains in addition to the signature:

(A) the signer's printed name;

(B) the signer's date of birth;

(C) if the territory from which signatures must be obtained is situated in more than one county, the county of registration;

(D) the signer's residence address; and

(E) the date of signing; and

(2) complies with any other applicable requirements prescribed by law.

(c) The use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.

(d) The omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. The omission of the zip code from the address does not invalidate a signature.

(e) The signature is the only entry on the petition that is required to be in the signer's handwriting.

(f) A signer may withdraw the signer's signature by deleting the signature from the petition or by filing with the voter registrar an affidavit requesting that the signature be withdrawn from the petition. A signer may not withdraw the signature from a petition on or after the date the petition is received by the registrar. A withdrawal affidavit filed by mail is considered to be filed at the time of its receipt by the registrar. The withdrawal of a signature nullifies the signature on the petition and places the signer in the same position as if the signer had not signed the petition.

Sec. 501.032. REQUIREMENTS TO ORDER ELECTION. (a) The commissioners court, at its next regular session on or after the 30th day after the date the petition is filed, shall order a local option election to be held on the issue

set out in the petition if the petition is filed with the voter registrar not later than the 60th day after the date the petition is issued and bears the actual signatures of a number of qualified voters of the political subdivision equal to at least:

(1) 35 percent of the registered voters in the subdivision for a ballot issue that permits voting for or against:

(A) "The legal sale of all alcoholic beverages for off-premise consumption only.";

(B) "The legal sale of all alcoholic beverages except mixed beverages.";

(C) "The legal sale of all alcoholic beverages including mixed beverages."; or

(D) "The legal sale of mixed beverages.";

(2) 25 percent of the registered voters in the political subdivision who voted in the most recent general election for a ballot issue that permits voting for or against "The legal sale of wine on the premises of a holder of a winery permit."; or

(3) 35 percent of the registered voters in the political subdivision who voted in the most recent gubernatorial election for an election on any other ballot issue.

(b) Voters whose names appear on the list of registered voters with the notation "S," or a similar notation, shall be excluded from the computation of the number of registered voters of a particular territory.

Sec. 501.033. RECORD IN MINUTES. The date a petition is presented, the names of the signers, and the action taken with respect to the petition shall be entered in the minutes of the commissioners court.

Sec. 501.034. ISSUES TO APPEAR IN ORDER FOR ELECTION. (a) The election order must state in its heading and text whether the local option election to be held is for the purpose of prohibiting or legalizing the sale of the alcoholic beverages set out in the issue recited in the application and petition.

(b) The order must state the issue to be voted on in the election.

Sec. 501.035. ISSUES. (a) In the ballot issues prescribed by this section, "wine" is limited to vinous beverages that do not contain more than 17 percent alcohol by volume and includes malt beverages that do not exceed that alcohol content. For local option purposes, those beverages, sold and dispensed to the public in unbroken, sealed, individual containers, are a separate and distinct type of alcoholic beverage.

(b) In an area where any type or classification of alcoholic beverages is prohibited and the issue submitted pertains to legalization of the sale of one or more of the prohibited types or classifications, the ballot shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(9) "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."

(10) "The legal sale of wine on the premises of a holder of a winery permit."

(c) In an area where the sale of all alcoholic beverages including mixed beverages has been legalized, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of all alcoholic beverages including mixed beverages."

(8) "The legal sale of mixed beverages."

(9) "The legal sale of mixed beverages in restaurants by food and beverage certificate holders only."

(10) "The legal sale of wine on the premises of a holder of a winery permit."

(d) In an area where the sale of all alcoholic beverages except mixed beverages has been legalized, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of all alcoholic beverages for off-premise consumption only."

(6) "The legal sale of all alcoholic beverages except mixed beverages."

(7) "The legal sale of wine on the premises of a holder of a winery permit."

(e) In an area where the sale of beverages containing alcohol not in excess of 17 percent by volume has been legalized, and those of higher alcoholic content are prohibited, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(3) "The legal sale of beer and wine for off-premise consumption only."

(4) "The legal sale of beer and wine."

(5) "The legal sale of wine on the premises of a holder of a winery permit."

(f) In an area where the sale of beer containing alcohol not exceeding four percent by weight has been legalized, and all other alcoholic beverages are prohibited, the ballot for a prohibitory election shall be prepared to permit voting for or against the one of the following issues that applies:

(1) "The legal sale of beer for off-premise consumption only."

(2) "The legal sale of beer."

(g) In an area where the sale of a particular type of alcoholic beverage has been legalized only for off-premise consumption, no alcoholic beverage may be consumed on any licensed premises and no type of alcoholic beverage other than the type legalized may be sold.

Sec. 501.036. ISSUE ON MIXED BEVERAGES. (a) A local option election does not affect the sale of mixed beverages unless the proposition specifically mentions mixed beverages.

(b) In any local option election in which any shade or aspect of the issue submitted involves the sale of mixed beverages, any other type or classification of alcoholic beverage that was legalized before the election remains legal without regard to the outcome of that election on the question of mixed beverages. If the sale of mixed beverages by food and beverage certificate holders was legalized before a local option election on the general sale of mixed beverages, the sale of mixed beverages in an establishment that holds a food and beverage certificate remains legal without regard to the outcome of the election on the general sale of mixed beverages.

Sec. 501.037. EVIDENCE OF VALIDITY. The commissioners court election order is prima facie evidence of compliance with all provisions necessary to give the order validity or to give the commissioners court jurisdiction to make the order valid.

Sec. 501.038. FREQUENCY OF ELECTIONS. A local option election on a particular issue may not be held in a political subdivision until after the first anniversary of the most recent local option election in that political subdivision on that issue.

[Sections 501.039-501.100 reserved for expansion]

SUBCHAPTER C. HOLDING OF ELECTION

Sec. 501.101. APPLICABILITY OF ELECTION CODE. Except as provided by this chapter, the officers holding a local option election shall hold the election in the manner provided by the other provisions of this code.

Sec. 501.102. ELECTION PRECINCTS. (a) County election precincts shall be used for a local option election to be held in an entire county or in a justice precinct.

(b) Election precincts established by the governing body of the municipality for its municipal elections shall be used for a local option election to be held in a municipality. If the governing body has not established precincts for its municipal

elections, the commissioners court shall prescribe the election precincts for the local option election under the law governing establishment of precincts for municipal elections.

Sec. 501.103. POLLING PLACES; NOTICE. (a) The election shall be held at the customary polling place in each election precinct. If the customary polling place is not available, the commissioners court shall designate another polling place.

(b) The notice for the election shall state the polling place for each election precinct and the precinct numbers of county precincts included in each municipal election precinct if the election is for a municipality.

Sec. 501.104. NUMBER OF BALLOTS FURNISHED. If the election is conducted using printed ballots, the county clerk shall furnish the presiding judge of each election precinct with at least the number of ballots equal to the number of registered voters in the precinct plus 10 percent of that number of voters.

Sec. 501.105. ISSUE ON BALLOT. (a) The issue ordered to appear on the ballot for an election ordered by the commissioners court must be the same as the issue applied for and set out in the petition.

(b) The issue appropriate to the election shall be printed on the ballot in the exact language stated in Section 501.035.

Sec. 501.106. TIME FOR VOTE TALLY. The votes for a local option election shall be counted and the report of the election submitted to the commissioners court within 24 hours after the time the polls close.

Sec. 501.107. COUNTY PAYMENT OF ELECTION EXPENSES. The county shall pay the expense of holding a local option election authorized by this chapter in the county, justice precinct, or municipality in that county except that:

(1) if an election is to be held only within the corporate limits of a municipality located wholly within the county, the county may require the municipality to reimburse the county for all or part of the expenses of holding the local option election;

(2) county payment of the expense of an election to legalize the sale of alcoholic beverages is limited to the holding of one election in a political subdivision during a one-year period; and

(3) county payment of the expense of an election to prohibit the sale of alcoholic beverages is limited to the holding of one election in a political subdivision during a one-year period.

Sec. 501.108. DEPOSIT REQUIRED FOR CERTAIN ELECTIONS. (a) If a county is not required to pay the expense of a local option election under Section 501.107, the county clerk shall require the applicants for a petition for a local option election to make a deposit before the issuance of the petition.

(b) The deposit must be in the form of a cashier's check in an amount equal to 25 cents per voter listed on the current list of registered voters residing in the county, justice precinct, or municipality where the election is to be held.

(c) The money received shall be deposited in the county's general fund. A refund may not be made to the applicants regardless of whether the petition is returned to the county clerk or the election is ordered.

(d) The county clerk may not issue a petition to the applicants unless a deposit required by this chapter is made.

(e) A person who violates Subsection (d) commits an offense. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than $200 nor more than $500;

(2) confinement in the county jail for not more than 30 days; or

(3) both the fine and confinement.

Sec. 501.109. ELECTION IN CERTAIN MUNICIPALITIES. (a) This section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality that is located in more than one county.

(b) An election to which this section applies shall be conducted by the municipality instead of the counties. For the purposes of an election conducted under this section, a reference in this chapter to:

(1) the county is considered to refer to the municipality;

(2) the commissioners court is considered to refer to the governing body of the municipality;

(3) the county clerk or voter registrar is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(c) The municipality shall pay the expense of the election.

(d) An action to contest the election under Section 501.155 may be brought in the district court of any county in which the municipality is located.

[Sections 501.110-501.150 reserved for expansion]

SUBCHAPTER D. PROCEDURE FOLLOWING ELECTION

Sec. 501.151. DECLARATION OF RESULT. (a) On completing the canvass of the election returns, the commissioners court shall make an order declaring the result and cause the clerk of the commissioners court to record the order as provided by law.

(b) In a prohibitory election, if a majority of the votes cast do not favor the issue "The legal sale . . .," the court's order must state that the sale of the type or types of beverages stated in the issue at the election is prohibited effective on the 30th day after the date the order is entered. The prohibition remains in effect until changed by a subsequent local option election held under this chapter.

(c) In a legalization election, if a majority of the votes cast favor the issue "The legal sale . . .," the legal sale of the type or types of beverages stated in the issue at the election is legal on the entering of the court's order. The legalization remains in effect until changed by a subsequent local option election held under this code.

(d) The local option status of a political subdivision does not change as a result of the election if:

(1) in an election described by Subsection (b), less than a majority of the votes cast do not favor the issue; and

(2) in an election described by Subsection (c), less than a majority of the votes cast favor the issue.

Sec. 501.152. ORDER PRIMA FACIE EVIDENCE. The order of the commissioners court declaring the result of the election is prima facie evidence that all provisions of law have been complied with in giving notice of and holding the election, counting and returning the votes, and declaring the result of the election.

Sec. 501.153. CERTIFICATION OF RESULT. Not later than the third day after the date the result of a local option election has been declared, the county clerk shall certify the result to the secretary of state and the commission. The clerk may not charge a fee for this service.

Sec. 501.154. POSTING ORDER PROHIBITING SALE. (a) A commissioners court order declaring the result of a local option election and prohibiting the sale of any or all types of alcoholic beverages must be published by posting the order at three public places in the county or other political subdivision in which the election was held.

(b) The posting of the order shall be recorded in the minutes of the commissioners court by the county judge. The entry in the minutes or a copy certified under the hand and seal of the county clerk is prima facie evidence of the posting.

Sec. 501.155. ELECTION CONTEST. (a) The enforcement of local option laws in the political subdivision in which an election is being contested is not suspended during an election contest.

(b) The result of an election contest finally settles all questions relating to the validity of that election. A person may not call the legality of that election into question again in any other suit or proceeding.

(c) If an election contest is not timely instituted, it is conclusively presumed that the election is valid and binding in all respects on all courts.

SECTION 2. The heading to Chapter 251, Alcoholic Beverage Code, is amended to read as follows:

CHAPTER 251. LOCAL OPTION STATUS [~~ELECTIONS~~]

SECTION 3. Section 251.71, Alcoholic Beverage Code, is amended by adding Subsection (e) to read as follows:

(e) For purposes of this code:

(1) a reference to a local option election means an election held under Chapter 501, Election Code; and

(2) a local option election held under Chapter 501, Election Code, is considered to have been held under this code.

SECTION 4. Section 251.72, Alcoholic Beverage Code, is amended to read as follows:

Sec. 251.72. CHANGE OF STATUS. Except as provided in Section 251.73 of this code, an authorized voting unit that has exercised or may exercise the right of local option retains the status adopted, whether absolute prohibition or legalization of the sale of alcoholic beverages of one or more of the various

types and alcoholic contents on which an issue may be submitted under the terms of Section 501.035, Election Code [~~251.14 of this code~~], until that status is changed by a subsequent local option election in the same authorized voting unit.

SECTION 5. Section 251.80(c), Alcoholic Beverage Code, is amended to read as follows:

(c) The provisions of Section 501.107, Election Code, [~~251.40 of this code~~] relating to the payment of local option election expenses shall apply to elections held in a territory that is defined in accordance with Subsection (a) of this section.

SECTION 6. Subchapter D, Chapter 251, Alcoholic Beverage Code, is amended by adding Section 251.82 to read as follows:

Sec. 251.82. ELECTION IN CERTAIN CITIES AND TOWNS. For the purposes of an election conducted under Section 501.109, Election Code, a reference in this code:

(1) to the county is considered to refer to the city or town;

(2) to the commissioners court is considered to refer to the governing body of the city or town;

(3) to the county clerk or registrar of voters is considered to refer to the secretary of the city or town or, if the city or town does not have a secretary, to the person performing the functions of a secretary of the city or town; and

(4) to the county judge is considered to refer to the mayor of the city or town or, if the city or town does not have a mayor, to the presiding officer of the governing body of the city or town.

SECTION 7. Subchapters A, B, and C, Chapter 251, Alcoholic Beverage Code, are repealed.

SECTION 8. The saving provisions of Section 311.031, Government Code, apply to:

(1) the repeal of Subchapters A, B, and C, Chapter 251, Alcoholic Beverage Code, by this Act as if those provisions were statutes to which Section 311.031 applies; and

(2) the enactment of Title 17, Election Code, by this Act as if this Act were a code governed by Chapter 311, Government Code.

SECTION 9. This Act takes effect September 1, 2005.

HB 1939 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Ritter called up with senate amendments for consideration at this time,

HB 1939, A bill to be entitled An Act relating to certain disqualifications for unemployment compensation benefits for assigned employees of staff leasing services companies.

Representative Ritter moved to concur in the senate amendments to **HB 1939**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 1939, A bill to be entitled An Act relating to certain disqualifications for unemployment compensation benefits for assigned employees of staff leasing services companies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 207.045(i), Labor Code, is amended to read as follows:

(i) An assigned employee of a staff leasing services company is considered to have left the assigned employee's last work without good cause if the staff leasing services company demonstrates that:

(1) at the time the employee's assignment to a client company concluded, the staff leasing services company, or the client company acting on the staff leasing services company's behalf, gave written notice and written instructions to the assigned employee to contact the staff leasing services company for a new assignment [~~on termination of assignment at a client company~~]; and

(2) the assigned employee did not contact the staff leasing services company regarding reassignment or continued employment; provided that the assigned employee may show that good cause existed for the assigned employee's failure to contact the staff leasing services company.

SECTION 2. The changes in law made by this Act apply only to a claim for unemployment compensation benefits that is filed with the Texas Workforce Commission on or after the effective date of this Act. A claim filed before that date is governed by the law in effect on the date the claim was filed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2005.

HB 2104 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Delisi called up with senate amendments for consideration at this time,

HB 2104, A bill to be entitled An Act relating to the prosecution of the offense of hindering apprehension or prosecution.

Representative Delisi moved to concur in the senate amendments to **HB 2104**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 2104, A bill to be entitled An Act relating to the prosecution of the offense of hindering apprehension or prosecution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 38.05(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense or, with intent to hinder the arrest, detention, adjudication, or disposition of a child for engaging in delinquent conduct that violates a penal law of the state, or with intent to hinder the arrest of another under the authority of a warrant or capias [~~grade of felony~~], he:

(1) harbors or conceals the other;

(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or

(3) warns the other of impending discovery or apprehension.

SECTION 2. The change in law made 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 covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

SECTION 3. This Act takes effect September 1, 2005.

HB 401 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Villarreal called up with senate amendments for consideration at this time,

HB 401, A bill to be entitled An Act relating to the use of volunteer income tax assistance programs by persons who owe delinquent child support.

Representative Villarreal moved to concur in the senate amendments to **HB 401**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 401, A bill to be entitled An Act relating to providing information to certain persons about the availability of volunteer income tax assistance programs and the federal earned income tax credit.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 231, Family Code, is amended by adding Section 231.122 to read as follows:

Sec. 231.122. COOPERATION WITH VOLUNTEER INCOME TAX ASSISTANCE PROGRAMS. (a) In order to maximize the amount of any tax refund to which an obligor may be entitled and which may be applied to child support and medical support obligations, the Title IV-D agency shall cooperate with volunteer income tax assistance programs in the state in informing obligors of the availability of the programs.

(b) The Title IV-D agency shall publicize the services of the volunteer income tax assistance programs by distributing printed materials regarding the programs and by placing information regarding the programs on the agency's Internet website.

(c) The Title IV-D agency is not responsible for producing or paying the costs of producing the printed materials distributed in accordance with Subsection (b).

SECTION 2. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.087 to read as follows:

Sec. 531.087. DISTRIBUTION OF EARNED INCOME TAX CREDIT INFORMATION. (a) The commission shall ensure that educational materials relating to the federal earned income tax credit are provided in accordance with this section to each person receiving assistance or benefits under:

(1) the child health plan program;

(2) the financial assistance program under Chapter 31, Human Resources Code;

(3) the medical assistance program under Chapter 32, Human Resources Code;

(4) the food stamp program under Chapter 33, Human Resources Code; or

(5) another appropriate health and human services program.

(b) In accordance with Section 531.0317, the commission shall, by mail or through the Internet, provide a person described by Subsection (a) with access to:

(1) Internal Revenue Service publications relating to the federal earned income tax credit or information prepared by the comptroller under Section 403.025 relating to that credit;

(2) federal income tax forms necessary to claim the federal earned income tax credit; and

(3) where feasible, the location of at least one program in close geographic proximity to the person that provides free federal income tax preparation services to low-income and other eligible persons.

(c) In January of each year, the commission or a representative of the commission shall mail to each person described by Subsection (a) information about the federal earned income tax credit that provides the person with referrals to the resources described by Subsection (b).

SECTION 3. This Act takes effect September 1, 2005.

HB 260 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative McReynolds called up with senate amendments for consideration at this time,

HB 260, A bill to be entitled An Act relating to suits affecting the parent-child relationship and protective orders.

Representative Goodman 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 260**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 260**: Goodman, chair; Nixon; Strama; Phillips; and Casteel.

HB 972 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Solomons called up with senate amendments for consideration at this time,

HB 972, A bill to be entitled An Act relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

Representative Solomons moved to concur in the senate amendments to **HB 972**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 972, A bill to be entitled An Act relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.002(a), Occupations Code, is amended to read as follows:

(a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive[~~, "incisive~~] or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

SECTION 2. Section 201.004, Occupations Code, is amended to read as follows:

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017 [~~2005~~].

SECTION 3. Sections 201.053(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~,~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person [~~An officer, employee, or paid consultant of a Texas trade association in the field of health care~~] may not be a member [~~or employee~~] of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [~~who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule~~].

(d) A person may not be [~~serve as~~] a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 201.056(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office [~~appointment~~] the qualifications required by Sections 201.051 and 201.052(b);

(2) does not maintain during service on the board the qualifications required by Sections 201.051 and 201.052(b);

(3) is ineligible for membership under [~~violates a prohibition established by~~] Section 201.052 or 201.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subchapter B, Chapter 201, Occupations Code, is amended by adding Section 201.061 to read as follows:

Sec. 201.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 6. Section 201.101, Occupations Code, is amended to read as follows:

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 7. Section 201.152(b), Occupations Code, is amended to read as follows:

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules [~~opinions~~] based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

SECTION 8. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.1525 and 201.1526 to read as follows:

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform;

(2) must clearly specify any equipment and the use of that equipment that is prohibited; and

(3) may require a license holder to obtain additional training or certification to perform certain procedures or use certain equipment.

Sec. 201.1526. DEVELOPMENT OF PROPOSED RULES REGARDING SCOPE OF PRACTICE OF CHIROPRACTIC. (a) This section applies to the process by which the board develops proposed rules under Section 201.1525 before the proposed rules are published in the Texas Register and before the board complies with the rulemaking requirements of Chapter 2001, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

(c) A rule adopted by the board under Section 201.1525 may not be challenged on the grounds that the board did not comply with this section. If the board was unable to solicit a significant amount of advice and opinion from the public or from affected persons early in the rule development process, the board shall state in writing the reasons why the board was unable to do so.

SECTION 9. Subchapter D, Chapter 201, Occupations Code, is amended by adding Section 201.1555 to read as follows:

Sec. 201.1555. FRAUD. (a) The board shall strictly and vigorously enforce the provisions of this chapter prohibiting fraud.

(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:

(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

SECTION 10. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.163 and 201.164 to read as follows:

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Sec. 201.164. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 11. Section 201.205(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) require the board to prioritize complaints for purposes of determining the order in which they are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending;

(3) ensure that a complaint is not dismissed without appropriate consideration;

(4) [~~(3)~~] require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(5) [~~(4)~~] ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and

(6) [~~(5)~~] prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

SECTION 12. Subchapter E, Chapter 201, Occupations Code, is amended by adding Sections 201.207, 201.208, and 201.209 to read as follows:

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

(1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and

(2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) The board is not required to provide notice before conducting an inspection under this section.

Sec. 201.208. COOPERATION WITH TEXAS DEPARTMENT OF INSURANCE. (a) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation by providing information that is relevant to the investigation. Except as provided by this section, confidential information that is shared under this section remains confidential under law, and legal restrictions on access to the information remain in effect unless the agency sharing the information approves use of the information by the receiving agency for enforcement purposes. The provision of information by the board to the department or by the department to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) The department and the board shall develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency, including information on all disciplinary actions taken.

(e) The department and the board shall collaborate on taking appropriate disciplinary actions to the extent practicable.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all investigations conducted by the board with the cooperation and assistance of the Texas Department of Insurance and the Texas Workers' Compensation Commission during the preceding fiscal year.

SECTION 13. Section 201.251, Occupations Code, is amended to read as follows:

Sec. 201.251. APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS. (a) The board shall appoint local chiropractic peer review committees. Members of a local chiropractic peer review committee serve staggered terms of three years, with as near to one-third of the members' terms as possible expiring December 31 of each year.

(b) The board may seek input [~~shall appoint the members of the peer review committee~~] from state [~~a list of nominees submitted by the local~~] chiropractic associations in selecting persons to appoint to a local [~~association to conduct~~] peer review committee [~~procedures~~].

SECTION 14. Section 201.252, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The board shall establish requirements for peer review training programs that do not discriminate against any chiropractor. A peer review training program must include training in the investigation of complaints in accordance with this chapter and board rules.

(d) The board by rule shall adopt additional requirements for eligibility to serve on a chiropractic peer review committee, including a requirement that a member have:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with Article 21.58A, Insurance Code.

SECTION 15. Section 201.253(a), Occupations Code, is amended to read as follows:

(a) The board shall appoint an executive chiropractic peer review committee to direct the activities of the local committees. The executive peer review committee consists of six volunteer members. Members of the executive peer review committee serve staggered terms of three years, with one-third of the members' terms expiring December 31 of each year. The executive peer review committee shall elect a presiding officer from its members.

SECTION 16. The heading to Section 201.254, Occupations Code, is amended to read as follows:

Sec. 201.254. DUTIES OF PEER REVIEW COMMITTEE WITH REGARD TO CERTAIN DISPUTES.

SECTION 17. Subchapter F, Chapter 201, Occupations Code, is amended by adding Sections 201.2545 and 201.2546 to read as follows:

Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW COMMITTEE. (a) The board may refer to a local chiropractic peer review committee for investigation a complaint regarding whether chiropractic treatment or services provided by a chiropractor were provided according to the standard of care in the practice of chiropractic.

(b) In conducting an investigation of a referred complaint, the committee shall review the records and other evidence obtained by the staff of the board in the course of the staff's investigation of the complaint.

(c) The committee shall report to the board its findings regarding the complaint, including a statement of:

(1) the standard of care in the practice of chiropractic governing the chiropractic treatment or services provided by the chiropractor;

(2) whether the chiropractor met the standard of care in providing the treatment or services; and

(3) the clinical basis for the committee's finding under Subdivision (2).

(d) The board may request a member of the committee to attend an informal conference or testify at a contested case hearing.

(e) The board, with input from the executive chiropractic peer review committee, shall adopt rules necessary to implement this section.

Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN COMMITTEE ACTIVITIES. (a) In the absence of fraud, conspiracy, or malice, a member of a peer review committee is not liable in a civil action for a finding,

evaluation, recommendation, or other action made or taken by the member as a member of the committee or by the committee. The immunity granted by this subsection does not limit the operation of federal or state antitrust laws as applied to the conduct of a local or executive peer review committee that involves price fixing or any other unreasonable restraint of trade.

(b) A member of a peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by the member.

(c) Except for the express immunity provided by Subsection (a), this section does not deprive any person of a right or remedy, legal or equitable.

SECTION 18. Section 201.255, Occupations Code, is amended to read as follows:

Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON DISPUTES MEDIATED. (a) The board may request from a chiropractic peer review committee information pertaining to actions taken by the peer review committee.

(b) The executive chiropractic peer review committee shall file annually with the board a report on the disputes mediated by the local chiropractic peer review committees under Section 201.254 during the preceding calendar year. The report must include:

(1) the number of disputes referred to the committees;

(2) a categorization of the disputes referred to the committees and the number of complaints in each category; and

(3) the number of disputes resolved and the manner in which they were resolved.

SECTION 19. Subchapter F, Chapter 201, Occupations Code, is amended by adding Section 201.256 to read as follows:

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. The board shall maintain on the board's Internet website information regarding local chiropractic peer review committees, including:

(1) the services committees provide; and

(2) the types of disputes committees mediate.

SECTION 20. Section 201.302, Occupations Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed 90 [~~60~~] semester hours of college courses at a school other than a chiropractic school; and

(4) is either a graduate or a final semester student of a bona fide reputable chiropractic school.

(d) Notwithstanding Subsection (a)(3), if the Council on Chiropractic Education or another national chiropractic education accreditation organization recognized by the board requires a number of semester hours of college courses

at a school other than a chiropractic school that is greater or less than the number of hours specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.

SECTION 21. Section 201.303(a), Occupations Code, is amended to read as follows:

(a) To comply with the requirements of Section 201.302 [~~201.302(a)(3)~~], the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of [~~60 or more~~] semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

SECTION 22. Section 201.305, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

SECTION 23. Section 201.307(b), Occupations Code, is amended to read as follows:

(b) The board by rule shall establish the number of times [~~and the conditions under which~~] an applicant may retake the [~~an~~] examination required by Section 201.304(a)(1) or (b), as applicable. An applicant must pass the examination required by Section 201.304(a)(2) within three attempts. The board by rule shall establish the conditions under which an applicant may retake an examination. The board may require an applicant to fulfill additional educational requirements.

SECTION 24. Sections 201.354(d) and (g), Occupations Code, are amended to read as follows:

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the annual [~~required~~] renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~and an additional fee equal to one-half of the examination fee for the license~~]. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~all unpaid renewal fees and an additional fee equal to the examination fee for the license~~].

(g) A person may renew a license that has been expired for at least one year but not more than three years if:

(1) the board determines according to criteria adopted by board rule that the person has shown good cause for the failure to renew the license; and

(2) the person pays to the board:

(A) the annual [~~required~~] renewal fee set by the board under Section 201.153(a) for each year in which the license was expired;

(B) [~~and~~] an additional fee in an amount equal to the sum of:

(i) [~~(A)~~] the annual renewal [~~examination~~] fee set by the board under Section 201.153(a) [~~for the license~~], multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) [~~(B)~~] two times the annual renewal [~~examination~~] fee set by the board under Section 201.153(a); and

(C) the increase in the annual renewal fee required by Section 201.153(b) [~~for the license~~].

SECTION 25. Section 201.355(b), Occupations Code, is amended to read as follows:

(b) The person must pay to the board a fee that is equal to the normally required renewal [~~amount of the examination~~] fee for the license.

SECTION 26. The heading to Subchapter J, Chapter 201, Occupations Code, is amended to read as follows:

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER [~~REQUIREMENTS REGARDING USE OF CHIROPRACTIC ASSISTANTS AND TECHNOLOGY~~]

SECTION 27. Subchapter J, Chapter 201, Occupations Code, is amended by adding Section 201.453 to read as follows:

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) The Texas Department of Insurance shall provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall provide to the board a copy of any expert report served under Section 74.351, Civil Practice and Remedies Code, in a malpractice action against the chiropractor.

SECTION 28. Section 201.502(a), Occupations Code, is amended to read as follows:

(a) The board may refuse to admit a person to examinations and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) presenting to the board or using a license, certificate, or diploma or a transcript of a license, certificate, or diploma that was illegally or fraudulently obtained, counterfeited, or materially altered;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the examination;

(5) being convicted of a crime involving moral turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that is false or that tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner, if that advertising is not readily subject to verification;

(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic license, certificate, or diploma;

(14) impersonating or acting as proxy for another in an examination required by this chapter for a chiropractic license;

(15) impersonating a licensed chiropractor;

(16) allowing one's chiropractic license to be used by another person to practice chiropractic;

(17) being proved insane by a person having authority to make that determination;

(18) failing to use proper diligence in the practice of chiropractic or using gross inefficiency in the practice of chiropractic;

(19) failing to clearly differentiate a chiropractic office or clinic from another business or enterprise;

(20) personally soliciting a patient or causing a patient to be solicited by the use of a case history of another patient of another chiropractor;

(21) using for the purpose of soliciting patients an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code; or

(22) advertising using the term "physician" or "chiropractic physician" or any combination or derivation of the term "physician."

SECTION 29. Subchapter K, Chapter 201, Occupations Code, is amended by adding Sections 201.5025 and 201.5026 to read as follows:

Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT. (a) A chiropractor or an applicant for a license to practice chiropractic commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) commits fraud or deception in taking or passing an examination;

(3) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 201.5026, or injure the public;

(4) engages in conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license;

(5) directly or indirectly employs a person whose license to practice chiropractic has been suspended, canceled, or revoked;

(6) associates in the practice of chiropractic with a person:

(A) whose license to practice chiropractic has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of chiropractic in this state or elsewhere; or

(7) directly or indirectly aids or abets the practice of chiropractic by a person that is not licensed to practice chiropractic by the board.

(b) For purposes of Subsection (a)(4), conduct that subverts or attempts to subvert the chiropractic licensing examination process includes, as prescribed by board rule, conduct that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). Proof of the commission of the act while in the practice of chiropractic or under the guise of the practice of chiropractic is sufficient for the board's action.

SECTION 30. The heading to Section 201.504, Occupations Code, is amended to read as follows:

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

SECTION 31. Section 201.504, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Subject to Subsection (d), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(d) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 32. Subchapter K, Chapter 201, Occupations Code, is amended by adding Section 201.5065 to read as follows:

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the chiropractor's license.

SECTION 33. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of chiropractic without a license or registration under this chapter, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter L.

SECTION 34. Section 201.604, Occupations Code, is amended to read as follows:

Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as provided by Section 201.605, a~~] person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $500 or by confinement in the county jail for not more than 30 days.

SECTION 35. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.606 to read as follows:

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this chapter, provides chiropractic treatment or services to a patient while intoxicated, and, by reason of that conduct, places the patient at a substantial and unjustifiable risk of harm.

(c) An offense under this section is a state jail felony.

SECTION 36. Sections 201.053(c), 201.059, 201.162, and 201.254(c)-(e), Occupations Code, are repealed.

SECTION 37. The changes in law made by Section 201.053, Occupations Code, as amended by this Act, and Section 201.061, Occupations Code, as added by this Act, regarding the prohibitions on or qualifications of members of the Texas Board of Chiropractic Examiners do not affect the entitlement of a member serving on the board immediately before September 1, 2005, to continue to serve and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

SECTION 38. Not later than January 1, 2006, the Texas Board of Chiropractic Examiners shall adopt the rules required by Sections 201.1525, 201.1555, and 201.2545, Occupations Code, as added by this Act, and Sections 201.205 and 201.252, Occupations Code, as amended by this Act.

SECTION 39. The changes in law made by this Act to Chapter 201, Occupations Code, relating to the investigation of a complaint apply only to a complaint filed with the Texas Board of Chiropractic Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 40. (a) The terms of the members of the local chiropractic peer review committees appointed under Section 201.251, Occupations Code, serving on December 31, 2005, expire on that date.

(b) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the local chiropractic peer review committees under Section 201.251, Occupations Code, as amended by this Act. In appointing the initial members of each committee, the board shall appoint as near to one-third of the members as possible to terms expiring December 31, 2006, as near to one-third as possible to terms expiring December 31, 2007, and as near to one-third as possible to terms expiring December 31, 2008. This Act does not prohibit a person who is a member of a local chiropractic peer review committee before January 1, 2006, from being appointed as a member of the committee to serve a term beginning on or after January 1, 2006, if the person has the qualifications required for the position under Section 201.252, Occupations Code, as amended by this Act.

SECTION 41. (a) The terms of the members of the executive chiropractic peer review committee appointed under Section 201.253, Occupations Code, serving on December 31, 2005, expire on that date.

(b) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the executive chiropractic peer review committee under Section 201.253, Occupations Code, as amended by this Act.

In appointing the initial members of the committee, the board shall appoint two persons to terms expiring December 31, 2006, two to terms expiring December 31, 2007, and two to terms expiring December 31, 2008. This Act does not prohibit a person who is a member of the executive chiropractic peer review committee before January 1, 2006, from being appointed as a member of the committee to serve a term beginning on or after January 1, 2006, if the person has the qualifications required for the position under Section 201.253, Occupations Code, as amended by this Act.

SECTION 42. The changes in law made by this Act to Sections 201.302 and 201.303, Occupations Code, apply only to a person who enrolls in a chiropractic school on or after the effective date of this Act. A person who enrolled in a chiropractic school before that date is governed by the law in effect on the date of enrollment, and the former law is continued in effect for that purpose.

SECTION 43. The changes in law made by this Act to Sections 201.354 and 201.355, Occupations Code, apply only to the renewal of a license to practice chiropractic that expires on or after the effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

SECTION 44. This Act takes effect September 1, 2005.

HB 1751 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Peña called up with senate amendments for consideration at this time,

HB 1751, A bill to be entitled An Act relating to the procedures governing the payment of restitution by criminal defendants.

Representative Peña moved to concur in the senate amendments to **HB 1751**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 1751, A bill to be entitled An Act relating to the procedures governing the payment of restitution by criminal defendants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 42.037, Code of Criminal Procedure, is amended by amending Subsections (a)-(c) and (e)-(i) to read as follows:

(a) In addition to any fine authorized by law, the court that sentences a defendant convicted of an offense may order the defendant to make restitution to any victim of the offense <u>or to the compensation to victims of crime fund established under Subchapter B, Chapter 56, to the extent that fund has paid</u>

compensation to or on behalf of the victim. If the court does not order restitution or orders partial restitution under this subsection, the court shall state on the record the reasons for not making the order or for the limited order.

(b)(1) If the offense results in damage to or loss or destruction of property of a victim of the offense, the court may order the defendant:

(A) to return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property is impossible or impractical or is an inadequate remedy, to pay an amount equal to the greater of:

(i) the value of the property on the date of the damage, loss, or destruction; or

(ii) the value of the property on the date of sentencing, less the value of any part of the property that is returned on the date the property is returned.

(2) If the offense results in personal [~~bodily~~] injury to a victim, the court may order the defendant to make restitution to:

(A) the victim for any expenses incurred by the victim as a result of the offense; or

(B) the compensation to victims of crime fund to the extent that fund has paid compensation to or on behalf of the victim [~~do any one or more of the following:~~

[~~(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;~~

[~~(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; or~~

[~~(C) reimburse the victim for income lost by the victim as a result of the offense~~].

(3) [~~If the offense results in the death of a victim, the court may, in addition to an order under Subdivision (2) of this subsection, order the defendant to pay an amount equal to the cost of necessary funeral and related services.~~

[~~(4)~~] If the victim or the victim's estate consents, the court may, in addition to an order under Subdivision (2) [~~of this subsection~~], order the defendant to make restitution by performing services instead of by paying money or make restitution to a person or organization, other than the compensation to victims of crime fund, designated by the victim or the estate.

(c) The court, in determining whether to order restitution and the amount of restitution, shall consider:

(1) the amount of the loss sustained by any victim and the amount paid to or on behalf of the victim by the compensation to victims of crime fund as a result of the offense; and

(2) [~~the financial resources of the defendant;~~

[~~(3) the financial needs and earning ability of the defendant and the defendant's dependents; and~~

[~~(4)~~] other factors the court deems appropriate.

(e) The court shall impose an order of restitution that is as fair as possible to the victim or to the compensation to victims of crime fund, as applicable. The imposition of the order may not unduly complicate or prolong the sentencing process.

(f)(1) The court may not order restitution for a loss for which the victim has received or will receive compensation only from a source other than the compensation to victims of crime fund. The court may, in the interest of justice, order restitution to any person who has compensated the victim for the loss to the extent the person paid compensation. An order of restitution shall require that all restitution to a victim or to the compensation to victims of crime fund be made before any restitution to any other person is made under the order.

(2) Any amount recovered by a victim from a person ordered to pay restitution in a federal or state civil proceeding is reduced by any amount previously paid to the victim by the person under an order of restitution.

(g)(1) The court may require a defendant to make restitution under this article within a specified period or in specified installments. If the court requires the defendant to make restitution in specified installments, in addition to the installment payments, the court may require the defendant to pay a one-time restitution fee of $12, $6 of which the court shall retain for costs incurred in collecting the specified installments and $6 of which the court shall order to be paid to the compensation to victims of crime fund.

(2) The end of the period or the last installment may not be later than:

(A) the end of the period of probation, if probation is ordered;

(B) five years after the end of the term of imprisonment imposed, if the court does not order probation; or

(C) five years after the date of sentencing in any other case.

(3) If the court does not provide otherwise, the defendant shall make restitution immediately.

(4) Except as provided by Subsection (n), the order of restitution must require the defendant to make restitution directly to the victim or other person eligible for restitution under this article, including the compensation to victims of crime fund, or to deliver the amount or property due as restitution to a community supervision and corrections department for transfer to the victim or person.

(h) If a defendant is placed on community supervision or is paroled or released on mandatory supervision, the court or the parole panel shall order the payment of restitution ordered under this article as a condition of community supervision, parole, or mandatory supervision. The court may revoke community supervision and the parole panel may revoke parole or mandatory supervision if the defendant fails to comply with the order. In determining whether to revoke community supervision, parole, or mandatory supervision, the court or parole panel shall consider:

(1) the defendant's employment status;

(2) the defendant's current and future earning ability;

(3) the defendant's current and future financial resources;

(4) the willfulness of the defendant's failure to pay; [~~and~~]

(5) any other special circumstances that may affect the defendant's ability to pay; and

(6) the victim's financial resources or ability to pay expenses incurred by the victim as a result of the offense.

(i) In addition to any other terms and conditions of probation imposed under Article 42.12 [~~of this code~~], the court may require a probationer to reimburse the compensation to victims of crime [~~crime victims compensation~~] fund created under Subchapter B, Chapter 56, for any amounts paid from that fund to or on behalf of a victim of the probationer's offense. In this subsection, "victim" has the meaning assigned by Article 56.32 [~~56.01 of this code~~].

SECTION 2. Section 11(a), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) The judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may, at any time, during the period of community supervision alter or modify the conditions. The judge may impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. Conditions of community supervision may include, but shall not be limited to, the conditions that the defendant shall:

(1) Commit no offense against the laws of this State or of any other State or of the United States;

(2) Avoid injurious or vicious habits;

(3) Avoid persons or places of disreputable or harmful character;

(4) Report to the supervision officer as directed by the judge or supervision officer and obey all rules and regulations of the community supervision and corrections department;

(5) Permit the supervision officer to visit the defendant [~~him~~] at the defendant's [~~his~~] home or elsewhere;

(6) Work faithfully at suitable employment as far as possible;

(7) Remain within a specified place;

(8) Pay the defendant's [~~his~~] fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums;

(9) Support the defendant's [~~his~~] dependents;

(10) Participate, for a time specified by the judge in any community-based program, including a community-service work program under Section 16 of this article;

(11) Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending the defendant [~~him~~] in the case, if counsel was appointed, or if the defendant [~~he~~] was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

(12) Remain under custodial supervision in a community corrections facility, obey all rules and regulations of such facility, and pay a percentage of the defendant's [~~his~~] income to the facility for room and board;

(13) Pay a percentage of the defendant's [~~his~~] income to the defendant's [~~his~~] dependents for their support while under custodial supervision in a community corrections facility;

(14) Submit to testing for alcohol or controlled substances;

(15) Attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse;

(16) With the consent of the victim of a misdemeanor offense or of any offense under Title 7, Penal Code, participate in victim-defendant mediation;

(17) Submit to electronic monitoring;

(18) Reimburse the compensation to victims of crime [~~general revenue~~] fund for any amounts paid from that fund to or on behalf of a victim, as defined by Article 56.32 [~~56.01 of this code~~], of the defendant's offense, or if no reimbursement is required, make one payment to the compensation to victims of crime fund in an amount not to exceed $50 if the offense is a misdemeanor or not to exceed $100 if the offense is a felony;

(19) Reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;

(20) Pay all or part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense;

(21) Make one payment in an amount not to exceed $50 to a crime stoppers organization as defined by Section 414.001, Government Code, and as certified by the Crime Stoppers Advisory Council;

(22) Submit a blood sample or other specimen to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant; and

(23) In any manner required by the judge, provide public notice of the offense for which the defendant was placed on community supervision in the county in which the offense was committed.

SECTION 3. The changes in law made by this Act apply only to an order of restitution that is entered or a condition of community supervision that is imposed on or after September 1, 2005. An order of restitution that is entered or a condition of community supervision that is imposed before September 1, 2005, is governed by the law in effect on the date the order was entered or the condition was imposed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

HB 1940 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Ritter called up with senate amendments for consideration at this time,

HB 1940, A bill to be entitled An Act relating to alternative dispute resolution of certain contract claims against the state.

Representative Ritter moved to concur in the senate amendments to **HB 1940**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 913): 138 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Gonzales; Gonzalez Toureilles; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Brown, F.; Giddings; Goodman; Goolsby; McReynolds; Oliveira.

STATEMENT OF VOTE

When Record No. 913 was taken, I was temporarily out of the house chamber. I would have voted yes.

Giddings

Senate Committee Substitute

CSHB 1940, A bill to be entitled An Act relating to alternative dispute resolution of certain contract claims against the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 2260.003(a) and (c), Government Code, are amended to read as follows:

(a) The total amount of money recoverable on a claim for breach of contract under this chapter may not, after deducting the amount specified in Subsection (b), exceed an amount equal to the sum of:

(1) the balance due and owing on the contract price; [~~and~~]

(2) the amount or fair market value of orders or requests for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed; and

(3) any delay or labor-related expense incurred by the contractor as a result of an action of or a failure to act by the unit of state government or a party acting under the supervision or control of the unit of state government.

(c) Any award of damages under this chapter may not include:

(1) consequential or similar damages, except delays or labor-related expenses described by Subsection (a)(3);

(2) exemplary damages;

(3) any damages based on an unjust enrichment theory;

(4) attorney's fees; or

(5) home office overhead.

SECTION 2. Section 2260.005, Government Code, is amended to read as follows:

Sec. 2260.005. EXCLUSIVE PROCEDURE. Subject to Section 2260.007, the procedures contained in this chapter are exclusive and required prerequisites to suit in accordance with Chapter 107, Civil Practice and Remedies Code. This chapter does not prevent a contractor sued by a unit of state government from asserting a counterclaim or right of offset against the unit of state government in the court in which the unit of state government files the suit.

SECTION 3. Section 2260.051(d), Government Code, is amended to read as follows:

(d) A unit of state government must assert, in a writing delivered to the contractor, any counterclaim not later than the 60th [~~90th~~] day after the date of notice under Subsection (b). A unit of state government that does not comply with this subsection waives the right to assert the counterclaim.

SECTION 4. Section 2260.052(a), Government Code, is amended to read as follows:

(a) The chief administrative officer or, if designated in the contract, another officer of the unit of state government shall examine the claim and any counterclaim and negotiate with the contractor in an effort to resolve them. The [~~Except as provided by Subsection (b), the~~] negotiation must begin not later than the 120th [~~60th~~] day after the [~~later of:~~

[~~(1) the date of termination of the contract;~~

[~~(2) the completion date in the original contract; or~~

[~~(3) the~~] date the claim is received.

SECTION 5. Section 2260.056(a), Government Code, is amended to read as follows:

(a) Before the 120th [~~270th~~] day after the date the claim is filed with the unit of state government and before the expiration of any extension of time under Section 2260.055, the parties may agree to mediate a claim made under this chapter.

SECTION 6. Section 2260.104(e), Government Code, is amended to read as follows:

(e) In a contested case hearing under this subchapter:

(1) the decision may not be appealed except for abuse of discretion; and

(2) the state agency may not change the finding of fact or conclusion of law, nor vacate or modify an order as provided in Section 2001.058(e).

SECTION 7. Section 2260.105, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The unit of state government shall pay that part of the claim that is less than $250,000 if:

(1) the administrative law judge finds, by a preponderance of the evidence, that under the laws of this state the claim or part of the claim is valid; and

(2) the total amount of the damages, after taking into account any counterclaim, equals or exceeds $250,000.

SECTION 8. Section 2260.052(b), Government Code, is repealed.

SECTION 9. The changes in law made by this Act apply only to claims involving a breach of a contract entered into by a unit of state government on or after the effective date of this Act. A claim involving a breach of a contract entered into by a unit of state government 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 10. This Act takes effect September 1, 2005.

HB 3262 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Escobar called up with senate amendments for consideration at this time,

HB 3262, A bill to be entitled An Act relating to the validation of a governmental act or proceeding of the Town of South Padre Island.

Representative Escobar moved to concur in the senate amendments to **HB 3262**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 914): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.;

Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Dukes; Oliveira.

Senate Committee Substitute

CSHB 3262, A bill to be entitled An Act relating to the validation of a governmental act or proceeding of the Town of South Padre Island.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1, Title 28, Revised Statutes, is amended by adding Article 974d-45 to read as follows:

Art. 974d.45. MUNICIPAL VALIDATION FOR VOLUNTARY ANNEXATION BY A GENERAL LAW MUNICIPALITY

Sec. 1. An annexation or attempted annexation by a general law municipality that occurred after May 1, 2004 and before January 1, 2005, and that was initiated by means of a petition signed by all property owners within the annexed area, is validated as of the date it occurred.

Sec. 2. This article does not apply to:

(1) an annexation or attempted annexation that, under a statute of this state, was a misdemeanor or felony at the time the act or proceeding occurred;

(2) an incorporation or attempted incorporation of a municipality within the incorporated boundaries or extraterritorial jurisdiction of another municipality that occurred without the consent of the other municipality in violation of Chapter 42 or 43, Local Government Code;

(3) an ordinance that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or

(4) a matter that on the effective date of this article:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

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 immediately effect, this Act takes effect September 1, 2005.

HB 107 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Van Arsdale called up with senate amendments for consideration at this time,

HB 107, A bill to be entitled An Act relating to prohibiting actions brought against certain persons alleging injury relating to an individual's weight gain, obesity, or any health condition associated with weight gain or obesity.

Representative Van Arsdale moved to concur in the senate amendments to **HB 107**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 915): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Burnam.

Senate Committee Substitute

CSHB 107, A bill to be entitled An Act relating to prohibiting actions brought against certain persons alleging injury relating to an individual's weight gain, obesity, or any health condition associated with weight gain or obesity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 138 to read as follows:

CHAPTER 138. PERSONAL RESPONSIBILITY FOR FOOD CONSUMPTION

Sec. 138.001. DEFINITIONS. In this chapter:

(1) "Agricultural commodity" has the meaning assigned by Section 41.002, Agriculture Code.

(2) "Agricultural producer" means any producer of an agricultural commodity.

(3) "Food" has the definition assigned by Section 431.002, Health and Safety Code. "Food" does not include:

(A) a cosmetic, as defined by Section 321(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321 (i));

(B) a drug, as defined by Section 321(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(g)), whether prescription or over-the-counter; or

(C) a dietary supplement, as defined by Section 321(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(ff)).

(4) "Livestock" has the meaning assigned by Section 1.003, Agriculture Code.

(5) "Livestock producer" means any producer of livestock.

(6) "Manufacturer" means a person lawfully engaged, in the regular course of the person's trade or business, in manufacturing a food.

(7) "Seller" means a person lawfully engaged, in the regular course of the person's trade or business, in marketing, distributing, advertising, or selling a food.

(8) "State" includes each state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands and any other territory or possession of the United States and any political subdivision of any of those places.

(9) "Trade association" means any association or business organization, whether or not incorporated under federal or state law, that is not operated for profit and two or more members of which are manufacturers, marketers, distributors, advertisers, or sellers of a food.

Sec. 138.002. CIVIL ACTION PROHIBITED. (a) Except as otherwise provided by this section, a manufacturer, seller, trade association, livestock producer, or agricultural producer is not liable under any law of this state for any claim arising out of weight gain or obesity, a health condition associated with weight gain or obesity, or any other generally known condition allegedly caused by or allegedly likely to result from the long-term consumption of food, including:

(1) an action brought by a person other than the individual on whose weight gain, obesity, or health condition the action is based; and

(2) any derivative action brought by or on behalf of any individual or any representative, spouse, parent, child, or other relative of any individual.

(b) This section does not prohibit a person from bringing:

(1) an action in which:

(A) a manufacturer or seller of a food knowingly and wilfully violates a federal or state statute applicable to the manufacturing, marketing, distribution, advertisement, labeling, or sale of the food; and

(B) the violation is a proximate cause of injury related to an individual's weight gain or obesity or any health condition associated with an individual's weight gain or obesity; or

(2) an action brought:

(A) under Chapter 431, Health and Safety Code; or

(B) by the attorney general under Section 17.47, Business & Commerce Code.

(c) This section does not create a cause of action.

Sec. 138.003. PLEADINGS. In an action described in Section 138.002(b)(1), the initiating petition must state with particularity:

(1) the federal and state statutes allegedly violated; and

(2) the facts that are alleged to have proximately caused the injury claimed.

Sec. 138.004. STAY. (a) For an action described by Section 138.002(b), all discovery and other proceedings are stayed during the pendency of any motion to dismiss unless the court finds on motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(b) During the pendency of any stay of discovery, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the petition shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of the person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the applicable rules of civil procedure.

(c) A party aggrieved by the wilful failure of an opposing party to comply with this section may apply to the court for an order awarding appropriate sanctions.

SECTION 2. A court shall immediately dismiss any pending action under its jurisdiction that:

(1) was filed on or after June 1, 2005; and

(2) under Chapter 138, Civil Practice and Remedies Code, as added by this Act, could not be brought before the court.

SECTION 3. 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, 2005.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business in the district:

Villarreal on motion of Solomons.

HB 192 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Eissler called up with senate amendments for consideration at this time,

HB 192, A bill to be entitled An Act relating to the determination of the validity of certain Montgomery County Hospital District election petitions.

Representative Eissler moved to concur in the senate amendments to **HB 192**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 916): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Dutton.

Senate Committee Substitute

CSHB 192, A bill to be entitled An Act relating to the determination of the validity of certain Montgomery County Hospital District election petitions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 258, Acts of the 65th Legislature, Regular Session, 1977, is amended by adding Section 13A to read as follows:

Sec. 13A. (a) Notwithstanding Section 26.07(b)(3), Tax Code, a petition to require an election under Section 26.07, Tax Code, on reducing the district's tax rate to the rollback tax rate shall be submitted to the county elections administrator of Montgomery County instead of to the board of directors of the district.

(b) Notwithstanding Section 26.07(c), Tax Code, not later than the 20th day after the day a petition is submitted under Subsection (a) of this section, the county elections administrator shall:

(1) determine whether the petition is valid under Section 26.07, Tax Code; and

(2) certify the determination of the petition's validity to the board of directors of the district.

(c) If the county elections administrator fails to act within the time allowed, the petition is treated as if it had been found valid.

(d) Notwithstanding Section 26.07(d), Tax Code, if the county elections administrator certifies to the board of directors that the petition is valid or fails to act within the time allowed, the board of directors shall order that an election under Section 26.07, Tax Code, to determine whether to reduce the district's tax rate to the rollback rate be held in the district in the manner prescribed by Section 26.07(d) of that code.

(e) The district shall reimburse the county elections administrator for reasonable costs incurred in performing the duties required by this section.

SECTION 2. Section 23B, Chapter 258, Acts of the 65th Legislature, Regular Session, 1977, is amended by amending Subsection (a) and adding Subsections (a-1)-(a-5) to read as follows:

(a) The residents of the district by petition may request the board of directors to order an election on the question of dissolving the district and disposing of the district's assets and obligations. A petition must:

(1) state that it is intended to request an election in the district on the question of dissolving the district and disposing of the district's assets and obligations;

(2) be signed by a number of residents of the district equal to at least 15 percent of the total vote received by all candidates for governor in the most recent gubernatorial general election in the district that occurs more than 30 days before the date the petition is submitted; and

(3) be submitted to the county elections administrator of Montgomery County [~~The board of directors shall order an election on the question of dissolving the district and disposing of the district's assets and obligations if the board of directors receives a petition requesting an election that is signed by a number of residents of the district equal to at least 15 percent of the total vote received by all candidates for governor in the most recent gubernatorial general election in the district that occurs more than 30 days before the date the petition is submitted to the board. If a petition submitted under this subsection does not contain the necessary number of valid signatures, a petition submitted under this subsection before the third anniversary of the date the invalid petition was submitted has no effect~~].

(a-1) Not later than the 30th day after the date a petition requesting the dissolution of the district is submitted under Subsection (a) of this section, the county elections administrator shall:

(1) determine whether the petition is valid; and

(2) certify the determination of the petition's validity to the board of directors of the district.

(a-2) If the county elections administrator fails to act within the time allowed, the petition is treated as if it had been found valid.

(a-3) If the county elections administrator certifies to the board of directors that the petition is valid or fails to act within the time allowed, the board of directors shall order that a dissolution election be held in the district in the manner prescribed by this section.

(a-4) If a petition submitted under Subsection (a) of this section does not contain the necessary number of valid signatures, the residents of the district may not submit another petition under Subsection (a) of this section before the third anniversary of the date the invalid petition was submitted.

(a-5) The district shall reimburse the county elections administrator for reasonable costs incurred in performing the duties required by this section.

SECTION 3. The change in law made by this Act applies only to a petition filed on or after the effective date of this Act. A petition filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose.

SECTION 4. 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, 2005.

HB 269 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Keel called up with senate amendments for consideration at this time,

HB 269, A bill to be entitled An Act relating to the effect of an expunction.

Representative Keel moved to concur in the senate amendments to **HB 269**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 917): 141 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

Nays — Phillips.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Edwards.

Senate Committee Substitute

CSHB 269, A bill to entitled An Act relating to the effect of an expunction.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 55.03, Code of Criminal Procedure, is amended to read as follows:

Art. 55.03. EFFECT OF EXPUNCTION. When the order of expunction is final:

(1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose [~~other than a purpose described by Section 411.083(a) or (b)(1), (2), or (3), Government Code,~~] is prohibited;

(2) except as provided in Subdivision (3) [~~3~~] of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

SECTION 2. The Department of Public Safety of the State of Texas shall as soon as practicable take action as necessary to ensure compliance with Subdivision (1), Article 55.03, Code of Criminal Procedure, as amended by this Act, including the destruction of information that has been maintained by the department solely to enable the department to comply with Subdivision (1), Article 55.03, Code of Criminal Procedure, as that law existed immediately before the effective date of this Act.

SECTION 3. 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, 2005.

HB 1079 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative West called up with senate amendments for consideration at this time,

HB 1079, A bill to be entitled An Act relating to the eligibility of certain judges to retire with full benefits.

Representative West moved to concur in the senate amendments to **HB 1079**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering votes are as follows: (Keel recorded voting present, not voting.)

Senate Committee Substitute

CSHB 1079, A bill to be entitled An Act relating to the eligibility of certain judges to retire with full benefits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 839.101(a), Government Code, is amended to read as follows:

(a) A member is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system;

(2) is at least 65 years old and has at least 12 years of service credited in the retirement system, regardless of whether the member currently holds a judicial office;

(3) [~~is at least 55 years old and~~] has at least 20 years of service credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(4) has served at least two full terms on an appellate court and the sum of the member's age and amount of service credited in the retirement system equals or exceeds the number 70, regardless of whether the member currently holds a judicial office.

SECTION 2. This Act takes effect September 1, 2005.

HB 1126 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Uresti called up with senate amendments for consideration at this time,

HB 1126, A bill to be entitled An Act relating to emergency medical services vehicles and personnel.

Representative Uresti 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 1126**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1126**: Uresti, chair; Solis; Delisi; Laubenberg; and Zedler.

HB 1188 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Hartnett called up with senate amendments for consideration at this time,

HB 1188, A bill to be entitled An Act relating to the criteria for designation of a reinvestment zone for purposes of tax increment financing and to the powers of a municipality that has created a reinvestment zone.

Representative Hartnett 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 1188**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1188**: Hartnett, chair; Anchia; Geren; Hughes; and Solis.

HB 1274 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Hardcastle called up with senate amendments for consideration at this time,

HB 1274, A bill to be entitled An Act relating to the service area of the Ranger Junior College District.

Representative Hardcastle moved to concur in the senate amendments to **HB 1274**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 918): 138 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter;

Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Allen, A.; Gonzales; Hamilton; Merritt; Solomons.

Senate Amendment No. 1 (Senate Committee Amendment No. 2)

Amend **HB 1274** by striking amended Subdivision (2), Section 130.196, Education Code (House engrossment, page 1, line 12), and substituting the following:

(2) [~~Young,~~] Comanche, Brown, [~~and~~] Erath, and Young counties, except for the part of the Graham Independent School District that is located in Young County.

HB 1357 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Flores called up with senate amendments for consideration at this time,

HB 1357, A bill to be entitled An Act relating to the civil consequences of certain alcohol-related offenses.

Representative Flores 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 1357**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1357**: Flores, chair; Chisum; Morrison; Solis; and Homer.

HB 1583 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Kolkhorst called up with senate amendments for consideration at this time,

HB 1583, A bill to be entitled An Act relating to the authority of an emergency services district to obtain information to determine whether the district's 9-1-1 emergency service fee is correctly billed, collected, and remitted.

Representative Kolkhorst moved to concur in the senate amendments to **HB 1583**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 1583** as follows:

On page 1, line 12, after "user." insert "This section does not apply to an incumbent local exchange company as defined in Section 51.002, Utilities Code."

On page 1, line 15, after "requires" insert the phrase "so long as that information and the format requested are readily available for the service provider's records".

HB 2026 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Hilderbran called up with senate amendments for consideration at this time,

HB 2026, A bill to be entitled An Act relating to the recovery of certain enforcement-related costs, the operation of certain accounts in the Parks and Wildlife Department, the penalties for certain criminal offenses involving certain animals, and the taking and possession of certain wildlife or eggs, including requirements related to taxidermy and tanning and to harmful aquatic plants; imposing penalties.

Representative Hilderbran moved to concur in the senate amendments to **HB 2026**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 919): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Hamric; Jones, J.; Talton.

Senate Committee Substitute

CSHB 2026, A bill to be entitled An Act relating to the recovery of certain enforcement-related costs and to the taking and possession of certain wildlife or eggs, including requirements related to taxidermy and tanning and to harmful aquatic plants; imposing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.101, Parks and Wildlife Code, is amended by adding Subdivision (5) to read as follows:

(5) "Take," except as otherwise provided by this code, means collect, hook, hunt, net, shoot, or snare, by any means or device, and includes an attempt to take or to pursue in order to take.

SECTION 2. Section 12.013, Parks and Wildlife Code, is amended to read as follows:

Sec. 12.013. POWER TO TAKE WILDLIFE. An employee of the department acting within the scope of the employee's authority may possess, take, transport, release, and manage any of the wildlife and fish in this state for investigation, propagation, distribution, education, disease diagnosis or prevention, or scientific purposes.

SECTION 3. Section 12.110, Parks and Wildlife Code, is amended to read as follows:

Sec. 12.110. DISPOSITION OF CONFISCATED GAME. (a) Except as provided by Subsection (d), the [~~The~~] department shall donate, whenever donation [~~same~~] is reasonably practicable, any wild game animal, bird, fowl, [~~or~~] game fish, or exotic animal that [~~which~~] is unlawfully killed, taken, shipped, held in storage, possessed, or offered for sale [~~found~~] in a public eating place to a charitable institution, hospital, or person or persons.

(b) The expense of any storage, care, feeding, cold storage, or processing that may be necessary for an unlawfully possessed game bird, fowl, animal, [~~or~~] game fish, or exotic animal shall be assessed against the violator on the violator's [~~his~~] conviction.

(c) The department and an enforcement officer of the department who acts under this section are not liable in any civil action for the seizure, sale, or donation of a game bird, other fowl, animal, [~~or~~] game fish, or exotic animal.

(d) The department may sell confiscated live game described by Subsection (a) to the highest of three bidders. At the time of a sale under this subsection, the department shall provide the buyer a receipt for all game sold to the buyer. The department shall deposit the proceeds of the sale in the state treasury to the credit of suspense account 900 pending the outcome of any action against the person charged with an unlawful action described by Subsection (a). If that person is found guilty, pleads guilty or nolo contendere, or is placed on deferred

adjudication, the department shall deposit the proceeds of the sale into the game, fish, and water safety account. If the person is found not guilty, the department shall pay the proceeds of the sale to the person.

(e) This section does not apply to the lawful possession or sale of an exotic animal.

(f) In this section, "exotic animal" has the meaning assigned by Section 62.015.

SECTION 4. Subchapter D, Chapter 12, Parks and Wildlife Code, is amended by adding Section 12.308 to read as follows:

Sec. 12.308. CERTAIN COSTS RECOVERABLE. (a) The actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees incurred by the department in a civil suit under this subchapter may be recovered in addition to damages for the value of any fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured.

(b) Any amounts recovered under this section shall be credited to the same operating accounts from which the expenditures occurred.

SECTION 5. Section 12.409, Parks and Wildlife Code, is amended to read as follows:

Sec. 12.409. SEPARATE OFFENSES. Each fish, bird, animal, reptile, [~~or~~] amphibian, or egg or part of a fish, bird, animal, reptile, [~~or~~] amphibian, or egg taken, possessed, killed, left to die, imported, exported, offered for sale, sold, purchased, attempted to be purchased, or retained in violation of any provision of this code or a proclamation or regulation adopted under this code constitutes a separate offense.

SECTION 6. Section 42.002(b), Parks and Wildlife Code, is amended to read as follows:

(b) A resident possessing a valid [~~resident alligator hunter's license,~~] resident trapper's license[~~,~~] or fur-bearing animal propagation permit is not required to have a license issued under this section to take or possess the species covered by the license or permit.

SECTION 7. Section 42.005(c), Parks and Wildlife Code, is amended to read as follows:

(c) A nonresident possessing a valid [~~nonresident alligator hunter's license or~~] nonresident trapper's license is not required to have a license issued under this section to take or possess the species governed by the license.

SECTION 8. The heading to Section 43.073, Parks and Wildlife Code, is amended to read as follows:

Sec. 43.073. [~~SIZE OF~~] AREA[~~;~~] LIMITATIONS AND[~~;~~] MARKINGS.

SECTION 9. Sections 43.073(a) and (c), Parks and Wildlife Code, are amended to read as follows:

(a) A private bird hunting area must [~~may~~] consist of [~~not more than 8,000~~] contiguous acreage owned by an individual, partnership, firm, or corporation [~~acres~~].

(c) Signs must [~~shall~~] be placed at each entrance to a private bird hunting area [~~and all corners~~] to identify clearly the boundaries of each licensed area.

SECTION 10. Section 44.001, Parks and Wildlife Code, is amended by adding Subdivision (3) to read as follows:

(3) "Game animal" means a pronghorn antelope, a collared peccary or javelina, or a red or gray squirrel.

SECTION 11. Section 44.002, Parks and Wildlife Code, is amended to read as follows:

Sec. 44.002. LICENSE REQUIREMENT. No person may sell, place in captivity, or engage in the business of propagating any game animal of this state unless the person [~~he~~] has obtained a license issued under this chapter from the department.

SECTION 12. Section 44.005(b), Parks and Wildlife Code, is amended to read as follows:

(b) The game breeder shall place a suitable permanent [~~metal~~] tag bearing the game breeder's [~~his~~] serial number on the ear of each pronghorn antelope or collared peccary or javelina held in captivity [~~or sold~~] by the game breeder.

SECTION 13. Section 44.006, Parks and Wildlife Code, is amended to read as follows:

Sec. 44.006. LICENSE PRIVILEGES. The holder of a valid game breeder's license may:

(1) engage in the business of game breeding in the immediate locality for which the license was issued; or

(2) sell or hold in captivity for the purpose of propagation or sale a game animal [~~antelope, collared peccary, and wild squirrels~~].

SECTION 14. Chapter 45, Parks and Wildlife Code, is amended by adding Section 45.0001 to read as follows:

Sec. 45.0001. DEFINITIONS. In this chapter:

(1) "Game bird" has the meaning assigned by Section 64.001 and includes "migratory game birds."

(2) "Migratory game bird" has the meaning assigned by Section 64.021.

SECTION 15. Section 45.001, Parks and Wildlife Code, is amended to read as follows:

Sec. 45.001. LICENSE REQUIRED. No person may possess game birds in captivity for the purpose of propagation or sale or sell game bird eggs without first acquiring the proper license authorized to be issued under this chapter.

SECTION 16. Section 45.003, Parks and Wildlife Code, is amended by adding Subsection (c) to read as follows:

(c) A class 1 or class 2 commercial game bird breeder's license is valid for selling game bird eggs in this state, regardless of the number of eggs sold.

SECTION 17. The heading to Section 45.005, Parks and Wildlife Code, is amended to read as follows:

Sec. 45.005. RECORDS OF LIVE BIRD AND EGG SALES.

SECTION 18. Section 45.005(a), Parks and Wildlife Code, is amended to read as follows:

(a) No holder of a commercial game bird breeder's license may sell a live game bird or game bird egg without issuing a written document showing the name and serial number of the game bird breeder, the name and address of the purchaser, and the kind or species [~~description~~] and number of game birds or game bird eggs sold. The document shall be delivered to the purchaser.

SECTION 19. Section 45.0061, Parks and Wildlife Code, is amended to read as follows:

Sec. 45.0061. SOURCE OF GAME BIRDS. A person who is not required to possess a commercial game bird breeder's license and who is in possession of a live game bird, game bird egg, or part of a dead game bird shall, on the request of a game warden commissioned by the department, furnish to the warden a receipt showing the name and street address of the person and the name and street address of the source from which any live game bird, game bird egg, or part of a dead game bird in the possession of the person was derived. The receipt must also show the date of sale and the kind or species and number of live game birds, game bird eggs, or parts of dead game birds acquired. The failure or refusal to comply with this section is a violation of this chapter.

SECTION 20. Section 45.007(b), Parks and Wildlife Code, is amended to read as follows:

(b) No person may purchase a live game bird or game bird egg except from a holder of a game bird breeder's license; however, this subsection does not prohibit the purchase of live game birds or game bird eggs [~~delivered by a common carrier~~] from a lawful source outside the state.

SECTION 21. Sections 45.008(a) and (b), Parks and Wildlife Code, are amended to read as follows:

(a) Each commercial game bird breeder shall maintain records showing the numbers of game birds and game bird eggs acquired, propagated, sold, and disposed of in any other manner. The records must [~~shall~~] be on forms provided by the department and must [~~shall~~] contain any other information required by the department.

(b) During August of each year or another month set by the commission, but before August 31 or another date established by the commission, a commercial game bird breeder shall send to the department a report showing the total number of game birds in the possession of the breeder during the reporting period and accounting for the acquisition and disposition of each game bird or game bird egg purchased or sold. The reporting period is from August 1 of the preceding year through July 31 of the current year or another yearly period established by the commission.

SECTION 22. Subchapter A, Chapter 62, Parks and Wildlife Code, is amended by adding Section 62.002 to read as follows:

Sec. 62.002. COMPUTER-ASSISTED REMOTE HUNTING. (a) In this section:

(1) "Computer-assisted remote hunting" means the use of a computer or any other device, equipment, or software, to remotely control the aiming and discharge of archery equipment, a crossbow, or a firearm to hunt an animal, including a bird.

(2) "Firearm" and "archery equipment" have the meanings assigned by Section 62.014.

(b) A person may not engage in computer-assisted remote hunting or provide or operate facilities for computer-assisted remote hunting if the animal being hunted is located in this state.

(c) For purposes of this section, facilities for computer-assisted remote hunting include real property and improvements on the property associated with hunting, including hunting blinds, offices, and rooms equipped to facilitate computer-assisted remote hunting.

(d) A person who violates this section commits an offense that is a Class B Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant that the defendant has been convicted one or more times before the trial date of a violation of this section, in which case the offense is a Class A Parks and Wildlife Code misdemeanor.

(e) It is an exception to the application of this section that a person provides only:

(1) general-purpose equipment, including a computer, camera, fencing, and building materials;

(2) general-purpose computer software including an operating system and communications programs; or

(3) general telecommunications hardware or networking services for computers, including adapters, modems, servers, routers, and other facilities associated with Internet access.

SECTION 23. Section 62.003(a), Parks and Wildlife Code, is amended to read as follows:

(a) Except as provided in Subsection (b) [~~of this section~~], no person may hunt any wild bird or wild animal, other than an alligator, frog, or turtle, from any type of aircraft or airborne device, motor vehicle, powerboat, or sailboat, or from any other floating device [~~any wild bird or wild animal~~].

SECTION 24. Sections 62.023(a) and (c), Parks and Wildlife Code, are amended to read as follows:

(a) If the owner of a lawfully taken game animal or game bird, including the head [~~heads~~] or hide of a lawfully taken game animal or game bird [~~hides~~] that has [~~have~~] been mounted or tanned, has not claimed the mounted game animal, game bird, or head or the tanned hide [~~them~~] within 90 days after notification by a taxidermist or tanner, the taxidermist or tanner may sell the mounted game animal, game bird other than a migratory game bird, or head or tanned hide [~~head or hides~~] for the amount due for labor performed.

(c) A taxidermist or tanner selling a mounted game animal, game bird, or head or tanned hide [~~heads or hides~~] under this section shall maintain, until the second anniversary of the completion of the taxidermy or tanning, documentation of the identity of the person who left the game animal, game bird, head, or hide for taxidermy or tanning. Documentation under this section may include a hunting tag, wildlife resource document, or cold storage record [~~report~~

~~immediately the sale to the department. The report must include the name of the person purchasing the head or hides and a copy of the transportation affidavit regarding the manner in which the head or hides were obtained~~].

SECTION 25. Section 62.068, Parks and Wildlife Code, is amended to read as follows:

Sec. 62.068. ARREST. A peace officer, game warden [~~management officer~~], or commissioned state park employee may arrest without warrant a person found committing a violation of this subchapter.

SECTION 26. Section 65.006, Parks and Wildlife Code, is amended to read as follows:

Sec. 65.006. PERMIT [~~LICENSE~~] REQUIRED. [~~(a) No person may take, attempt to take, or possess an alligator in this state unless the person has acquired and possesses an alligator hunter's license.~~

[~~(b)~~] No person for any purpose may possess, purchase, or possess after purchase an alligator, an alligator hide, an alligator egg, or any part of an alligator taken in this state unless:

(1) the person has acquired and possesses a permit issued by the department for that purpose; or

(2) a regulation of the commission otherwise allows the possession or purchase without a permit.

SECTION 27. Subchapter A, Chapter 66, Parks and Wildlife Code, is amended by adding Section 66.0071 to read as follows:

Sec. 66.0071. REMOVAL OF HARMFUL AQUATIC PLANTS. On leaving any public or private body of water in this state, a person shall immediately remove and lawfully dispose of any harmful or potentially harmful aquatic plant included on the list published under Section 66.007(b) that is clinging or attached to the person's:

(1) vessel or watercraft; or

(2) trailer, motor vehicle, or other mobile device used to transport or launch a vessel or watercraft.

SECTION 28. Section 71.001(1), Parks and Wildlife Code, is amended to read as follows:

(1) "Fur-bearing animal" means wild beaver, otter, mink, ring-tailed cat, badger, skunk, raccoon, muskrat, opossum, fox, or nutria [~~, or civet cat~~].

SECTION 29. Section 102.021, Government Code, is amended to read as follows:

Sec. 102.021. COURT COSTS ON CONVICTION. A person convicted of an offense shall pay, in addition to all other costs:

(1) court costs on conviction of a felony (Sec. 133.102, Local Government Code) . . . $133;

(2) court costs on conviction of a Class A or Class B misdemeanor (Sec. 133.102, Local Government Code) . . . $83;

(3) court costs on conviction of a nonjailable misdemeanor offense, including a criminal violation of a municipal ordinance, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle (Sec. 133.102, Local Government Code) . . . $40;

(4) court costs on certain convictions in statutory county courts (Sec. 51.702, Government Code) . . . $15;

(5) court costs on certain convictions in certain county courts (Sec. 51.703, Government Code) . . . $15;

(6) a time payment fee if convicted of a felony or misdemeanor for paying any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution (Sec. 133.103, Local Government Code) . . . $25;

(7) a fee for services of prosecutor (Art. 102.008, Code of Criminal Procedure) . . . $25;

(8) fees for services of peace officer:

(A) issuing a written notice to appear in court for certain violations (Art. 102.011, Code of Criminal Procedure) . . . $5;

(B) executing or processing an issued arrest warrant or capias (Art. 102.011, Code of Criminal Procedure) . . . $50;

(C) summoning a witness (Art. 102.011, Code of Criminal Procedure) . . . $5;

(D) serving a writ not otherwise listed (Art. 102.011, Code of Criminal Procedure) . . . $35;

(E) taking and approving a bond and, if necessary, returning the bond to courthouse (Art. 102.011, Code of Criminal Procedure) . . . $10;

(F) commitment or release (Art. 102.011, Code of Criminal Procedure) . . . $5;

(G) summoning a jury (Art. 102.011, Code of Criminal Procedure) . . . $5;

(H) attendance of a prisoner in habeas corpus case if prisoner has been remanded to custody or held to bail (Art. 102.011, Code of Criminal Procedure) . . . $8 each day;

(I) mileage for certain services performed (Art. 102.011, Code of Criminal Procedure) . . . $0.29 per mile; and

(J) services of a sheriff or constable who serves process and attends examining trial in certain cases (Art. 102.011, Code of Criminal Procedure) . . . not to exceed $5;

(9) services of a peace officer in conveying a witness outside the county (Art. 102.011, Code of Criminal Procedure) . . . $10 per day or part of a day, plus actual necessary travel expenses;

(10) overtime of peace officer for time spent testifying in the trial or traveling to or from testifying in the trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;

(11) court costs on an offense relating to rules of the road, when offense occurs within a school crossing zone (Art. 102.014, Code of Criminal Procedure) . . . $25;

(12) court costs on an offense of passing a school bus (Art. 102.014, Code of Criminal Procedure) . . . $25;

(13) court costs on an offense of truancy or contributing to truancy (Art. 102.014, Code of Criminal Procedure) . . . $20;

(14) cost for visual recording of intoxication arrest before conviction (Art. 102.018, Code of Criminal Procedure) . . . $15;

(15) cost of certain evaluations (Art. 102.018, Code of Criminal Procedure) . . . actual cost;

(16) additional costs attendant to certain intoxication convictions under Chapter 49, Penal Code, for emergency medical services, trauma facilities, and trauma care systems (Art. 102.0185, Code of Criminal Procedure) . . . $100;

(17) cost for DNA testing for certain felonies (Art. 102.020, Code of Criminal Procedure) . . . $250;

(18) court cost on an offense of public lewdness or indecent exposure (Art. 102.020, Code of Criminal Procedure) . . . $50;

(19) court cost on conviction of a misdemeanor under Subtitle C, Title 7, Transportation Code (Sec. 542.403, Transportation Code) . . . $3;

(20) cost for impoundment of vehicle (Sec. 601.263, Transportation Code) . . . $15 per day; [~~and~~]

(21) a civil and criminal enforcement cost on conviction of an offense of, or related to, the nonpayment of a toll in certain counties (Sec. 284.2031, Transportation Code) . . . $1; and

(22) the cost of any storage, care, feeding, cold storage, or processing necessary for an unlawfully taken, shipped, or possessed game bird, fowl, animal, game fish, or exotic animal (Sec. 12.110, Parks and Wildlife Code) . . . actual cost.

SECTION 30. Section 103.022, Government Code, is amended to read as follows:

Sec. 103.022. MISCELLANEOUS FEES AND COSTS. The following fees and costs shall be paid or collected as follows:

(1) fee for use of an interpreter in civil cases (Sec. 21.051, Civil Practice and Remedies Code) . . . $3;

(2) fee for custodian of a record compelled by a court to produce or certify the record (Sec. 22.004, Civil Practice and Remedies Code) . . . $1;

(3) cost for use of certified copy of the record of names of all trustees appointed by any state organization of a religious congregation in this state (Sec. 126.012, Civil Practice and Remedies Code) . . . $1.50;

(4) filing of a restitution lien (Art. 42.22, Code of Criminal Procedure) . . . $5;

(5) issuance and service of a warrant of arrest for certain offenses if prescribed by the municipality (Art. 45.203, Code of Criminal Procedure) . . . not to exceed $25;

(6) filing a certified copy of a judicial finding of fact and conclusion of law if charged by the secretary of state (Sec. 51.905, Government Code) . . . $15;

(7) costs of determining and sending information concerning the identity of the court with continuing, exclusive jurisdiction if charged by the bureau of vital statistics (Sec. 108.006, Family Code) . . . reasonable fee;

(8) initial operations fee paid to domestic relations office on filing of a suit affecting the parent-child relationship, if authorized by the administering entity (Sec. 203.005, Family Code) . . . not to exceed $15;

(9) initial child support service fee paid to domestic relations office in certain counties on filing of a suit affecting the parent-child relationship, if authorized by the administering entity (Sec. 203.005, Family Code) . . . not to exceed $36;

(10) service fee for services of a domestic relations office, if authorized by the administering entity (Sec. 203.005, Family Code) . . . not to exceed $3 per month;

(11) fee from a Title IV-D agency for each item of process to each individual on whom service is required, including service by certified or registered mail (Sec. 231.202, Family Code) . . . the amount that a sheriff or constable may charge for serving process under Section 118.131, Local Government Code;

(12) a copy of records of spousal or child support and fees administered in Dallas County if authorized by the local administrative judge (Sec. 152.0634, Human Resources Code) . . . not to exceed $2 per page;

(13) collecting, disbursing, or monitoring spousal or child support payments in Dallas County (Sec. 152.0635, Human Resources Code) . . . not to exceed $3 per month;

(14) fee for adoption, family, and home study investigations in an adoption in Dallas County (Sec. 152.0635, Human Resources Code) . . . not to exceed $250;

(15) certain transactions with respect to a suit for spousal support or a suit affecting the parent-child relationship in Harris County, if authorized by the county commissioners court (Sec. 152.1074, Human Resources Code) . . . not to exceed $2 per transaction;

(16) child support service fee in Nueces County, if authorized by the county commissioners court (Sec. 152.1844, Human Resources Code) . . . not to exceed $5 per month;

(17) services by the offices of the sheriff and constables (Sec. 118.131, Local Government Code) . . . amount set by county commissioners court;

(18) cost paid by each surety posting the bail bond for an offense other than a misdemeanor punishable by fine only under Chapter 17, Code of Criminal Procedure, for the felony prosecutor supplement fund and the fair defense account (Sec. 41.258, Government Code) . . . $15, provided the cost does not exceed $30 for all bail bonds posted at that time for an individual and the cost is not required on the posting of a personal or cash bond;

(19) appraiser's fee as court costs for determining the fair value of ownership interests of owners who have perfected their rights (Sec. 10.365, Business Organizations Code) . . . a reasonable fee; [~~and~~]

(20) to participate in a court proceeding in this state, a nonresident attorney fee for civil legal services to the indigent (Sec. 82.0361, Government Code) . . . $250 except as waived or reduced under supreme court rules for representing an indigent person; and

(21) costs of investigation, reasonable attorney's fees, and reasonable expert witness fees in a civil suit or a criminal prosecution for recovery of the value of any fish, shellfish, reptile, amphibian, bird, or animal (Sec. 12.308, Parks and Wildlife Code) . . . actual costs.

SECTION 31. Section 822.102(a), Health and Safety Code, is amended to read as follows:

(a) This subchapter does not apply to:

(1) a county, municipality, or agency of the state or an agency of the United States or an agent or official of a county, municipality, or agency acting in an official capacity;

(2) a research facility, as that term is defined by Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its subsequent amendments, that is licensed by the secretary of agriculture of the United States under that Act;

(3) an organization that is an accredited member of the American Zoo and Aquarium Association;

(4) an injured, infirm, orphaned, or abandoned dangerous wild animal while being transported for care or treatment;

(5) an injured, infirm, orphaned, or abandoned dangerous wild animal while being rehabilitated, treated, or cared for by a licensed veterinarian, an incorporated humane society or animal shelter, or a person who holds a rehabilitation permit issued under Subchapter C, Chapter 43, Parks and Wildlife Code;

(6) a dangerous wild animal owned by and in the custody and control of a transient circus company that is not based in this state if:

(A) the animal is used as an integral part of the circus performances; and

(B) the animal is kept within this state only during the time the circus is performing in this state or for a period not to exceed 30 days while the circus is performing outside the United States;

(7) a dangerous wild animal while in the temporary custody or control of a television or motion picture production company during the filming of a television or motion picture production in this state;

(8) a dangerous wild animal owned by and in the possession, custody, or control of a college or university solely as a mascot for the college or university;

(9) a dangerous wild animal while being transported in interstate commerce through the state in compliance with the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act;

(10) a nonhuman primate owned by and in the control and custody of a person whose only business is supplying nonhuman primates directly and exclusively to biomedical research facilities and who holds a Class "A" or Class "B" dealer's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments; [~~and~~]

(11) a dangerous wild animal that is:

(A) owned by or in the possession, control, or custody of a person who is a participant in a species survival plan of the American Zoo and Aquarium Association for that species; and

(B) an integral part of that species survival plan; and

(12) in a county west of the Pecos River that has a population of less than 25,000, a cougar, bobcat, or coyote in the possession, custody, or control of a person that has trapped the cougar, bobcat, or coyote as part of a predator or depredation control activity.

SECTION 32. The following laws are repealed:

(1) Section 61.901(c), Parks and Wildlife Code;

(2) Section 62.023(b), Parks and Wildlife Code;

(3) Section 65.007, Parks and Wildlife Code; and

(4) Section 71.004(b), Parks and Wildlife Code.

SECTION 33. The change in law made by this Act in adding Section 12.308, Parks and Wildlife Code, applies only to a civil suit under Subchapter D, Chapter 12, Parks and Wildlife Code, that commences on or after the effective date of this Act. A civil suit under Subchapter D, Chapter 12, Parks and Wildlife Code, that commences before the effective date of this Act is governed by the law in effect at the time the suit commenced, and that law is continued in effect for that purpose.

SECTION 34. (a) The changes in law made by Section 12.409, Parks and Wildlife Code, as amended by this Act, and the repeal of Section 61.901(c), Parks and Wildlife Code, by this Act apply 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 at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

(b) The repeal of Section 65.007, Parks and Wildlife Code, by this Act applies only to a license issued on or after September 1, 2006.

SECTION 35. 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, 2005.

HB 2027 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Hilderbran called up with senate amendments for consideration at this time,

HB 2027, A bill to be entitled An Act relating to the use of certain weapons in or on the beds or banks of certain rivers and streams in particular counties; providing a penalty.

Representative Hilderbran 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 2027**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2027**: Hilderbran, chair; Kuempel; Baxter; Gallego; and Phillips.

HB 2767 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Talton called up with senate amendments for consideration at this time,

HB 2767, A bill to be entitled An Act relating to the release of a criminal defendant in certain cases and the eligibility of and citation to certain individuals who act as sureties on bail bonds.

Representative Talton moved to concur in the senate amendments to **HB 2767**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 2767, A bill to be entitled An Act relating to the release of a criminal defendant in certain cases and the eligibility of and citation to certain individuals who act as sureties on bail bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 17.10, Code of Criminal Procedure, is amended to read as follows:

Art. 17.10. DISQUALIFIED SURETIES. (a) A minor may not [~~cannot~~] be surety on a bail bond, but the accused party may sign as principal.

(b) A person, for compensation, may not be a surety on a bail bond written in a county in which a county bail bond board regulated under Chapter 1704, Occupations Code, does not exist unless the person, within two years before the bail bond is given, completed in person at least eight hours of continuing legal education in criminal law courses or bail bond law courses that are:

(1) approved by the State Bar of Texas; and

(2) offered by an accredited institution of higher education in this state.

SECTION 2. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.141 to read as follows:

Art. 17.141. ELIGIBLE BAIL BOND SURETIES IN CERTAIN COUNTIES. In a county in which a county bail bond board regulated under Chapter 1704, Occupations Code, does not exist, the sheriff may post a list of eligible bail bond sureties whose security has been determined to be sufficient. Each surety listed under this article must file annually a sworn financial statement with the sheriff.

SECTION 3. Article 22.03, Code of Criminal Procedure, is amended to read as follows:

Art. 22.03. CITATION TO SURETIES. (a) Upon entry of judgment, a citation shall issue forthwith notifying the sureties of the defendant, if any, that the bond has been forfeited, and requiring them to appear and show cause why the judgment of forfeiture should not be made final.

(b) A citation to a surety who is an individual shall be served to the individual at the address shown on the face of the bond.

(c) A citation to a surety that is a corporation or other entity shall be served to the attorney designated for service of process by the corporation or entity under Chapter 804, Insurance Code.

(d) By filing the waiver or designation in writing with the clerk of the court, a surety may waive service of citation or may designate a person other than the surety or the surety's attorney to receive service of citation under this article. The waiver or designation is effective until a written revocation is filed with the clerk.

SECTION 4. Article 22.04, Code of Criminal Procedure, is amended to read as follows:

Art. 22.04. REQUISITES OF CITATION. A citation shall be sufficient if it be in the form provided for citations in civil cases in such court; provided, however, that a copy of the judgment of forfeiture entered by the court, a copy of the forfeited bond, and a copy of any power of attorney attached to the forfeited bond shall be attached to the citation and the citation shall notify the parties cited to appear and show cause why the judgment of forfeiture should not be made final.

SECTION 5. Article 22.05, Code of Criminal Procedure, is amended to read as follows:

Art. 22.05. CITATION AS IN CIVIL ACTIONS. If service of citation is not waived under Article 22.03, a surety is [~~Sureties shall be~~] entitled to notice by service of citation, the length of time and in the manner required in civil actions; and the officer executing the citation shall return the same as in civil actions. It shall not be necessary to give notice to the defendant unless he has furnished his address on the bond, in which event notice to the defendant shall be deposited in the United States mail directed to the defendant at the address shown on the bond.

SECTION 6. Article 32.01, Code of Criminal Procedure, is amended to read as follows:

Art. 32.01. DEFENDANT IN CUSTODY AND NO INDICTMENT PRESENTED. When a defendant has been detained in custody or held to bail for his appearance to answer any criminal accusation [~~before the district court~~], the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant on or before the last day of the next term of the court which is held after his commitment or admission to bail or on or before the 180th day after the date of commitment or admission to bail, whichever date is later.

SECTION 7. The changes in law made by this Act in amending Articles 22.03, 22.04, and 22.05, Code of Criminal Procedure, apply only to a citation of forfeiture issued on or after the effective date of this Act. A citation of forfeiture

issued before the effective date of this Act is governed by the law in effect on the date the citation of forfeiture is issued, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2005.

HB 2883 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Smithee called up with senate amendments for consideration at this time,

HB 2883, A bill to be entitled An Act relating to Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association.

Representative Smithee moved to concur in the senate amendments to **HB 2883**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 2883, A bill to be entitled An Act relating to the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Article 21.28-D, Insurance Code, is amended to read as follows:

Sec. 3. COVERAGE AND LIMITATIONS. (a) Subject to Subsections (a-1) and (a-2) of this section, this [~~This~~] Act provides coverage for a policy or contract specified in Subsection (b) of this section to the following persons:

(1) a person, other than a nonresident certificate holder under a group policy or contract, who is the beneficiary, assignee, or payee of a person covered under Paragraph (2) of this subsection; [~~and~~]

(2) a person who is an owner of or certificate holder under the policy or contract, other than [~~; or, in the case of~~] an unallocated annuity contract or structured settlement annuity, [~~to the person who is the contract holder,~~] and who:

(A) is a resident; or

(B) is not a resident, but only under all of the following conditions [~~if~~]:

(i) the insurers that issued the policies or contracts are domiciled in this state;

(ii) [~~the insurers never held a license or certificate of authority in the states in which the persons reside;~~

[~~(iii)~~] the state in which the person resides has an association [~~states have associations~~] similar to the association created by this Act; and

(iii) [~~(iv)~~] the person is not eligible for coverage by an association in any other state because the insurers were not licensed in the state at the time specified in that state's guaranty association law;

(3) a person who is the owner of an unallocated annuity contract issued to or in connection with:

(A) a benefit plan whose plan sponsor has the sponsor's principal place of business in this state; or

(B) a government lottery, if the owner is a resident; and

(4) a person who is the payee under a structured settlement annuity, or beneficiary of the payee if the payee is deceased, if:

(A) the payee is a resident, regardless of where the contract owner resides;

(B) the payee is not a resident, the contract owner of the structured settlement annuity is a resident, and the payee is not eligible for coverage by the association in the state in which the payee resides; or

(C) the payee and the contract owner are not residents, the insurer that issued the structured settlement annuity is domiciled in this state, the state in which the contract owner resides has an association similar to the association created by this Act, and neither the payee or, if applicable, the payee's beneficiary, nor the contract owner is eligible for coverage by the association in the state in which the payee or contract owner resides [~~the associations~~].

(a-1) This Act does not provide coverage to:

(1) a person who is a payee or the beneficiary of a payee with respect to a contract the owner of which is a resident of this state, if the payee or the payee's beneficiary is afforded any coverage by the association of another state; or

(2) a person otherwise described by Subsection (a)(3) of this section, if any coverage is provided by the association of another state to that person.

(a-2) This Act is intended to provide coverage to persons who are residents of this state, and in those limited circumstances as described in this Act, to nonresidents. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this Act is provided coverage under the laws of any other state, the person may not be provided coverage under this Act. In determining the application of the provisions of this subsection in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this Act shall be construed in conjunction with other state laws to result in coverage by only one association.

(b) This Act provides coverage to the persons specified in Subsection (a) of this section, and subject to Subsections (a-1) and (a-2) of this section, for direct, non-group life, health, accident, annuity, and supplemental policies or contracts, for certificates under direct group policies and contracts, group hospital service contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this Act. This Act also provides coverage for all other insurance coverages written by mutual assessment corporations, local mutual aid associations, statewide mutual assessment companies, and stipulated premium companies licensed to do business in this state. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding

agreements, structured settlement annuities, annuities issued to or in connection with government lotteries [~~agreements, lottery contracts~~], and any immediate or deferred annuity contracts.

(c) This Act does not provide coverage for:

(1) a portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract owner [~~holder~~];

(2) a policy or contract of reinsurance, unless assumption certificates have been issued;

(3) a portion of a policy or contract to the extent that the rate of interest on which it is based:

(A) averaged over the period of four years before the date on which the member insurer becomes impaired or insolvent under this Act, whichever is earlier [~~association becomes obligated with respect to the policy or contract~~], exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for a lesser period if the policy or contract was issued less than four years before the member insurer becomes impaired or insolvent under this Act, whichever is earlier [~~association became obligated~~]; and

(B) on and after the date on which the member insurer becomes impaired or insolvent under this Act, whichever is earlier [~~association becomes obligated with respect to the policy or contract~~], exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) a portion of a policy or contract issued to a plan or program of an employer, association, [~~or~~] similar entity, or other person to provide life, health, or annuity benefits to its employees, [~~or~~] members, or others, to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:

(A) a multiple employer welfare arrangement as defined by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002);

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services-only contract;

(5) a portion of a policy or contract, to the extent that it provides dividends or experience rating credits, voting rights, or provides that fees or allowances be paid to any person, including the policy or contract owner [~~holder~~], in connection with the service to or administration of the policy or contract;

(6) a policy or contract issued in this state by a member insurer at a time when it was not licensed to issue the policy or contract in this state;

(7) an unallocated annuity contract issued to or in connection with a [~~an employee~~] benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the Pension Benefit Guaranty Corporation has not yet become liable to make any payments with respect to the benefit plan;

(8) a portion of an unallocated annuity contract that is not issued to or in connection with a specific employee, benefit plan for a union or association of natural persons, or a government lottery; [~~and~~]

(9) any portion of a financial guarantee, funding agreement, or guaranteed investment contract which (1) contains no mortality guarantees and (2) is not issued to or in connection with a specific employee, benefit plan, or a governmental lottery;

(10) a portion of a policy or contract to the extent that the assessments required by Section 9 of this Act with respect to the policy or contract are preempted by federal or state law;

(11) a contractual agreement that established the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or the plan's trustee in a case in which neither the benefit plan sponsor nor its trustee is an affiliate of the member insurer; and

(12) a portion of a policy or contract to the extent the policy or contract provides for interest or other changes in value that are to be determined by the use of an index or external reference stated in the policy or contract, but that have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this Act, whichever date is earlier; provided, however, if a policy's or contract's interest or changes in value are credited less frequently than annually, for purposes of determining the values that have been credited and are not subject to forfeiture as described by this paragraph, the interest or change in value determined by using the procedures defined in the policy or contract is credited as if the contractual date of crediting interest or changing values is the earlier of the date of impairment or the date of insolvency, and is not subject to forfeiture.

(d) The benefits for which the association may become liable shall [~~may~~] not exceed the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer. The association has no obligation to provide benefits outside the express written terms of the policy or contract, including:

(1) claims based on marketing materials;

(2) claims based on side letters, riders, or other documents that were issued without meeting applicable policy form filing or approval requirements;

(3) claims based on misrepresentation of or regarding policy benefits;

(4) extracontractual claims; or

(5) claims for penalties or consequential or incidental damages.

(e) The limitations set forth in this Act are limitations on the benefits for which the association is obligated before taking into account either the association's subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this Act may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to the association's subrogation and assignment rights.

SECTION 2. Section 5, Article 21.28-D, Insurance Code, is amended by amending Subdivisions (2), (3), (4), (5), (6), (7), (9), (10), (11), and (12) and adding Subdivisions (2-a), (8-a), (9-a), and (11-a) to read as follows:

(2) "Association" means the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association created under Section 6 of this Act.

(2-a) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

(3) "Contractual obligation" means an obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under Section 3 of this Act. A contractual obligation does not include:

(A) death benefits in an amount in excess of $300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of $100,000 [~~in the aggregate~~] under one or more covered policies on any one life;

(B) an amount in excess of $100,000 in the present value [~~aggregate~~] under one or more annuity contracts within the scope of this Act issued with respect to one life under [~~to the same holder of~~] individual annuity policies or [~~to the same annuitant or participant under~~] group annuity policies or an amount in excess of $5,000,000 in unallocated annuity contract benefits with respect to any one contract holder irrespective of the number of such contracts;

(C) an amount in excess of the following amounts, including any net cash surrender or cash withdrawl values, [~~$200,000 in the aggregate~~] under one or more accident and health, accident, [~~or~~] health, or long-term care insurance policies on any one life:

(i) $500,000 for basic hospital, medical-surgical, or major medical insurance, as those terms are defined in this code or rules adopted by the commissioner;

(ii) $300,000 for disability and long-term care insurance, as those terms are defined in this code or rules adopted by the commissioner; or

(iii) $200,000 for coverages that are not defined as basic hospital, medical-surgical, major medical, disability, or long-term care insurance;

(D) an amount in excess of $100,000 in present value annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values, with respect to each individual participating in a governmental retirement benefit plan established under Section 401, 403(b), or 457, Internal Revenue Code of 1986 (26 U.S.C. Sections 401, 403(b), and 457), covered by an unallocated annuity contract or the beneficiary or beneficiaries of the individual if the individual is deceased;

(E) an amount in excess of $100,000 in present value annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values, with respect to each payee of a structured settlement annuity or the beneficiary or beneficiaries of the payee if the payee is deceased;

(F) aggregate benefits in an amount in excess of $300,000 with respect to one life, except with respect to:

(i) benefits paid under basic hospital, medical-surgical, or major medical insurance policies, described by Paragraph (C)(i) of this subdivision, in which case the aggregate benefits are $500,000; and

(ii) benefits paid to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, in which case the maximum benefits are $5,000,000 regardless of the number of policies and contracts held by the owner;

(G) an amount in excess of $5,000,000 in benefits, with respect to either one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in Paragraph (D) of this subdivision irrespective of the number of contracts with respect to the contract owner or plan sponsor or one contract owner provided coverage under Section 3(a)(3)(B) of this Act, except that, if one or more unallocated annuity contracts are covered contracts under this Act and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage shall be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state and in no event shall the association be obligated to cover more than $5,000,000 in benefits with respect to all these unallocated contracts;

(H) any contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic value of economic benefits of the covered policy or contract; or

(I) [~~(D)~~] punitive, exemplary, extracontractual, or bad faith damages, whether agreed to or assumed by an insurer or insured or imposed by a court of competent jurisdiction.

(4) "Covered policy" means any policy or contract, or portion of a policy or contract, within the scope of this Act under Section 3 of this Act.

(5) "Impaired insurer" means[~~:~~

[~~(A)~~] a member insurer that is designated an "impaired insurer" by the commissioner and is:

(A) placed by a court in this state or another state [~~the commissioner~~] under an order of supervision, liquidation, rehabilitation, or conservation;

(B) placed under an order of liquidation or rehabilitation under the provisions of Article 21.28 of this code; or

(C) placed under an order of supervision or conservation by the commissioner under the provisions of Article 21.28-A of this code [~~or 21.28-A, Insurance Code, and that has been designated an "impaired insurer" by the commissioner; or~~

[~~(B) a member insurer determined in good faith by the commissioner to be unable or potentially unable to fulfill its contractual obligations~~].

(6) "Insolvent insurer" means a member insurer [~~whose minimum free surplus, if a mutual company, or whose required capital, if a stock company, becomes impaired to the extent prohibited by law and~~] that has been placed under an order of liquidation with a finding of insolvency [~~designated an "insolvent insurer"~~] by a court in this state or another state [~~the commissioner~~].

(7) "Member insurer" means any insurer licensed or that holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under Section 3 of this Act, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, including a mutual assessment corporation, a local mutual association, a statewide mutual assessment company, and a stipulated premium company licensed to do business in this state, but does not include:

(A) a health maintenance organization;

(B) a fraternal benefit society;

(C) a mandatory state pooling plan;

(D) an insurance exchange; [~~or~~]

(E) an organization which has a certificate of authority or license limited to the issuance of charitable gift annuities as defined in this code or rules adopted by the commissioner; or

(F) any entity similar to any of those described by Paragraphs (A)-(E) [~~(A)-(D)~~] of this subdivision.

(8-a) "Owner" means the owner of a policy or contract and "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and is properly recorded as the owner on the books of the insurer. The terms owner, contract owner, and policy owner do not include persons with a mere beneficial interest in a policy or contract.

(9) "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

(9-a) "Plan sponsor" means:

(A) the employer in the case of a benefit plan established or maintained by a single employer;

(B) the employee organization in the case of a benefit plan established or maintained by an employee organization; or

(C) in a case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(10) "Premiums" means amounts received on covered policies or contracts less premiums, considerations, and deposits returned on those policies or contracts, and less dividends and experience credits on those policies or contracts. "Premiums" does not include amounts received for policies or contracts

or for the portions of any policies or contracts for which coverage is not provided under Section 3(b) of this Act, except that assessable premiums shall not be reduced on account of Section 3(c)(3) of this Act relating to interest limitations and Section 5(3) of this Act relating to limitations with respect to any one individual, any one participant, any one annuitant, and any one contract owner [~~holder~~]. "Premiums" does not include premiums in excess of $5,000,000 [~~five million dollars~~] on any unallocated annuity contract not issued under a governmental benefit [~~retirement~~] plan established under Section 401, 403(b), or 457 of the United States Internal Revenue Code (26 U.S.C. Sections 401, 403(b) and 457). "Premiums" does not include premiums in excess of $5,000,000 with respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, regardless of the number of policies or contracts held by the owner. "Premiums" also does not include premiums received from the Treasury of the State of Texas or from the Treasury of the United States for insurance contracted for by the state or federal government for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by the state or federal government in accordance with or in furtherance of the provisions of Title 2, Human Resources Code, or the Federal Social Security Act.

(11) "Resident" means any person who resides in this state on the earlier of the date a member insurer becomes an impaired insurer or the date of entry of a court order that determines a member insurer to be an impaired insurer or the date of entry of a court order that determines a member insurer to be an insolvent insurer [~~at the time a member insurer is determined to be an impaired or insolvent insurer~~] and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person is its principal place of business. A United States citizen that is either a resident of a foreign country or a resident of a United States possession, territory, or protectorate that does not have an association similar to the association created by this Act is considered a resident of the state of domicile of the insurer that issued the policy or contract.

(11-a) "Structured settlement annuity" means an annuity purchased to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(12) "Supplemental contract" means any written agreement entered into for the distribution of policy or contract proceeds.

SECTION 3. Article 21.28-D, Insurance Code, is amended by adding Section 5A to read as follows:

Sec. 5A. DEFINITION OF PRINCIPAL PLACE OF BUSINESS OF PLAN SPONSOR OR OTHER PERSON. (a) Except as otherwise provided by this section, in this Act, the "principal place of business" of a plan sponsor or a person other than an individual means the single state in which the individuals who establish policy for the direction, control, and coordination of the operations

of the plan sponsor or person as a whole primarily exercise that function, as determined by the association in its reasonable judgment by considering the following factors:

(1) the state in which the primary executive and administrative headquarters of the plan sponsor or person is located;

(2) the state in which the principal office of the chief executive officer of the plan sponsor or person is located;

(3) the state in which the board of directors, or similar governing person or persons, of the plan sponsor or person conduct the majority of their meetings;

(4) the state in which the executive or management committee of the board of directors, or similar governing person or persons, of the plan sponsor or person conduct the majority of their meetings;

(5) the state from which the management of the overall operations of the plan sponsor or person is directed; and

(6) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors described by Subdivisions (1)-(5) of this subsection.

(b) In the case of a plan sponsor, if more than 50 percent of the participants in the benefit plan are employed in a single state, that state is the principal place of business of the plan sponsor.

(c) The principal place of business of a plan sponsor of a benefit plan described in Section 5(9-a)(C) of this Act is the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in that benefit plan.

SECTION 4. Section 6(a), Article 21.28-D, Insurance Code, is amended to read as follows:

(a) The Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association is a nonprofit legal entity. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under Section 10 of this Act and shall exercise its powers through a board of directors established under Section 7 of this Act. For purposes of administration and assessment, the association shall maintain four accounts:

(1) the accident, health, and hospital services insurance account;

(2) the life insurance account;

(3) the annuity account; and

(4) the administrative account.

SECTION 5. Section 8, Article 21.28-D, Insurance Code, is amended by amending Subsections (e), (n), and (v), and by adding Subsections (u-1), (u-2), (u-3), (x), and (y) to read as follows:

(e) When proceeding under Subsections (b)(2) or (d) of this section, with respect to only life and health insurance policies the association shall:

(1) assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability that would have been payable under the policies of the impaired or insolvent insurer, for claims incurred:

(A) with respect to a group policy or contract, the later of:

(i) the earlier of the next renewal date under the policy or contract or the 45th day after the date the association becomes obligated with respect to the policy; or

(ii) the 30th day after the date the association becomes obligated with respect to the policy; or

(B) with respect to an individual policy, the later of:

(i) the earlier of the next renewal date under the policy, if any, or the date one year after the date the association becomes obligated with respect to the policy; or

(ii) the 30th day after the date the association becomes obligated with respect to the policy;

(2) make diligent efforts to provide all known insureds or group policyholders notice before the 30th day before the benefits provided are terminated; and

(3) with respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, substitute coverage on an individual basis in accordance with the provisions of Subsection (f) of this section, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(n) Premiums due for coverage after entry of an order of receivership of an impaired or insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(u-1) The rights of the association under Subsection (u) include, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this Act, against any person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment for the annuity, other than a person responsible solely by reason of serving as an assignee in respect of a qualified assignment under Section 130, Internal Revenue Code of 1986 (26 U.S.C. Section 130).

(u-2) If a provision of Subsection (t), (u), or (u-1) of this section is invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations is reduced by the amount realized by any other person with respect to the person or

claim that is attributable to the policies, or portion of the policies, covered by the association. If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights described in Subsection (t), (u), or (u-1) of this section, the person shall pay to the association the portion of the recovery attributable to the policies, or portion of the policies, covered by the association.

(u-3) A deposit in this state, held under law or required by the commissioner for the benefit of creditors, including policy owners, that is not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or a reciprocal state in accordance with Section 13, Article 21.28, of this code, shall be promptly paid to the association. The association is entitled to retain a portion of any amount paid to the association under this subsection equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount paid to the association and retained under this subsection. The amount paid to the association under this subsection, less the amount retained by the association under this subsection, is treated as a distribution of estate assets under Section 7A(a), Article 21.28, of this code, or the similar law of the state of domicile of the impaired or insolvent insurer.

(v) The association may:

(1) enter into contracts as are necessary or proper to carry out the provisions and purposes of this Act;

(2) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under Section 9 of this Act and to settle claims or potential claims against it;

(3) borrow money to effect the purposes of this Act, and any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets;

(4) employ or retain employees or contractors to handle the financial transactions of the association and to perform other functions under this Act;

(5) take legal action as may be necessary to avoid payment of improper claims; [~~and~~]

(6) exercise, for the purposes of this Act and to the extent approved by the commissioner, the powers of a domestic life, accident, health, or hospital service insurer, but the association may not issue insurance policies or annuity contracts other than those issued to perform its obligations under this Act;

(7) request information from a person seeking coverage from the association in determining its obligations under this Act with respect to the person, and the person shall promptly comply with the request; and

(8) take any other necessary or appropriate action to discharge the association's duties and obligations under this Act or to exercise the association's powers under this Act.

(x) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this Act in an economical and efficient manner.

(y) If the association arranges or offers to provide the benefits of this Act to a covered person under a plan or arrangement that fulfills the association's obligations under this Act, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

SECTION 6. Section 9, Article 21.28-D, Insurance Code, is amended by amending Subsections (b), (d), (f), (g), and (h) and adding Subsection (b-1) to read as follows:

(b) There are two classes of assessments, as follows:

(1) Class A assessments are authorized and called [~~made~~] to meet administrative costs of the association, administrative expenses properly incurred under this Act relating to any unauthorized insurer or nonmember of the association, and other general expenses not related to a particular insolvent or impaired insurer; and

(2) Class B assessments are authorized and called [~~made~~] to the extent necessary to carry out the powers and duties of the association under Section 8 with regard to an insolvent or impaired insurer.

(b-1) For purposes of Subsection (b) of this section, an assessment is authorized at the time a resolution by the board of directors is passed under which an assessment will be called immediately or in the future from member insurers for a specified amount and an assessment is called at the time a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within a period stated in the notice. An authorized assessment becomes a called assessment at the time notice is mailed by the association to member insurers.

(d) The amount of a Class B assessment shall be allocated [~~divided~~] among the separate accounts in accordance with an allocation formula that may be based on:

(1) the premiums or reserves of the impaired or insolvent insurer; or

(2) any other standard deemed by the board of directors in the board's sole discretion as being fair and reasonable under the circumstances [~~as reflected in the annual statements for the year preceding the assessment in the same proportion that the premiums from the policies covered by each account were received by the insolvent or impaired insurer from all covered policies during the year preceding impairment~~].

(f) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on [~~all~~] business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent bear to [~~the~~] premiums received on [~~all~~] business in this state for those calendar years by all assessed member insurers.

(g) Assessments for funds to meet the requirements of the association with respect to an insolvent or impaired insurer may not be authorized and called [~~made~~] until necessary to implement the purposes of this Act. Classification of assessments under Subsection (b) of this section and computation of assessments under this section shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called not later than the 180th day after the date the assessment is authorized.

(h) The association may defer, in whole or in part, the assessment of a member insurer if, in the opinion of the association, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments on a member insurer for each account may not exceed two [~~one~~] percent of the insurer's premiums on the policies covered by the account during the three [~~in any one~~] calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If two or more assessments are authorized in a calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation described by this subsection shall be equal to the higher of the three-year average annual premiums for the applicable subaccount or account as computed in accordance with this section.

SECTION 7. Section 13(a), Article 21.28-D, Insurance Code, is amended to read as follows:

(a) Unless a longer period of time has been required by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an admitted asset in the form approved by the commissioner under Section 9(k) of this Act at percentages of the original face amount approved by the commissioner, for calendar years as follows:

100 percent for the calendar year of issuance, which shall be reduced 20 [~~10~~] percent a year for each year thereafter for a period of 5 [~~10~~] years.

SECTION 8. Sections 14(d) and (i), Article 21.28-D, Insurance Code, are amended to read as follows:

(d) Before the termination of any receivership, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyholders of the impaired or insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the impaired or insolvent insurer. In making this determination, the court shall consider the welfare of the policyholders of the continuing or successor insurer.

(i) The maximum amount recoverable under Subsections (f) and (h) of this section is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer.

SECTION 9. (a) Effective September 1, 2005:

(1) the name of the Life, Accident, Health, and Hospital Service Insurance Guaranty Association is changed to the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association, and all powers, duties, rights, and obligations of the Life, Accident, Health, and Hospital Service Insurance Guaranty Association are the powers, duties, rights, and obligations of the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association;

(2) a member of the board of directors of the Life, Accident, Health, and Hospital Service Insurance Guaranty Association is a member of the board of directors of the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association; and

(3) a reference in law to the Life, Accident, Health, and Hospital Service Insurance Guaranty Association is a reference to the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association.

(b) The Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association is the successor to the Life, Accident, Health, and Hospital Service Insurance Guaranty Association in all respects. All personnel, equipment, data, documents, facilities, contracts, items, other property, rules, decisions, and proceedings of or involving the Life, Accident, Health, and Hospital Service Insurance Guaranty Association are unaffected by the change in the name of the association.

SECTION 10. The change in law made by this Act applies only to an insurer that first becomes an impaired or insolvent insurer on or after the effective date of this Act. An insurer that becomes an impaired or insolvent insurer before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for this purpose.

SECTION 11. This Act takes effect September 1, 2005.

HB 2941 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Eiland called up with senate amendments for consideration at this time,

HB 2941, A bill to be entitled An Act relating to compensation of insurance agents.

Representative Eiland moved to concur in the senate amendments to **HB 2941**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 2941, A bill to be entitled An Act relating to compensation of insurance agents.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 4005, Insurance Code, is amended by adding Section 4005.004 to read as follows:

Sec. 4005.004. DISCLOSURE OF COMPENSATION. (a) In this section:

(1) "Affiliate" has the meaning described by Section 823.003(a).

(2) "Agent" means a person licensed under Chapter 4051, 4053, 4054, or 4056.

(3) "Compensation from an insurer or other third party" includes payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration, whether or not payable under a written contract or agreement.

(4) "Compensation from a customer" does not include a fee described by Section 4005.003, an application fee, or an inspection fee.

(5) "Customer" means the person signing the application for insurance or the authorized representative of the insured actually negotiating the placement of an insurance product with the agent. A person is not to be considered a "customer" of an agent for purposes of this section solely because the person is a participant or beneficiary:

(A) of an employee benefit plan; or

(B) of, or otherwise covered by, a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by an agent or the agent's affiliate.

(6) "Documented acknowledgement" means a customer's dated acknowledgement, obtained before the customer's purchase of an insurance product, as demonstrated by the customer's written or electronic signature or recorded voice, or by other additional methods that the commissioner may authorize by rule.

(b) If an agent, or any affiliate of an agent, receives compensation from a customer for the placement or renewal of an insurance product, other than a service fee described under Section 4005.003, an application fee, or an inspection fee, the agent or the affiliate may not accept or receive any compensation from an insurer or other third party for that placement or renewal unless the agent has, before the customer's purchase of insurance:

(1) obtained the customer's documented acknowledgement that the compensation will be received by the agent or affiliate; and

(2) provided a description of the method and factors used to compute the compensation to be received from the insurer or other third party for that placement.

(c) This section does not apply to:

(1) a licensed agent who acts only as an intermediary between an insurer and the customer's agent, including a managing general agent;

(2) a reinsurance intermediary or surplus lines agent placing reinsurance or surplus lines insurance; or

(3) an agent whose sole compensation for the placement or servicing of an insurance product is derived from commissions, salaries, and other remuneration paid by the insurer.

(d) An agent may satisfy any requirements imposed by this section through an affiliate.

(e) The commissioner may adopt rules as necessary to implement the disclosure and acknowledgment of disclosure requirements under this section.

SECTION 2. Section 4005.054, Insurance Code, is amended to read as follows:

Sec. 4005.054. RECEIVING ADDITIONAL FEE PROHIBITED. A person who holds a license under this code and receives a commission or other consideration for services as an agent may not receive an additional fee for those services provided to the same client except for a fee:

(1) described by Section 550.001 or 4005.003; and

(2) for which disclosure is made as required under Section 4005.003 or Section 4005.004.

SECTION 3. (a) The Texas Department of Insurance shall conduct a study regarding whether the commissions paid to insurance agents for sales of insurance policies for coverage under the Texas Health Insurance Risk Pool established under Chapter 1506, Insurance Code, are sufficient to ensure that consumers who are eligible for coverage under that pool are made aware of the existence of the pool and the benefits of purchasing insurance policies issued by the pool.

(b) The Texas Department of Insurance shall report the results of the study to the legislature not later than December 1, 2006.

SECTION 4. This Act takes effect September 1, 2005.

HB 2959 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Paxton called up with senate amendments for consideration at this time,

HB 2959, A bill to be entitled An Act relating to the use of federal child care and development block grant funds by local workforce development boards.

Representative Paxton 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 2959**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2959**: Paxton, chair; Hupp; J. Davis; Veasey; and Gonzalez Toureilles.

HB 2965 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Seaman called up with senate amendments for consideration at this time,

HB 2965, A bill to be entitled An Act relating to insurance premium finance agreements.

Representative Seaman moved to concur in the senate amendments to **HB 2965**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 920): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Menendez.

Senate Committee Substitute

CSHB 2965, A bill to entitled An Act relating to regulation of sharing of certain profits and fees by premium finance companies and certain related persons or entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 651.001, Insurance Code, is amended by adding Subdivisions (2-a) and (8-a) to read as follows:

(2-a) "Insurance agent" means a person licensed under Subchapter E, Chapter 981 or Chapter 4051, 4052, 4053, 4054, 4055, 4056, or 4153.

(8-a) "Premium finance agreement servicer" means a person who provides a premium finance company with collection, billing, or other services related to the administration of premium finance agreements.

SECTION 2. Section 651.051, Insurance Code, is amended to read as follows:

Sec. 651.051. LICENSE REQUIRED. (a) Unless the person is a license holder, a person may not:

(1) negotiate, transact, or engage in the business of insurance premium financing in this state; or

(2) contract for, charge, or receive directly or indirectly on or in connection with an insurance premium financing any charge, regardless of whether the charge is for interest, compensation, consideration, expense, or otherwise, if in the aggregate the amount of the charge exceeds the amount the person would be permitted by law to charge if the person were not a license holder.

(b) This subchapter does not apply to a person who purchases or otherwise acquires a premium finance agreement from a license holder if the license holder:

(1) retains the right to service the agreement and to collect payments due under the agreement; and

(2) remains responsible for servicing the agreement in compliance with this chapter.

SECTION 3. The heading to Subchapter C, Chapter 651, Insurance Code, is amended to read as follows:

SUBCHAPTER C. REGULATION OF INSURANCE PREMIUM FINANCE COMPANIES AND OTHERS

SECTION 4. Section 651.110, Insurance Code, is amended to read as follows:

Sec. 651.110. LIMITATIONS ON CERTAIN INDUCEMENTS OR SHARING OF PROFITS AND FEES [~~REBATE OF FINANCE CHARGE~~]. (a) This section applies to:

(1) an [~~An~~] insurance premium finance company;

(2) an insurance agent;

(3) a premium finance agreement servicer; or

(4) [~~or~~] an affiliate, employee, agent, or other representative of an insurance premium finance company or a premium finance agreement servicer.

(a-1) A person, partnership, or other entity described by Subsection (a) and involved in transactions related to the financing of insurance premiums may not:

(1) directly or indirectly pay, allow, give, or offer to pay, [~~or~~] allow, or give in any manner to an insurance agent [~~or broker~~] or an employee of an insurance agent [~~or broker or to any other person~~] any consideration, [~~or~~] compensation, or inducement for soliciting, accepting an application for, delivering, or administering[~~, from the charge for financing specified in the~~] premium finance agreements [~~agreement or from another source~~]; [~~or~~]

(2) pay, allow, or offer to pay or allow an insurance agent or an employee of an insurance agent to share the profits of any person, partnership, or other entity if any portion of the share of profits is determined, either in whole or in part, by the amount of premium dollars financed or premium finance agreements placed; or

(3) pay, allow, or offer to pay or allow an insurance agent or an employee of an insurance agent to share any portion of fees, including late fees, that are related to the premium finance agreement [~~give or offer to give any valuable consideration or inducement of any kind directly or indirectly to an insurance agent or broker or an employee of an insurance agent or broker~~].

(b) Subsection (a-1) [~~(a)(2)~~] does not prohibit the giving or offering of an article of merchandise to an insurance agent or an employee of an insurance agent that has a value of $10 [~~$1~~] or less on which there is an advertisement of the insurance premium finance company.

(c) Subsection (a-1) [~~(a)~~] does not prohibit a person, partnership, or other entity described by Subsection (a) [~~an insurance premium finance company~~] from making a payment under a contractual agreement with a validly organized and operating association of insurance agents or a subsidiary of the association if no part of a payment received under the agreement:

(1) is distributed to an insurance agent [~~or broker~~] or an employee of an insurance agent [~~or broker~~]; or

(2) inures directly to the benefit of a member of the association or an employee of the member.

(d) A contractual agreement under Subsection (c):

(1) must be in writing; and

(2) is not valid until commissioner [~~department~~] approval is received.

(e) Subsection (a-1) does not prohibit an insurance agent from being the sole owner or sole shareholder of an insurance premium finance company and receiving profits and fees of the insurance premium finance company if the insurance agent discloses in writing the agent's ownership interest in the insurance premium finance company to all insureds placed by the agent with the insurance premium finance company owned by the agent.

(f) Subsections (a-1) and (e) do not apply to a person, partnership, or other entity described by Subsection (a) and involved in transactions related to the financing of insurance premiums for commercial lines of insurance if, with respect to those transactions:

(1) the insurance agent discloses in writing the source of any compensation to be received by the agent as a result of the insured entering into a premium finance agreement;

(2) the agent provides in writing to the insured the amount of compensation, as a percentage of the premiums financed, if the amount of compensation received by the agent exceeds two percent of the premium amount financed; and

(3) the amount of compensation is based only on actual premiums financed and is not paid as:

(A) an advance on future premium finance agreements; or

(B) a form of bonus for the agent agreeing to place finance agreements with the premium finance company.

SECTION 5. Section 651.158(b), Insurance Code, is amended to read as follows:

(b) If an insured pays a premium finance agreement in full as authorized by this section and the agreement included an amount for a charge, the insured is entitled to receive for the prepayment by cash or renewal a refund credit in accordance with Subchapter H, Chapter 342, Finance Code, and rules adopted under that subchapter. If the amount of the credit for prepayment is less than $5 [~~$1~~], the insured is not entitled to a refund credit.

SECTION 6. (a) The change in law made by this Act applies only to an act committed or a transaction that occurs on or after the effective date of this Act.

(b) An act committed or a transaction that occurs before the effective date of this Act is covered by the law in effect on the date that the act was committed or the transaction occurred, and the former law is continued in effect for that purpose.

SECTION 7. 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, 2005.

HB 3024 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative B. Cook called up with senate amendments for consideration at this time,

HB 3024, A bill to be entitled An Act relating to the sale of fish collected from certain private property.

Representative B. Cook moved to concur in the senate amendments to **HB 3024**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 3024, A bill to be entitled An Act relating to the sale of fish collected from certain private property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 134, Agriculture Code, is amended by adding Section 134.018 to read as follows:

Sec. 134.018. LICENSE NOT REQUIRED FOR SALE OF CERTAIN FISH. (a) An aquaculture license is not required for the sale of fish:

(1) that are not on the Parks and Wildlife Department's list of exotic fish, shellfish, and aquatic plants;

(2) collected from a private facility on private land by a person who holds an aquaculture license;

(3) by the owner of the private facility from which the fish were collected;

(4) to manage the fish population in the private facility; and

(5) to a person who holds an aquaculture license.

(b) Not later than the 30th day after the sale of fish under this section, the buyer who holds an aquaculture license shall submit a copy of the invoice for the sale to the Parks and Wildlife Department. The seller and the buyer shall maintain a record of the sale for not less than one year. The record must contain at least:

(1) the invoice number;

(2) the date of the sale;

(3) the name and address of the seller;

(4) the physical location of the facility from which the fish were collected;

(5) the name, address, and aquaculture license number of the buyer; and

(6) the number of fish sold.

(c) Sections 66.020 and 66.111, Parks and Wildlife Code, do not apply to a sale under this section.

SECTION 2. This Act takes effect September 1, 2005.

HB 3162 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative M. Noriega called up with senate amendments for consideration at this time,

HB 3162, A bill to be entitled An Act relating to the temporary replacement of a member of a political party's county executive committee who enters active military service.

Representative M. Noriega moved to concur in the senate amendments to **HB 3162**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 921): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Burnam; Edwards.

Senate Amendment No. 1 (Senate Committee Amendment No. 1)

Amend **HB 3162** as follows:

On page 1, strike line 19 and substitute with the following:

unable to fulfill the member's duties, due to the member's obligations to the armed forces of the United States.

HB 3235 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Uresti called up with senate amendments for consideration at this time,

HB 3235, A bill to be entitled An Act relating to providing interpreter services to certain recipients of medical assistance or their parents or guardians.

Representative Uresti moved to concur in the senate amendments to **HB 3235**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 3235, A bill to be entitled An Act relating to providing interpreter services to certain recipients of medical assistance or their parents or guardians.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 32.024, Human Resources Code, is amended by adding Subsection (bb) to read as follows:

(bb) In this subsection, "deaf" and "hard of hearing" have the meanings assigned by Section 81.001. Subject to the availability of funds, the department shall provide interpreter services as requested during the receipt of medical assistance under this chapter to:

(1) a person receiving that assistance who is deaf or hard of hearing; or

(2) a parent or guardian of a person receiving that assistance if the parent or guardian is deaf or hard of hearing.

SECTION 2. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 3. This Act takes effect September 1, 2005.

HB 3333 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Chavez called up with senate amendments for consideration at this time,

HB 3333, A bill to be entitled An Act relating to the sale or transfer of interest of real property to certain federally recognized Indian tribes.

Representative Chavez 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 3333**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3333**: Chavez, chair; Hill; Griggs; Hunter; and Campbell.

HB 1826 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Grusendorf called up with senate amendments for consideration at this time,

HB 1826, A bill to be entitled An Act relating to the use of school district resources for the maintenance of real property not owned or leased by the district.

Representative Grusendorf moved to concur in the senate amendments to **HB 1826**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 922): 138 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Branch; Dukes; Merritt; Puente; Turner.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 1826** in Section 1 of the bill (Senate committee printing), as follows:

(1) In proposed Subsection (a), Section 11.168, Education Code (page 1, line 14), strike "(a)".

(2) In proposed Subsection (a), Section 11.168, Education Code (page 1, line 16), between "resources" and "for the design", insert "for the provision of materials or labor".

(3) Strike proposed Subsection (b), Section 11.168, Education Code (page 1, lines 19-25).

HB 2303 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Driver called up with senate amendments for consideration at this time,

HB 2303, A bill to be entitled An Act relating to the regulation of and rights of private security personnel.

Representative Driver moved to concur in the senate amendments to **HB 2303**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 2303, A bill to be entitled An Act relating to the regulation of and rights of private security personnel.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 1702, Occupations Code, is amended by adding Section 1702.047 to read as follows:

Sec. 1702.047. ADMINISTRATIVE STAFF. The department shall designate a department employee who shall report directly to the board. The employee designated under this section shall assist the board in the administration of the board's duties. The salary for an employee designated under this section may not exceed the salary specified in the General Appropriations Act for an employee subject to salary group A10.

SECTION 2. Subchapter D, Chapter 1702, Occupations Code, is amended by adding Section 1702.0611 to read as follows:

Sec. 1702.0611. RULEMAKING PROCEDURES. (a) The board may only adopt rules under this chapter on the approval of the Public Safety Commission as provided by this section.

(b) Before adopting a rule under this chapter, the board must:

(1) determine the need for the proposed rule;

(2) work with persons who will be affected by the rule to ensure consideration of all relevant issues regarding the proposed rule;

(3) consult with an attorney in the department's regulatory licensing service to draft the rule and ensure that the proposed rule complies with statutory requirements regarding administrative rules; and

(4) submit the proposed rule to the department's general counsel, director, and chief accountant for consideration of the proposed rule's impact on the department and to ensure that the proposed rule is within the board's authority.

(c) On the completion of the required publication and comment periods under Chapter 2001, Government Code, the Public Safety Commission shall:

(1) return the proposed rule to the board if:

(A) the commission identifies a problem with the rule that must be resolved before the rule is approved; or

(B) a comment requiring resolution is received during the comment period; or

(2) place the rule on the commission's agenda for final approval during the commission's next regularly scheduled meeting.

(d) On approval of the proposed rule by the Public Safety Commission, the department shall comply with the requirements of Chapter 2001, Government Code, for final adoption of the rule.

SECTION 3. Section 1702.062(a), Occupations Code, is amended to read as follows:

(a) The commission by rule shall establish reasonable and necessary fees that produce sufficient revenue to administer this chapter. The fees may not produce unnecessary fund balances and may not exceed the following amounts:

Class A license	$350 [~~$250~~] (original and renewal)
Class B license	$400 [~~$300~~] (original and renewal)
Class C license	$540 [~~$440~~] (original and renewal)
Class D license	$400 (original and renewal)
Reinstate suspended license	$150
Assignment of license	$150
Change name of license	$ 75
Delinquency fee	
Branch office certificate and renewal	$300 [~~$200~~]
Registration fee for private investigator, manager, branch office manager, locksmith, electronic access control device installer, and alarm systems installer	$ 30 [~~$ 20~~] (original and renewal)
Registration fee for noncommissioned security officer	$ 30 [~~$ 25~~] (original and renewal)
Registration fee for security salesperson	$ 30 [~~$ 20~~]
Registration fee for alarm systems monitor	$ 30 [~~$ 20~~]
Registration fee for dog trainer	$ 30 [~~$ 20~~]
Registration fee for owner, officer, partner, or shareholder of a license holder	$ 50
Registration fee for security consultant	$300 [~~$ 55~~]
Registration fee for employee of license holder	$ 30

Security officer commission fee	$ 50 (original and renewal)
School instructor fee	$100 (original and renewal)
School approval fee	$350 [~~$250~~] (original and renewal)
Letter of authority fee for private business and political subdivision	$400 [~~$300~~]
Letter of authority renewal fee for private business and political subdivision	$225
Letter of authority fee for commissioned officer, noncommissioned officer, or personal protection officer for political subdivision	$ 10
FBI fingerprint check	$ 25
Duplicate pocket card	$ 10
Employee information update fee	$ 15
Burglar alarm sellers renewal fee	$ 30 [~~$ 25~~]
Personal protection officer authorization	$ 50

SECTION 4. Section 1702.163(a), Occupations Code, is amended to read as follows:

(a) The board [~~commission~~] may not issue a security officer commission to an applicant employed by a license holder unless the applicant submits evidence satisfactory to the board [~~commission~~] that the applicant has:

(1) completed the basic training course at a school or under an instructor approved by the board [~~commission~~];

(2) met each qualification established by this chapter and board [~~commission~~] rule;

(3) achieved the score required by the board [~~commission~~] on the examination under Section 1702.1685; and

(4) demonstrated to the satisfaction of the firearm training instructor that the applicant has complied with other board [~~commission~~] standards for minimum marksmanship competency with a handgun [~~shotgun~~].

SECTION 5. Section 1702.182, Occupations Code, is amended to read as follows:

Sec. 1702.182. SECURITY DEPARTMENT OF PRIVATE BUSINESS. (a) A security department acts as the security department of a private business if it:

(1) has as its general purpose the protection and security of its own property and grounds; and

(2) does not offer or provide security services to another person.

(b) For purposes of this subchapter, a hospital licensed under Chapter 241 or 577, Health and Safety Code, may provide security services to:

(1) buildings, grounds, and tenants located on the hospital's property or campus, regardless of who owns the building; and

(2) a parent entity or member entity of the hospital or hospital corporation, or an affiliated entity or business with whom the hospital shares common ownership or control.

SECTION 6. Section 1702.282, Occupations Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The board [~~commission~~] shall conduct a criminal history check, including a check of any criminal history record information maintained by the Federal Bureau of Investigation, in the manner provided by Subchapter F, Chapter 411, Government Code, on each applicant for a license, registration, security officer commission, letter of approval, permit, or certification. An applicant is not eligible for a license, registration, commission, letter of approval, permit, or certification if the check reveals that the applicant has committed an act that constitutes grounds for the denial of the license, registration, commission, letter of approval, permit, or certification. Except as provided by Subsection (d), each [~~Each~~] applicant shall include in the application two complete sets of fingerprints on forms prescribed by the board [~~commission~~] accompanied by the fee set by the board [~~commission~~].

(d) An applicant who is a peace officer is not required to submit fingerprints with the applicant's application. On request, the law enforcement agency or other entity that employs the peace officer or the entity that maintains the peace officer's fingerprints shall provide the fingerprints for the peace officer to the board. The applicant shall provide sufficient information to the board to enable the board to obtain the fingerprints under this subsection.

SECTION 7. Section 46.05, Penal Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f) It is a defense to prosecution under this section for the possession of a chemical dispensing device that the actor is [~~holds~~] a security officer [~~commission issued by the Texas Commission on Private Security~~] and has received training on the use of the chemical dispensing device by a training program that is:

(1) provided by the Commission on Law Enforcement Officer Standards and Education; or

(2) approved for the purposes described by this subsection by the Texas [~~Commission on~~] Private Security Board of the Department of Public Safety.

(g) In Subsection (f), "security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

SECTION 8. Section 1702.062(a), Occupations Code, as amended by Section 3 of this Act, takes effect only if the provision of the General Appropriations Act to increase appropriations to the Department of Public Safety of the State of Texas to increase the department's full time employee (FTE) count by 39 employees for implementation of Chapter 1702, Occupations Code, is enacted and becomes law. If that provision is not enacted, Section 1702.062(a), Occupations Code, as amended by Section 3 of this Act, is void and of no effect.

SECTION 9. This Act takes effect September 1, 2005.

HB 2233 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Geren called up with senate amendments for consideration at this time,

HB 2233, A bill to be entitled An Act relating to state and certain local fiscal matters; providing a penalty.

Representative Geren 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 2233**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2233**: J. Keffer, chair; Chisum; Edwards; Solomons; and Rose.

SB 11 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Delisi, the house granted the request of the senate for the appointment of a conference committee on **SB 11**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 11**: Delisi, chair; Corte; Berman; Dutton; and M. Noriega.

SB 409 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative P. King, the house granted the request of the senate for the appointment of a conference committee on **SB 409**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 409**: P. King, chair; R. Cook; Turner; Baxter; and Crabb.

SB 1830 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Luna, the house granted the request of the senate for the appointment of a conference committee on **SB 1830**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1830**: Luna, chair; Crownover; Dukes; Hopson; and J. Davis.

SB 122 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Giddings submitted the conference committee report on **SB 122**.

Representative Giddings moved to adopt the conference committee report on **SB 122**.

A record vote was requested.

The motion to adopt the conference committee report on **SB 122** prevailed by (Record 923): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Madden.

HB 1820 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Otto submitted the following conference committee report on **HB 1820** :

Austin, Texas, May 23, 2005

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 1820** 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.

Eltife	Otto
Ellis, Rodney	Talton
Nelson	Vo
Jackson	A. Allen
Whitmire	Blake
On the part of the senate	On the part of the house

HB 1820, A bill to be entitled An Act relating to the requirements for reporting certain information to the attorney general or the legislature.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2111.002, Government Code, is amended to read as follows:

Sec. 2111.002. REPORTING. Each [~~(a) Not later than January 31 of each year, each~~] state agency shall report to the lieutenant governor and the speaker of the house of representatives any [~~attorney general each~~] technological innovation developed by the agency that:

(1) has potential commercial application, is proprietary, or could be protected under intellectual property laws; and

(2) was developed:

(A) during the preceding calendar year; or

(B) before the preceding calendar year but was not previously reported to the lieutenant governor and the speaker of the house of representatives [~~attorney general~~].

[~~(b) The attorney general may prescribe a form for the report.~~]

SECTION 2. Section 311.016(b), Tax Code, is amended to read as follows:

(b) The municipality shall send a copy of a report made under this section to[~~:~~

[~~(1) the attorney general; and~~

[~~(2)~~] the comptroller.

SECTION 3. Section 4.08(c), Chapter 427, Acts of the 44th Legislature, 1st Called Session, 1935, as amended (Article 8280-115, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) A copy of the audit report shall be filed with the authority, the governor, the lieutenant governor, the speaker of the house of representatives, [~~the attorney general,~~] the commission, and the comptroller of public accounts.

SECTION 4. A state agency is not required to report a technological innovation to the lieutenant governor and the speaker of the house of representatives under Section 2111.002(2)(B), Government Code, as amended by this Act, if the technological innovation was previously reported to the attorney general under Section 2111.002.

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, 2005.

Representative Otto moved to adopt the conference committee report on **HB 1820**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1820** prevailed by (Record 924): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar;

Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — West.

HB 261 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Dutton submitted the following conference committee report on **HB 261** :

Austin, Texas, May 23, 2005

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 261** 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.

Wentworth	Goodman
Duncan	Dutton
Hinojosa	Castro
West, Royce	Nixon
	Strama
On the part of the senate	On the part of the house

HB 261, A bill to be entitled An Act relating to possession of or access to a grandchild and designation of other relatives as managing conservators.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter H, Chapter 153, Family Code, is amended to read as follows:

SUBCHAPTER H. RIGHTS OF GRANDPARENT, AUNT, OR UNCLE

SECTION 2. Section 153.431, Family Code, is amended to read as follows:

Sec. 153.431. [~~GRANDPARENTAL~~] APPOINTMENT OF GRANDPARENT, AUNT, OR UNCLE AS MANAGING CONSERVATOR [~~CONSERVATORS~~]. If both of the parents of a child are deceased, the court may consider appointment of a parent, sister, or brother of a deceased parent [~~grandparents may be considered for appointment~~] as a managing conservator of the child [~~conservators~~], but that consideration does not alter or diminish the discretionary power of the court.

SECTION 3. Section 153.432, Family Code, is amended to read as follows:

Sec. 153.432. SUIT FOR POSSESSION OR ACCESS BY GRANDPARENT. (a) A biological or adoptive grandparent may request possession of or access to a grandchild by filing:

(1) an original suit; or

(2) a suit for modification as provided by Chapter 156.

(b) A grandparent may request possession of or access to a grandchild in a suit filed for the sole purpose of requesting the relief, without regard to whether the appointment of a managing conservator is an issue in the suit.

SECTION 4. Section 153.433, Family Code, is amended to read as follows:

Sec. 153.433. POSSESSION OF OR [~~AND~~] ACCESS TO GRANDCHILD. The court shall order reasonable possession of or access to a grandchild by a grandparent if:

(1) at the time the relief is requested, at least one biological or adoptive parent of the child has not had that parent's parental rights terminated; [~~and~~]

(2) the grandparent requesting possession of or access to the child overcomes the presumption that a parent acts in the best interest of the parent's child by proving by a preponderance of the evidence that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being; [~~access is in the best interest of the child;~~] and

(3) [~~at least one of the following facts is present:~~

[~~(A)~~] the grandparent requesting possession of or access to the child is a parent of a parent of the child and that parent of the child:

(A) has been incarcerated in jail or prison during the three-month period preceding the filing of the petition;

(B) [~~or~~] has been found by a court to be incompetent;

(C) [~~or~~] is dead; or

(D) does not have actual or court-ordered possession of or access to the child

[~~(B) the parents of the child are divorced or have been living apart for the three-month period preceding the filing of the petition or a suit for the dissolution of the parents' marriage is pending;~~

[~~(C) the child has been abused or neglected by a parent of the child;~~

[~~(D) the child has been adjudicated to be a child in need of supervision or a delinquent child under Title 3;~~

[~~(E) the grandparent requesting access to the child is the parent of a person whose parent-child relationship with the child has been terminated by court order; or~~

[~~(F) the child has resided with the grandparent requesting access to the child for at least six months within the 24 month period preceding the filing of the petition~~].

SECTION 5. The heading to Section 153.434, Family Code, is amended to read as follows:

Sec. 153.434. LIMITATION ON RIGHT TO REQUEST POSSESSION OR ACCESS.

SECTION 6. The change in law made by this Act to Section 153.431, Family Code, applies to a suit affecting the parent-child relationship that is pending in a trial court on the effective date of this Act or that is filed on or after the effective date of this Act.

SECTION 7. The changes in law made by this Act to Sections 153.432 and 153.433, Family Code, apply to a suit under Section 153.432, Family Code, that is pending in a trial court on the effective date of this Act or that is filed on or after the effective date of this Act.

SECTION 8. This Act takes effect September 1, 2005.

Representative Dutton moved to adopt the conference committee report on **HB 261**.

The motion to adopt the conference committee report on **HB 261** prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

HB 1077 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Crabb submitted the following conference committee report on **HB 1077** :

Austin, Texas, May 23, 2005

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 1077** 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.

Wentworth	Crabb
Averitt	R. Cook
Harris	Deshotel
	P. King
	Talton
On the part of the senate	On the part of the house

HB 1077, A bill to be entitled An Act relating to the composition of certain courts of appeals districts and to the assignment and transfer of cases in certain courts of appeals districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 22.201(b), (f), (j), (k), (m), and (o), Government Code, are amended to read as follows:

(b) The First Court of Appeals District is composed of the counties of Austin, Brazoria, [~~Burleson,~~] Chambers, Colorado, Fort Bend, Galveston, Grimes, Harris, [~~Trinity, Walker,~~] Waller, and Washington.

(f) The Fifth Court of Appeals District is composed of the counties of Collin, Dallas, Grayson, Hunt, Kaufman, and Rockwall[~~, and Van Zandt~~].

(j) The Ninth Court of Appeals District is composed of the counties of [~~Angelina,~~] Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, and Tyler.

(k) The Tenth Court of Appeals District is composed of the counties of Bosque, Burleson, Brazos, Coryell, Ellis, Falls, Freestone, Hamilton, Hill, Johnson, Leon, Limestone, Madison, McLennan, Navarro, Robertson, [~~and~~] Somervell, and Walker.

(m) The Twelfth Court of Appeals District is composed of the counties of Anderson, Angelina, Cherokee, Gregg, Henderson, [~~Hopkins,~~] Houston, [~~Kaufman,~~] Nacogdoches, [~~Panola,~~] Rains, Rusk, Sabine, San Augustine, Shelby, Smith, Trinity, Upshur, Van Zandt, and Wood.

(o) The Fourteenth Court of Appeals District is composed of the counties of Austin, Brazoria, [~~Burleson,~~] Chambers, Colorado, Fort Bend, Galveston, Grimes, Harris, [~~Trinity, Walker,~~] Waller, and Washington.

SECTION 2. Sections 22.207(c) and 22.213(d), Government Code, are repealed.

SECTION 3. (a) Burleson, Trinity, and Walker Counties:

(1) may not impose a fee under Section 22.2021(b), Government Code, for cases filed on or after the effective date of this Act; and

(2) as soon as practicable after the effective date of this Act, shall transfer the money collected under that section to the First and Fourteenth Courts of Appeals.

(b) Van Zandt County:

(1) may not impose a fee under Section 22.2061(b), Government Code, for cases filed on or after the effective date of this Act; and

(2) as soon as practicable after the effective date of this Act, shall transfer the money collected under that section to the Fifth Court of Appeals.

(c) Burleson, Trinity, and Walker Counties shall reimburse Harris County, as required under Section 22.202(c), Government Code, for the costs incurred by Harris County from March 1, 2005, until the effective date of this Act to support the First and Fourteenth Courts of Appeals Districts.

SECTION 4. This Act does not affect the jurisdiction on appeal of any case from a county that is transferred by this Act to a different court of appeals district if the notice of appeal for the case was filed before September 1, 2005.

SECTION 5. This Act takes effect September 1, 2005.

Representative Crabb moved to adopt the conference committee report on **HB 1077**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1077** prevailed by (Record 925): 113 Yeas, 25 Nays, 3 Present, not voting.

Yeas — Allen, R.; Alonzo; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Eiland; Eissler; Elkins; Escobar; Farabee; Flores; Flynn; Frost; Gallego; Gattis; Giddings; Griggs; Grusendorf; Guillen; Haggerty; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hodge; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keffer, B.; King, P.; King, T.; Kuempel; Laney; Laubenberg; Luna; Madden; Martinez Fischer; McCall; McClendon; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Straus; Swinford; Talton; Taylor; Truitt; Turner; Van Arsdale; Veasey; Vo; West; Woolley; Zedler.

Nays — Allen, A.; Anchia; Chavez; Dutton; Edwards; Farrar; Geren; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Hamilton; Herrero; Hochberg; Hopson; Kolkhorst; Leibowitz; Martinez; McReynolds; Noriega, M.; Pickett; Solis; Strama; Thompson; Uresti.

Present, not voting — Mr. Speaker; Keffer, J.(C); Solomons.

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Keel; Nixon; Puente; Wong.

STATEMENT OF VOTE

I was shown voting yes on Record No. 925. I intended to vote no.

Hope

SB 1050 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Bailey submitted the conference committee report on **SB 1050**.

Representative Bailey moved to adopt the conference committee report on **SB 1050**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 1050** prevailed by (Record 926): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales;

Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Burnam.

HB 225 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Driver submitted the following conference committee report on **HB 225** :

Austin, Texas, May 24, 2005

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 225** 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.

Deuell	Driver
Seliger	Isett
Staples	Frost
Hinojosa	Hupp
Williams	Hegar
On the part of the senate	On the part of the house

HB 225, A bill to be entitled An Act relating to the issuance and expiration of certain licenses to carry a concealed handgun.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 411.173(a), Government Code, as amended by Chapters 255 and 752, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) The department by rule shall establish a procedure for a person who meets the eligibility requirements of this subchapter other than the residency requirement established by Section 411.172(a)(1) to obtain a license under this

subchapter if the person is a legal resident of another [~~a~~] state [~~that does not provide for the issuance of a license to carry a concealed handgun~~] or if the person relocates to this state with the intent to establish residency in this state. The procedure must include payment of a fee in an amount sufficient to recover the average cost to the department of obtaining a criminal history record check and investigation on a nonresident applicant. A license issued in accordance with the procedure established under this subsection [~~If a state whose residents may obtain a license under this subsection enacts a law providing for the issuance of a license to carry a concealed handgun, a license issued to a resident of that state~~]:

(1) remains in effect until the license expires under Section 411.183; and

(2) may be renewed under Section 411.185 [~~until the time a license issued by the other state is recognized by this state under Subsection (b)~~].

SECTION 2. Section 411.173(b), Government Code, is amended to read as follows:

(b) The governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state or shall issue a proclamation that a license issued by the other state is recognized in this state if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is initiated [~~conducted~~] by state or local authorities or an agent of the state or local authorities before the license is issued [~~to determine the applicants' eligibility to possess a firearm under federal law~~]. For purposes of this subsection, "background check" means a search of the National Crime Information Center database and the Interstate Identification Index maintained by the Federal Bureau of Investigation.

SECTION 3. Section 411.183(b), Government Code, is amended to read as follows:

(b) A renewed license expires on the license holder's birthdate, five [~~four~~] years after the date of the expiration of the previous license.

SECTION 4. Section 411.173(a-1), Government Code, is repealed.

SECTION 5. This Act applies only to a license renewed on or after September 1, 2005.

SECTION 6. This Act takes effect September 1, 2005.

Representative Driver moved to adopt the conference committee report on **HB 225**.

The motion to adopt the conference committee report on **HB 225** prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

HB 747 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative McReynolds submitted the following conference committee report on **HB 747** :

Austin, Texas, May 25, 2005

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 747** 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.

Staples	McReynolds
Brimer	Casteel
Lindsay	T. King
Shapleigh	Krusee
Wentworth	Phillips
On the part of the senate	On the part of the house

HB 747, A bill to be entitled An Act relating to the designation of the El Camino East/West Corridor.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 225, Transportation Code, is amended by adding Section 225.0401 to read as follows:

Sec. 225.0401. EL CAMINO EAST/WEST CORRIDOR. (a) The parts of State Highways 7, 21, and 103, United States Highway 290, and Interstate Highway 10 that create a route from the Pendleton Bridge in Sabine County to the El Paso-Hudspeth County line are designated as the El Camino East/West Corridor.

(b) The part of Interstate Highway 10 that follows the route of the El Camino Real de Tierra Adentro in El Paso County is designated as the El Camino Real de Tierra Adentro East/West Corridor.

(c) To the extent the El Camino East/West Commission reimburses the department for the department's costs, the department shall:

(1) design and construct markers in consultation with the El Camino East/West Commission to be placed along the corridor indicating the highway number, the appropriate designation, and any other appropriate information; and

(2) erect a marker at each end of the corridor and at appropriate intermediate sites along the corridor.

(d) Funds collected by the department under Subsection (c) shall be deposited to the credit of the state highway fund.

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, 2005.

Representative McReynolds moved to adopt the conference committee report on **HB 747**.

The motion to adopt the conference committee report on **HB 747** prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. Members registering their votes are as follows: Flynn recorded voting no.)

HB 880 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Delisi called up with senate amendments for consideration at this time,

HB 880, A bill to be entitled An Act relating to attorney general review of certain contracts for health care purposes.

Representative Delisi 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 880**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 880**: Delisi, chair; Laubenberg; J. Davis; McReynolds; and A. Allen.

HB 2157 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Smithee called up with senate amendments for consideration at this time,

HB 2157, A bill to be entitled An Act relating to the receivership of insurers in this state; providing penalties.

Representative Smithee moved to concur in the senate amendments to **HB 2157**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 2157, A bill to be entitled An Act relating to the receivership of insurers in this state; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 1, Insurance Code, is amended by adding Chapter 21A to read as follows:

CHAPTER 21A. INSURER RECEIVERSHIP ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21A.001. CONSTRUCTION AND PURPOSE. (a) This chapter may be cited as the Insurer Receivership Act.

(b) This chapter may not be interpreted to limit the powers granted the commissioner under other provisions of law.

(c) This chapter shall be liberally construed to support the purpose stated in Subsection (e).

(d) All powers and authority of a receiver under this chapter are cumulative and are in addition to all powers and authority that are available to a receiver under law other than this chapter.

(e) The purpose of this chapter is to protect the interests of insureds, claimants, creditors, and the public generally, through:

(1) early detection of any potentially hazardous condition in an insurer and prompt application of appropriate corrective measures;

(2) improved methods for conserving and rehabilitating insurers;

(3) enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;

(4) apportionment of any unavoidable loss in accordance with the statutory priorities set out in this chapter;

(5) lessening the problems of interstate receivership by:

(A) facilitating cooperation between states in delinquency proceedings; and

(B) extending the scope of personal jurisdiction over debtors of the insurer located outside this state;

(6) regulation of the business of insurance by the impact of the law relating to delinquency procedures and related substantive rules; and

(7) providing for a comprehensive scheme for the receivership of insurers and those subject to this chapter as part of the regulation of the business of insurance in this state because proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

Sec. 21A.002. CONFLICTS OF LAW. This chapter and the state law governing insurance guaranty associations constitute this state's insurer receivership laws and shall be construed together in a manner that is consistent. In the event of a conflict between the insurer receivership laws and the provisions of any other law, the insurer receivership laws prevail.

Sec. 21A.003. COVERED PERSONS. The provisions of this chapter apply to all:

(1) insurers who are doing or have done an insurance business in this state and against whom claims arising from that business may exist now or in the future and to all persons subject to examination by the commissioner;

(2) insurers who purport to do an insurance business in this state;

(3) insurers who have insureds resident in this state;

(4) other persons organized or doing insurance business, or in the process of organizing with the intent to do insurance business in this state;

(5) nonprofit health corporations and all fraternal benefit societies subject to Chapters 844 and 885, respectively;

(6) title insurance companies subject to Title 11;

(7) health maintenance organizations subject to Chapter 843; and

(8) surety and trust companies subject to Chapter 7, general casualty companies subject to Chapter 861, statewide mutual assessment companies subject to Chapter 881, mutual insurance companies subject to Chapter 882 or 883, local mutual aid associations subject to Chapter 886, burial associations subject to Chapter 888, farm mutual insurance companies subject to Chapter 911, county mutual insurance companies subject to Chapter 912, Lloyd's plans subject to Chapter 941, reciprocal or interinsurance exchanges subject to Chapter 942, and fidelity, guaranty, and surety companies.

Sec. 21A.004. DEFINITIONS. (a) For the purposes of this chapter:

(1) "Affiliate," "control," and "subsidiary" have the meanings assigned by Chapter 823.

(2) "Alien insurer" means an insurer incorporated or organized under the laws of a jurisdiction that is not a state.

(3) "Creditor" or "claimant" means a person having any claim against an insurer, whether the claim is matured or not, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

(4) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, or conserving the insurer, and any proceeding under Section 21A.051.

(5) "Doing business," including "doing insurance business" and the "business of insurance," includes any of the following acts, whether effected by mail, electronic means, or otherwise:

(A) the issuance or delivery of contracts of insurance, either to persons resident or covering a risk located in this state;

(B) the solicitation of applications for contracts described by Paragraph (A) or other negotiations preliminary to the execution of the contracts;

(C) the collection of premiums, membership fees, assessments, or other consideration for contracts described by Paragraph (A);

(D) the transaction of matters subsequent to the execution of contracts described by Paragraph (A) and arising out of those contracts; or

(E) operating as an insurer under a certificate of authority issued by the department.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

(7) "Foreign insurer" means an insurer domiciled in another state.

(8) "Formal delinquency proceeding" means any rehabilitation or liquidation proceeding.

(9) "General assets" includes:

(A) all property of the estate that is not:

(i) subject to a secured claim or a valid and existing express trust for the security or benefit of specified persons or classes of persons; or

(ii) required by the insurance laws of this state or any other state to be held for the benefit of specified persons or classes of persons; and

(B) all property of the estate and the proceeds of that property in excess of the amount necessary to discharge any secured claims described by Paragraph (A).

(10) "Good faith" means honesty in fact and intention, and for the purposes of Subchapter F also requires the absence of:

(A) information that would lead a reasonable person in the same position to know that the insurer is financially impaired or insolvent; and

(B) knowledge regarding the imminence or pendency of any delinquency proceeding against the insurer.

(11) "Guaranty association" means any mechanism mandated by Article 21.28-C or 21.28-D, Chapter 2602, or other laws of this state or a similar mechanism in another state that is created for the payment of claims or continuation of policy obligations of financially impaired or insolvent insurers.

(12) "Impaired" means that an insurer does not have admitted assets at least equal to all its liabilities together with the minimum surplus required to be maintained under this code.

(13) "Insolvency" or "insolvent" means an insurer:

(A) is unable to pay its obligations when they are due;

(B) does not have admitted assets at least equal to all its liabilities; or

(C) has a total adjusted capital that is less than that required under:

(i) Chapter 822, 841, or 843, as applicable; or

(ii) applicable rules or guidelines adopted by the commissioner under Section 822.210, 841.205, or 843.404.

(14) "Insurer" means any person that has done, purports to do, is doing, or is authorized to do the business of insurance in this state, and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by any insurance commissioner. For purposes of this chapter, any other persons included under Section 21A.003 are insurers.

(15) "Netting agreement" means a contract or agreement, including terms and conditions incorporated by reference in a contract or agreement, and a master agreement (which master agreement, together with all schedules, confirmations, definitions, and addenda to the agreement and transactions under the agreement, schedules, confirmations, definitions, or addenda, are to be treated as one netting agreement) that documents one or more transactions between the parties to the contract or agreement for or involving one or more qualified financial contracts and that, among the parties to the netting agreement, provides for the netting or liquidation of qualified financial contracts, present or future payment obligations, or payment entitlements under the contract or agreement, including liquidation or close-out values relating to the obligations or entitlements.

(16) "New value" means money, money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to the transferee in a transaction that is neither void nor voidable by the insurer or the receiver under any applicable law, including proceeds of the property. The term does not include an obligation substituted for an existing obligation.

(17) "Party in interest" means the commissioner, a 10 percent or greater equity security holder in the insolvent insurer, any affected guaranty association, any nondomiciliary commissioner for a jurisdiction in which the insurer has outstanding claims liabilities, and any of the following parties that have filed a request for inclusion on the service list under Section 21A.007:

(A) an insurer that ceded to or assumed business from the insolvent insurer; and

(B) an equity shareholder, policyholder, third-party claimant, creditor, and any other person, including any indenture trustee, with a financial or regulatory interest in the receivership proceeding.

(18) "Person" means individual, aggregation of individuals, partnership, corporation, or other entity.

(19) "Policy" means a written contract of insurance, written agreement for or effecting insurance, or the certificate for or effecting insurance, by whatever name. The term includes all clauses, riders, endorsements, and papers that are a part of the contract, agreement, or certificate. The term does not include a contract of reinsurance.

(20) "Property of the insurer" or "property of the estate" includes:

(A) all right, title, and interest of the insurer in property, whether legal or equitable, tangible or intangible, choate or inchoate, and includes choses in action, contract rights, and any other interest recognized under the laws of this state;

(B) entitlements that:

(i) existed prior to the entry of an order of rehabilitation or liquidation; and

(ii) may arise by operation of the provisions of this chapter or other provisions of law allowing the receiver to avoid prior transfers or assert other rights; and

(C) all records and data that are otherwise the property of the insurer, in whatever form maintained, within the possession, custody, or control of a managing general agent, third-party administrator, management company, data processing company, accountant, attorney, affiliate, or other person, including:

(i) claims and claim files;

(ii) policyholder lists;

(iii) application files;

(iv) litigation files;

(v) premium records;

(vi) rate books and underwriting manuals;

(vii) personnel records; and

(viii) financial records or similar records.

(21) "Qualified financial contract" means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the commissioner determines by rule to be a qualified financial contract for the purposes of this chapter.

(22) "Receiver" means liquidator, rehabilitator, or ancillary conservator, as the context requires.

(23) "Receivership" means any liquidation, rehabilitation, or ancillary conservation, as the context requires.

(24) "Receivership court" refers to the court in which a delinquency proceeding is pending, unless the context requires otherwise.

(25) "Reinsurance" means transactions or contracts by which an assuming insurer agrees to indemnify a ceding insurer against all, or a part, of any loss that the ceding insurer might sustain under the policy or policies that it has issued or will issue.

(26) "Secured claim" means any claim secured by an asset that is not a general asset. The term includes the right to set off as provided in Section 21A.209. The term does not include a claim arising from a constructive or resulting trust, a special deposit claim, or a claim based on mere possession.

(27) "Special deposit" means a deposit established pursuant to statute for the security or benefit of a limited class or limited classes of persons.

(28) "Special deposit claim" means any claim secured by a special deposit. The term does not include any claim secured by the general assets of the insurer.

(29) "State" means any state, district, or territory of the United States.

(30) "Transfer" includes the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest in property, including a setoff, or with the possession of property or of fixing a lien upon property or upon an interest in property, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings. The retention of a security title in property delivered to an insurer is deemed a transfer suffered by the insurer.

(31) "Unauthorized insurer" means an insurer doing the business of insurance in this state that has not received from this state a certificate of authority or some other type of authority that allows for doing the business of insurance in this state.

(b) For purposes of this chapter, "admitted assets" and "liabilities" have the meanings assigned by the department in rules relating to risk-based capital.

(c) For purposes of Subsection (a)(21):

(1) "Commodity contract" means:

(A) a contract for the purchase or sale of a commodity for future delivery on or subject to the rules of a board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.) or a board of trade outside the United States;

(B) an agreement that is subject to regulation under Section 19, Commodity Exchange Act (7 U.S.C. Section 23), and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract; or

(C) an agreement or transaction that is subject to regulation under Section 4c(b), Commodity Exchange Act (7 U.S.C. Section 6c(b)), and that is commonly known to the commodities trade as a commodity option.

(2) "Forward contract" means a contract, other than a commodity contract, with a maturity date more than two days after the date the contract is entered into, that is for the purchase, sale, or transfer of a commodity, as defined by Section 1a, Commodity Exchange Act (7 U.S.C. Section 1a), or any similar good, article, service, right, or interest that is presently or in the future becomes the subject of dealing in the forward contract trade or product or byproduct of the contract. The term includes a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or a combination of these or option on any of them.

(3) "Repurchase agreement" includes a reverse repurchase agreement and means an agreement, including related terms, that provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of or that are fully guaranteed as to principal and interest by the United States against the transfer of funds by the transferee of the certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by the transferee to transfer to the transferor certificates of deposit, eligible bankers' acceptances, or securities as described in this subdivision, on demand or at a date certain not later than one year after the transfers, against the transfer of funds. For the purposes of this subdivision, the items that may be subject to a repurchase agreement:

(A) include mortgage-related securities and a mortgage loan and an interest in a mortgage loan; and

(B) do not include any participation in a commercial mortgage loan unless the commissioner determines by rule to include the participation within the meaning of the term.

(4) "Securities contract" means a contract for the purchase, sale, or loan of a security, including an option for the repurchase or sale of a security, certificate of deposit, or group or index of securities or an interest in the group or index or based on the value of the group or index, an option entered into on a national securities exchange relating to foreign currencies, or the guarantee of a settlement of cash or securities by or to a securities clearing agency. For the purposes of this subdivision, the term "security" includes a mortgage loan, a mortgage-related security, and an interest in any mortgage loan or mortgage-related security.

(5) "Swap agreement" means an agreement, including the terms and conditions incorporated by reference in an agreement, that is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement,

currency future, or currency option or any other similar agreement. The term includes any combination agreements described by this subdivision and an option to enter into any agreement described by this subdivision.

(d) The definitions under this section apply only to this chapter unless the context of another law requires otherwise.

Sec. 21A.005. JURISDICTION AND VENUE. (a) A delinquency proceeding may not be commenced under this chapter by a person other than the commissioner, and a court does not have jurisdiction to entertain, hear, or determine any delinquency proceeding commenced by any other person.

(b) A court of this state does not have jurisdiction, other than in accordance with this chapter, to entertain, hear, or determine any complaint praying for:

(1) the liquidation, rehabilitation, seizure, sequestration, conservation, or receivership of any insurer; or

(2) a stay, injunction, restraining order, or other relief preliminary, incidental, or relating to proceedings described by Subdivision (1).

(c) The receivership court, as of the commencement of a delinquency proceeding under this chapter, has exclusive jurisdiction of all property of the insurer, wherever located, including property located outside the territorial limits of the state. The receivership court has original but not exclusive jurisdiction of all civil proceedings arising:

(1) under this chapter; or

(2) in or related to delinquency proceedings under this chapter.

(d) In addition to other grounds for jurisdiction provided by the law of this state, a court having jurisdiction of the subject matter has jurisdiction over a person served pursuant to Rules 21 and 21a, Texas Rules of Civil Procedure, or other applicable provisions of law in an action brought by the receiver if the person served:

(1) is or has been an agent, or other person who, at any time, has written policies of insurance for or has acted in any manner on behalf of an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;

(2) is or has been an insurer or reinsurer who, at any time, has entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or who is an agent of or for the reinsurer, in any action on or incident to the reinsurance contract;

(3) is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;

(4) at the time of the institution of the delinquency proceeding against the insurer, is or was holding assets in which the receiver claims an interest on behalf of the insurer in any action concerning the assets; or

(5) is obligated to the insurer in any way, in any action on or incident to the obligation.

(e) If, on motion of any party, the receivership court finds that any action, as a matter of substantial justice, should be tried in a forum outside this state, the receivership court may enter an appropriate order to stay further proceedings on the action in this state. Except as to claims against the estate, nothing in this chapter deprives a party of any contractual right to pursue arbitration. A party in arbitration may bring a claim or counterclaim against the estate, but the claim or counterclaim is subject to Section 21A.209.

(f) Service must be made upon the person named in the petition in accordance with Rules 21 and 21a, Texas Rules of Civil Procedure. In lieu of such service, upon application to the receivership court, service may be made in any manner the receivership court directs if it is satisfactorily shown by affidavit:

(1) in the case of a corporation, that the officers of the corporation cannot be served because they have departed from the state or otherwise concealed themselves with intent to avoid service;

(2) in the case of a Lloyd's plan or reciprocal or interinsurance exchange, that the individual attorney in fact or the officers of the corporate attorney in fact cannot be served because of departure or concealment; or

(3) in the case of an individual, that the person cannot be served because of the individual's departure or concealment.

(g) An action authorized by this section must be brought in a district court in Travis County.

(h) At any time after an order is entered pursuant to Section 21A.051, 21A.101, or 21A.151, the commissioner or receiver may transfer the case to the county of the principal office of the person proceeded against. In the event of transfer, the court in which the proceeding was commenced, upon application of the commissioner or receiver, shall direct its clerk to transmit the court's file to the clerk of the court to which the case is to be transferred. The proceeding, after transfer, shall be conducted in the same manner as if it had been commenced in the court to which the matter is transferred.

(i) A person may not intervene in any delinquency proceeding in this state for the purpose of seeking or obtaining payment of any judgment, lien, or other claim of any kind. The claims procedure set forth in this chapter constitutes the exclusive means for obtaining payment of claims from the receivership estate. This provision is not intended to affect the rights conferred on the guaranty associations by Section 21A.008(l).

(j) The foregoing provisions of this section notwithstanding, the provisions of this chapter do not confer jurisdiction on the receivership court to resolve coverage disputes between guaranty associations and those asserting claims against them resulting from the initiation of a delinquency proceeding under this chapter. The determination of any dispute with respect to the statutory coverage obligations of any guaranty association by a court or administrative agency or body with jurisdiction in the guaranty association's state of domicile is binding and conclusive as to the parties in a delinquency proceeding initiated in the receivership court, including the policyholders of the insurer. With respect to a

guaranty association's obligations under a rehabilitation plan, the receivership court has jurisdiction only if the guaranty association expressly consents to the jurisdiction of the court.

Sec. 21A.006. EXEMPTION FROM FEES. The receiver may not be required to pay any filing, recording, transcript, or authenticating fee to any public officer in this state.

Sec. 21A.007. NOTICE, HEARING, AND APPEAL ON MATTERS SUBMITTED BY RECEIVER FOR RECEIVERSHIP COURT APPROVAL. (a) Upon written request to the receiver, a person must be placed on the service list to receive notice of matters filed by the receiver. It is the responsibility of the person requesting notice to inform the receiver in writing of any changes in the person's address or to request that the person's name be deleted from the service list. The receiver may require that the persons on the service list provide confirmation that they wish to remain on the service list. Any person who fails to confirm the person's intent to remain on the service list may be purged from the service list. Inclusion on the service list does not confer standing in the delinquency proceeding to raise, appear, or be heard on any issue.

(b) Except as otherwise provided by this chapter, notice and hearing of any matter submitted by the receiver to the receivership court for approval under this chapter must be conducted in accordance with Subsections (c)-(g).

(c) The receiver shall file an application explaining the proposed action and the basis of the proposed action. The receiver may include any evidence in support of the application. If the receiver determines that any documents supporting the application are confidential, the receiver may submit them to the receivership court under seal for in camera inspection.

(d) The receiver shall provide notice of the application to all persons on the service list and any other parties as determined by the receiver. Notice may be provided by first class mail postage paid, electronic mail, or facsimile transmission, at the receiver's discretion. For purposes of this section, notice is deemed to be given on the date that it is deposited with the U.S. Postmaster or transmitted, as applicable, to the last known address as shown on the service list.

(e) Any party in interest objecting to the application must file an objection specifying the grounds for the objection not later than the 20th day after the date of the notice of the filing of the application or within another period as the receivership court may set, and must serve copies on the receiver and any other persons served with the application within the same period. An objecting party has the burden of showing why the receivership court should not authorize the proposed action.

(f) If no objection to the application is timely filed, the receivership court may enter an order approving the application without a hearing, or hold a hearing to determine if the receiver's application should be approved. The receiver may request that the receivership court enter an order or hold a hearing on an expedited basis.

(g) If an objection is timely filed, the receivership court may hold a hearing. If the receivership court approves the application and, upon a motion by the receiver, determines that the objection was frivolous or filed merely for delay or for another improper purpose, the receivership court shall order the objecting party to pay the receiver's reasonable costs and fees of defending the action.

Sec. 21A.008. INJUNCTIONS AND ORDERS. (a) The receivership court may issue any order, process, or judgment, including stays, injunctions, or other orders, as necessary or appropriate to carry out the provisions of this chapter or an approved rehabilitation plan.

(b) This chapter may not be construed to limit the ability of the receiver to apply to a court other than the receivership court in any jurisdiction to carry out any provision of this chapter or for the purpose of pursuing claims against any person.

(c) Except as provided by Subsection (e) or as otherwise provided by this chapter and subject to Subsection (g), the commencement of a delinquency proceeding under this chapter operates as a stay, applicable to all persons, of:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the insurer, including an arbitration proceeding, that was or could have been commenced before the commencement of the delinquency proceeding under this chapter, or to recover a claim against the insurer that arose before the commencement of the delinquency proceeding under this chapter;

(2) the enforcement against the insurer or against property of the insurer of a judgment obtained before the commencement of the delinquency proceeding under this chapter;

(3) any act to obtain or retain possession of property of the insurer or of property from the insurer or to exercise control over property or records of the insurer;

(4) any act to create, perfect, or enforce any lien against property of the insurer;

(5) any act to collect, assess, or recover a claim against the insurer that arose before the commencement of a delinquency proceeding under this chapter;

(6) the commencement or continuation of an action or proceeding against a reinsurer of the insurer, by the holder of a claim against the insurer, seeking reinsurance recoveries that are contractually due to the insurer; and

(7) except as provided by Subsection (e)(1), the commencement or continuation of an action or proceeding by a governmental unit to terminate or revoke an insurance license.

(d) Except as provided in Subsection (e) or as otherwise provided by this chapter, the commencement of a delinquency proceeding under this chapter operates as a stay, applicable to all persons, of any judicial, administrative, or other action or proceeding, including the enforcement of any judgment, against any insured that was or could have been commenced before the commencement of the delinquency proceeding under this chapter, or to recover a claim against the insured that arose before or after the commencement of the delinquency proceeding under this chapter and for which the insurer is or may be liable under

a policy of insurance or is obligated to defend a party. The stay provided by this subsection terminates 90 days after the date of appointment of the receiver, unless, for good cause shown, the stay is extended by order of the receivership court after notice to any affected parties and any hearing the receivership court determines is appropriate.

(e) Notwithstanding Subsection (c), the commencement of a delinquency proceeding under this chapter does not operate as a stay of:

(1) regulatory actions not described by Subsection (c)(7) that are taken by the commissioners of nondomiciliary states, including the suspension of licenses;

(2) criminal proceedings;

(3) any act to perfect or to maintain or continue the perfection of an interest in property to the extent that the act is accomplished within any relation back period under applicable law;

(4) set off as permitted by Section 21A.209;

(5) pursuit and enforcement of nonmonetary governmental claims, judgments, and proceedings;

(6) presentment of a negotiable instrument and the giving of notice and protesting dishonor of the instrument;

(7) enforcement of rights against single beneficiary trusts established pursuant to and in compliance with laws relating to credit for reinsurance;

(8) termination, liquidation, and netting of obligations under qualified financial contracts as provided for in Section 21A.261;

(9) discharge by a guaranty association of statutory responsibilities under any law governing guaranty associations; or

(10) any of the following actions:

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the insurer by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of the assessment.

(f) Except as provided by Subsection (h):

(1) the stay of an act against property of the insurer under Subsection (c) continues until the property is no longer property of the receivership estate; and

(2) the stay of any other act under Subsection (c) continues until the earlier of the time the delinquency proceeding is closed or dismissed.

(g) Notwithstanding the provisions of Subsection (c), claims against the insurer that arose before the commencement of the delinquency proceeding under this chapter may be asserted as a counterclaim in any judicial, administrative, or other action or proceeding initiated by or on behalf of the receiver against the holder of the claims.

(h) On request of a party in interest and after notice and any hearing the receivership court determines is appropriate, the receivership court may grant relief from the stay of Subsection (c) or (d), such as by terminating, annulling, modifying, or conditioning the stay:

(1) for cause as described by Subsection (i); or

(2) with respect to a stay of an act against property under Subsection (c) if:

(A) the insurer does not have equity in the property; and

(B) the property is not necessary to an effective rehabilitation plan.

(i) For purposes of Subsection (h), "cause" includes the receiver canceling a policy, surety bond, or surety undertaking if the creditor is entitled, by contract or by law, to require the insured or the principal to have a policy, surety bond, or surety undertaking and the insured or the principal fails to obtain a replacement policy, surety bond, or surety undertaking not later than the later of:

(1) the 30th day after the date the receiver cancels the policy, surety bond, or surety undertaking; or

(2) the time permitted by contract or law.

(j) In any hearing under Subsection (h), the party seeking relief from the stay has the burden of proof on each issue, which must be established by clear and convincing evidence.

(k) The estate of an insurer that is injured by any wilful violation of a stay provided by this section is entitled to actual damages, including costs and attorney's fees. In appropriate circumstances, the receivership court may impose additional sanctions.

(l) Any guaranty association or its designated representative may intervene as a party as a matter of right or otherwise appear and participate in any court proceeding concerning a delinquency proceeding if the association is or may become liable to act as a result of the rehabilitation or liquidation of the insurer. Exercise by any guaranty association or its designated representative of the right to intervene conferred under this subsection does not constitute grounds to establish general personal jurisdiction by the courts of this state. The intervening guaranty association or its designated representative are subject to the receivership court's jurisdiction for the limited purpose for which it intervenes.

(m) Notwithstanding any other provision of law, bond may not be required of the commissioner or receiver in relation to any stay or injunction under this section.

Sec. 21A.009. STATUTES OF LIMITATIONS. (a) If applicable law, an order, or an agreement fixes a period within which the insurer may commence an action, and this period has not expired before the date of the filing of the initial petition in a delinquency proceeding, the receiver may commence an action only before the later of:

(1) the end of the period, including any suspension of the period occurring on or after the filing of the initial petition in a delinquency proceeding; or

(2) four years after the later of the date of entry of an order for either rehabilitation or liquidation.

(b) Except as provided by Subsection (a), if applicable law, an order, or an agreement fixes a period within which the insurer may file any pleading, demand, notice, or proof of claim or loss, cure a default in a case or proceeding, or perform any other similar act, and the period has not expired before the date of the filing of the petition initiating formal delinquency proceedings, the receiver may file, cure, or perform, as the case may be, only before the later of:

(1) the end of the period, including any suspension of the period occurring on or after the filing of the initial petition in the delinquency proceeding; or

(2) 60 days after the later of the date of entry of an order for either rehabilitation or liquidation.

(c) If applicable law, an order, or an agreement fixes a period for commencing or continuing a civil action in a court other than the receivership court on a claim against the insurer, and the period has not expired before the date of the initial filing of the petition in a delinquency proceeding, then the period does not expire until the later of:

(1) the end of the period, including any suspension of the period occurring on or after the filing of the initial petition in the delinquency proceeding; or

(2) 30 days after termination or expiration of the stay under Section 21A.008 with respect to the claim.

(d) If the otherwise applicable limitations period has not expired prior to the initial filing of the petition commencing a delinquency proceeding, any other action or proceeding filed by a receiver may be commenced at any time within four years after the date upon which the cause of action accrues or four years after the date on which the receiver is appointed, whichever is later.

Sec. 21A.010. COOPERATION OF OFFICERS, OWNERS, AND EMPLOYEES. (a) Any present or former officer, manager, director, trustee, owner, employee, or agent of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner or receiver in any proceeding under this chapter or any investigation preliminary to the proceeding. For purposes of this section:

(1) "person" includes any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer; and

(2) "cooperate" includes:

(A) replying promptly in writing to any inquiry from the commissioner or receiver requesting the reply; and

(B) promptly making available to the commissioner or receiver any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in the person's possession, custody, or control.

(b) A person may not obstruct or interfere with the commissioner or receiver in the conduct of any delinquency proceeding or any preliminary or incidental investigation.

(c) This section may not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(d) Any person described by Subsection (a) who fails to cooperate with the commissioner or receiver, or any person who obstructs or interferes with the commissioner or receiver in the conduct of any delinquency proceeding or any preliminary or incidental investigation, or who violates any order validly issued under this chapter:

(1) commits an offense; and

(2) is subject to the imposition by the commissioner of an administrative penalty not to exceed $10,000 and subject to the revocation or suspension of any licenses issued by the commissioner in accordance with Chapters 82 and 84.

(e) An offense under Subsection (d) is punishable by a fine not exceeding $10,000 or imprisonment for not more than one year, or both fine and imprisonment.

Sec. 21A.011. ACTIONS BY AND AGAINST RECEIVER. (a) An allegation by the receiver of improper or fraudulent conduct against any person may not be the basis of a defense to the enforcement of a contractual obligation owed to the insurer by a third party, unless the conduct is found to have been materially and substantially related to the contractual obligation for which enforcement is sought.

(b) A prior wrongful or negligent action of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may not be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise, except that the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract, and a principal under a surety bond or a surety undertaking is entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or that the insurer or its agents commingled or otherwise misappropriated the property. Evidence of fraud in the inducement is admissible only if the evidence is contained in the records of the insurer.

(c) An action or inaction by the department or the insurance regulatory authorities in any state may not be asserted as a defense to a claim by the receiver.

(d) Except as provided by Subsection (e), a judgment or order entered against an insured or the insurer in contravention of any stay or injunction under this chapter, or at any time by default or collusion, may not be considered as evidence of liability or of the amount of damages in adjudicating claims filed in the estate arising out of the subject matter of the judgment or order.

(e) Subsection (d) does not apply to guaranty associations' claims for amounts paid on settlements and judgments in pursuit of their statutory obligations.

(f) The receiver may not be deemed a governmental entity for the purposes of any state law awarding fees to a litigant who prevails against a governmental entity.

Sec. 21A.012. UNRECORDED OBLIGATIONS AND DEFENSES OF AFFILIATES. (a) In any proceeding or claim by the receiver, an affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any defense, unless evidence of the defense was recorded in the books and records of the insurer at or about the time the events giving rise to the defense occurred and, if required by statutory accounting practices and procedures, was timely reported on the insurer's official financial statements filed with the department.

(b) An affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any claim, unless the obligations were recorded in the books and records of the insurer at or about the time the obligations were incurred and, if required by statutory accounting practices and procedures, were timely reported on the insurer's official financial statements filed with the department.

(c) Claims by the receiver against any affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer based on unrecorded or unreported transactions are not barred by this section.

Sec. 21A.013. EXECUTORY CONTRACTS AND UNEXPIRED LEASES. (a) The receiver may assume or reject any executory contract or unexpired lease of the insurer.

(b) Neither the filing of a petition commencing delinquency proceedings under this chapter nor the entry of an order for a delinquency proceeding constitutes a breach or anticipatory breach of any contract or lease of the insurer.

(c) If there has been a default in an executory contract or unexpired lease of the insurer, the receiver may not assume the contract or lease unless, at the time of the assumption of the contract or lease, the receiver:

(1) cures or provides adequate assurance that the receiver will promptly cure the default; and

(2) provides adequate assurance of future performance under the contract or lease.

(d) Subsection (c) does not apply to a default that is a breach of a provision relating to:

(1) the insolvency or financial condition of the insurer at any time before the closing of the delinquency proceeding;

(2) the appointment of or taking possession by a receiver in a case under this chapter or a custodian before the commencement of the delinquency proceeding; or

(3) the satisfaction of any penalty rate or provision relating to a default arising from any failure of the insurer to perform nonmonetary obligations under the executory contract or unexpired lease.

(e) A claim arising from the rejection, under this section or a plan of rehabilitation, of an executory contract or unexpired lease of the insurer that has not been assumed shall be determined, treated, and classified as if the claim had arisen before the date of the filing of a successful petition commencing the delinquency proceeding.

Sec. 21A.0135. CONTRACTS FOR SPECIAL DEPUTIES. (a) The receiver shall use a competitive bidding process in the selection of any special deputies appointed under Section 21A.102 or 21A.154. The process must include procedures to promote the participation of historically underutilized businesses that have been certified by the Texas Building and Procurement Commission under Section 2161.061, Government Code.

(b) A proposal submitted in connection with a bid solicitation under Subsection (a) must describe the efforts that have been made to include historically underutilized businesses as subcontractors and the plan for using the historically underutilized businesses in the administration of the receivership estate. A special deputy appointed under Section 21A.102 or 21A.154 shall make a good faith effort to implement the plan and shall report to the receiver the special deputy's efforts to identify and subcontract with historically underutilized businesses.

Sec. 21A.014. IMMUNITY AND INDEMNIFICATION OF RECEIVER AND ASSISTANTS. (a) For the purposes of this section, the persons entitled to immunity and indemnification and those entitled to immunity only, as applicable, are:

(1) all present and former receivers responsible for the conduct of a delinquency proceeding under this chapter;

(2) all of the receiver's present and former assistants, including:

(A) all present and former special deputies and assistant special deputies engaged by contract or otherwise;

(B) all persons whom the receiver, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under this chapter; and

(C) any state employees acting with respect to a delinquency proceeding under this chapter; and

(3) all of the receiver's present and former contractors, including all persons with whom the receiver, special deputies, or assistant special deputies have contracted to assist in a delinquency proceeding under this chapter, including attorneys, accountants, auditors, actuaries, investment bankers, financial advisors, and any other professionals or firms who are retained or contracted with by the receiver as independent contractors and all employees of the contractors.

(b) The receiver, the receiver's assistants, and the receiver's contractors have immunity under this chapter, as described by Subsections (c) and (d).

(c) The receiver, the receiver's assistants, and the receiver's contractors are immune from suit and liability, both personally and in their representative capacities, for any claim for damage to or loss of property or personal injury or other civil liability caused by or resulting from any alleged act, error, or omission

of the receiver or any assistant or contractor that arises out of or by reason of their duties or employment or is taken at the direction of the receivership court, providing that the alleged act, error, or omission is performed in good faith.

(d) Any immunity granted by this section is in addition to any immunity granted by other law.

(e) The receiver and the receiver's assistants are entitled to indemnification under this chapter, as described by Subsections (f)-(l).

(f) If any legal action is commenced against the receiver or any assistant, whether against the receiver or assistant personally or in their official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or any assistant arising out of or by reason of their duties or employment, the receiver and any assistant are indemnified from the assets of the insurer for all expenses, attorney's fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action, unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the receiver or assistant giving rise to the claim:

(1) did not arise out of or by reason of their duties or employment; or

(2) was caused by intentional or wilful and wanton misconduct.

(g) Attorney's fees and any and all related expenses incurred in defending a legal action for which immunity or indemnity is available under this section must be paid from the assets of the insurer, as the fees and expenses are incurred, and in advance of the final disposition of the legal action upon receipt of an agreement by or on behalf of the receiver or assistant to repay the attorney's fees and expenses, if it is ultimately determined upon a final adjudication on the merits that the receiver or assistant is not entitled to immunity or indemnity under this section.

(h) Any indemnification for expense payments, judgments, settlements, decrees, attorney's fees, surety bond premiums, or other amounts paid or to be paid from the insurer's assets pursuant to this section are an administrative expense of the insurer.

(i) In the event of any actual or threatened litigation against a receiver or any assistant for whom immunity or indemnity may be available under this section, a reasonable amount of funds, which in the judgment of the receiver may be needed to provide immunity or indemnity, must be segregated and reserved from the assets of the insurer as security for the payment of indemnity until:

(1) all applicable statutes of limitation have run;

(2) all actual or threatened actions against the receiver or any assistant have been completely and finally resolved; and

(3) all obligations under this section have been satisfied.

(j) Instead of segregating and reserving funds under Subsection (i), the receiver may, in the receiver's discretion, obtain a surety bond or make other arrangements that will enable the receiver to secure fully the payment of all obligations under this section.

(k) If any legal action against an assistant for whom indemnity may be available under this section is settled prior to final adjudication on the merits, the receiver must pay the settlement amount on behalf of the assistant, or indemnify the assistant for the settlement amount, unless the receiver determines that the claim:

(1) did not arise out of or by reason of the assistant's duties or employment; or

(2) was caused by the intentional or wilful and wanton misconduct of the assistant.

(l) In any legal action in which a claim is asserted against the receiver, that portion of any settlement relating to the alleged act, error, or omission of the receiver is subject to the approval of the receivership court. The receivership court may not approve that portion of the settlement if it determines that the claim:

(1) did not arise out of or by reason of the receiver's duties or employment; or

(2) was caused by the intentional or wilful and wanton misconduct of the receiver.

(m) Nothing contained or implied in this section may operate or be construed or applied to deprive the receiver, the receiver's assistants, or receiver's contractors of any immunity, indemnity, benefits of law, rights, or defense otherwise available.

(n) The immunity and indemnification provided to the receiver's assistants and the immunity provided to the receiver's contractors under this section do not apply to any action by the receiver against that person.

(o) Subsection (b) applies to any suit based in whole or in part on any alleged act, error, or omission that takes place on or after September 1, 2005.

(p) Subsections (e)-(l) apply to any suit that is pending on or filed after September 1, 2005, without regard to when the alleged act, error, or omission took place.

Sec. 21A.015. APPROVAL AND PAYMENT OF EXPENSES. (a) The receiver may pay any expenses under contracts, leases, employment agreements, or other arrangements entered into by the insurer prior to receivership, as the receiver deems necessary for the purposes of this chapter. The receiver is not required to pay any expenses that the receiver determines are not necessary, and may reject any contract pursuant to Section 21A.013.

(b) Receivership expenses other than those described in Subsection (a) must be paid in accordance with Subsections (c)-(f).

(c) The receiver shall submit to the receivership court an application pursuant to Section 21A.007 to approve:

(1) the terms of compensation of each special deputy or contractor with respect to which the total amount of the compensation is reasonably expected by the receiver for the duration of the delinquency proceeding to exceed $250,000, or another amount established by the receivership court; and

(2) any other anticipated expense in excess of $25,000, or another amount established by the receivership court.

(d) The receiver may, as the receiver deems appropriate, submit an application to approve any compensation, anticipated expenses, or incurred expenses not described by Subsection (c)(1).

(e) The receiver may pay any expenses not requiring receivership court approval and any expenses approved by the rehabilitation or liquidation order as the expenses are incurred.

(f) The approval of expenses by the receivership court does not prejudice the right of the receiver to seek any recovery, recoupment, disgorgement, or reimbursement of fees based on contract or causes of action recognized in law or in equity.

(g) On a quarterly basis, or as otherwise provided by the receivership court, the receiver shall submit to the receivership court a report summarizing the expenses incurred during the period.

(h) Receivership court approval may not be required to pay expenses incurred by the receiver in connection with the appeal of an order of the receivership court.

(i) All expenses of receivership shall be paid from the assets of the insurer, except as provided by this subsection. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the expenses incurred, the commissioner may advance funds from the account established under Section 21A.304(c). Any amounts advanced shall be repaid to the account out of the first available money of the insurer.

Sec. 21A.016. FINANCIAL REPORTING. (a) Not later than the 120th day after the date of entry of an order of receivership by the receivership court, and at least quarterly after that date, the receiver shall file a financial report with the receivership court. A financial report filed under this subsection at a minimum, must include:

(1) a statement of the assets and liabilities of the insurer;

(2) the changes in those assets and liabilities; and

(3) all funds received or disbursed by the receiver during the period covered by the report.

(b) The receivership court shall require a financial report filed under Subsection (a) to comply with all receivership financial reporting requirements specified by the National Association of Insurance Commissioners and adopted in this state by rule by the commissioner.

(c) Not later than the 120th day after the date of entry of an order of liquidation by the receivership court, and at least quarterly after that date, or at other intervals as may be agreed to between the liquidator and the guaranty associations, but in no event less than annually, each affected guaranty association shall file reports with the liquidator. The reports must be in a format compatible with that specified by the National Association of Insurance Commissioners. Reports under this subsection shall be filed with the receivership court.

Sec. 21A.017. RECORDS. (a) Upon entry of an order of rehabilitation or liquidation, the receiver is vested with title to all of the books, documents, papers, policy information, and claim files, and all other records of the insurer, of

whatever nature, in whatever medium, and wherever located, regardless of whether the records are in the custody and control of a third-party administrator, managing general agent, attorney, or other representative of the insurer. The receiver may immediately take possession and control of all of the records of the insurer, and of the premises where the records are located. A third-party administrator, managing general agent, attorney, or other representative of the insurer shall release all records described by this subsection to the receiver, or the receiver's designee, at the request of the receiver. A guaranty association that has or may have obligations under a policy issued by the insurer has the right, with the receiver's approval, to take actions as are necessary to obtain directly from any third-party administrator, managing general agent, attorney, or other representative of the insurer all records described by this section that pertain to the insurer's business and that are appropriate or necessary for the guaranty association to fulfill the association's statutory obligations.

(b) The receiver has the authority to certify the records of a delinquent insurer described by Subsection (a) and the records of the receiver's office created and maintained in connection with a delinquent insurer, as follows:

(1) records of a delinquent insurer may be certified by the receiver in an affidavit stating that the records:

(A) are true and correct copies of records of the insurer; and

(B) were received from the custody of the insurer or found among its effects; and

(2) records created by or filed with the receiver's office in connection with a delinquent insurer may be certified by the receiver's affidavit stating that the records are true and correct copies of records maintained by the receiver's office.

(c) Original books, documents, papers, and other records, or copies of original records certified under Subsection (b), when admitted in evidence, are prima facie evidence of the facts disclosed.

(d) The records of a delinquent insurer held by the receiver may not be considered records of the department for any purposes, and Chapter 552, Government Code, does not apply to those records.

[Sections 21A.018-21A.050 reserved for expansion]

SUBCHAPTER B. PROCEEDINGS

Sec. 21A.051. RECEIVERSHIP COURT'S SEIZURE ORDER. (a) The commissioner may file in a district court of Travis County a petition with respect to an insurer domiciled in this state, an unauthorized insurer, or, pursuant to Section 21A.401, a foreign insurer:

(1) alleging that grounds exist that would justify a court order for a formal delinquency proceeding against the insurer under this chapter;

(2) alleging that the interests of policyholders, creditors, or the public will be endangered by delay; and

(3) setting forth the contents of a seizure order deemed to be necessary by the commissioner.

(b) Upon a filing under Subsection (a), the receivership court may issue, ex parte and without notice or hearing, the requested seizure order directing the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business, and until further order of the receivership court, enjoining the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner. Any person having possession or control of and refusing to deliver any of the books, records, or assets of a person against whom a seizure order has been issued commits an offense. An offense under this subsection is punishable in the manner described by Section 21A.010(e).

(c) A petition that prays for injunctive relief must be verified by the commissioner or the commissioner's designee, but need not plead or prove irreparable harm or inadequate remedy at law. The commissioner shall provide only the notice as the receivership court may require.

(d) The receivership court shall specify in the seizure order the duration of the seizure order, which shall be a period the receivership court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of the commissioner or the insurer, or the court's own motion, the receivership court may, from time to time, hold hearings as it deems desirable after notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The receivership court shall vacate the seizure order if the commissioner fails to commence a formal delinquency proceeding under this chapter after having had a reasonable opportunity to do so. An order of the receivership court pursuant to a formal proceeding under this chapter vacates the seizure order.

(e) Entry of a seizure order under this section does not constitute a breach or an anticipatory breach of any contract of the insurer.

(f) An insurer subject to an ex parte seizure order under this section may petition the receivership court at any time after the issuance of a seizure order for a hearing and review of the seizure order. The receivership court shall hold the hearing and conduct the review not later than the 15th day after the date of the request. A hearing under this subsection may be held privately in chambers, and a hearing shall be held privately in chambers if the insurer proceeded against so requests.

(g) If, at any time after the issuance of a seizure order, it appears to the receivership court that any person whose interest is or will be substantially affected by the seizure order did not appear at the hearing and has not been served, the receivership court may order that notice be given to the person. An order that notice be given does not stay the effect of any seizure order previously issued by the receivership court.

(h) Whenever the commissioner makes any seizure as provided by Subsection (b), on the demand of the commissioner, the sheriff of any county and the police department of any municipality shall furnish the commissioner with the deputies, patrolmen, or officers as may be necessary to assist the commissioner in making and enforcing the seizure order.

(i) In all proceedings and judicial reviews under this section, all records of the insurer, department files, court records and papers, and other documents, so far as they pertain to or are a part of the record of the proceedings, are confidential, and all papers filed with the clerk of the court shall be held by the clerk in a confidential file as permitted by law, except to the extent necessary to obtain compliance with any order entered in connection with the proceedings, unless and until:

(1) the court, after hearing argument in chambers, orders otherwise;

(2) the insurer requests that the matter be made public; or

(3) the commissioner applies for an order under Section 21A.057.

Sec. 21A.052. COMMENCEMENT OF FORMAL DELINQUENCY PROCEEDING. (a) Any formal delinquency proceeding against a person shall be commenced by filing a petition in the name of the commissioner or department.

(b) The petition must state the grounds upon which the proceeding is based and the relief requested and may include a prayer for restraining orders and injunctive relief as described in Section 21A.008. On the filing of the petition or order, a copy shall be forwarded by first class mail or electronic communication as permitted by the receivership court to the insurance regulatory officials and guaranty associations in states in which the insurer did business.

(c) Any petition that prays for injunctive relief must be verified by the commissioner or the commissioner's designee, but need not plead or prove irreparable harm or inadequate remedy at law. The commissioner shall provide only the notice as the receivership court may require.

(d) If any temporary restraining order is prayed for:

(1) the receivership court may issue an initial order containing the relief requested;

(2) the receivership court shall set a time and date for the return of summons, not later than 10 days after the time and date of the issuance of the initial order, at which time the person proceeded against may appear before the receivership court for a summary hearing;

(3) the order must state the time and date of its issuance; and

(4) the order may not continue in effect beyond the time and date set for the return of summons, unless the receivership court expressly enters one or more orders extending the restraining order.

(e) If a temporary restraining order is not requested, the receivership court shall cause summons to be issued. The summons must specify a return date not later than the 30th day after the date of issuance and that an answer must be filed at or before the return date.

Sec. 21A.053. RETURN OF SUMMONS AND SUMMARY HEARING. (a) The receivership court shall hold a summary hearing at the time and date for the return of summons on a petition to commence a formal delinquency proceeding.

(b) If a person is not served with summons on a petition to commence a formal delinquency proceeding and fails to appear for the summary hearing, the receivership court shall:

(1) continue the summary hearing not more than 10 days;

(2) provide for alternative service of summons upon the person; and

(3) extend any restraining order.

(c) Upon a showing of good faith efforts to effect personal service upon a person who has failed to appear for a continued summary hearing, the receivership court shall order notice of the petition to commence a formal delinquency proceeding to be published. The order and notice shall specify a return date not less than 10 or later than 20 days after the date of publication and that the restraining order has been extended to the continued hearing date.

(d) If a person fails to appear for a summary hearing on a petition to commence a formal delinquency proceeding after service of summons, the receivership court shall enter judgment in favor of the commissioner against that person.

(e) A person who appears for the summary hearing on a petition to commence a formal delinquency proceeding shall file the person's answer at the hearing, and the receivership court shall:

(1) determine whether to extend any temporary restraining orders pending final judgment; and

(2) set the case for trial on a date not later than 10 days after the date of the summary hearing.

(f) The receivership court may not grant a continuance for filing an answer.

Sec. 21A.054. PROCEEDINGS FOR EXPEDITED TRIAL: CONTINUANCES, DISCOVERY, EVIDENCE. (a) The receivership court shall proceed to hear the case on the petition to commence a formal delinquency proceeding at the time and date set forth for trial. To the extent practicable, the receivership court shall give precedence to the matter over all other matters. To the extent authorized by law, the receivership court may assign the matter to other judges if necessary to comply with the need for expedited proceedings under this chapter.

(b) Continuances for trial may be granted only in extreme circumstances.

(c) The receivership court shall admit into evidence, as self-authenticated, certified copies of any of the following when offered by the commissioner:

(1) the financial statements made by the insurer or an affiliate;

(2) examination reports of the insurer or an affiliate made by or on behalf of the commissioner; and

(3) any other document filed with any insurance department by the insurer or an affiliate.

(d) The facts contained in any examination report of the insurer or an affiliate made by or on behalf of the commissioner are presumed to be true as of the date of the hearing if the examination was made as of a date not more than 270 days before the date the petition was filed. The presumption is rebuttable, and shifts the burden of production and persuasion to the insurer.

(e) Discovery is limited to grounds alleged in the petition and shall be concluded on an expedited basis.

Sec. 21A.055. DECISION AND APPEALS. (a) The receivership court shall enter judgment on the petition to commence formal delinquency proceedings not later than the 15th day after the date of conclusion of the evidence.

(b) The judgment is final when entered. Any appeal must be prosecuted on an expedited basis and must be taken not later than the fifth day after the date of entry of the judgment. A request for reconsideration, review, or appeal, or posting of a bond does not dissolve or stay the judgment.

Sec. 21A.056. CONFIDENTIALITY. (a) The commissioner, rehabilitator, or liquidator may share documents, materials, or other information in the possession, custody, or control of the department without regard to the confidentiality of those documents, materials, or information, pertaining to an insurer that is the subject of a proceeding under this chapter with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, with state, federal, and international law enforcement authorities, with an auditor appointed by the receivership court in accordance with Section 21A.355, and, pursuant to Section 21A.105, with representatives of guaranty associations that may have statutory obligations as a result of the insolvency of the insurer, provided that the recipient agrees to maintain the confidentiality, if any, of the documents, material, or other information. Nothing in this section limits the power of the commissioner to disclose information under other applicable law.

(b) A domiciliary receiver shall permit a commissioner of another state or a guaranty association to obtain a listing of policyholders and certificate holders residing in the requestor's state, including current addresses and summary policy information, provided that the commissioner of the other state or the guaranty association agrees to maintain the confidentiality of the records and agrees that the records will be used only for regulatory or guaranty association purposes. Access to records may be limited to normal business hours. In the event that the domiciliary receiver believes that certain information is sensitive and that disclosure may cause a diminution in recovery, the receiver may apply for a protective order imposing additional restrictions on access.

(c) The Texas Workers' Compensation Commission shall report to the department any information that a workers' compensation insurer has committed acts that indicate that the insurer is impaired or insolvent. A report made under this subsection is confidential under this section.

(d) The confidentiality obligations imposed by this section end upon the entry of an order of liquidation against the insurer, unless otherwise agreed to by the parties or pursuant to an order of the receivership court.

(e) A waiver of any applicable privilege or claim of confidentiality does not occur as a result of any disclosure, or any sharing of documents, materials, or other information, made pursuant to this section.

Sec. 21A.057. GROUNDS FOR CONSERVATION, REHABILITATION, OR LIQUIDATION. The commissioner may file with a court in this state a petition with respect to an insurer domiciled in this state or an unauthorized insurer for an order of rehabilitation or liquidation on any one or more of the following grounds:

(1) the insurer is impaired;

(2) the insurer is insolvent;

(3) the insurer is about to become insolvent, with "about to become insolvent" being defined as reasonably anticipated that the insurer will not have liquid assets to meet its next 90 days' current obligations;

(4) the insurer has neglected or refused to comply with an order of the commissioner to make good within the time prescribed by law any deficiency, whenever its capital and minimum required surplus, if a stock company, or its surplus, if a company other than stock, has become impaired;

(5) the insurer, its parent company, its subsidiaries, or its affiliates have converted, wasted, or concealed property of the insurer or have otherwise improperly disposed of, dissipated, used, released, transferred, sold, assigned, hypothecated, or removed the property of the insurer;

(6) the insurer is in a condition such that it could not meet the requirements for organization and authorization as required by law, except as to the amount of the original surplus required of a stock company under Title 6, and except as to the amount of the surplus required of a company other than a stock company in excess of the minimum surplus required to be maintained;

(7) the insurer, its parent company, its subsidiaries, or its affiliates have concealed, removed, altered, destroyed, or failed to establish and maintain books, records, documents, accounts, vouchers, and other pertinent material adequate for the determination of the financial condition of the insurer by examination under Article 1.15, 1.15A, or 1.16 or has failed to properly administer claims or maintain claims records that are adequate for the determination of its outstanding claims liability;

(8) at any time after the issuance of an order under Article 1.32 or 21.28-A, or at the time of instituting any proceeding under this chapter, it appears to the commissioner that, upon good cause shown, it would not be in the best interest of the policyholders, creditors, or the public to proceed with the conduct of the business of the insurer;

(9) the insurer is in a condition such that the further transaction of business would be hazardous financially, according to Article 1.32 or otherwise, to its policyholders, creditors, or the public;

(10) there is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's property, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that, if established, would endanger assets in an amount threatening the solvency of the insurer;

(11) control of the insurer is in a person who is:

(A) dishonest or untrustworthy; or

(B) so lacking in insurance company managerial experience or capability as to be hazardous to policyholders, creditors, or the public;

(12) any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director, trustee, employee, shareholder, or other person, has refused to be examined under oath by the commissioner concerning the insurer's affairs, whether in this state or elsewhere or if examined under oath, refuses to divulge pertinent information reasonably known to the person; and after reasonable notice of the fact, the insurer has failed promptly and effectively to terminate the employment and status of the person and all the person's influence on management;

(13) after demand by the commissioner under Article 1.15, 1.15A, or 1.16 or under this chapter, the insurer has failed promptly to make available for examination any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer or of any person having executive authority in the insurer, so far as they pertain to the insurer;

(14) without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, in a manner contrary to Chapter 823 or any law relating to bulk reinsurance, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person;

(15) the insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, sequestrator, or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state;

(16) within the previous five years, the insurer has wilfully and continuously violated its charter, articles of incorporation or bylaws, any insurance law of this state, or any valid order of the commissioner;

(17) the insurer has failed to pay within 60 days after the due date any obligation to any state or political subdivision of a state or any judgment entered in any state, if the court in which the judgment was entered had jurisdiction over the subject matter, except that nonpayment is not a ground until 60 days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts;

(18) the insurer has systematically engaged in the practice of reaching settlements with and obtaining releases from claimants, and then unreasonably delayed payment, failed to pay the agreed-upon settlements, or systematically attempted to compromise with claimants or other creditors on the ground that it is financially unable to pay its claims or obligations in full;

(19) the insurer has failed to file its annual report or other financial report required by statute within the time allowed by law;

(20) the board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified by Section 21A.003, request or consent to rehabilitation or liquidation under this chapter;

(21) the insurer does not comply with its domiciliary state's requirements for issuance to it of a certificate of authority, or its certificate of authority has been revoked by its state of domicile; or

(22) when authorized by department rules.

Sec. 21A.058. ENTRY OF ORDER. If the commissioner establishes any of the grounds provided in Section 21A.057, the receivership court shall grant the petition and issue the order of rehabilitation or liquidation requested in the petition.

Sec. 21A.059. EFFECT OF PETITION OR ORDER ON CONTRACT OR LEASE. Neither the filing of a petition under this chapter nor the entry of any order of seizure, rehabilitation, or liquidation constitutes a breach or an anticipatory breach of any contract or lease of the insurer.

[Sections 21A.060-21A.100 reserved for expansion]

SUBCHAPTER C. REHABILITATION

Sec. 21A.101. REHABILITATION ORDERS. (a) An order to rehabilitate the business of an insurer must appoint the commissioner and the commissioner's successors in office as the rehabilitator and must direct the rehabilitator to take possession of the property of the insurer wherever located and to administer it subject to this chapter. The rehabilitator is entitled to request the receivership court to appoint a single judge to supervise the rehabilitation and hear any cases or controversies arising out of or related to the rehabilitation. Rehabilitation proceedings are exempt from any dormancy or similar program maintained by the receivership court for the early closure of civil actions. The filing or recording of the order with the clerk of the court or recorder of deeds of the county in which the principal business of the company is conducted, or, in the case of real estate, the county in which its principal office or place of business is located, imparts the same notice as a deed, bill of sale, or other evidence of title filed or recorded with the recorder of deeds would impart. The order to rehabilitate the insurer must, by operation of law, vest title to all property of the insurer in the rehabilitator.

(b) Any order issued under this section must require accountings to the receivership court by the rehabilitator. Accountings must be at the intervals specified by the receivership court in its order, but not less frequently than semi-annually. Each accounting must include a report concerning the rehabilitator's opinion as to the likelihood that a plan under Section 21A.103 will be prepared by the rehabilitator and the timetable for doing so.

(c) In recognition of the need for a prompt and final resolution for all persons affected by a plan of rehabilitation, any appeal from an order of rehabilitation or an order approving a plan of rehabilitation must be heard on an expedited basis. A stay of an order of rehabilitation or an order approving a plan of rehabilitation may not be granted unless the appellant demonstrates that extraordinary circumstances warrant delaying the recovery under the plan of rehabilitation of all other persons, including policyholders. If the plan provides an appropriate mechanism for adjustment in the event of any adverse ruling from an appeal, a stay may not be granted.

Sec. 21A.102. POWERS AND DUTIES OF REHABILITATOR. (a) The rehabilitator may appoint one or more special deputies. A special deputy serves at the pleasure of the rehabilitator and has all the powers and responsibilities of the rehabilitator granted under this section, unless specifically limited by the rehabilitator. The rehabilitator may employ or contract with legal counsel, actuaries, accountants, appraisers, consultants, clerks, assistants, and other personnel as may be deemed necessary. Any special deputy or any other person with whom the rehabilitator contracts under this subsection may act on behalf of the commissioner only in the commissioner's capacity as rehabilitator. Any person with whom the rehabilitator contracts under this subsection is not considered an agent of the state, and any contract entered into under this subsection does not constitute a contract with the state. The provisions of any law governing the procurement of goods and services by the state does not apply to any contract entered into by the commissioner as rehabilitator. The compensation of any special deputies, employees, and contractors and all expenses of taking possession of the insurer and of conducting the rehabilitation shall be fixed by the rehabilitator, with the approval of the receivership court in accordance with Section 21A.015, and shall be paid out of the property of the insurer. The persons appointed under this subsection serve at the pleasure of the rehabilitator. If the rehabilitator deems it necessary to the proper performance of the rehabilitator's duties under this chapter, the rehabilitator may appoint an advisory committee of policyholders, claimants, or other creditors, including guaranty associations. The advisory committee serves at the pleasure of the rehabilitator and without compensation or reimbursement for expenses. The rehabilitator or the receivership court in rehabilitation proceedings conducted under this chapter may not appoint another committee of any nature.

(b) The rehabilitator may take action as the rehabilitator deems necessary or appropriate to reform and revitalize the insurer, including canceling policies, insurance and reinsurance contracts other than life or health insurance or annuities, or surety bonds or surety undertakings or transferring policies, insurance and reinsurance contracts, or surety bonds or surety undertakings to a solvent assuming insurer, with court approval. The rehabilitator has all the powers of the directors, officers, and managers of the insurer, whose authority is suspended, except as redelegated by the rehabilitator. The rehabilitator has full power to direct and manage, hire and discharge employees, and deal with the property and business of the insurer.

(c) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, affiliate or other person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.

(d) The rehabilitator may assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition under this chapter has been filed does not bind the rehabilitator.

(e) The enumeration, in this section, of the powers and authority of the rehabilitator may not be construed as a limitation upon the rehabilitator, nor shall it exclude in any manner the right to do other acts not specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of rehabilitation.

Sec. 21A.103. REHABILITATION PLANS. (a) The rehabilitator shall prepare and file a plan to effect rehabilitation with the receivership court not later than the first anniversary of the entry of the rehabilitation order or another further time as the receivership court may allow. Upon application of the rehabilitator for approval of the plan, and after the notice and hearings the receivership court may prescribe, the receivership court may approve or disapprove the proposed plan or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the receivership court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. A plan for a life insurer may propose imposition of a moratorium upon loan and cash surrender rights under policies, for a period not to exceed one year from the entry of the rehabilitation order approving the rehabilitation plan, unless the receivership court, for good cause shown, extends the moratorium.

(b) Once a plan has been filed, any party in interest may object to the plan.

(c) A plan must:

(1) except as provided by Subsection (e), provide no less favorable treatment of a claim or class of claims than would occur in liquidation, unless the holder of a particular claim or interest agrees to a less favorable treatment of that particular claim or interest;

(2) provide adequate means for the plan's implementation;

(3) contain information concerning the financial condition of the insurer and the operation and effect of the plan, as far as is reasonably practicable in light of the nature and history of the insurer, the condition of the insurer's books and records, and the nature of the plan; and

(4) provide for the disposition of the books, records, documents, and other information relevant to the duties and obligations covered by the plan.

(d) A plan may include any other provision not inconsistent with the provisions of this chapter, including:

(1) payment of distributions;

(2) assumption or reinsurance of all or a portion of the insurer's remaining liabilities by, and transfer of assets and related books and records to, an authorized insurer or other entity;

(3) to the extent appropriate, application of insurance company regulatory market conduct standards to any entity administering claims on behalf of the receiver or assuming direct liabilities of the insurer;

(4) contracting with a state guaranty association or any other qualified entity to perform the administration of claims;

(5) annual independent financial and performance audits of any entity administering claims on behalf of the receiver that is not otherwise subject to examination pursuant to state insurance law; and

(6) termination of the insurer's liabilities other than those under policies of insurance as of a date certain.

(e) A plan may designate and separately treat one or more separate subclasses of claims consisting only of claims within the subclasses that are for or reduced to de minimis amounts. For purposes of this subsection, a "de minimis amount" means any amount equal to or less than a maximum de minimis amount approved by the receivership court as being reasonable and necessary for administrative convenience.

Sec. 21A.104. TERMINATION OF REHABILITATION. (a) When the rehabilitator believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public or would be futile, the rehabilitator may move for an order of liquidation. In accordance with Section 21A.105, the rehabilitator or the rehabilitator's designated representative shall coordinate with the guaranty associations that may become liable as a result of the liquidation and any national association of guaranty associations to plan for transition to liquidation.

(b) Because the protection of the interests of insureds, claimants, and the public requires the timely performance of all insurance policy obligations, if the payment of policy obligations is suspended in substantial part for a period of six months at any time after the appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a plan under Section 21A.103, the rehabilitator shall petition the receivership court for an order of liquidation.

(c) The rehabilitator or the directors of the insurer may at any time petition the receivership court for, or the receivership court on its own motion may enter, an order terminating rehabilitation of an insurer. Subject to the provisions of Section 21A.351, if the receivership court finds that rehabilitation has been accomplished and that grounds for rehabilitation under Section 21A.057 no longer exist, it shall order that the insurer be restored to title and possession of its property and the control of the business.

Sec. 21A.105. COORDINATION WITH GUARANTY ASSOCIATIONS. (a) The receiver shall notify any potentially obligated guaranty association or the guaranty association's representative concerning the entry of a rehabilitation order and shall update the guaranty association or its representative regarding significant developments that impact efforts to rehabilitate the insurer. On a determination by the rehabilitator that rehabilitation efforts may not be successful, the rehabilitator shall participate in cooperative efforts with the potentially obligated guaranty associations. To facilitate an orderly transition to liquidation, the rehabilitator shall make available to the guaranty associations the information necessary to discharge their responsibilities upon becoming statutorily obligated. To the extent that information is available, or as it becomes available, the rehabilitator shall provide appropriate information to guaranty associations in the states in which the insurer transacted business.

(b) For the purposes of Subsection (a), "appropriate information" may include the following for lines of business written by the insurer, whether covered or not covered by guaranty associations:

(1) a general description of the different types of business written or assumed by the insurer;

(2) claim counts and policy counts by state and by line of business;

(3) claim and policy reserves;

(4) account values and cash surrender values;

(5) policy loans;

(6) interest crediting history;

(7) premiums and mode of payment;

(8) unpaid claims and amounts;

(9) sample policies and endorsements;

(10) a listing of different locations of claim files;

(11) if third-party administrators were used, copies of executed contracts and a description of the contractual arrangements; and

(12) information concerning claims in litigation or dispute, including a listing of claims with assigned defense counsel for those claims going to trial in the near future after a possible liquidation date.

(c) For the purposes of Subsection (a), "appropriate information" also includes information concerning states in which the insurer is or was licensed and periods for which the insurer is or was licensed and other information reasonably requested by a guaranty association necessary for the guaranty association to fulfill its statutory duties.

(d) In the case of a property and casualty insurer, the rehabilitator, in cooperation with the guaranty associations, shall make all reasonable efforts to prepare the insurer's electronic policy and claims data so that, upon the entry of an order of liquidation, the data will be ready for transmission using the Uniform Data Standards as promulgated by the National Association of Insurance Commissioners.

(e) The list of what appropriate information includes under Subsections (b) and (c) is not necessarily an exclusive list. Other information may be necessary to ensure that an orderly transition to liquidation occurs, and that information may be appropriately provided by the receiver.

[Sections 21A.106-21A.150 reserved for expansion]

SUBCHAPTER D. LIQUIDATION

Sec. 21A.151. LIQUIDATION ORDERS. (a) An order to liquidate the business of an insurer shall appoint the commissioner and any successor in office as the liquidator and shall direct the liquidator to take possession of the property of the insurer and to administer it subject to this chapter. The liquidator is entitled to request the receivership court to appoint a single judge to supervise the liquidation and to hear any cases or controversies arising out of or related to the liquidation. Liquidation proceedings are exempt from any dormancy or similar program maintained by the receivership court for the early closure of civil actions. As of the entry of the final order of liquidation, the liquidator is vested by operation of law with the title to all of the property, contracts, rights of action, and books and records of the insurer ordered liquidated, wherever located. The filing or recording of the order with the clerk of the court and the recorder of deeds of the county in which the insurer's principal office or place of business is located

or, in the case of real estate, the county where the property is located, imparts the same notice as a deed, bill of sale, or other evidence of title filed or recorded with that recorder of deeds would impart.

(b) Upon issuance of the order of liquidation, the rights and liabilities of the insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided by Sections 21A.152 and 21A.255, unless otherwise fixed by the court.

(c) An order to liquidate the business of an alien insurer in this state must be in the same terms and has the same legal effect as an order to liquidate a domestic insurer.

(d) At the time of petitioning for an order of liquidation, or at any time after petitioning, the commissioner may petition the receivership court for a judicial declaration of insolvency. After providing the notice and hearing as it deems proper, the receivership court may make the declaration of insolvency.

(e) In the event an order of liquidation is set aside on appeal, the company may not be released from delinquency proceedings except in accordance with Section 21A.351.

Sec. 21A.152. CONTINUANCE OF COVERAGE. (a) Notwithstanding any policy or contract language or any other statute, all reinsurance contracts by which the insurer has assumed the insurance obligations of another insurer are canceled upon entry of an order of liquidation.

(b) Notwithstanding any policy or contract language or any other statute, all policies, insurance contracts other than reinsurance by which the insurer has ceded insurance obligations to another person, and surety bonds or surety undertakings, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation, unless further extended by the receiver with the approval of the receivership court, continue in force only until the earlier of:

(1) the 30th day after the date of entry of the liquidation order;

(2) the date of expiration of the policy coverage;

(3) the date the insured has replaced the insurance coverage with equivalent insurance with another insurer or otherwise terminated the policy;

(4) the date the liquidator has effected a transfer of the policy obligation pursuant to Section 21A.154(h); or

(5) the date proposed by the liquidator and approved by the receivership court to cancel coverage.

(c) An order of liquidation under Section 21A.151 must terminate coverages at the time specified by Subsections (a) and (b) for purposes of any other statute.

(d) Policies of life or health insurance or annuities covered by a guaranty association and any portion of policies of life or health insurance or annuities covered by a guaranty association continue in force for the period and under the terms provided for by any applicable guaranty association law. Policies of life or health insurance or annuities not covered by a guaranty association and any portion of policies of life or health insurance or annuities not covered by a guaranty association terminate under Subsection (b), except to the extent the

liquidator proposes and the receivership court approves the use of property of the estate, consistent with Section 21A.301, for the purpose of continuing the contracts or coverage by transferring them to an assuming reinsurer.

(e) The cancellation of any bond or surety undertaking does not release any cosurety or guarantor.

(f) The obligations of the insolvent insurer's reinsurers are not released or discharged by a cancellation under this section.

Sec. 21A.153. SALE OR DISSOLUTION OF INSURER'S CORPORATE ENTITY. (a) Notwithstanding the entry of a liquidation order, the liquidator may apply for an order to sell or dissolve the corporate entity or charter of a domestic insurer or the United States branch of an alien insurer domiciled in this state at any time after an order of liquidation of the insurer has been granted, consistent with the provisions of this section.

(b) Upon an application to sell the corporate entity or charter, with notice as prescribed in this chapter, the receivership court may enter an order:

(1) separating the corporate entity or charter, together with any of its licenses to do business and the assets the liquidator deems appropriate to the transaction, from the remaining estate in liquidation and all of the remaining estate's assets and the claims or interests of all claimants, creditors, policyholders, and stockholders;

(2) canceling all outstanding stock and other securities of and other equity interests in the corporate entity or charter, provided that the cancellation may not affect any claim against the estate by a holder of an equity interest;

(3) authorizing the issuance and sale of new stock or other securities for the purpose of transferring to one or more buyers control and ownership of the corporate entity or charter; and

(4) authorizing the sale of the corporate entity or charter, together with any of its authorizations or licenses to do business and the general assets of the estate the liquidator deems to be appropriate to the transaction, free and clear from the claims or interest of all claimants, creditors, policyholders, and stockholders.

(c) The sale of the corporate entity or charter may be made in the manner and on the terms and conditions applied for by the liquidator and ordered by the receivership court. Any sale is subject to the domiciliary state's laws regarding acquisition of an insurer, Chapter 823, and any other law regarding the transfer of control of insurers. The proceeds from the sale of the corporate entity or charter become a part of the property of the estate in liquidation. The separate corporate entity or charter, together with any of its authorizations or licenses to do business and such assets as the liquidator deems appropriate to the transaction, are, following the sale of the corporate entity or charter, free and clear from the claims or interest of all claimants, creditors, policyholders, and stockholders of the corporation in liquidation.

(d) This section shall be liberally construed to accomplish its purposes to:

(1) provide an expeditious and effective procedure to realize the maximum proceeds possible from the sale of a corporate entity or charter separated from an estate in liquidation; and

(2) ensure that the purchasers receive clear and marketable titles.

(e) If permission to sell the corporate entity or charter is not granted prior to discharge of the liquidator, in accordance with this section or otherwise with receivership court approval:

(1) the receivership court may order dissolution of the corporate entity or charter;

(2) dissolution shall be deemed complete by operation of law upon the discharge of the liquidator if the insurer is insolvent; or

(3) dissolution may be ordered by the receivership court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

Sec. 21A.154. POWERS OF LIQUIDATOR. (a) The liquidator may appoint a special deputy or deputies to act for the liquidator under this chapter and employ or contract with legal counsel, actuaries, accountants, appraisers, consultants, clerks, assistants, and other personnel the liquidator may deem necessary to assist in the liquidation. A special deputy has all powers of the liquidator granted by this section, unless specifically limited by the liquidator, and serves at the pleasure of the liquidator. A special deputy or any other person with whom the liquidator contracts under this subsection may act on behalf of the commissioner only in the commissioner's capacity as liquidator. Any person with whom the liquidator contracts is not considered to be an agent of the state and any contract under this subsection is not a contract with the state. The provisions of any law governing the procurement of goods and services by the state do not apply to any contract entered into by the commissioner as liquidator. This subsection does not waive any immunity granted by Section 21A.014 or create any cause of action against the state.

(b) The liquidator may determine the reasonable compensation for any special deputies, employees, or contractors retained by the liquidator as provided in Subsection (a) and pay compensation in accordance with Section 21A.015.

(c) The liquidator may appoint, with the approval of the receivership court, an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, if the committee be deemed necessary. The advisory committee serves at the pleasure of the liquidator, and the decision to appoint an advisory committee is at the sole discretion of the liquidator. The advisory committee serves without compensation or reimbursement for expenses. The liquidator or the receivership court in liquidation proceedings conducted under this chapter may not appoint another committee of any nature.

(d) The liquidator may hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, compel any persons to subscribe to their testimony after it has been correctly reduced to writing, and, in connection with a power under this subsection, require the production of any books, papers, records, or other documents that the liquidator deems relevant to the inquiry.

(e) The liquidator may audit the books and records of all agents of the insurer to the extent that those books and records relate to the business activities of the insurer.

(f) The liquidator may collect all debts and moneys due and claims belonging to the insurer, wherever located, and may:

(1) institute action in other jurisdictions, in order to forestall garnishment and attachment proceedings against the debts;

(2) do other acts as necessary or expedient to collect, conserve, or protect the insurer's property, including the power to sell, compromise, or assign debts for purposes of collection upon such terms and conditions as the liquidator deems consistent with this chapter; and

(3) pursue any creditor's remedies available to enforce the insurer's claims.

(g) The liquidator may conduct public and private sales of the property of the insurer.

(h) The liquidator may use property of the estate of an insurer under a liquidation order to transfer to a solvent assuming insurer policy obligations or the insurer's obligations under surety bonds and surety undertakings as well as collateral held by the insurer with respect to the reimbursement obligations of the principals under those surety bonds and surety undertakings, if the transfer can be arranged without prejudice to applicable priorities under Section 21A.301. If all insureds, principals, third-party claimants, and obligees under the policies, surety bonds, and surety undertakings consent or if the receivership court so orders, the estate has no further liability under the transferred policies, surety bonds, or surety undertakings after the transfer is made.

(i) The liquidator may, subject to Subsection (x), acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the estate at its market value or upon terms and conditions that are fair and reasonable. The liquidator also has the power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(j) The liquidator may borrow money on the security of the property of the estate or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any funds borrowed under this subsection may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of distribution.

(k) The liquidator may enter into contracts as necessary to carry out the order to liquidate and, subject to the provisions of Section 21A.013, may assume or reject any executory contract or unexpired lease to which the insurer is a party.

(l) The liquidator may continue to prosecute and institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under Section 21A.153, the liquidator has the power to apply to any court in this state or elsewhere for leave to substitute the liquidator for the insurer as a party.

(m) The liquidator may prosecute any action that may exist on behalf of the creditors, members, policyholders, shareholders of the insurer, or the public against any person, except to the extent that a claim is personal to a specific

creditor, member, policyholder, or shareholder and recovery on such claim would not inure to the benefit of the estate. This subsection does not infringe or impair any of the rights provided to a guaranty association pursuant to its enabling statute or otherwise.

(n) The liquidator may take possession of the records and property of the insurer as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations must be allowed reasonable access to the records of the insurer as is necessary for the guaranty associations to carry out their statutory obligations.

(o) The liquidator may deposit in one or more banks in this state the amounts that are required for meeting current administration expenses and dividend distributions.

(p) The liquidator may invest all amounts not currently needed, unless the receivership court orders otherwise.

(q) The liquidator may file any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located.

(r) The liquidator may assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition is filed under this chapter does not bind the liquidator. When a guaranty association has an obligation to defend any suit, the liquidator shall defer to the association's obligation.

(s) The liquidator may exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be avoidable under this chapter or otherwise.

(t) The liquidator may intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and act as the receiver or trustee whenever the appointment is offered.

(u) The liquidator may enter into agreements with any receivers or commissioners of any other states.

(v) The liquidator may exercise all powers held by receivers on August 31, 2005, or conferred on receivers after that date by the laws of this state not inconsistent with this chapter.

(w) The liquidator is vested with all the rights of the entity or entities in receivership.

(x) The enumeration, in this section, of the powers and authority of the liquidator may not be construed as a limitation upon the liquidator, nor may it exclude in any manner the right to do other acts not specifically enumerated or otherwise provided for, to the extent necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(y) The liquidator may hypothecate, encumber, lease, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer, settle or resolve any claim brought by the liquidator on behalf of the insurer, or commute or settle any claim of reinsurance under any contract of reinsurance, as follows:

(1) if the property or claim has a market or settlement value that does not exceed the lesser of $1 million or 10 percent of the general assets of the estate as shown on the receivership's financial statements, the liquidator may take action at the liquidator's discretion, provided that the receivership court may, upon petition of the liquidator, increase the threshold upon a showing that compliance with this requirement is burdensome to the liquidator in administering the estate and is unnecessary to protect the material interests of creditors;

(2) in all instances other than those described in Subdivision (1), the liquidator may take the action only after obtaining approval of the receivership court as provided by Section 21A.007;

(3) the liquidator may, at the liquidator's discretion, request the receivership court to approve a proposed action as provided by Section 21A.007 if the value of the property or claim appears to be less than the threshold provided by Subdivision (1) but cannot be ascertained with certainty, or for any other reason as determined by the liquidator; and

(4) after obtaining approval of the receivership court as provided in Section 21A.007, the liquidator may, subject to Subsection (z), transfer rights to payment under ceding reinsurance agreements covering policies to a third-party transferee.

(z) The transferee of a right to payment under Subsection (y)(4) has the rights to collect and enforce collection of the reinsurance for the amount payable to the ceding insurer or to its receiver, without diminution because of the insolvency or because the receiver has failed to pay all or a portion of the claim, based on the amounts paid or allowed pursuant to Section 21A.211. The transfer of the rights does not give rise to any defense regarding the reinsurer's obligations under the reinsurance agreement regardless of whether an agreement or other applicable law prohibits the transfer of rights under the reinsurance agreement. Except as provided in this subsection, any transfer of rights pursuant to Subsection (y)(4) does not impair any rights or defenses of the reinsurer that existed prior to the transfer or that would have existed in the absence of the transfer. Except as otherwise provided in this subsection, any transfer of rights pursuant to Subsection (y)(4) does not relieve the transferee or the liquidator from obligations owed to the reinsurer pursuant to the reinsurance or other agreement.

(aa) The liquidator is not obligated to defend any action against the insurer or insured. Any insureds not defended by a guaranty association may provide their own defense, and include the cost of the defense as part of their claims, if the defense was an obligation of the insurer. The right of the liquidator to contest coverage on a particular claim is preserved without the necessity for an express reservation of rights.

Sec. 21A.155. NOTICE TO CREDITORS AND OTHERS. (a) Unless the receivership court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(1) by first class mail or electronic communication as permitted by the receivership court to:

(A) any guaranty association that is or may become obligated as a result of the liquidation and any national association of guaranty associations;

(B) all the insurer's agents, brokers, or producers of record with current appointments or current licenses to represent the insurer and all other agents, brokers, or producers as the liquidator deems appropriate at their last known address; and

(C) all persons or entities known or reasonably expected to have claims against the insurer, at their last known address as indicated by the records of the insurer, and all state and federal agencies with an interest in the proceeding; and

(2) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in any other locations as the liquidator deems appropriate.

(b) The notice of the entry of an order of liquidation must contain or provide directions for obtaining the following information:

(1) a statement that the insurer has been placed in liquidation;

(2) a statement that certain acts are stayed under Section 21A.008 and describe any additional injunctive relief ordered by the receivership court;

(3) a statement whether, and to what extent, the insurer's policies continue in effect;

(4) to the extent applicable, a statement that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws;

(5) a statement of the deadline for filing claims, if established, and the requirements for filing a proof of claim pursuant to Section 21A.251 on or before that date;

(6) a statement of the date, time, and location of any initial status hearing scheduled at the time the notice is sent;

(7) a description of the process for obtaining notice of matters before the receivership court; and

(8) any other information the liquidator or the receivership court deems appropriate.

(c) If notice is given in accordance with this section, the distribution of property of the insurer under this chapter is conclusive with respect to all claimants, whether or not they received notice.

(d) Notwithstanding the other provisions of this section, the liquidator has no duty to locate any persons or entities if no address is found in the records of the insurer or if mailings are returned to the liquidator because of inability to deliver at the address shown in the insurer's books and records. In these circumstances the notice by publication as required by this chapter or actual notice received is sufficient notice. Written certification by the liquidator or other knowledgeable person acting for the liquidator that the notices were deposited in the United States mail, postage prepaid, or that the notices have been electronically transmitted is prima facie evidence of mailing and receipt. All claimants shall keep the liquidator informed of any changes of address.

(e) Notwithstanding Subsection (a)(1)(C), upon application of the liquidator, the receivership court may:

(1) find that notice by publication as required in this section is sufficient notice to those persons holding an occurrence policy that expired more than four years prior to the entry of the order of liquidation and under which there are no pending claims; or

(2) order other notice to persons described by Subdivision (1) as it deems appropriate.

(f) The liquidator shall notify the Texas Workers' Compensation Commission upon the entry of the liquidation order if the insurer has issued workers' compensation coverage in effect in this state. Upon request of the liquidator, the Texas Workers' Compensation Commission shall submit a list of active cases pending before the commission that relate to workers' compensation coverage issued by the insurer.

Sec. 21A.156. DUTIES OF AGENTS. (a) Every person who represented the insurer as an agent and receives notice in the form prescribed in Section 21A.155 that the insurer is the subject of a liquidation order, not later than the 30th day after the date of the notice, shall provide to the liquidator, in addition to the information the agent may be required to provide pursuant to Section 21A.010, the information in the agent's records related to any policy issued by the insurer through the agent and any policy issued by the insurer through an agent under contract to the agent, including the name and address of any subagent. For purposes of this subsection, a policy is issued through an agent if the agent has a property interest in the expiration of the policy or if the agent has had in the agent's possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another.

(b) Any agent failing to provide information to the liquidator as required in Subsection (a) may be subject to payment of an administrative penalty under Chapter 84 of not more than $1,000. In addition, the agent's license may be suspended under Chapter 4005.

[Sections 21A.157-21A.200 reserved for expansion]

SUBCHAPTER E. ASSET RECOVERY

Sec. 21A.201. TURNOVER OF ASSETS. (a) If the receiver determines that funds or property in the possession of another person are rightfully the property of the estate, the receiver shall deliver to the person a written demand for immediate delivery of the funds or property, referencing this section by number and the court and docket number of the receivership action, and notifying the person that any claim of right to the funds or property by the person must be presented to the receivership court not later than the 20th day after the date of the written demand. Any person who holds funds or other property belonging to an entity subject to an order of receivership under this chapter shall deliver the funds or other property to the receiver on demand. Should the person allege any right to retain the funds or other property, the person, not later than the 20th day after the date of receipt of the demand that the funds or property be delivered to the receiver, shall file with the receivership court a pleading setting out that right. The

person shall serve a copy of the pleading on the receiver. The pleading must inform the receivership court as to the nature of the claim to the funds or property, the alleged value of the property or amount of funds held, and what action, pending determination of the dispute, has been taken by the person to preserve and protect the property or to preserve any funds. The relinquishment of possession of funds or property by any person who has received a demand pursuant to this section does not constitute a waiver of a right to make a claim in the receivership.

(b) If requested by the receiver, the receivership court shall hold a hearing to determine where and under what conditions the person shall hold the property or funds pending determination of the dispute. The receivership court may impose conditions as it may deem necessary or appropriate for the preservation of the property or funds until the receivership court can determine the validity of the person's claim to the property or funds. If any property or funds are allowed to remain in the possession of the person after demand made by the receiver, that person is strictly liable to the estate for any waste, loss, or damage to or diminution of value of the property or funds retained.

(c) If a person has filed a pleading alleging any right to retain funds or property as provided by Subsection (a), the receivership court shall hold a subsequent hearing to determine the entitlement of the person to the funds or property claimed by the receiver.

(d) If a person fails to deliver the funds or property or to file the pleading described by Subsection (a) within the period described by Subsection (a), the receivership court may, upon petition of the receiver and upon a copy of the petition being served by the receiver to that person, issue its summary order directing the immediate delivery of the funds or property to the receiver and finding that the person has waived all claims of right to the funds or property.

Sec. 21A.202. RECOVERY FROM AFFILIATES. (a) The receiver has a right to recover from any affiliate of the insurer any property of the insurer transferred to or for the benefit of the affiliate, or the property's value, if the transfer was made within the two years preceding the initial petition for receivership.

(b) A transfer is not recoverable under Subsection (a) if the affiliate shows that, when the transfer was made:

(1) the insurer was solvent;

(2) the transfer was lawful; and

(3) neither the insurer nor the affiliate knew or reasonably should have known that the transfer, under then-applicable statutory accounting standards, would:

(A) place the insurer:

(i) in violation of applicable capital or surplus requirements;

(ii) below the applicable minimum risk-based capital level; or

(iii) in violation of writing ratios under Article 1.32 or analogous requirements under Section 843.406; or

(B) cause the insurer's filed financial statements not to present fairly the capital and surplus of the insurer.

Sec. 21A.203. UNAUTHORIZED POST-PETITION TRANSFERS. (a) Except as provided by this section, the receiver may avoid any transfer of an interest of the insurer in property or any obligation incurred by the insurer that:

(1) was made or occurred after the petition for receivership was filed; and

(2) is not authorized by the receiver and approved by the receivership court or otherwise authorized in accordance with this chapter.

(b) Except to the extent that a transfer or obligation avoidable under Subsection (a) is otherwise voidable under this chapter, a transferee or obligee of a transfer or obligation avoided under Subsection (a) that takes for value and in good faith, at the option of the receivership court, has a lien or may retain any interest transferred or enforce any obligation incurred, as applicable, to the extent that the transferee or obligee gave value to the insurer in exchange for the transfer or obligation.

Sec. 21A.204. VOIDABLE PREFERENCES AND LIENS. (a) A "preference" is a transfer of any interest in property of an insurer that:

(1) is made to or for the benefit of a creditor and for or on account of an antecedent debt and is made or suffered by the insurer within two years preceding the filing of a successful petition commencing delinquency proceedings; and

(2) enables the creditor to receive more than the creditor would receive if the insurer were liquidated under this chapter, the transfer had not been made, and the creditor was entitled to receive payment of the debt to the extent provided by this chapter.

(b) Any preference may be avoided by the receiver if:

(1) the insurer was insolvent at the time of the transfer;

(2) the transfer was made within 120 days before the date of filing of the petition commencing delinquency proceedings;

(3) the creditor receiving the transfer or to be benefited by the transfer, or the creditor's agent acting with reference to the transfer, had, at the time the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(4) the creditor receiving the transfer was:

(A) an officer or director of the insurer;

(B) an employee, attorney, or other person who was in fact in a position to effect a level of control or influence over the actions of the insurer comparable to that of an officer or director, without regard to whether the person held that position; or

(C) an affiliate.

(c) The receiver may not avoid a transfer under this section:

(1) to the extent that the transfer was:

(A) intended by the insurer and the creditor to or for whose benefit the transfer was made to be a contemporaneous exchange for new value given to the insurer and in fact was a substantially contemporaneous exchange; or

(B) made in the ordinary course of business or financial affairs between the insurer and the transferee and made according to ordinary business terms in payment of a debt incurred by the insurer in the ordinary course of business or financial affairs of the insurer and the transferee; or

(2) to or for the benefit of a creditor, to the extent that, after the transfer, the creditor gave new value to or for the benefit of the insurer that was:

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the insurer did not make an otherwise unavoidable transfer to or for the benefit of the creditor.

(d) For purposes of this section:

(1) a transfer of property other than real property is deemed to be made or suffered at the time the transfer becomes so far perfected that any subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee;

(2) a transfer of real property is deemed to be made or suffered when the transfer is so far perfected that a subsequent bona fide purchaser from the insurer could not obtain rights superior to the rights of the transferee;

(3) a transfer that creates an equitable lien is not deemed to be perfected if there are available means by which a legal lien could be created; and

(4) a transfer not perfected prior to the filing of a petition for receivership is deemed to be made immediately before the filing commencing delinquency proceedings.

(e) The provisions of this section apply without regard to whether there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(f) Within the meaning of Subsection (d), "a lien obtainable by legal or equitable proceedings on a simple contract" is a lien arising in the ordinary course of proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or similar process, whether before, upon, or after judgment or decree and whether before or upon levy. The term does not include liens that under applicable law are given a special priority over other liens that are prior in time.

(g) Within the meaning of Subsection (d), a lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee if the consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. A lien could not, however, become superior and a purchase could not create superior rights for the purpose of Subsection (d) through any acts subsequent to the obtaining of the lien or subsequent to the purchase that require the agreement or concurrence of any third party or that require any further judicial action or ruling.

(h) A transfer of property for or on account of a new and contemporaneous consideration that is deemed under Subsection (d) to be made or suffered after the transfer because of delay in perfecting the transfer does not become a transfer for

or on account of an antecedent debt if any acts required by the applicable law to be performed to perfect the transfer against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if the loan is actually made, or a transfer that becomes security for a future loan, has the same effect as a transfer for or on account of a new and contemporaneous consideration.

(i)(1) If any lien deemed voidable under Subsection (b) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition commencing delinquency proceedings under this chapter, the indemnifying transfer or lien is also deemed voidable.

(2) The property affected by any lien deemed voidable under Subsection (b) and Subdivision (1) is discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety passes to the receiver, except that the receivership court may on due notice order any lien deemed voidable under this section to be preserved for the benefit of the estate and may direct that a conveyance be executed as may be proper or adequate to evidence the title of the receiver.

(3) Reasonable notice of any hearing in the proceeding shall be given to all parties as required by law, including the obligee of a releasing bond or other like obligation. If an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the receivership court may in the same proceeding ascertain the value of the property or lien. If the value of the property or lien is less than the amount for which the property is indemnified or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment to the receiver of its value, as determined by the receivership court, within a reasonable time determined by the receivership court.

(4) The liability of the surety under a releasing bond or other similar obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the receiver, or if the property is retained under Subdivision (3) to the extent of the amount paid to the receiver.

(j) This section may not be construed to prejudice any other claim by the receiver against any person.

Sec. 21A.205. FRAUDULENT TRANSFERS AND OBLIGATIONS. (a) The receiver may avoid any transfer of an interest of the insurer in property, any reinsurance transaction, or any obligation incurred by an insurer that was made or incurred on or within two years before the date of the initial filing of a petition commencing delinquency proceedings under this chapter, if the insurer voluntarily or involuntarily:

(1) made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any person to which it was or became indebted on or after the date that the transfer was made or the obligation was incurred; or

(2) received less than a reasonably equivalent value in exchange for the transfer or obligation.

(b) Except to the extent that a transfer or obligation voidable under this section is voidable under other provisions of this chapter, a transferee or obligee that takes for value and in good faith a voidable transfer or obligation has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that the transferee or obligee gave value to the insurer in exchange for the transfer or obligation.

(c) For purposes of this section, a transfer is made when the transfer is so perfected that a subsequent bona fide purchaser from the insurer cannot acquire an interest in the property transferred that is superior to the interest in the property of the transferee, but if the transfer is not so perfected before the commencement of the delinquency proceeding, the transfer is deemed to have been made immediately before the date of the initial filing of the petition commencing delinquency proceedings.

(d) For purposes of this section, "value" means property or satisfaction or securing of a present or antecedent debt of the insurer.

Sec. 21A.206. RECEIVER AS LIEN CREDITOR. (a) The receiver may avoid any transfer of or lien upon the property of, or obligation incurred by, an insurer that the insurer or a policyholder, creditor, member, or stockholder of the insurer may have avoided without regard to any knowledge of the receiver, the commissioner, the insurer, or any policyholder, creditor, member, or stockholder of the insurer regardless of whether such a policyholder, creditor, member, or stockholder exists.

(b) The receiver is deemed a creditor without knowledge for purposes of pursuing claims under the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, or similar provisions of state or federal law.

Sec. 21A.207. LIABILITY OF TRANSFEREE. (a) Except as otherwise provided in this section, to the extent that the receiver obtains an order under Section 21A.201 or avoids a transfer under Sections 21A.202, 21A.203, 21A.204, 21A.205, or 21A.206, the receiver may recover the property transferred, or the value of the property, from:

(1) the initial transferee of the transfer or the entity for whose benefit the transfer was made; or

(2) any immediate or mediate transferee of the initial transferee.

(b) The receiver may not recover under Subsection (a)(2) from:

(1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of the transferee.

(c) Any transfer avoided in accordance with this chapter is preserved for the benefit of the receivership estate, but only with respect to property of the insurer.

(d) In addition to the remedies specifically provided under Sections 21A.201-21A.206 and Subsection (a), if the receiver is successful in establishing a claim to the property or any part of the property, the receiver is entitled to recover judgment for:

(1) rental for the use of the tangible property from the later of the entry of the receivership order or the date of the transfer;

(2) in the case of funds or intangible property, the greater of:

(A) the actual interest or income earned by the property; or

(B) interest at the statutory rate for judgments from the later of the date of the entry of the receivership order or the date of the transfer; and

(3) except as to recoveries from guaranty associations, all costs, including investigative costs and other expenses necessary to the recovery of the property or funds, and reasonable attorney's fees.

(e) In any action under this section, the receivership court may allow the receiver to seek recovery of the property involved or the property's value.

(f) In any action under Sections 21A.201-21A.206, the receiver has the burden of proving the avoidability of a transfer, and the person against whom recovery or avoidance is sought has the burden of proving the nature and extent of any affirmative defense.

Sec. 21A.208. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS. (a) A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this chapter may not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim may not be allowed unless the money is paid or the property is delivered to the receiver not later than the 30th day after the date of the entering of the final judgment, except that the receivership court may allow further time if there is an appeal or other continuation of the proceeding.

(b) A claim allowable under Subsection (a) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused late filing under Section 21A.251(b) if filed not later than the 30th day after the date of the avoidance, or within the further time allowed by the receivership court under Subsection (a).

Sec. 21A.209. SETOFFS. (a) All mutual debts or mutual credits, whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under this chapter, must be set off and only the balance shall be allowed or paid, except as provided by Subsection (b).

(b) A setoff may not be allowed in favor of any person if:

(1) the obligation of the insurer to the person:

(A) would not, at the date of the commencement of the delinquency proceeding, entitle the person to share as a claimant in the assets of the insurer; or

(B) was purchased by or transferred to the person:

(i) after the commencement of the delinquency proceeding; or

(ii) for the purpose of increasing setoff rights;

(2) the obligation of the insurer is owed to an affiliate of the person, or any other entity or association other than the person;

(3) the obligation of the person:

(A) is as a trustee or fiduciary; or

(B) is to pay:

(i) an assessment levied against the members of a mutual insurer, reciprocal or interinsurance exchange, or Lloyd's plan; or

(ii) a balance upon a subscription to the capital stock of a capital stock insurance company; or

(4) the obligations between the person and the insurer arise from reinsurance transactions in which either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations.

(c) The receiver shall provide an interested person with accounting statements identifying all debts that are due and payable. If a person owes the insurer amounts that are due and payable against which the person asserts a setoff of mutual credits that, in the future, may become due and payable from the insurer, the person shall promptly pay the amounts due and payable to the receiver. Notwithstanding any other provision of this chapter, the receiver shall promptly and fully refund, to the extent of a person's prior payments under this section, any mutual credits that become due and payable to the person by the insurer.

Sec. 21A.210. ASSESSMENTS. (a) As soon as practicable, but not later than the fourth anniversary of the date of an order of receivership of an insurer issuing assessable policies, the receiver shall make a report to the receivership court setting forth:

(1) the reasonable value of the assets of the insurer;

(2) the insurer's probable total liabilities;

(3) the probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and

(4) a recommendation as to whether an assessment should be made and in what amount.

(b) Upon the basis of the report provided in Subsection (a), including any supplements and amendments to the report, the receivership court may approve, solely on application by the receiver, one or more assessments against all members of the insurer who are subject to assessment. The order approving the assessment shall provide instructions regarding notice of the assessment, deadlines for payment, and other instructions to the receiver regarding collection of the assessment.

(c) Subject to any applicable legal limits on ability to assess, the aggregate assessment must be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment, exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(d) After levy of assessment under Subsection (b), the receiver shall petition the receivership court for an order directing each member who has not paid the assessment pursuant to the levy to show cause why a judgment for the assessment should not be entered.

(e) At least 20 days before the return day of the order to show cause, the receiver shall give notice of the order to show cause to each member liable on the assessment. Notice must be given by first class mail mailed to the member's last known address as it appears on the insurer's records, by publication, or by another method of notification as directed by the receivership court. Failure of the member or subscriber to receive the notice of the assessment or of the order, within the time specified in the assessment or order or at all, is not a defense in a proceeding to collect the assessment.

(f) If a member does not appear and serve verified objections upon the receiver on or before the return day of the order to show cause under Subsection (d), the receivership court shall make an order adjudging the member liable for the amount of the assessment against the member under Subsection (d) together with costs, and the receiver shall have a judgment against the member for the amount of the assessment and costs in the order.

(g) If on or before the return day of the order to show cause, the member appears and serves verified objections upon the receiver, the receivership court may hear and determine the matter or may appoint a referee to hear it and make an order as the facts warrant. In the event that the receiver determines that the objections do not warrant relief from assessment, the member may request the receivership court to review the matter and vacate the order to show cause.

(h) The receiver may enforce any order or collect any judgment under Subsection (f) by any lawful means.

(i) Any assessment of a subscriber or member of an insurer made by the receiver pursuant to the order of receivership court fixing the aggregate amount of the assessment against all members or subscribers and approving the classification and formula made by the receiver under this section is prima facie correct.

(j) Any claim filed by an assessee who fails to pay an assessment, after the conclusion of any legal action by the assessee objecting to the assessment, is deemed a late filed claim under Section 21A.251.

Sec. 21A.211. REINSURER'S LIABILITY. (a) If the receiver has claims under policies covered by reinsurance, the liability of the reinsurer to the receiver under the policies reinsured may not be diminished because of the insolvency of the insurer, regardless of any provisions in the reinsurance contract to the contrary, except under the following circumstances:

(1) a contract or other written agreement entered into before the delinquency proceeding that is otherwise permitted by law specifically provides another payee of the reinsurance in the event of the insolvency of the ceding insurer;

(2) the assuming insurer, under an assumption reinsurance agreement and with the consent of the direct insured, has assumed, as direct obligations of the assuming insurer, the policy obligations of the ceding insurer to the payees under policies and in substitution for the obligations of the ceding insurer to those payees; or

(3) a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under a contract of reinsurance in accordance with the life and health guaranty association laws of this state or its domiciliary state or another applicable law, rule, order, or assignment contract, in which case payments shall be made directly to or at the direction of the guaranty association.

(b) Except as provided by Subsection (a), any reinsurance shall be payable to the receiver under a policy reinsured by the assuming insurer on the basis of claims:

(1) allowed under Section 21A.253; and

(2) paid under:

(A) Article 21.28-C or 21.28-D;

(B) Chapter 2602; or

(C) the guaranty associations of other states.

(c) The liquidator or receiver, as applicable, shall give written notice to affected reinsurers of the pendency of a claim against the receiver under a reinsured policy within a reasonable time after the claim is filed in the delinquency proceeding. During the pendency of the claim any affected reinsurer may:

(1) investigate the claim; and

(2) intervene, at the reinsurer's own expense, in any proceeding where the claim is to be adjusted and assert any defense or defenses which it may deem available to the delinquent company, the liquidator, or the receiver.

(d) Subject to court approval, an expense incurred under Subsection (c)(1) or (2) shall be chargeable against the delinquent company as part of the expense of liquidation, to the extent of a proportionate share of the benefit which may accrue to the delinquent company solely as a result of the defense undertaken by the assuming insurer.

(e) If two or more assuming insurers are involved in the same claim and a majority in interest elect to intervene and assert a defense to a claim described by Subsection (c), an expense incurred under Subsection (c)(1) or (2) shall be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

(f) Nothing in this Chapter shall be construed as authorizing the receiver, or other entity, to compel payment from a non-life reinsurer on the basis of estimated incurred but not reported losses or outstanding reserves, except outstanding reserves with respect to claims made pursuant to section 21A.255 and approved workers compensation claims filed under section 21A.252(d).

Sec. 21A.212. RECOVERY OF PREMIUMS OWED. (a) An insured shall pay, either directly to the receiver or to any agent that has paid or is obligated to pay the receiver on behalf of the insured, any unpaid earned premium or retrospectively rated premium due the insurer based on the termination of coverage under Section 21A.152. Premium on surety business is deemed earned at inception if a policy term cannot be determined. All other premium is deemed earned and is prorated equally over the determined policy term, regardless of any provision in the bond, guaranty, contract or other agreement.

(b) Any person, other than the insured, shall turn over to the receiver any unpaid premium due and owing as shown on the records of the insurer, including any amount representing commissions, for the full policy term due the insurer at the time of the entry of the receivership order, whether earned or unearned, based on the termination of coverage under Section 21A.152. The unpaid premium due the receiver from any person other than the insured excludes any premium not collected from the insured and not earned based on the termination of coverage under Section 21A.152.

(c) Any person, other than the insured, responsible for the remittance of a premium, shall turn over to the receiver any unearned commission of the person based on the termination of coverage under Section 21A.152. Credits, setoffs, or both may not be allowed to an agent, broker, premium finance company, or any other person for any amounts advanced to the insurer by the person on behalf of, but in the absence of a payment by, the insured, or for any other amount paid by the person to any other person after the entry of the order of receivership.

(d) Persons that collect premium or finance premium under a premium finance contract that is due the insurer in receivership are deemed to hold that premium in trust as fiduciaries for the benefit of the insurer and to have availed themselves of the laws of this state, regardless of any provision to the contrary in any agency contract or other agreement.

(e) Any premium finance company is obligated to pay any amounts due the insurer from premium finance contracts, whether the premium is earned or unearned. The receiver has the right to collect any unpaid financed premium directly from the premium finance company or directly from the insured that is a party to the premium finance contract.

(f) Upon satisfactory evidence of a violation of this section by a person other than an insured, the commissioner may pursue one or more of the following courses of action:

(1) suspend, revoke, or refuse to renew the licenses of the offending party or parties; and

(2) impose:

(A) an administrative penalty under Chapter 84 of not more than $1,000 for each act in violation of this section by the party or parties; and

(B) any other sanction or penalty authorized by Chapter 82.

Sec. 21A.213. ADMINISTRATION OF DEDUCTIBLE AGREEMENTS AND POLICYHOLDER COLLATERAL. (a) Any collateral held to secure the obligations of a policyholder under a deductible agreement with an insurer subject to a delinquency proceeding under this chapter must be maintained and administered as provided in this section. For purposes of this section, a "deductible agreement" is any combination of one or more policies, endorsements, contracts, or security agreements that:

(1) provide for the policyholder to bear the risk of loss within a specified amount per claim or occurrence covered under a policy of insurance; and

(2) may be subject to an aggregate limit of policyholder reimbursement obligations.

(b) This section applies to any collateral described by Subsection (a), regardless of whether the collateral is held by, for the benefit of, or assigned to the insurer under a deductible agreement. The collateral shall be used to secure the policyholder's obligation to fund or reimburse claims payments within the agreed deductible amount, subject to this section.

(c) If the contract between the policyholder and the insurer allows the policyholder to fund claims within the deductible amount through a third-party administrator or otherwise, the receiver shall allow that funding arrangement to continue, except as prohibited by Title 5, Labor Code. If a policyholder funds claims within the deductible amount, the receiver or any guaranty association has no obligation to pay claims for the amount funded by the policyholder, and the policyholder or its third-party administrator is not obligated to reimburse a guaranty association for any amount funded. A charge of any kind may not be made against a guaranty association based on the funding of claims payments by a policyholder under this subsection.

(d) If the receiver is holding collateral provided by a policyholder to secure both a deductible agreement and other obligations of the policyholder, the receiver shall:

(1) allocate the collateral among these obligations in accordance with the deductible agreement; or

(2) in the absence of an allocation provision in the deductible agreement and with the approval of the receivership court, allocate the collateral equitably among these obligations.

(e) If, under Subsection (d), the collateral secures reimbursement obligations under more than one line of insurance, the receiver shall equitably allocate the collateral among the various lines based on the estimated ultimate exposure within the deductible amount for each line.

(f) If a guaranty association is obligated to pay claims under a policy under Subsection (d), the receiver shall give notice to the guaranty associations of any allocation under this section.

(g) Once all claims covered by the collateral have been paid and the receiver is satisfied that no new claims may be presented, the receiver shall release any remaining collateral to the policyholder in accordance with the provisions of the contract and of this chapter.

(h) To the extent a guaranty association is required by applicable law to pay any claims for which the insurer would have been entitled to reimbursement from the policyholder, the following provisions apply:

(1) The receiver shall promptly invoice the policyholder for the reimbursement due under the agreement, and the policyholder is obligated to pay the amount invoiced to the receiver for the benefit of the guaranty associations that paid the claims. Neither the insolvency of the insurer nor the insurer's inability to perform any obligations under the deductible agreement is a defense to the policyholder's reimbursement obligation under the deductible agreement. At the time the policyholder reimbursements are collected, the receiver shall promptly forward those amounts to the guaranty association, based on the claims paid by the guaranty association that were subject to the deductible.

(2) If the collateral is insufficient to reimburse the guaranty association for claims paid within the deductible, the receiver shall use any existing collateral to make a partial reimbursement to the guaranty association, subject to any allocation under Subsection (d), (e), or (f). If more than one guaranty association has a claim against the same collateral, the receiver shall prorate payments to each guaranty association based on the amount of the claims each guaranty association has paid.

(3) The receiver is entitled to deduct from reimbursements owed to a guaranty association or collateral to be returned to a policyholder reasonable actual expenses incurred in fulfilling the receiver's responsibilities under this section. Expenses incurred to collect reimbursements for the benefit of a guaranty association are subject to the approval of the guaranty association. Any remaining expenses that are not deducted from the reimbursements are payable subject to Section 21A.015.

(4) The receiver shall provide any affected guaranty associations with a complete accounting of the receiver's deductible billing and collection activities on a quarterly basis, or at other intervals as may be agreed to between the receiver and the guaranty associations. Accountings under this subdivision must include copies of the policyholder billings, the reimbursements collected, the available amounts and use of collateral for each account, and any prorating of payments.

(5) If the receiver fails to make a good faith effort to collect reimbursements due from a policyholder under a deductible agreement within 120 days of receipt of claims payment reports from a guaranty association, the guaranty association may, after notice to the receiver, collect the reimbursements that are due, and, in so doing, the guaranty association shall have the same rights and remedies as the receiver. A guaranty association shall report any amounts collected under this subdivision and expenses incurred in collecting those amounts to the receiver.

(6) The receiver shall periodically adjust the collateral held as the claims subject to the deductible agreement are paid, provided that adequate collateral is maintained. The receiver is not required to adjust the collateral more than once a year. The receiver shall inform the guaranty associations of all collateral reviews, including the basis for the adjustment.

(7) Reimbursements received or collected by a guaranty association under this section may not be considered a distribution of the insurer's assets. A guaranty association shall provide the receiver with an accounting of any amounts it has received or collected under this section and any expenses incurred in connection with that receipt or collection. The amounts received, net of any expenses incurred in connection with collection of the amounts, must be set off against the guaranty association's claim filed under Section 21A.251 for the payments that were reimbursed.

(8) To the extent that a guaranty association pays a claim within the deductible amount that is not reimbursed by either the receiver or by policyholder payments, the guaranty association has a claim for those amounts in the delinquency proceeding in accordance with Section 21A.251.

(9) Nothing in this section limits any rights of a guaranty association under applicable law to obtain reimbursement for claims payments made by the guaranty association under policies of the insurer or for the association's related expenses.

(i) If a claim that is subject to a deductible agreement and secured by collateral is not covered by any guaranty association, the following provisions apply:

(1) The receiver is entitled to retain as an asset of the estate any collateral or deductible reimbursements obtained by the receiver.

(2) If a policyholder fails to assume an obligation under a deductible agreement to pay a claim, the receiver shall use the collateral to adjust and pay the claim to the extent that the available collateral, after any allocation under Subsection (d), (e), or (f), is sufficient to pay all outstanding and anticipated claims within the deductible. If the collateral is exhausted and all reasonable means of collection against the insured have been exhausted, the remaining claims shall be subject to the provisions of Sections 21A.251 and 21A.301.

(3) The receiver is entitled to deduct from collateral reasonable actual expenses incurred in fulfilling the receiver's responsibilities under this section. Any remaining expenses that are not deducted from the reimbursements are payable subject to Section 21A.015.

[Sections 21A.214-21A.250 reserved for expansion]

SUBCHAPTER F. CLAIMS

Sec. 21A.251. FILING OF CLAIMS. (a) Except as provided by this subsection, proof of all claims must be filed with the liquidator in the form required by Section 21A.252 on or before the last day for filing specified in the notice required under Section 21A.155, which date may not be later than 18 months after entry of the order of liquidation, unless the receivership court, for good cause shown, extends the time, except that proofs of claims for cash surrender values or other investment values in life insurance and annuities and for any other policies insuring the lives of persons need not be filed unless the liquidator expressly so requires. The receivership court, only upon application of the liquidator, may allow alternative procedures and requirements for the filing of proofs of claim or for allowing or proving claims. Upon application, if the receivership court dispenses with the requirements of filing a proof of claim by a person or a class or group of persons, a proof of claim for the person, class, or group is deemed to have been filed for all purposes, except that the receivership court's waiver of proof of claim requirements does not impact guaranty association proof of claim filing requirements or coverage determinations to the extent the guaranty fund statute or filing requirements are inconsistent with the receivership court's waiver of proof.

(b) The liquidator shall permit a claimant that makes a late filing to share ratably in distributions, whether past or future, as if the claim were not filed late, to the extent that the payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(1) the eligibility to file a proof of claim was not known to the claimant, and the claimant filed a proof of claim not later than the 90th day after the date of first learning of the eligibility;

(2) a transfer to a creditor was avoided under Section 21A.202, 21A.203, 21A.204, or 21A.206, or was voluntarily surrendered under Section 21A.208, and the filing satisfies the conditions of Section 21A.208; or

(3) the valuation under Section 21A.260, of security held by a secured creditor shows a deficiency, and the claim for the deficiency is filed not later than the 30th day after the valuation.

(c) The liquidator may petition the receivership court to set a date before which all late claims under Subsection (b) must be filed.

(d) The liquidator shall permit guaranty associations to file claims late and to receive a ratable share of distributions, whether past or future, as if the claims were not late.

Sec. 21A.252. PROOF OF CLAIM. (a) Proof of claim consists of a statement signed by the claimant or on behalf of the claimant that includes all of the following, as applicable:

(1) the particulars of the claim, including the consideration given for it;

(2) the identity and amount of the security on the claim;

(3) the payments, if any, made on the debt;

(4) that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;

(5) any right of priority of payment or other specific right asserted by the claimant;

(6) the name and address of the claimant and the attorney, if any, who represents the claimant; and

(7) the claimant's social security or federal employer identification number.

(b) The liquidator may require that:

(1) a prescribed form be used; and

(2) other information and documents be included.

(c) At any time the liquidator may:

(1) require the claimant to present information or evidence supplementary to that required under Subsection (a); and

(2) take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(d) Any guaranty association must be permitted to file a single omnibus proof of claim for all claims of the association in connection with payment of claims of the insurer. The omnibus proof of claim may be periodically updated by the association, and the association may be required to submit a reasonable amount of documentation in support of the claim. A guaranty association's claim under this Subsection may include amounts for anticipated payments after the closing of the receivership including incurred but not reported claims.

Sec. 21A.253. ALLOWANCE OF CLAIMS. (a) Except as provided in Subsections (i) and (l), the liquidator shall review all claims duly filed in the liquidation proceeding and shall further investigate as the liquidator considers

necessary. Consistent with the provisions of this chapter, the liquidator may allow, disallow, or compromise the amount for which claims will be recommended to the receivership court, unless the liquidator is required by law to accept claims as settled by a person or organization, including a guaranty association, subject to any statutory or contractual rights of the affected reinsurers to participate in the claims allowance process. No claim under a policy of insurance may be allowed for an amount in excess of the applicable policy limits.

(b) Pursuant to the review, the liquidator shall provide written notice of the claim determination by any means authorized by Section 21A.007 to the claimant or the claimant's attorney and may provide notice to any reinsurer that is or may be liable in respect of the claim. The notice must set forth the amount of the claim allowed by the liquidator, if any, and the priority class of the claim as established in Section 21A.301.

(c) Not later than the 45th day after the mailing of the notice as set forth in Subsection (b), those noticed may submit written objections to the liquidator. Any submitted objections must clearly set out all facts and the legal basis, if any, for the objections and the reasons why the claim should be allowed at a different amount or in a different priority class. If no timely objection is filed, the determination is final.

(d) A claim that has not become mature as of the coverage termination date established under Section 21A.201 because payment on the claim is not yet due may be allowed as if it were mature. A claim that is allowed under this Subsection may be discounted to present value based upon a reasonable estimated date of the payment, if the liquidator determines that the present value of the payment is materially less than the amount of the payment.

(e) A judgment or order against an insured or the insurer entered after the date of the initial filing of a successful petition for receivership, or within 120 days before the initial filing of the petition, and a judgment or order against an insured or the insurer entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages.

(f) Claims under employment contracts by directors, officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to any order of receivership, unless explicitly approved in writing by:

(1) the commissioner prior to an order of receivership;

(2) the rehabilitator before the entry of an order of liquidation; or

(3) the liquidator after the entry of an order of liquidation.

(g) The total liability of the insurer to all claimants arising out of the same act or policy may not be greater than the insurer's total liability would have been were the insurer not in liquidation.

(h) The liquidator shall disallow claims for de minimis amounts as determined by the receivership court as being reasonable and necessary for administrative convenience.

(i) A claim that does not contain all the applicable information required by Section 21A.252 need not be further reviewed or adjudicated, and may be denied or disallowed by the liquidator subject to the notice and objection procedures in this section.

(j) The liquidator may reconsider a claim on the basis of additional information and amend the recommendation to the receivership court. The claimant must be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The receivership court may amend its allowance or disallowance as appropriate.

(k) The liquidator is not required to process claims for any class until it appears reasonably likely that property will be available for a distribution to that class. If there are insufficient assets to justify processing all claims for any class listed in Section 21A.301, the liquidator shall report the facts to the receivership court and make such recommendations as may be appropriate for handling the remainder of the claims.

(l) Any claim by a lessor for damages resulting from the termination of a lease of real property shall be disallowed to the extent that the claim exceeds:

(1) the rent reserved by the lease, without acceleration, for the longer of one year or 15 percent of the remaining term of the lease, not to exceed three years, following the earlier of:

(A) the date of the filing of the petition; or

(B) the date on which the lessor repossessed or the lessee surrendered the leased property; and

(2) any unpaid rent due under the lease, without acceleration, on the earlier of the dates described by Subdivision (1).

(m) If a claim is fully covered by a guaranty association, the liquidator has no obligation to process the claim in accordance with this section and may refuse to process the claim in accordance with this section.

Sec. 21A.254. CLAIMS UNDER OCCURRENCE POLICIES, SURETY BONDS, AND SURETY UNDERTAKINGS. (a) Subject to the provisions of Section 21A.253, any insured has the right to file a claim for the protection afforded under the insured's policy, regardless of whether a claim is known at the time of filing, if the policy is an occurrence policy.

(b) Subject to the provisions of Section 21A.253, an obligee under a surety bond or surety undertaking has the right to file a claim for the protection afforded under the surety bond or surety undertaking issued by the insurer under which the obligee is the beneficiary, regardless of whether a claim is known at the time of filing.

(c) After a claim is filed under Subsection (a) or (b), at the time that a specific claim is made by or against the insured or by the obligee, the insured or the obligee shall supplement the claim, and the receiver shall treat the claim as a contingent or unliquidated claim under Section 21A.255.

Sec. 21A.255. ALLOWANCE OF CONTINGENT AND UNLIQUIDATED CLAIMS. (a) A claim of an insured or third party may be allowed under Section 21A.253, regardless of the fact that the claim was

contingent or unliquidated, if any contingency is removed in accordance with Subsection (b) and the value of the claim is determined. For purposes of this section, a claim is contingent if:

(1) the accident, casualty, disaster, loss, event, or occurrence insured, reinsured, or bonded or reinsured against occurred on or before the date fixed under Section 21A.151; and

(2) the act or event triggering the insurer's obligation to pay has not occurred as of the date fixed under Section 21A.151.

(b) Unless the receivership court directs otherwise, a contingent claim may be allowed if the claimant has presented proof reasonably satisfactory to the liquidator of the insurer's obligation to pay or the claim was based on a cause of action against an insured of the insurer and:

(1) it may be reasonably inferred from proof presented upon the claim that the claimant would be able to obtain a judgment; and

(2) the person has furnished suitable proof, unless the receivership court for good cause shown otherwise directs, that no further valid claims can be made against the insurer arising out of the cause of action other than those already presented.

(c) The liquidator may petition the receivership court to set a date before which all claims under this section are final. In addition to the notice requirements of Section 21A.007, the liquidator shall give notice of the filing of the petition to all claimants with claims that remain contingent or unliquidated under this section.

Sec. 21A.256. SPECIAL PROVISIONS FOR THIRD-PARTY CLAIMS. (a) When any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator on or before the last day for filing claims.

(b) Whether or not the third party files a claim, the insured may file a claim on the insured's own behalf in the liquidation.

(c) The liquidator may make recommendations to the receivership court for the allowance of an insured's claim after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the receivership court, the liquidator shall withhold any distribution payable on the claim, pending the outcome of litigation and negotiation between the insured and the third party. The liquidator may reconsider the claim as provided in Section 21A.253(j). As claims against the insured are settled or barred, the insured or third party, as appropriate, shall be paid from the amount withheld the same percentage distribution as was paid on other claims of like priority, based on the lesser of the amount actually due from the insured by action or paid by agreement plus the reasonable costs and expense of defense, or the amount allowed on the claims by the receivership court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed property of the insurer.

(d) If several claims founded upon one policy are timely filed under this section, whether by third parties or as claims by the insured, and the aggregate amount of the timely filed allowed claims exceeds the aggregate policy limits, the liquidator may:

(1) apportion the policy limits ratably among the timely filed allowed claims; or

(2) give notice to the insured, known third parties, and affected guaranty associations that the aggregate policy limits have been exceeded. On and after the 30th day after the date of the liquidator's notice, further amounts may not be allowed, the policy limits shall be apportioned ratably among the timely filed allowed claims, and any additional claims shall be rejected.

(e) Claims by the insured under Subsection (d) must be evaluated as described by Subsection (c). If any insured's claim is subsequently reduced under Subsection (c), the amount freed by the reduction must be apportioned ratably among the claims which have been reduced under Subsection (d).

(f) A claim may not be allowed under this section to the extent the claim is covered by any guaranty association.

(g) A claimant may withdraw a proof of claim with the liquidator's approval. The liquidator may approve the withdrawal only upon a showing of good cause and after giving notice of the withdrawal to the insured.

(h) The filing of a proof of claim in connection with a claim against an insured has the following effect on the rights of the claimant and the insured:

(1) By filing a proof of claim, a claimant waives any right to pursue the personal assets of the insured with respect to the claim, to the extent of the coverage or policy limits provided by the insurer, and agrees that to the extent of the coverage or policy limits provided by the insurer, the claimant will seek satisfaction of the claim against the insured solely from distributions paid by the liquidator on the claim and from any payments that a guaranty association may pay on account of the claim, except as provided in this section.

(2) The waiver provided under this section is conditioned upon the cooperation of the insured with the liquidator and any applicable guaranty association in the defense of the claim. The waiver provided under this section does not operate to:

(A) discharge the guaranty association from any of the association's responsibilities and duties;

(B) release the insured with respect to any claim in excess of the coverage or policy limits provided by the insurer or any other responsible party; or

(C) release the insured with respect to any claim by a guaranty association for reimbursement under the law applicable to the guaranty association.

(3) The waiver provided under this section is void if:

(A) a claimant withdraws the claimant's proof of claim under Subsection (g); or

(B) the liquidator avoids insurance coverage in connection with a proof of the claim.

(4) The liquidator shall provide, where applicable, notice of the election of remedies provision in this section on any proof of claim form the liquidator distributes. The notice must be inserted above the claimant's signature line in typeface not smaller than the typeface of the rest of the notice and, in any event not smaller than a 14-point font, and must include a statement substantially similar to the following: "I understand by filing this claim in the estate of the insurer I am waiving any right to pursue the personal assets of the insured to the extent that there are policy limits or coverage provided by the now insolvent insurer."

Sec. 21A.257. DISPUTED CLAIMS. (a) When objections to the liquidator's proposed treatment of a claim are filed and the liquidator does not alter the determination of the claim as a result of the objections, the liquidator shall ask the receivership court for a hearing pursuant to Section 21A.007.

(b) The provisions of this section are not applicable to disputes with respect to coverage determinations by a guaranty association as part of the association's statutory obligations.

(c) The final disposition by the receivership court of a disputed claim is deemed a final judgment for purposes of appeal.

Sec. 21A.258. LIQUIDATOR'S RECOMMENDATIONS TO RECEIVERSHIP COURT. The liquidator shall present to the receivership court, for approval, reports of claims settled or determined by the liquidator under Section 21A.253. The reports must be presented from time to time as determined by the liquidator and must include information identifying the claim and the amount and priority class of the claim.

Sec. 21A.259. CLAIMS OF CODEBTORS. If a creditor does not timely file a proof of the creditor's claim, an entity that is liable to the creditor together with the insurer, or that has secured the creditor, may file a proof of the claim.

Sec. 21A.260. SECURED CREDITORS' CLAIMS. (a) The value of any security held by a secured creditor must be determined in one of the following ways:

(1) by converting the same into money according to the terms of the agreement pursuant to which the security was delivered to the creditor; or

(2) by agreement or litigation between the creditor and the liquidator.

(b) If a surety has paid any losses or loss adjustment expenses under its own surety instrument before any petition initiating a delinquency proceeding is filed and the principal to the instrument has posted collateral that remains available to reimburse the losses or loss adjustment expenses at the time the petition is filed and that collateral has not been credited against the payments made, then the receiver has the first priority to use the collateral to reimburse the surety for any pre-petition losses and expenses.

(c) If the principal under a surety bond or surety undertaking has pledged any collateral, including a guaranty or letter of credit, to secure the principal's reimbursement obligation to the insurer issuing the bond or undertaking, the claim of any obligee, or subject to the discretion of the receiver, of any completion contractor under the surety bond or surety undertaking must be satisfied first out of the collateral or its proceeds.

(d) In making any distribution to an obligee or completion contractor under Subsection (c), the receiver shall retain a sufficient reserve for any other potential claim against that collateral.

(e) If collateral is insufficient to satisfy in full all potential claims against it under Subsections (c) and (g), the claims against the collateral must be paid on a pro rata basis, and an obligee or completion contractor under Subsection (c) has a claim, subject to allowance under Section 21A.253, for any deficiency.

(f) If the time to assert claims against a surety bond or a surety undertaking has expired, and all claims described by this section have been satisfied in full, any remaining collateral pledged under the surety bond or surety undertaking must be returned to the principal under the bond or undertaking.

(g) To the extent that a guaranty association has made a payment relating to a claim against a surety bond, the guaranty association shall first be reimbursed for that payment and related expenses out of the available collateral or proceeds related to the surety bond. To the extent that the collateral is sufficient, the guaranty association shall be reimbursed 100 percent of its payment. If the collateral is insufficient to satisfy in full all potential claims against the collateral under Subsection (c) and this subsection, a guaranty association that has paid claims on the surety bond is entitled to a pro rata share of the available collateral in accordance with Subsection (e), and the guaranty association has claims against the general assets of the estate in accordance with Section 21A.253 for any deficiency. Any payment made to a guaranty association under this subsection from collateral may not be deemed early access or otherwise deemed a distribution out of the general assets or property of the estate, and the guaranty association receiving payment shall subtract any payment from the collateral from the association's final claims against the estate.

(h) An amount determined under Subsection (a) shall be credited upon the secured claim, and the claimant may file a proof of claim, subject to all other provisions of this chapter for any deficiency, which must be treated as an unsecured claim. If the claimant surrenders the claimant's security to the liquidator, the entire claim is treated as if unsecured.

(i) The liquidator may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of the property to the extent of any benefit to the holder of such claim.

Sec. 21A.261. QUALIFIED FINANCIAL CONTRACTS. (a) Notwithstanding any other provision of this chapter, including any other provision of this chapter permitting the modification of contracts, or other law of this state, a person may not be stayed or prohibited from exercising:

(1) a contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of:

(A) the insolvency, financial condition, or default of the insurer at any time, provided that the right is enforceable under applicable law other than this chapter; or

(B) the commencement of a formal delinquency proceeding under this chapter;

(2) any right under a pledge, security, collateral, or guarantee agreement, or any other similar security arrangement or credit support document, relating to a netting agreement or qualified financial contract; or

(3) subject to any provision of Section 21A.209(b), any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract where the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting.

(b) Upon termination of a netting agreement, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under this chapter shall be transferred to, or on the order of the receiver for, the insurer, even if the insurer is the defaulting party and notwithstanding any provision in the netting agreement that may provide that the nondefaulting party is not required to pay any net or settlement amount due to the defaulting party upon termination. Any limited two-way payment provision in a netting agreement with an insurer that has defaulted is deemed to be a full two-way payment provision as against the defaulting insurer. Any such property or amount is, except to the extent it is subject to one or more secondary liens or encumbrances, a general asset of the insurer.

(c) In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter, the receiver shall either:

(1) transfer to one party, other than an insurer subject to a proceeding under this chapter, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including:

(A) all rights and obligations of each party under each netting agreement and qualified financial contract; and

(B) all property, including any guarantees or credit support documents, securing any claims of each party under each netting agreement and qualified financial contract; or

(2) transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in Subdivision (1), with respect to the counterparty and any affiliate of the counterparty.

(d) If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use its best efforts to notify any person who is party to the netting agreements or qualified financial contracts of the transfer not later than noon, the receiver's local time, on the business day following the transfer. For purposes of this subsection, "business day" means a day other than a Saturday, a Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(e) Notwithstanding any other provision of this chapter, a receiver may not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge, security, or

collateral or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract, that is made before the commencement of a formal delinquency proceeding under this chapter. However, a transfer may be avoided under Section 21A.205(a) if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

(f) In exercising any of the receiver's powers under this chapter to disaffirm or repudiate a netting agreement or qualified financial contract, the receiver shall take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection with the agreement or contract in its entirety. Notwithstanding any other provision of this chapter, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding rehabilitation case must be determined and must be allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation. The amount of the claim must be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. For purposes of this subsection, the term "actual direct compensatory damages" does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims.

(g) For purposes of this section, the term "contractual right" includes any right, whether or not evidenced in writing, arising under:

(1) statutory or common law;

(2) a rule or bylaw of a national securities exchange, national securities clearing organization, or securities clearing agency;

(3) a rule, bylaw, or resolution of the governing body of a contract market or its clearing organization; or

(4) law merchant.

(h) The provisions of this section do not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

(i) All rights of counterparties under this chapter apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

[Sections 21A.262-21A.300 reserved for expansion]

SUBCHAPTER G. DISTRIBUTIONS

Sec. 21A.301. PRIORITY OF DISTRIBUTION. The priority of payment of distributions on unsecured claims must be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class

shall be paid in full, or adequate funds retained for their payment, before the members of the next class receive payment, and all claims within a class must be paid substantially the same percentage of the amount of the claim. Except as provided by Subsections (a)(2), (a)(3), (i), and (k), subclasses may not be established within a class. No claim by a shareholder, policyholder, or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies. The order of distribution of claims shall be:

(a) Class 1. (1) The costs and expenses of administration expressly approved or ratified by the liquidator, including the following:

(A) the actual and necessary costs of preserving or recovering the property of the insurer;

(B) reasonable compensation for all services rendered on behalf of the administrative supervisor or receiver;

(C) any necessary filing fees;

(D) the fees and mileage payable to witnesses;

(E) unsecured loans obtained by the receiver; and

(F) expenses, if any, approved by the rehabilitator of the insurer and incurred in the course of the rehabilitation that are unpaid at the time of the entry of the order of liquidation.

(2) The reasonable expenses of a guaranty association, including overhead, salaries and other general administrative expenses allocable to the receivership to include administrative and claims handling expenses and expenses in connection with arrangements for ongoing coverage, other than expenses incurred in the performance of duties under Section 2602.113, Section 2(3) of Article 21.28-C, and Section 12 of Article 21.28-D or similar duties under the statute governing a similar organization in another state. In the case of the Texas Property and Casualty Insurance Guaranty Association and other property and casualty guaranty associations, the expenses shall include loss adjustment expenses, including adjusting and other expenses and defense and cost containment expenses. In the event that there are insufficient assets to pay all of the costs and expenses of administration under Subsection (a) (1) and the expenses of a guaranty association, the costs and expenses under Subsection (a) (1) shall have priority over the expenses of a guaranty association. In this event, the expenses of a guaranty association shall be paid on a pro rata basis after the payment of costs and expenses under Subsection (a) (1) in full.

(3) For purposes of Subsection (a)(1)(E), any unsecured loan obtained by the receiver, unless by its terms it otherwise provides, has priority over all other costs of administration. Absent agreement to the contrary, all claims in this subclass share pro rata.

(4) Except as expressly approved by the receiver, any expenses arising from a duty to indemnify the directors, officers, or employees of the insurer are excluded from this class and, if allowed, are Class 5 claims.

(b) Class 2. All claims under policies of insurance, including third-party claims, claims under nonassessable policies for unearned premium, claims of obligees and, subject to the discretion of the receiver, completion contractors under surety bonds and surety undertakings other than bail bonds, mortgage or

financial guaranties, or other forms of insurance offering protection against investment risk, claims by principals under surety bonds and surety undertakings for wrongful dissipation of collateral by the insurer or its agents, and claims incurred during the extension of coverage provided for in Section 21A.152. All other claims incurred in fulfilling the statutory obligations of a guaranty association not included in Class 1, including indemnity payments on covered claims and, in the case of the Life, Accident, Health, and Hospital Service Insurance Guaranty Association or another life and health guaranty association, all claims as a creditor of the impaired or insolvent insurer for all payments of and liabilities incurred on behalf of covered claims or covered obligations of the insurer and for the funds needed to reinsure those obligations with a solvent insurer. Notwithstanding any provision of this chapter, the following claims are excluded from Class 2 priority:

(1) obligations of the insolvent insurer arising out of reinsurance contracts;

(2) obligations, excluding unearned premium claims on policies other than reinsurance agreements, incurred after:

(A) the expiration date of the insurance policy;

(B) the policy has been replaced by the insured or canceled at the insured's request; or

(C) the policy has been canceled as provided by this chapter;

(3) obligations to insurers, insurance pools, or underwriting associations and their claims for contribution, indemnity, or subrogation, equitable or otherwise;

(4) any claim that is in excess of any applicable limits provided in the insurance policy issued by the insurer;

(5) any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy;

(6) tort claims of any kind against the insurer and claims against the insurer for bad faith or wrongful settlement practices; and

(7) claims of the guaranty associations for assessments not paid by the insurer, which must be paid as claims in Class 5.

(c) Class 3. Claims of the federal government not included in Class 3.

(d) Class 4. Debts due employees for services or benefits to the extent that the debts do not exceed $5,000 or two months salary, whichever is the lesser, and represent payment for services performed within one year before the entry of the initial order of receivership. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.

(e) Class 5. Claims of other unsecured creditors not included in Classes 1 through 4, including claims under reinsurance contracts, claims of guaranty associations for assessments not paid by the insurer, and other claims excluded from Class 2.

(f) Class 6. Claims of any state or local governments, except those specifically classified elsewhere in this section. Claims of attorneys for fees and expenses owed them by an insurer for services rendered in opposing a formal delinquency proceeding. In order to prove the claim, the claimant must show that

the insurer that is the subject of the delinquency proceeding incurred the fees and expenses based on its best knowledge, information, and belief, formed after reasonable inquiry, indicating opposition was in the best interests of the insurer, was well grounded in fact, and was warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that opposition was not pursued for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the litigation.

(g) Class 7. Claims of any state or local government for a penalty or forfeiture, but only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The balance of the claims must be treated as Class 9 claims under Subsection (j).

(h) Class 8. Except as provided in Sections 21A.251(b) and (d), late filed claims that would otherwise be classified in Classes 2 through 7.

(i) Class 9. Surplus notes, capital notes or contribution notes or similar obligations, premium refunds on assessable policies, and any other claims specifically assigned to this class. Claims in this class are subject to any subordination agreements related to other claims in this class that existed before the entry of the liquidation order.

(j) Class 10. Interest on allowed claims of Classes 1 through 9, according to the terms of a plan proposed by the liquidator and approved by the receivership court.

(k) Class 11. Claims of shareholders or other owners arising out of their capacity as shareholders or other owners, or any other capacity, except as they may be qualified in Class 2, 5, or 10. Claims in this class are subject to any subordination agreements related to other claims in this class that existed before the entry of the liquidation order.

Sec. 21A.302. PARTIAL AND FINAL DISTRIBUTIONS OF ASSETS. (a) With the approval of the receivership court, the liquidator may declare and pay one or more distributions to claimants whose claims have been allowed. Distributions paid under this subsection must be paid at substantially the same percentage of the amount of the claim.

(b) In determining the percentage of distributions to be paid on these claims, the liquidator may consider the estimated value of the insurer's property, including estimated reinsurance recoverables in connection with the insurer's estimated liabilities for unpaid losses and loss expenses and for incurred but not reported losses and loss expenses, and the estimated value of the insurer's liabilities, including estimated liabilities for unpaid losses and loss expenses and for incurred but not reported losses and loss expenses.

(c) Distribution of property in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the receivership court.

(d) Notwithstanding the provisions of Subsection (a) and Subchapter D, the liquidator is authorized to pay benefits under a workers' compensation policy after the entry of the liquidation order if:

(1) the insurer has accepted liability and no bona fide dispute exists;

(2) payments under the policy commenced before the entry of the liquidation order; and

(3) future or past indemnity or medical payments are due under the policy.

(e) Claim payments made under Subsection (d) may continue until the date that a guaranty association assumes responsibility for claim payments under the policy.

(f) Any claim payments made under Subsection (d) and any related expenses must be treated as early access payments under Section 21A.303 to the guaranty association responsible for the claims.

Sec. 21A.303. EARLY ACCESS PAYMENTS. (a) For purposes of this section, "distributable assets" means all general assets of the liquidation estate less:

(1) amounts reserved, to the extent necessary and appropriate, for the entire Section 21A.301(a) expenses of the liquidation through and after its closure; and

(2) to the extent necessary and appropriate, reserves for distributions on claims other than those of the guaranty associations falling within the priority classes of claims established in Section 21A.301(c).

(b) Early access payments to guaranty associations must be made as soon as possible after the entry of a liquidation order and as frequently as possible after the entry of the order, but at least annually if distributable assets are available to be distributed to the guaranty associations, and must be in amounts consistent with this section. Amounts advanced to an affected guaranty association pursuant to this section shall be accounted for as advances against distributions to be made under Section 21A.302. Where sufficient distributable assets are available, amounts advanced are not limited to the claims and expenses paid to date by the guaranty associations; however, the liquidator may not distribute distributable assets to the guaranty associations in excess of the anticipated entire claims of the guaranty associations falling within the priority classes of claims established in Sections 21A.301(b) and (c).

(c) Within 120 days after the entry of an order of liquidation by the receivership court, and at least annually after the entry of the order, the liquidator shall apply to the receivership court for approval to make early access payments out of the general assets of the insurer to any guaranty associations having obligations arising in connection with the liquidation or shall report that there are no distributable assets at that time based on financial reporting as required in Section 21A.016. The liquidator may apply to the receivership court for approval to make early access payments more frequently than annually based on additional information or the recovery of material assets.

(d) Within 60 days after approval by the receivership court of the applications in Subsection (c), the liquidator shall make any early access payments to the affected guaranty associations as indicated in the approved application.

(e) Notice of each application for early access payments, or of any report required pursuant to this section, must be given in accordance with Section 21A.007 to the guaranty associations that may have obligations arising from the liquidation. Notwithstanding the provisions of Section 21A.007, the liquidator shall provide these guaranty associations with at least 30 days' actual notice of the filing of the application and with a complete copy of the application prior to any action by the receivership court. Any guaranty association that may have obligations arising in connection with the liquidation has:

(1) the right to request additional information from the liquidator, who may not unreasonably deny such request; and

(2) the right to object as provided by Section 21A.007 to any part of each application or to any report filed by the liquidator pursuant to this section.

(f) In each application regarding early access payments, the liquidator shall, based on the best information available to the liquidator at the time, provide, at a minimum, the following:

(1) to the extent necessary and appropriate, the amount reserved for the entire expenses of the liquidation through and after its closure and for distributions on claims falling within the priority classes of claims established in Sections 21A.301(b) and (c);

(2) the computation of distributable assets and the amount and method of equitable allocation of early access payments to each of the guaranty associations; and

(3) the most recent financial information filed with the National Association of Insurance Commissioners by the liquidator.

(g) Each guaranty association that receives any payments pursuant to this section agrees, upon depositing the payment in any account to its benefit, to return to the liquidator any amount of these payments that may be required to pay claims of secured creditors and claims falling within the priority classes of claims established in Section 21A.301(a), (b), or (c). No bond may be required of any guaranty association.

(h) Nothing in this section affects the method by which a guaranty association determines the association's statutory coverage obligations.

(i) Without the consent of the affected guaranty associations or an order of the receivership court, the liquidator may not offset the amount to be dispersed to any guaranty association by the amount of any specific deposit or any other statutory deposit or asset of the insolvent insurer held in that state unless the association has actually received the deposit.

Sec. 21A.304. UNCLAIMED AND WITHHELD FUNDS. (a) If any funds of the receivership estate remain unclaimed after the final distribution under Section 21A.302, the funds must be placed in a segregated unclaimed funds account held by the commissioner. If the owner of any of the unclaimed funds presents proof of ownership satisfactory to the commissioner before the second anniversary of the date of the termination of the delinquency proceeding, the commissioner shall remit the funds to the owner. The interest earned on funds held in the unclaimed funds account may be used to pay any administrative costs related to the handling or return of unclaimed funds.

(b) If any amounts held in the unclaimed funds account remain unclaimed on or after the second anniversary of the date of the termination of the delinquency proceeding, the commissioner may file a motion for an order directing the disposition of the funds in the court in which the delinquency proceeding was pending. Any costs incurred in connection with the motion may be paid from the unclaimed funds account. The motion shall identify the name of the insurer, the names and last known addresses of the persons entitled to the unclaimed funds, if known, and the amount of the funds. Notice of the motion shall be given as directed by the court. Upon a finding by the court that the funds have not been claimed before the second anniversary of the date of the termination of the delinquency proceeding, the court shall order that any claims for unclaimed funds and any interest earned on the unclaimed funds that has not been expended under Subsection (a) are abandoned and that the funds must be disbursed under one of the following methods:

(1) the amounts may be deposited in the general receivership expense account under Subsection (c);

(2) the amounts may be transferred to the comptroller, and deposited into the general revenue fund; or

(3) the amounts may be used to reopen the receivership in accordance with Section 21A.353 and be distributed to the known claimants with approved claims.

(c) The commissioner may establish an account for the following purposes:

(1) to pay general expenses related to the administration of receiverships; and

(2) to advance funds to any receivership that does not have sufficient cash to pay its operating expenses.

(d) Any advance to a receivership under Subsection (c)(2) may be treated as a claim under Section 21A.301 as agreed at the time the advance is made or, in the absence of an agreement, in the priority determined to be appropriate by the court.

(e) If the commissioner determines at any time that the funds in the account exceed the amount required, the commissioner may transfer the funds or any part of the funds to the comptroller, and the transferred funds must be deposited into the general revenue fund.

[Sections 21A.305-21A.350 reserved for expansion]

SUBCHAPTER H. DISCHARGE

Sec. 21A.351. CONDITION ON RELEASE FROM DELINQUENCY PROCEEDINGS. Until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses of the obligations and interest on all the payments and expenses, are repaid to the guaranty associations, unless otherwise provided in a plan approved by the guaranty association, an insurer that is subject to any formal delinquency proceedings may not:

(1) solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;

(2) be returned to the control of its shareholders or private management; or

(3) have any of its assets returned to the control of its shareholders or private management.

Sec. 21A.352. TERMINATION OF LIQUIDATION PROCEEDINGS. When all property justifying the expense of collection and distribution has been collected and distributed under this chapter, the liquidator shall apply to the receivership court for an order discharging the liquidator and terminating the proceeding. The receivership court may grant the application and make any other orders, including orders to transfer any remaining funds that are uneconomic to distribute, or pursuant to Section 21A.302(c), assign any assets that remain unliquidated, including claims and causes of action, as may be deemed appropriate.

Sec. 21A.353. REOPENING RECEIVERSHIP. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the court to reopen the delinquency proceeding for good cause, including the discovery of additional property. If the court is satisfied that there is justification for reopening, it shall so order.

Sec. 21A.354. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF RECEIVERSHIP. (a) When it appears to the receiver that the records of the insurer in receivership are no longer useful, the receiver may recommend to the receivership court and the receivership court shall direct what records should be destroyed.

(b) If the receiver determines that any records should be maintained after the closing of the delinquency proceeding, the receiver may reserve property from the receivership estate for the maintenance of the records, and any amounts so retained are administrative expenses of the estate under Section 21A.301(a). Any records retained pursuant to this subsection must be transferred to the custody of the commissioner, and the commissioner may retain or dispose of the records as appropriate, at the commissioner's discretion. Any records of a delinquent insurer that are transferred to the commissioner may not be considered records of the department for any purposes, and Chapter 552, Government Code, does not apply to those records.

Sec. 21A.355. EXTERNAL AUDIT OF THE RECEIVER'S BOOKS. (a) The receivership court may, as it deems desirable, order audits to be made of the books of the receiver relating to any receivership established under this chapter. A report of each audit shall be filed with the commissioner and with the receivership court.

(b) The books, records, and other documents of the receivership must be made available to the auditor at any time without notice.

(c) The expense of each audit shall be considered a cost of administration of the receivership.

[Sections 21A.356-21A.400 reserved for expansion]

SUBCHAPTER I. INTERSTATE RELATIONS

Sec. 21A.401. ANCILLARY CONSERVATION OF FOREIGN INSURERS. (a) The commissioner may initiate an action against a foreign insurer pursuant to Section 21A.051 on any of the grounds stated in that section or on the basis that:

(1) any of the foreign insurer's property has been sequestered, garnished, or seized by official action in its domiciliary state or in any other state;

(2) the foreign insurer's certificate of authority to do business in this state has been revoked or was never issued and there are residents of this state with unpaid claims or in-force policies; or

(3) initiation of the action is necessary to enforce a stay under Section 17, Article 21.28-C, Section 18, Article 21.28-D, or Section 2602.259.

(b) If a domiciliary receiver has been appointed, the commissioner may initiate an action against a foreign insurer under Subsection (a)(1) or (a)(2) only with the consent of the domiciliary receiver.

(c) An order entered pursuant to this section must appoint the commissioner as conservator. The conservator's title to assets must be limited to the insurer's property and records located in this state.

(d) Notwithstanding Section 21A.201(c), the conservator shall hold and conserve the assets located in this state until the commissioner in the insurer's domiciliary state is appointed its receiver or until an order terminating conservation is entered under Subsection (g). Once a domiciliary receiver is appointed, the conservator shall turn over to the domiciliary receiver all property subject to an order under this section.

(e) The conservator may liquidate property of the insurer as necessary to cover the costs incurred in the initiation or administration of a proceeding under this section.

(f) The court in which an action under this section is pending may issue a finding of insolvency or an ancillary liquidation order. The court may enter an ancillary liquidation order only for the limited purposes of:

(1) liquidating assets in this state to pay costs under Subsection (e); or

(2) activating relevant laws applicable to guaranty associations to pay valid claims that are not being paid by the insurer.

(g) The conservator may at any time petition the receivership court for an order terminating an order entered under this section.

Sec. 21A.402. DOMICILIARY RECEIVERS APPOINTED IN OTHER STATES. (a) A domiciliary receiver appointed in another state is vested by operation of law with title to, and may summarily take possession of, all property and records of the insurer in this state. Notwithstanding any other provision of law regarding special deposits, special deposits held in this state shall be, upon the entry of an order of liquidation with a finding of insolvency, distributed to the guaranty associations in this state as early access payments subject to Section 21A.303, in relation to the lines of business for which the special deposits were made. The holder of any special deposit shall account to the domiciliary receiver for all distributions from the special deposit at the time of the distribution. The

statutory provisions of another state and all orders entered by courts of competent jurisdiction in relation to the appointment of a domiciliary receiver of an insurer and any related proceedings in another state must be given full faith and credit in this state. For purposes of this section, "another state" means any state other than this state. This state shall treat any other state than this state as a reciprocal state.

(b) Upon appointment of a domiciliary receiver in another state, the commissioner shall, unless otherwise agreed by the receiver, immediately transfer title to and possession of all property of the insurer under the commissioner's control, including all statutory general or special deposits, to the receiver.

(c) Except as provided in Subsection (a), the domiciliary receiver shall handle special deposits and special deposit claims in accordance with federal law and the statutes pursuant to which the special deposits are required. All amounts in excess of the estimated amount necessary to administer the special deposit and pay the unpaid special deposit claims are deemed general assets of the estate. If there is a deficiency in any special deposit so that the claims secured by the special deposit are not fully discharged from the deposit, the claimants may share in the general assets of the insurer to the extent of the deficiency at the same priority as other claimants in their class of priority under Section 21A.301, but the sharing must be deferred until the other claimants of their class have been paid percentages of their claims equal to the percentage paid from the special deposit. The intent of this provision is to equalize to this extent the advantage gained by the security provided by the special deposits.

SECTION 2. Section 3(a), Article 21.28-C, Insurance Code, is amended to read as follows:

(a) This Act applies to all kinds of direct insurance, and except as provided in Section 12 of this Act, is not applicable to the following:

(1) life, annuity, health, or disability insurance;

(2) mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;

(3) fidelity or surety bonds, or any other bonding obligations;

(4) credit insurance, vendors' single-interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;

(5) insurance of warranties or service contracts;

(6) title insurance;

(7) ocean marine insurance;

(8) any transaction or combination of transactions between a person, including an affiliate of such a person, and an insurer, including an affiliate of such an insurer, that involves the transfer of investment or credit risk unaccompanied by the transfer of insurance risk, including transactions, except for workers' compensation insurance, involving captive insurers, policies in which deductible or self-insured retention is substantially equal in amount to the limit of the liability under the policy, and transactions in which the insured retains a substantial portion of the risk; or

(9) any insurance provided by or guaranteed by government.

SECTION 3. Section 5(8), Article 21.28-C, Insurance Code, is amended to read as follows:

(8) "Covered claim" means an unpaid claim of an insured or third-party liability claimant that arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this state, if that insurer becomes an impaired insurer and the third-party claimant or liability claimant or insured is a resident of this state at the time of the insured event, or the claim is a first-party claim for damage to property that is permanently located in this state. A corporation or other entity that is not an individual is considered to be a resident of the state in which the entity's principal place of business is located. "Covered claim" shall also include unearned premiums, but in no event shall a covered claim for unearned premiums exceed $25,000. Individual covered claims (including any and all derivative claims by more than one person which arise from the same occurrence, which shall be considered collectively as a single claim under this Act) shall be limited to $300,000, except that the association shall pay the full amount of any covered claim arising out of a workers' compensation claim made under a workers' compensation policy. "Covered claim" shall not include any amount sought as a return of premium under a retrospective rating plan or any amount that is directly or indirectly due any reinsurer, insurer, self-insurer, insurance pool, or underwriting association, as subrogation recoveries, reinsurance recoveries, contribution, indemnification, or otherwise, and the insured of an impaired insurer is not liable, and the reinsurer, insurer, self-insurer, insurance pool, or underwriting association is not entitled to sue or continue a suit against that insured, for any subrogation recovery, reinsurance recovery, contribution, [~~or~~] indemnity, or any other claim asserted directly or indirectly by a reinsurer, insurer, insurance pool, or underwriting association to the extent of the applicable liability limits of the policy written and issued to the insured by the insolvent insurer. "Covered claim" shall not include supplementary payment obligations, including adjustment fees and expenses, attorney's fees and expenses, court costs, interest and penalties, and interest and bond premiums incurred prior to the determination that an insurer is an impaired insurer under this Act. "Covered claim" shall not include any prejudgment or postjudgment interest that accrues subsequent to the determination that an insurer is an impaired insurer under this Act. "Covered claim" shall not include any claim for recovery of punitive, exemplary, extracontractual, or bad-faith damages, whether sought as a recovery against the insured, insurer, guaranty association, receiver, special deputy receiver, or commissioner, awarded in a court judgment against an insured or insurer. Notwithstanding any other provision of this Act, the association's liability for shareholder derivative actions or other claims for economic loss incurred by a claimant in the claimant's capacity as a shareholder under an insurance policy placed in force on or after January 1, 1992, is limited to $300,000 for each policy, inclusive of defense costs, regardless of the number of claimants under each policy. "Covered claim" shall not include, and the association shall not have any liability to an insured or third-party liability

claimant, for its failure to settle a liability claim within the limits of a covered claim under this Act. With respect to a covered claim for unearned premiums, both persons who were residents of this state at the time the policy was issued and persons who are residents of this state at the time the company is found to be an impaired insurer shall be considered to have covered claims under this Act. If the impaired insurer has insufficient assets to pay the expenses of administering the receivership or conservatorship estate, that portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a covered claim under this Act.

SECTION 4. Section 8, Article 21.28-C, Insurance Code, is amended by amending Subsection (d) and adding Subsection (i) to read as follows:

(d) The association shall investigate and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims. The association may review settlements, releases, and judgments to which the impaired insurer or its insureds were parties to determine the extent to which those settlements, releases, and judgments may be properly contested. Any judgment taken before the designation of impairment in which an insured under a liability policy or the insurer failed to exhaust all appeals, any judgment taken by default or consent against an insured or the impaired insurer, and any settlement, release, or judgment entered into by the insured or the impaired insurer, is not binding on the association, and may not be considered as evidence of liability or of damages in connection with any claim brought against the association or any other party under this Act. Notwithstanding any other provision of this Act or any other law to the contrary, a covered claim shall not include any claim filed with the guaranty association on a date that is later than eighteen months after the date of the order of liquidation and also shall not include claims that are unknown and unreported as of the date, provided, however, [~~except~~] that a claim for workers' compensation benefits is governed by Title 5, Labor Code, and the applicable rules of the Texas Workers' Compensation Commission.

(i) The association may bring an action against any third-party administrator, agent, attorney, or other representative of an insurer for which a receiver has been appointed to obtain custody and control of all information, including files, records, and electronic data, related to the insurer that is appropriate or necessary for the association, or a similar association in other states, to carry out its duties under this Act or a similar law of another state. The association has the absolute right to obtain information under this subsection through emergency equitable relief, regardless of where the information is physically located. In bringing an action under this subsection, the association is not subject to any defense, possessory lien or other type of lien, or other legal or equitable ground for refusal to surrender the information that may be asserted against the receiver of the insurer. The association is entitled to an award of reasonable attorney's fees and costs incurred by the association in any action to obtain information under this subsection. The rights granted to the association under this subsection do not affect the receiver's title to information, and information obtained under this subsection remains the property of the receiver while in the custody of the association.

SECTION 5. Section 10(g), Article 21.28-C, Insurance Code, is amended to read as follows:

(g) Venue in a suit by or against the association or commissioner relating to any action or ruling of the association or commissioner made under this Act is in Travis County. The association or commissioner is not required to give an appeal bond in an appeal of a cause of action arising under this Act.

SECTION 6. Section 11(b), Article 21.28-C, Insurance Code, is amended to read as follows:

(b) The association is entitled to recover [~~from the following persons the amount of any covered claim and costs of defense paid on behalf of that person under this Act~~]:

(1) the amount of any covered claim for workers' compensation insurance benefits and the costs of administration and defense of those claims paid under this Act from any insured employer, other than an insured who is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being described by Section 501(c)(3) of that code, whose net worth on December 31 of the year next preceding the date the insurer becomes an impaired insurer exceeds $50 million, provided that an insured's net worth on that date shall be deemed [~~is considered~~] to include the aggregate net worth of the insured and all of the insured's parent, subsidiary, and affiliated companies as computed on a consolidated basis[~~, and whose obligations under a liability policy or contract of insurance written, issued, and placed in force after January 1, 1992, are satisfied in whole or in part by payments made under this Act~~]; and

(2) the amount of any covered claim and the costs of defense paid on behalf of any person who is an affiliate of the impaired insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this Act.

SECTION 7. Section 11A, Article 21.28-C, Insurance Code, is amended to read as follows:

Sec. 11A. NET WORTH EXCLUSION. (a) Except for a workers' compensation claim governed by Title 5, Labor Code, a covered claim does not include and the association is not liable for any claim arising from a policy of insurance of any [~~The association is not liable to pay a first party claim of an~~] insured whose net worth on December 31 of the year next preceding the date the insurer becomes an impaired insurer exceeds $50 million.

(b) The net worth of an insured for purposes of this section includes the aggregate net worth of the insured and all of the insured's parent, subsidiary, and affiliated companies computed on a consolidated basis.

(c) This section does not apply:

(1) to third-party claims against an insured that has:

(A) applied for or consented to the appointment of a receiver, trustee, or liquidator for all or a substantial part of the insurer's assets;

(B) filed a voluntary petition in bankruptcy; or

(C) filed a petition or an answer seeking a reorganization or arrangement with creditors or to take advantage of any insolvency law; or

(2) if an order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating the insured bankrupt or insolvent or approving a petition seeking reorganization of the insured or of all or substantial part of its assets.

(d) In an instance described by Subsection (c) of this section, the association is entitled to assert a claim in the bankruptcy or receivership proceeding to recover the amount of any covered claim and costs of defense paid on behalf of the insured [~~This section does not exclude the payment of a covered claim for workers' compensation benefits otherwise payable under this Act~~].

(e) The association may establish procedures for requesting financial information from an insured or claimant on a confidential basis for the purpose of applying sections concerning the net worth of first-party and third-party claimants, subject to any information requested under this subsection being shared with any other association similar to the association and with the liquidator for the impaired insurer on the same confidential basis. If the insured or claimant refuses to provide the requested financial information, the association requests an auditor's certification of that information, and the auditor's certification is available but not provided, the association may deem the net worth of the insured or claimant to be in excess of $50 million at the relevant time.

(f) In any lawsuit contesting the applicability of Section 11(b) of this article or this section when the insured or claimant has declined to provide financial information under the procedure provided in the plan of operation pursuant to Section 9 of this article, the insured or claimant bears the burden of proof concerning its net worth at the relevant time. If the insured or claimant fails to prove that its net worth at the relevant time was less than the applicable amount, the court shall award the association its full costs, expenses, and reasonable attorney's fees in contesting the claim.

SECTION 8. Section 17(a), Article 21.28-C, Insurance Code, is amended to read as follows:

(a) All proceedings in which an impaired insurer is a party or is obligated to defend a party in any court in this state, except proceedings directly related to the receivership or instituted by the receiver, shall be stayed as to all parties and for all purposes for six months and any additional time thereafter as may be determined by the court from the date of the designation of impairment or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action. A deadline imposed under the Texas Rules of Civil Procedure or the Texas Rules of Appellate Procedure is tolled during the stay. Statutes of limitation or repose are not tolled during the stay, and any action filed during the stay is stayed upon the filing of the action. The court in which the delinquency proceeding is pending has exclusive jurisdiction regarding the application, enforcement, and extension of the stay and may issue injunctions or other similar orders to enforce the stay. If the impaired insurer is not domiciled in this state, the commissioner may bring an ancillary conservation [~~delinquency~~] proceeding under Section 21A.401 [~~13, Article 21.28~~] of this code, for the [~~limited~~] purpose of determining the application, enforcement, and extension of the stay.

SECTION 9. Article 21.28, Insurance Code, is repealed.

SECTION 10. (a) The changes in law made by this Act apply only to a receivership proceeding brought against an insurer under Section 2, Article 21.28, Insurance Code, that is pending on the effective date of this Act and to a receivership proceeding initiated on or after the effective date of this Act. A receivership proceeding that has terminated before the effective date of this Act is governed by the law in effect at the time the receivership proceeding terminated, and that law is continued in effect for that purpose.

(b) Except as provided by Subsection (a) of this section, the changes in law made by this Act apply only to a proceeding or cause of action brought under Chapter 21A, Insurance Code, as added by this Act, that is filed or commenced on or after the effective date of this Act. A proceeding or cause of action brought under Article 21.28, Insurance Code, as it existed before its repeal by this Act, other than a receivership proceeding brought against an insurer, that was filed or commenced before the effective date of this Act is governed by the law in effect at the time the proceeding or cause of action was filed or commenced, and that law is continued in effect for that purpose.

SECTION 11. This Act takes effect September 1, 2005.

HB 603 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Eissler called up with senate amendments for consideration at this time,

HB 603, A bill to be entitled An Act relating to the suspension, removal, or expulsion of a public school student.

Representative Eissler moved to concur in the senate amendments to **HB 603**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 927): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith,

T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Senate Amendment No. 1 (Senate Floor Amendment No. 2)

Amend **HB 603** (Committee Printing) by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS appropriately:

SECTION ___. Subsection (d), Section 37.002, Education Code, is amended to read as follows:

(d) A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. If the teacher removed the student from class because the student has engaged in the elements of any offense listed in Section 37.006(a)(2)(B) or Section 37.007(a)(2)(A) or (b)(2)(C) against the teacher, the student may not be returned to the teacher's class without the teacher's consent. The teacher may not be coerced to consent.

SECTION ___. Section 37.006, Education Code, is amended by adding Subsection (o) to read as follows:

(o) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a principal or a principal's designee shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in any violation listed in this section of the student's misconduct. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator who intentionally violates this subsection.

SECTION ___. Subsection (g), Section 37.007, Education Code, is amended to read as follows:

(g) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a [~~A~~] school district shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction [~~teacher who has regular contact with a student through a classroom assignment of the conduct~~] of a student who has engaged in any violation listed in this section of the student's misconduct. Each educator [~~A teacher~~] shall keep the information received under [~~in~~] this subsection confidential from any person not entitled to the information under this subsection,

except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator [~~a teacher~~] who intentionally violates this subsection.

SECTION ___. Subsection (j), Section 37.008, Education Code, is amended to read as follows:

(j) If a student placed in a disciplinary alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls shall inform each educator who will have responsibility for, or will be under the direction and supervision of an educator who will have responsibility for, the instruction of the student of the contents of the placement order. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The district in which the student enrolls may continue the disciplinary alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement. A district may take any action permitted by this subsection if:

(1) the student was placed in a disciplinary alternative education program by an open-enrollment charter school under Section 12.131 and the charter school provides to the district a copy of the placement order; or

(2) the student was placed in a disciplinary alternative education program by a school district in another state and:

(A) the out-of-state district provides to the district a copy of the placement order; and

(B) the grounds for the placement by the out-of-state district are grounds for placement in the district in which the student is enrolling.

HB 467 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Bailey called up with senate amendments for consideration at this time,

HB 467, A bill to be entitled An Act relating to the financing of water and sewer programs and the provision of sewer connections in disadvantaged areas in certain counties.

HB 467 - DEBATE

REPRESENTATIVE CALLEGARI: Kevin, similar question, I want to be sure that if, let's say, the county adopts the EDAPT requirements they call for in this bill and it's an amendment, does that mean that only the projects that are federally funded have to comply with the bonding requirements?

REPRESENTATIVE BAILEY: Any project in an economically disadvantaged area where state funds were used would be required.

CALLEGARI: So normal projects, normal building development projects, would not be required to comply with the bonding requirements unless they fall under this particular funding allowed by this particular act?

BAILEY: That is correct.

REMARKS ORDERED PRINTED

Representative Callegari moved to print remarks between Representative Bailey and Representative Callegari.

The motion prevailed.

Representative Bailey moved to concur in the senate amendments to **HB 467**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 928): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Campbell; Casteel; Castro; Chavez; Chisum; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Dukes; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Callegari; Driver; Dunnam; Gallego.

Senate Committee Substitute

CSHB 467, A bill to be entitled An Act relating to the financing of water and sewer programs in disadvantaged areas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 17, Water Code, is amended by adding Subchapter K-1 to read as follows:

SUBCHAPTER K-1. STATEWIDE ASSISTANCE TO ECONOMICALLY DISTRESSED AREAS FOR WATER SUPPLY AND SEWER SERVICE PROJECTS

Sec. 17.941. DEFINITIONS. In this subchapter:

(1) "Economically distressed area" means an area in this state in which:

(A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rule;

(B) financial resources are inadequate to provide water supply and sewer services that will satisfy those needs; and

(C) an established residential subdivision was located on June 1, 2005, as determined by the board.

(2) "Financial assistance" means the funds provided by the board to political subdivisions for water supply or sewer services under this subchapter.

(3) "Political subdivision" means a county, a municipality, a nonprofit water supply corporation created and operating under Chapter 67, or a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(4) "Sewer services" and "sewer facilities" mean treatment works or individual, on-site, or cluster treatment systems such as septic tanks and include drainage facilities and other improvements for proper functioning of the sewer services and other facilities.

Sec. 17.942. FINANCIAL ASSISTANCE. The economically distressed areas program account may be used by the board to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer services, including providing money from the account for the state's participation in federal programs that provide assistance to political subdivisions. Money from the proceeds of bonds issued under the authority of Section 49-d-7(b) or 49-d-8, Article III, Texas Constitution, may not be used to provide financial assistance under this subchapter.

Sec. 17.943. APPLICATION FOR FINANCIAL ASSISTANCE. (a) A political subdivision may apply to the board for financial assistance under this subchapter by submitting an application together with a plan for providing water supply or sewer services to an economically distressed area.

(b) The application and plan must include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision was created and operates;

(3) a description of the existing water supply and sewer facilities located in the area to be served by the proposed project and, along with the description, a statement prepared and certified by an engineer registered to practice in this state that the facilities do not meet minimum state standards;

(4) information identifying the median household income for the area to be served by the proposed project;

(5) a project plan prepared and certified by an engineer registered to practice in this state that:

(A) describes the proposed planning, design, and construction activities necessary for providing water supply and sewer services that meet minimum state standards; and

(B) identifies the households to which the services will be provided;

(6) a budget that estimates the total cost of providing water supply and sewer services to the economically distressed area and a proposed schedule and method for repayment of financial assistance consistent with board rules and guidelines; and

(7) the total amount of assistance requested from the economically distressed areas program account.

(c) A program of water conservation for the more effective use of water is required for the approval of an application for financial assistance under this section in the same manner as such a program is required for the approval of an application for financial assistance under Section 17.125.

(d) Before considering the application, the board may require the applicant to:

(1) participate with the board in reviewing the applicant's managerial, financial, or technical capabilities to operate the system for which assistance is being requested;

(2) provide a written determination by the commission of the applicant's managerial, financial, and technical capabilities to operate the system for which assistance is being requested;

(3) request that the comptroller perform a financial management review of the applicant's current operations and, if the comptroller is available to perform the review, provide the board with the results of the review; or

(4) provide any other information required by the board or the executive administrator.

Sec. 17.944. CONSIDERATIONS IN REVIEWING APPLICATION. (a) In reviewing an application for financial assistance, the board shall consider:

(1) the need of the economically distressed area to be served by the water supply or sewer services in relation to the need of other political subdivisions requiring financial assistance under this subchapter and the relative costs and benefits of all applications;

(2) the availability of revenue or alternative financial assistance for the area served by the project, from all sources, for the payment of the cost of the proposed project;

(3) the financing of the proposed water supply or sewer project, including consideration of:

(A) the budget and repayment schedule submitted under Section 17.943(b)(6);

(B) other items included in the application relating to financing; and

(C) other financial information and data available to the board; and

(4) the feasibility of achieving cost savings by providing a regional facility for water supply or wastewater service and the feasibility of financing the project by using money from the economically distressed areas program account or any other available financial assistance.

(b) At the time an application for financial assistance is considered, the board must also find that the area to be served by a proposed project has a median household income of not more than 75 percent of the median state household income for the most recent year for which statistics are available.

Sec. 17.945. APPROVAL OR DISAPPROVAL OF APPLICATION. After considering the matters described by Section 17.944, the board by resolution shall:

(1) approve the plan and application as submitted;

(2) approve the plan and application subject to the requirements identified by the board or commission for the applicant to obtain the managerial, financial, and technical capabilities to operate the system and any other requirements, including training under Subchapter M, the board considers appropriate;

(3) deny the application and identify the requirements or remedial steps the applicant must complete before the applicant may be reconsidered for financial assistance;

(4) if the board finds that the applicant will be unable to obtain the managerial, financial, or technical capabilities to build and operate a system, deny the application and issue a determination that a service provider other than the applicant is necessary or appropriate to undertake the proposed project; or

(5) deny the application.

Sec. 17.946. FINDINGS REGARDING PERMITS. (a) The board may not release money for the construction of that portion of a project that proposes surface water or groundwater development until the executive administrator makes a written finding:

(1) that an applicant proposing surface water development has the necessary water right authorizing it to appropriate and use the water that the water supply project will provide; or

(2) that an applicant proposing groundwater development has the right to use water that the water supply project will provide.

(b) The board may release money for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs before making the finding required under Subsection (a) if the executive administrator determines that a reasonable expectation exists that the finding will be made before the release of funds for construction.

(c) If an applicant includes a proposal for treatment works, the board may not deliver money for the treatment works until the applicant has received a permit for construction and operation of the treatment works and approval of the plans and specifications from the commission, unless such a permit is not required by the commission.

Sec. 17.947. METHOD OF FINANCIAL ASSISTANCE. (a) The board may provide financial assistance to political subdivisions under this subchapter by using money in the economically distressed areas program account to purchase political subdivision bonds.

(b) The board may make financial assistance available to political subdivisions in any other manner that it considers feasible, including:

(1) contracts or agreements with a political subdivision for acceptance of financial assistance that establish any repayment based on the political subdivision's ability to repay the assistance and that establish requirements for acceptance of the assistance; or

(2) contracts or agreements for providing financial assistance in any federal or federally assisted project or program.

Sec. 17.948. TERMS OF FINANCIAL ASSISTANCE. (a) The board may use money in the economically distressed areas program account to provide financial assistance under this subchapter to a political subdivision to be repaid in the form, manner, and time provided by board rules and in the agreement between the board and the political subdivision, taking into consideration the information provided under Section 17.943.

(b) In providing financial assistance to an applicant under this subchapter, the board may not provide to the applicant financial assistance for which repayment is not required in an amount that exceeds 50 percent of the total amount of the financial assistance plus interest on any amount that must be repaid, unless the Department of State Health Services issues a finding that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project. The board and the applicant shall provide to the department information necessary to make a determination, and the board and the department may enter into memoranda of understanding necessary to carry out this subsection.

(c) The total amount of financial assistance provided by the board to political subdivisions under this subchapter from state-issued bonds for which repayment is not required may not exceed at any time 90 percent of the total principal amount of issued and unissued bonds authorized for purposes of this subchapter.

(d) In determining the amount and form of financial assistance and the amount and form of repayment, if any, the board shall consider:

(1) rates, fees, and charges that the average customer to be served by the project will be able to pay based on a comparison of what other families of similar income who are similarly situated pay for comparable services;

(2) sources of funding available to the political subdivision from federal and private money and from other state money;

(3) any local money of the political subdivision to be served by the project if the economically distressed area to be served by the board's financial assistance is within the boundary of the political subdivision; and

(4) the just, fair, and reasonable charges for water and wastewater service as provided by this code.

(e) In making its determination under Subsection (d)(1), the board may consider any study, survey, data, criteria, or standard developed or prepared by any federal, state, or local agency, private foundation, banking or financial institution, or other reliable source of statistical or financial data or information.

(f) The board may provide financial assistance money under this subchapter for treatment works only if the board determines that it is not feasible in the area covered by the application to use septic tanks as the method for providing sewer services under the applicant's plan.

SECTION 2. Subsection (c), Section 17.958, Water Code, is amended to read as follows:

(c) Money on deposit in the economically distressed areas program account may be used by the board for purposes provided by Subchapter K or K-1 in the manner that the board determines necessary for the administration of the fund.

SECTION 3. Subsection (i), Section 15.407, and Subsection (b), Section 15.974, Water Code, are repealed.

SECTION 4. 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, 2005.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **CSHB 467** by striking everything below the enacting clause and substituting:

SECTION 1. Subsection (a), Section 15.407, Water Code, is amended to read as follows:

(a) In this section, "economically distressed area" and "political subdivision" have the meanings assigned by Section 17.921 [~~16.341 of this code~~].

SECTION 2. Subdivisions (1) and (2), Section 16.341, Water Code, are amended to read as follows:

(1) "Affected county" means a county [~~:~~

[~~(A)~~] that has an economically distressed area which has a median household income that is not greater than 75 percent of the median state household income [~~a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; or~~

[~~(B) that is adjacent to an international border~~].

(2) "Economically distressed area" has the meaning assigned by Section 17.921 [~~means an area in which:~~

[~~(A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;~~

[~~(B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and~~

[~~(C) an established residential subdivision was located on June 1, 1989, as determined by the board~~].

SECTION 3. Subsections (b) and (c), Section 16.343, Water Code, are amended to read as follows:

(b) The model rules must:

(1) assure that adequate drinking water is available to the residential areas in accordance with Chapter 341, Health and Safety Code, and the Rules and Regulations for Public Water Systems and the Drinking Water Standards Governing Water Quality and Reporting Requirements for Public Water Supply Systems adopted by the commission [~~Texas Board of Health~~] and other law and rules applicable to drinking water; and

(2) provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 2005 [~~1989~~].

(c) The model rules must:

(1) assure that adequate sewer facilities are available to the residential areas through either septic tanks or an organized sewage disposal system that is a publicly or privately owned system for the collection, treatment, and disposal or sewage operated in accordance with the terms and conditions of a valid waste discharge permit issued by the commission or private sewage facilities in accordance with Chapter 366, Health and Safety Code, and the Construction Standards for On-Site Sewerage Facilities adopted by the commission and other law and rules applicable to sewage facilities; and

(2) provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 2005 [~~1989~~].

SECTION 4. Section 17.0112, Water Code, is amended to read as follows:

Sec. 17.0112. AUTHORIZATION OF CERTAIN BONDS FOR FINANCIAL ASSISTANCE. (a) The board may issue not more than $25 million in bonds dedicated under Section 17.0111 of this code and may issue not more than $50 million in bonds authorized under Article III, Texas Constitution, during a fiscal year to provide financial assistance for water supply and sewer services as provided under Subchapter K of this chapter.

(b) On request of the board, the bond review board by resolution may waive during any state fiscal year the limits [~~limit~~] provided by Subsection (a) [~~of this section~~] and authorize the board to issue an additional amount of bonds if the bond review board finds that the amount of bonds authorized for that state fiscal year has been exhausted or there is not a sufficient amount of bonds to meet needs of the program during the state fiscal year and that the public health and safety require immediate authorization of additional bonds. Before the bond review board adopts such a resolution, it shall give notice and hold a hearing to determine whether the limits should be waived and the authorization given.

SECTION 5. Section 17.921, Water Code, is amended by amending Subdivision (1) and adding Subdivision (6) to read as follows:

(1) "Economically distressed area" means an area in which:

(A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;

(B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) an established residential subdivision was located on June 1, 2005 [~~1989~~], as determined by the board.

(6) "Economically distressed areas account" means the economically distressed areas account in the Texas Water Development Fund or the economically distressed areas program account in the Texas Water Development Fund II.

SECTION 6. Subsection (b), Section 17.922, Water Code, is amended to read as follows:

(b) To the extent practicable, the board shall use the funds in the economically distressed areas account in conjunction with the other financial assistance available through the board to encourage the use of cost-effective water supply and wastewater systems, including regional systems, to maximize the long-term economic development of counties eligible for financial assistance under the economically distressed areas program. Any savings derived from the construction of a regional system that includes or serves an economically distressed area project shall be factored into the board's determination of financial assistance for the economically distressed area in a manner that assures the economically distressed area receives appropriate benefits from the savings. In no event shall financial assistance provided from the economically distressed areas account be used to provide water supply or wastewater service to any area that is not [~~defined as~~] an economically distressed area [~~pursuant to Section 17.921(1)(A) of this code~~].

SECTION 7. Subsections (b), (c), and (d), Section 17.927, Water Code, are amended to read as follows:

(b) The application and plan must include:

(1) the name of the political subdivision and its principal officers [~~comply with board requirements~~];

(2) a citation of the law under which the political subdivision was created and operates [~~describe in detail the method for delivering water supply and sewer services and the persons to whom the services will be provided~~];

(3) a project plan, prepared and certified by an engineer registered to practice in this state, that must:

(A) describe the proposed planning, design, and construction activities necessary to provide water supply and sewer services that meet minimum state standards; and

(B) identify the households to which the water supply and sewer services will be provided [~~describe the method for complying with minimum state standards for water supply and sewer services adopted by the board under Section 16.342 of this code~~];

(4) [~~include~~] a budget that estimates the total cost of providing water supply and sewer services to the economically distressed area and a proposed schedule and method for repayment of financial assistance consistent with board rules and guidelines;

(5) a description of the [~~describe~~] existing water supply and sewer facilities located in the [~~economically distressed~~] area to be served by the proposed project, including a statement [~~and include with the description:~~

[~~(A) the county map required by Section 366.036, Health and Safety Code; or~~

[~~(B) a document~~] prepared and certified by an engineer registered to practice in this state that the facilities do not meet minimum state standards [~~describing the plan for providing water supply and sewer services to the economically distressed area~~];

(6) documentation [~~provide proof~~] that the appropriate political subdivision has adopted the model rules developed under Section 16.343 [~~of this code~~];

(7) [~~include~~] information identifying the median household income for the area to be served by the proposed project [~~on the ability of potential customers to pay for the services provided by the project including composite data prepared by the applicant pursuant to board rules and guidelines from surveys of those potential customers covering income, family size, personal expenses, employment status, and other information required by board rule~~]; and

(8) the total amount of assistance requested from the economically distressed areas account [~~include an estimate of the per household cost of providing the services contemplated by the project with supporting data;~~

[~~(9) describe the procedures to be used to collect money from residents who use the proposed water supply and sewer services including procedures for collection of delinquent accounts;~~

[~~(10) include a requirement that a contractor who agrees to acquire, construct, extend, or provide water supply and sewer services executes a performance bond in the amount of 100 percent of the contract price;~~

[~~(11) contain an agreement to comply with applicable procurement procedures in contract awards for water supply and sewer services;~~

[~~(12) if located in the service area of a retail public utility or public utility that has a certificate of public convenience and necessity under Chapter 13 of this code, include a document in the form of an affidavit signed by the chief executive officer of the utility, which shall cooperate with the political subdivision, stating that the utility does not object to the construction and operation of the services and facilities in its service area;~~

[~~(13) include a map of the economically distressed area together with supporting information relating to dwellings in the area;~~

[~~(14) describe in detail the methods for incorporating water conservation into the provision of water and sewer services to the economically distressed area;~~

[~~(15) include, on request of the board, a written determination by the commission on the managerial, financial, and technical capabilities of the applicant to operate the system for which assistance is being requested; and~~

[~~(16) include any other information required by the board~~].

(c) Before the board approves the application or provides any funds under an application, it shall require an applicant to adopt a program of water conservation for the more effective use of water that meets the criteria established under Section 17.125 [~~If an applicant is a district or nonprofit water supply corporation, the applicant must include with the application proof that the appropriate county and municipalities have given their consent~~].

(d) Before considering an application, the board may require the applicant to:

(1) provide documentation to the executive administrator sufficient to allow review of the applicant's managerial, financial, and technical capabilities to operate the system for which assistance is being requested;

(2) provide a written determination by the commission on the applicant's managerial, financial, and technical capabilities to operate the system for which assistance is being requested;

(3) request that the comptroller perform a financial management review of the applicant and, if the review is performed, provide the board with the results of the review; or

(4) provide any other information required by the board or the executive administrator [~~In an application to the board for financial assistance for a water supply project or for sewer services, the applicant shall include:~~

[~~(1) the name of the political subdivision and its principal officers;~~

[~~(2) a citation of the law under which the political subdivision operates and was created;~~

[~~(3) a description of the water supply project or the sewer services for which the financial assistance will be used;~~

[~~(4) the estimated total cost of the water supply project or sewer services construction;~~

[~~(5) the amount of state financial assistance requested;~~

[~~(6) the plan for repaying the financial assistance provided for the water supply project or sewer services; and~~

[~~(7) any other information the board requires~~].

SECTION 8. Section 17.929, Water Code, is amended to read as follows:

Sec. 17.929. CONSIDERATIONS IN PASSING ON APPLICATION. (a) In passing on an application for financial assistance, the board shall consider:

(1) the need of the economically distressed area to be served by the water supply and sewer services in relation to the need of other political subdivisions requiring financial assistance under this subchapter and the relative costs and benefits of all applications;

(2) the availability to the area to be served by the project of revenue or financial assistance from alternative sources for the payment of the cost of the proposed project [~~efforts by the residents of the economically distressed area to provide necessary water supply and sewer services~~];

(3) [~~the proposed use of labor from inside the political subdivision to perform contracts for providing water supply and sewer services;~~

[~~(4) the relationship of the proposed water supply and sewer services to minimum state standards for water supply and sewer services adopted under Section 16.343 of this code;~~

[~~(5)~~] the financing of the proposed water supply and sewer project including consideration of:

(A) the budget and repayment schedule submitted under Section 17.927(b)(4) [~~of this code~~];

(B) other items included in the application relating to financing; and

(C) other financial information and data available to the board;

(4) [~~(6) whether the applicant has proposed methods for incorporating water conservation into the provision of water and sewer services to the economically distressed area;~~

[~~(7)~~] whether the county and other appropriate political subdivisions have [~~has~~] adopted model rules pursuant to Section 16.343 [~~of this code~~] and the manner of enforcement of model rules;

[~~(8) the feasibility of creating a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution, to provide the services and finance the water supply and sewer services covered by the application with district bonds issued and sold through the regular bond market;~~

[~~(9) the percentage of the total project cost that the financial assistance will comprise;~~] and

(5) [~~(10)~~] the feasibility of achieving cost savings by providing a regional facility for water supply or wastewater service and the feasibility of financing the facility by using funds from the economically distressed areas account or any other financial assistance.

(b) At the time an application for financial assistance is considered, the board also must find that the area to be served by a proposed project has a median household income that is not greater than 75 percent of the median state household income [~~an average per capita income that is at least 25 percent below the state average~~] for the most recent year [~~three consecutive years~~] for which statistics are available.

SECTION 9. Subsection (b), Section 17.930, Water Code, is amended to read as follows:

(b) After making the considerations provided by Section 17.929 [~~of this code~~], the board by resolution shall:

(1) approve the plan and application as submitted;

(2) approve the plan and application subject to the requirements identified by the board or commission for the applicant to obtain the managerial, financial, and technical capabilities to operate the system and any other requirements, including training under Subchapter M, the board considers appropriate;

(3) deny the application and identify the requirements or remedial steps the applicant must complete before the applicant may be reconsidered for financial assistance;

(4) if the board finds that the applicant will be unable to obtain the managerial, financial, or technical capabilities to build and operate a system, deny the application and issue a determination that a service provider other than the applicant is necessary or appropriate to undertake the proposed project; or

(5) deny the application.

SECTION 10. Subsections (a) and (c), Section 17.933, Water Code, are amended to read as follows:

(a) The board may use money in the economically distressed areas account to provide financial assistance to a political subdivision [~~to be repaid~~] in the form of a loan, including a loan with zero interest, grant, or other type of financial assistance to be determined[~~, manner, and time provided~~] by the board [~~rules and in the agreement between the board and the political subdivision~~] taking into consideration the information provided by Section 17.927(b)(7) [~~of this code~~].

(c) The total amount of financial assistance provided by the board to political subdivisions under this subchapter from state-issued bonds for which repayment is not required may not exceed at any time 90 percent of the total principal amount of issued and unissued bonds authorized under Article III[~~, Section 49-d-7~~] of the Texas Constitution, for purposes of this subchapter plus outstanding interest on those bonds.

SECTION 11. Section 17.952, Water Code, is amended to read as follows:

Sec. 17.952. ISSUANCE OF WATER FINANCIAL ASSISTANCE BONDS. The board by resolution may provide for the issuance of water financial assistance bonds, which shall be general obligation bonds of the state, in an aggregate principal amount not to exceed the principal amount authorized to be issued by the [~~Section 49-d-8, Article III,~~] Texas Constitution.

SECTION 12. Subsection (a), Section 17.993, Water Code, is amended to read as follows:

(a) The commission or the board may evaluate whether an operating entity needs training if the operating entity:

(1) requests financial assistance or an amendment to the project plan or budget [~~additional funding~~];

(2) requests more time to meet its obligations under a repayment schedule;

(3) does not provide required documentation; or

(4) has a history of compliance problems, as determined by the commission.

SECTION 13. Subsection (a), Section 212.0105, Local Government Code, is amended to read as follows:

(a) This section applies only to a person who:

(1) is the owner of a tract of land in [~~either:~~

[~~(A) a county that is contiguous to an international border; or~~

[~~(B)~~] a county in which a political subdivision that is eligible for and has applied for [~~has received~~] financial assistance through Subchapter K, Chapter 17, Water Code;

(2) divides the tract in a manner that creates any lots that are intended for residential purposes and are five acres or less; and

(3) is required under this subchapter to have a plat prepared for the subdivision.

SECTION 14. Section 232.071, Local Government Code, is amended to read as follows:

Sec. 232.071 APPLICABILITY. This subchapter applies only to the subdivision of land located:

(1) outside the corporate limits of a municipality; and

(2) in a county:

(A) in which is located a political subdivision that is eligible for and has applied for financial assistance under Section 15.407, Water Code, or Subchapter K, Chapter 17, Water Code; and

(B) to which Subchapter B does not apply.

SECTION 15. Subsection (i), Section 15.407, Subsection (f), Section 16.343, Sections 17.923 through 17.926, and Subsection (g), Section 17.933, Water Code, are repealed.

SECTION 16. The changes in law made by this Act apply only to an application for financial assistance pending or filed on or after the effective date of this Act.

SECTION 17. This Act takes effect on September 1, 2005.

(Speaker in the chair)

STATEMENT BY SPEAKER CRADDICK REGARDING GERMANENESS POINTS OF ORDER

Members, earlier today there was a series of parliamentary inquiries, which evidently has led to some confusion. The chair offers the following as a clarification to clear up that confusion.

First, on the question of a member's right to raise a point of order, the chair will always recognize a member to raise a point of order if the chair is aware of that member's desire. The chair encourages a member to express that desire by approaching the dais or, if the member has possession of the back microphone, by raising the issue from there. Members, the chair is also charged under the rules to maintain decorum on the floor and will not allow members to block or jerk the microphone away from other members. The chair implores the members to act in an appropriate manner and respect each other's rights.

Second, there seems to be confusion as to what happens when a point of order is sustained as to the germaneness of senate amendments to a house bill. The practice of the chair this session and my predecessors has been to return the bill to the senate with the message that a point of order has been sustained on senate amendments in that they are not germane. The bill is then in possession of the senate to take whatever action they consider appropriate under their rules. It is not the duty or the responsibility of the house to enforce senate rules.

Third, as to the timing of raising a point of order before the house adopts a motion to not concur and request the appointment of a conference committee, the normal procedure but only as a courtesy, and not by rule, is for members to allow

the house to go to conference rather than raising a point order. As previously stated, the chair will recognize anyone to raise a point of order if the chair is aware, and if decorum is followed.

Lastly, on the question of germaneness applying to a conference committee, there is apparently some confusion between Rule 11, Sections 2 and 3, and Article III, Section 30, of the Texas Constitution, commonly called constitutional germaneness. Germaneness as contemplated by Article III, Section 30, is the standard that is applied to changing the original purpose of a bill. That constitutional germaneness rule is what the chair referred to previously.

Another standard that the house also recognizes is the test that the conference committee must contain only one subject.

The chair has for years enforced these standards through its power of recognition by not recognizing a motion to adopt a conference committee report that contains constitutionally non-germane amendments or that violates the one subject rule. The chair always has the right to exercise the power of recognition under the rules. I hope that this explanation helps clear up some confusion.

(Chisum in the chair)

HB 607 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Giddings called up with senate amendments for consideration at this time,

HB 607, A bill to be entitled An Act relating to the delivery of blank check forms; providing a civil penalty.

Representative Giddings moved to concur in the senate amendments to **HB 607**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 607, A bill to be entitled An Act relating to the delivery of blank check forms; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.395 to read as follows:

Sec. 35.395. DELIVERY OF CHECK FORM. (a) In this section:

(1) "Addressee" means a person to whom a check form is sent.

(2) "Check form" means a device for the transmission or payment of money that:

(A) is not a negotiable instrument under Section 3.104;

(B) if completed would be a check as that term is described by Section 3.104; and

(C) is printed with information relating to the financial institution on which the completed check may be drawn.

(3)"Courier" means any entity that delivers parcels for a fee.

(4)"Check form Provider" means a business that provides check forms to a customer for a personal or business account.

(b) When an addressee requests of a check form provider, courier delivery of a check form with signature required, and such service is available in the delivery area of the addressee, the entity making the arrangement for courier delivery pursuant to the request of the addressee must provide the addressee with the option to require that a signature of the addressee, or the representative of the addressee, be obtained on delivery. The option to require such a signature may be provided on a printed check form order form, on an electronic check form order form where a check form orders are offered on the Internet, to an electronic mail address established for such purpose by the entity making the offer, or by another method reasonably calculated to effectively communicate the addressee's intent.

(c) An entity making the arrangement for the courier delivery of a check form to an addressee pursuant to the provisions of Subsection (b) shall notify the courier of the check form that the signature of the addressee is required for delivery under Subsection (b).

(d) If the addressee suffers a pecuniary loss through the use of check forms stolen at the time of delivery to the addressee, a civil penalty of up to a maximum amount of $1,000 per delivery may be levied upon-

(1) An entity that violates subsection (b) or (c), or

(2) A courier who is properly notified under Subsection (c) that a signature is required for delivery, and delivers the check form without obtaining a signature of the addressee or a representative of the addressee.

(e)The attorney general may bring suit to recover a civil penalty imposed under this section. The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Section 2. This Act takes effect June 1, 2006.

HB 1483 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Frost called up with senate amendments for consideration at this time,

HB 1483, A bill to be entitled An Act relating to the method of payment for a concealed handgun license and the fee for a duplicate or modified license.

Representative Frost moved to concur in the senate amendments to **HB 1483**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 1483** (senate committee printing) as follows:

(1) In the recital to SECTION 3 of the bill (page 1, line 60), strike "amending Subsection (d) and".

(2) In SECTION 3 of the bill, strike amended Subsection (d), Section 411.181, Government Code (page 1, lines 62-63).

(3) In the recital to SECTION 4 of the bill (page 2, line 7), strike "amending Subsection (a) and".

(4) In SECTION 4 of the bill, strike amended Subsection (a), Section 411.184, Government Code (page 2, lines 9-25).

HB 1867 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Naishtat called up with senate amendments for consideration at this time,

HB 1867, A bill to be entitled An Act relating to the transfer of money appropriated to provide care for certain persons in nursing facilities to provide community-based services to those persons.

Representative Naishtat moved to concur in the senate amendments to **HB 1867**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Committee Substitute

CSHB 1867, A bill to be entitled An Act relating to the transfer of money appropriated to provide care for certain persons in nursing facilities to provide community-based services to those persons.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.082 to read as follows:

Sec. 531.082. TRANSFER OF MONEY FOR COMMUNITY-BASED SERVICES. (a) The commission shall quantify the amount of money appropriated by the legislature that would have been spent during the remainder of a state fiscal biennium to care for a person who lives in a nursing facility but who is leaving that facility before the end of the biennium to live in the community with the assistance of community-based services.

(b) Notwithstanding any other state law and to the maximum extent allowed by federal law, the executive commissioner shall direct, as appropriate:

(1) the comptroller, at the time the person described by Subsection (a) leaves the nursing facility, to transfer an amount not to exceed the amount quantified under that subsection among the health and human services agencies and the commission as necessary to comply with this section; or

(2) the commission or a health and human services agency, at the time the person described by Subsection (a) leaves the nursing facility, to transfer an amount not to exceed the amount quantified under that subsection within the agency's budget as necessary to comply with this section.

(c) The commission shall ensure that the amount transferred under this section is redirected by the commission or health and human services agency, as applicable, to one or more community-based programs in the amount necessary to provide community-based services to the person after the person leaves the nursing facility.

SECTION 2. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 3. This Act takes effect September 1, 2005.

HB 2145 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Hupp called up with senate amendments for consideration at this time,

HB 2145, A bill to be entitled An Act relating to prohibiting changes in certain prescription drug orders without the approval of the prescribing health care practitioner.

Representative Hupp 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 2145**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2145**: Hupp, chair; Taylor; Seaman; Dutton; and Solis.

HB 2667 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Dutton called up with senate amendments for consideration at this time,

HB 2667, A bill to be entitled An Act relating to the election of a director of a municipal utility district.

Representative Dutton moved to concur in the senate amendments to **HB 2667**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 2667** (Senate committee printing) as follows:

1) In SECTION 1 of the bill, on page 1, lines 17 and 18, strike "perform the duties of the board in regard to", and replace with "administer".

2) In SECTION 1 of the bill, on page 1, at the end of line 18, insert: "This section shall not apply to an election in a district in which there are ten or fewer qualified voters at the time the election is called."

HB 2795 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Hartnett called up with senate amendments for consideration at this time,

HB 2795, A bill to be entitled An Act relating to certain appointments made by the governor and the chief justice of the supreme court.

Representative Hartnett 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 2795**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2795**: Hartnett, chair; Gattis; Phillips; Hughes; and Solis.

HB 2876 - MOTION TO CONCUR IN SENATE AMENDMENTS

Representative Callegari called up with senate amendments for consideration at this time,

HB 2876, A bill to be entitled An Act relating to certificates of public convenience and necessity for water service and sewer service.

HB 2876 - DEBATE

REPRESENTATIVE PUENTE: Mr. Callegari, Senate Amendment No. 1 deals with how a utility may raise rates, and says that a utility must give 128 days notice before raising those rates, is that correct?

REPRESENTATIVE CALLEGARI: Yes, one of the amendments did, yes.

PUENTE: And, it is your construction of that language, interpretation of that language, and legislative intent, that this amendment applies to utilities as they are defined in Chapter 13 of the Water Code, and that a city-owned utility, water utility, is not subject to those provisions of that amendment, correct?

CALLEGARI: Yes.

REMARKS ORDERED PRINTED

Representative Puente moved to print remarks between Representative Callegari and Representative Puente.

The motion prevailed.

Representative Callegari moved to concur in the senate amendments to **HB 2876**.

The motion was withdrawn.

HB 2815 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Campbell called up with senate amendments for consideration at this time,

HB 2815, A bill to be entitled An Act relating to the Concho River Watermaster Program.

Representative Campbell moved to concur in the senate amendments to **HB 2815**.

The motion to concur in senate amendments prevailed. (In accordance with House Rule 5, Section 51(b), every member present must have favored passage of the measure, but any member may register their position with the journal clerk. No members registered their position on this measure.)

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 2815** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 11, Water Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. CONCHO RIVER WATERMASTER PROGRAM

Sec. 11.551. DEFINITIONS. In this subchapter:

(1) "Advisory committee" means the Concho River Watermaster Advisory Committee appointed under Section 11.557.

(2) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(3) "Program" means the Concho River Watermaster Program, a division of the South Texas Watermaster established by the Texas Commission on Environmental Quality and operating pursuant to Rules and Regulations promulgated by the Texas Commission on Environmental Quality.

(4) "Water right holder" means a person who holds a certificated right in water under the jurisdiction of the watermaster acting under this subchapter.

(5) "Water user" means a person, including a water right holder, who uses water under the jurisdiction of the watermaster acting under this subchapter.

Sec. 11.552. CONCHO RIVER WATERMASTER PROGRAM. The Concho River Watermaster Program is established to ensure compliance with water rights in the area described by Section 11.553.

Sec. 11.553. JURISDICTION OF WATERMASTER. The geographical and jurisdictional boundaries of a watermaster acting under this subchapter shall be the Concho River segment of the Colorado River Basin that includes the Concho River and all of its tributaries, downstream on the main stem of the

Concho River to a point on the Concho River prior to reaching, and upstream of the O.H. Ivie Reservoir located at and including the diversion point of Certificate of Adjudication No. 14-1393 (River Order No. 4954450000) in Concho County.

Sec. 11.554. WATERMASTER; APPOINTMENT OF DEPUTY WATERMASTER.

(a) The watermaster for the South Texas Watermaster Program shall serve as the watermaster for the program.

(b) The watermaster shall appoint a deputy watermaster, who must reside in the area described by Section 11.553.

(c) The watermaster or deputy watermaster may not be:

(1) a water right holder in the river basin or segment of the river basin under the program's jurisdiction;

(2) a purchaser of water from a water right holder in the river basin or segment of the river basin under the program's jurisdiction; or

(3) a landowner of any land adjacent to the river or segment of the river under the program's jurisdiction.

Sec. 11.555. DUTIES AND AUTHORITY OF WATERMASTER. The watermaster has the same duties and authority under the Concho River Watermaster Program as the watermaster has under the South Texas Watermaster Program.

Sec. 11.556. APPOINTMENT OF NONVOTING MEMBER OF SOUTH TEXAS WATERMASTER ADVISORY COMMITTEE. (a) The executive director shall appoint a person who resides in the area described by Section 11.553 to the South Texas Watermaster Advisor Committee.

(b) Except as otherwise provided by this section, Section 11.3261 applies to a member of the South Texas Watermaster Advisory Committee appointed under this section.

(c) A member of the South Texas Watermaster Advisory Committee appointed under this section may attend all meetings of that committee and enter into discussions at the meetings, but the person may not vote at the meetings.

Sec. 11.557. CONCHO RIVER WATERMASTER ADVISORY COMMITTEE. (a) The Concho River Watermaster Advisor Committee consists of 13 members appointed by the executive director as follows:

(1) six members selected from nominations received one representing the City of Paint Rock and one representing each of the following stream segments or tributaries of the Concho River: Spring Creek, Dove Creek, South Concho, Middle Concho and main stem of the Concho below Certificate of Adjudication No. 14-1337 (River Order No. 5460010000);

(2) six members selected from a list of candidates submitted by the City of San Angelo; and

(3) one member selected at the executive director's discretion.

(b) If the executive director does not receive nominations or a list of candidates as specified under Subsection (a), after reasonable notice the executive director may appoint to the advisory committee the appropriate number of members selected at the executive director's discretion.

(c) If a vacancy occurs on the advisor committee, the executive director shall fill the vacancy for the unexpired term by appointing a person selected in the same manner as the person being replaced.

(d) An advisor committee member shall serve for a term of two years.

(e) An advisory committee member serves without compensation.

(f) The advisor committee shall:

(1) provide recommendations to the watermaster and deputy watermaster regarding activities of benefit to the water right holders in the administration and distribution of water;

(2) advise the watermaster and deputy watermaster on complaints and enforcement matters;

(3) review, hold a public hearing on, and make recommendations on the annual budget proposed by the watermaster so as to cover all costs of the Concho River Watermaster Program; and

(4) provide assistance as requested by the watermaster, deputy watermaster, or water right holders.

(g) Actions of the advisory committee in which a vote is taken must receive a two-thirds affirmative vote of the members present to be approved.

Sec. 11.558. FEES. Fees assessed under the Concho River Watermaster Program shall be of the same type and rate as those assessed under the South Texas Watermaster Program but may be adjusted as necessary to pay all expenses of the Concho River Watermaster Program. All costs of the Concho River Watermaster Program shall be assessed solely upon the water rights holders subject to the Concho River Watermaster Program.

Sec. 11.559. REFERENDUM. (a) On or after September 1, 2009, a water right holder may petition the advisory committee to conduct a referendum on the continuation of the program.

(b) The advisory committee shall conduct a referendum if it receives a petition signed by at least 50 percent of the water right holders.

(c) A referendum under this section must be held on a uniform election date, as provided by Section 41.001, Election Code.

(d) Only current water right holders are eligible to vote in the referendum.

(e) If at least 60 percent of the votes in the referendum favor discontinuing the program, the program shall be discontinued.

(f) A referendum under this section cannot be held more than once every four years.

(g) For purposes of this section, a water right holder shall be considered as one water rights holder regardless of the number or amount of water rights held under a permit or Certificate of Adjudication.

Sec. 11.560. COLORADO RIVER BASIN WATERMASTER PROGRAM. If a watermaster program is established for the entire Colorado River basin, the Concho River Watermaster Program is discontinued, and the area described by Section 11.553 is under the jurisdiction of the watermaster for the Colorado River Basin Watermaster Program.

Sec. 11.561. APPLICABILITY OF OTHER LAW AND COMMISSION RULES. A provision of this code or a rule adopted by the commission that relates to watermasters and does not conflict with the provisions of this subchapter applies to the program established under this subchapter.

SECTION 2. On the effective date of this Subchapter, the provisions of this Subchapter supersede any conflicting orders issued by the Texas Commission on Environmental Quality regarding a watermaster program for the Concho River segment described by Section 11.553, Water Code, as added by this Subchapter.

SECTION 3. The provisions added by this Subchapter take effect September 1, 2005.

HB 872 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative West called up with senate amendments for consideration at this time,

HB 872, A bill to be entitled An Act relating to the imposition of the pipeline safety annual inspection fee by the Railroad Commission of Texas.

Representative West 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 872**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 872**: West, chair; Crabb; Howard; Corte; and Gonzalez Toureilles.

HB 120 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Delisi called up with senate amendments for consideration at this time,

HB 120, A bill to be entitled An Act relating to the creation of a donor education, awareness, and registry program, the establishment of an organ donor and tissue council, and anatomical gift donation.

Representative Delisi moved to concur in the senate amendments to **HB 120**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 929): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales;

Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Keffer, J.; Kolkhorst; Morrison.

Senate Committee Substitute

CSHB 120, A bill to be entitled An Act relating to the creation of a donor education, awareness, and registry program, the establishment of an organ donor and tissue council, and anatomical gift donation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (b), (c), and (d), Section 521.401, Transportation Code, are amended to read as follows:

(b) The statement of gift may be shown on a donor's driver's license or personal identification certificate or by a card designed to be carried by the donor to evidence the donor's intentions with respect to organ, tissue, and eye donation. A donor card signed by the donor shall be given effect as if executed pursuant to Section 692.003(d), Health and Safety Code.

(c) Donor cards shall be provided to the department by qualified organ or tissue procurement organizations or eye banks, as those terms are defined in Section 692.002, Health and Safety Code, or by the Donor Education, Awareness, and Registry Program of Texas established under Chapter 49, Health and Safety Code. The department shall:

(1) provide to each applicant for the issuance of an original, renewal, corrected, or duplicate driver's license or personal identification certificate who applies in person, by mail, over the Internet, or by other electronic means:

(A) the opportunity to indicate on the person's driver's license or personal identification certificate that the person is willing to make an anatomical gift, in the event of death, in accordance with Section 692.003, Health and Safety Code; and

(B) an opportunity for the person to consent in writing to the department's provision of the person's name, date of birth, driver's license number, most recent address, and other information needed for identification purposes at the time of donation to the organization selected by the commissioner

of state health services under Chapter 49, Health and Safety Code, for inclusion in the statewide Internet-based registry of organ, tissue, and eye donors and for release to qualified organ, tissue, and eye bank organizations; and

(2) provide a means to distribute donor cards to interested individuals in each office authorized to issue driver's licenses or personal identification certificates[~~. The department and other appropriate state agencies, in cooperation with qualified organ, tissue, and eye bank organizations shall pursue the development of a combined statewide database of donors~~].

(d) An [~~Effective September 1, 1997, a statement of gift on driver's licenses or personal identification certificates shall have no force and effect, provided, however, that an~~] affirmative statement of gift on a person's driver's license or personal identification certificate executed after August 31, 2005 [~~prior to September 1, 1997~~], shall be conclusive evidence of a decedent's status as a donor and serve as consent for organ, tissue, and eye removal.

SECTION 2. Section 521.402, Transportation Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) To revoke an affirmative statement of gift on a person's driver's license or personal identification certificate [~~made prior to September 1, 1997~~], a person must apply to the department for an amendment to the license or certificate.

(c) To have a person's name deleted from the statewide Internet-based registry of organ, tissue, and eye donors maintained as provided by Chapter 49, Health and Safety Code, a person must provide written notice to the organization selected by the commissioner of state health services under that chapter to maintain the registry directing the deletion of the person's name from the registry. On receipt of a written notice under this subsection, the organization shall promptly remove the person's name and information from the registry.

SECTION 3. Section 521.403, Transportation Code, is amended to read as follows:

Sec. 521.403. INFORMATION PROVIDED TO HOSPITAL. The donor card of a person who is involved in an accident or other trauma shall accompany the person to the hospital or other health care facility. The driver's license or personal identification certificate [~~issued prior to September 1, 1997,~~] indicating an affirmative statement of gift of a person who is involved in an accident or other trauma[~~,~~] shall accompany the person to the hospital or health care facility if the person does not have a donor card.

SECTION 4. Chapter 49, Health and Safety Code, is amended to read as follows:

CHAPTER 49. DONOR EDUCATION, AWARENESS, AND REGISTRY [~~ANATOMICAL GIFT EDUCATIONAL~~] PROGRAM OF TEXAS

Sec. 49.001. DEFINITIONS [~~DEVELOPMENT AND IMPLEMENTATION OF PROGRAM~~]. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Registry program" means the Donor Education, Awareness, and Registry Program of Texas.

Sec. 49.002. ESTABLISHMENT OF PROGRAM. (a) In consultation with the Department of Public Safety and organ procurement organizations, the department shall establish the Donor Education, Awareness, and Registry Program of Texas.

(b) The department shall enter into an agreement with an organization selected by the commissioner under a competitive proposal process for the establishment and maintenance of a statewide Internet-based registry of organ, tissue, and eye donors. Contingent on the continued availability of appropriations under Subsection (h), the term of the initial agreement is two years and may be renewed for two-year terms thereafter unless terminated in a written notice to the other party by the department or organization not later than the 180th day before the last day of a term.

(c) The Department of Public Safety at least monthly shall electronically transfer to the organization selected by the commissioner as provided by Subsection (b) the name, date of birth, driver's license number, most recent address, and any other relevant information in the possession of the Department of Public Safety for any person who indicates on the person's driver's license application under Section 521.401, Transportation Code, that the person would like to make an anatomical gift and consents in writing to the release of the information by the Department of Public Safety to the organization for inclusion in the statewide Internet-based registry of organ, tissue, and eye donors.

(d) The contract between the department and the organization selected by the commissioner as provided by Subsection (b) must require the organization to:

(1) make information obtained from the Department of Public Safety under Subsection (c) available to qualified organ, tissue, and eye bank organizations;

(2) allow potential donors to submit information in writing directly to the organization for inclusion in the statewide Internet-based registry of organ, tissue, and eye donors;

(3) maintain the statewide Internet-based registry of organ, tissue, and eye donors in a manner that allows qualified organ, tissue, and eye bank organizations to immediately access organ, tissue, and eye donation information 24 hours a day, seven days a week, through electronic and telephonic methods; and

(4) protect the confidentiality and privacy of the individuals providing information to the statewide Internet-based registry, regardless of the manner in which the information is provided.

(e) Except as otherwise provided by Subsection (d)(3) or this subsection, the Department of Public Safety, the organization selected by the commissioner under Subsection (b), or a qualified organ, tissue, and eye bank organization may not sell, rent, or otherwise share any information provided to the registry. A qualified organ, tissue, and eye bank organization may share any information provided to the registry with an organ procurement organization or a health care provider or facility providing medical care to a potential donor as necessary to properly identify an individual at the time of donation.

(f) The Department of Public Safety, the organization selected by the commissioner under Subsection (b), or the qualified organ, tissue, and eye bank organizations may not use any demographic or specific data provided to the registry for any fund-raising activities. Data may only be transmitted from the selected organization to qualified organ, tissue, and eye bank organizations through electronic and telephonic methods using secure, encrypted technology to preserve the integrity of the data and the privacy of the individuals providing information.

(g) In each office authorized to issue driver's licenses or personal identification certificates, the Department of Public Safety shall make available educational materials developed by the Texas Organ, Tissue, and Eye Donor Council established under Chapter 113.

(h) The Department of Public Safety shall remit to the comptroller the money collected under Sections 521.421(g) and 521.422(c), Transportation Code, as provided by those subsections. A county assessor-collector shall remit to the comptroller any money collected under Section 502.1745, Transportation Code, as provided by that section. Money remitted to the comptroller in accordance with this subsection that is appropriated to the department must be spent in accordance with the priorities established by the department in consultation with the Texas Organ, Tissue, and Eye Donor Council to pay the costs of:

(1) maintaining, operating, and updating the statewide Internet-based donor registry and establishing procedures for an individual to be added to the registry; and

(2) designing and distributing education materials for prospective donors as required under this section.

(i) Any additional money over the amount necessary to accomplish the purposes of Subsections (h)(1) and (2) may be used by the department to provide education under this chapter or may be awarded using a competitive grant process to organizations to conduct organ, eye, and tissue donation education activities in this state. A member of the Texas Organ, Tissue, and Eye Donor Council may not receive a grant under this subsection.

(j) The department shall require the organization selected under Subsection (b) to submit an annual written report to the department that includes:

(1) the number of donors listed on the registry;

(2) changes in the number of donors listed on the registry; and

(3) the demographic characteristics of listed donors, to the extent the characteristics may be determined from information provided on donor registry forms submitted by donors to the organization.

(k) To the extent funds are available and as part of the registry program, the [~~(a) The~~] department shall [~~develop a program to~~] educate residents about anatomical gifts. The program shall include information about:

(1) the laws governing anatomical gifts, including Subchapter Q, Chapter 521, Transportation Code, and Chapter 692;

(2) the procedures for becoming an organ, eye, or tissue donor or donee; and

(3) the benefits of organ, eye, or tissue donation.

(l) [~~(b)~~] In developing the program, the department in consultation with the Texas Organ, Tissue, and Eye Donor Council shall solicit broad-based input reflecting recommendations of all interested groups, including representatives of patients, providers, ethnic groups, and geographic regions.

(m) In consultation with the Texas Organ, Tissue, and Eye Donor Council, the department may implement a training program for all appropriate Department of Public Safety and Texas Department of Transportation employees on the benefits of organ, tissue, and eye donation and the procedures for individuals to be added to the statewide Internet-based registry of organ, tissue, and eye donors. The department shall implement the training program before the date that the statewide Internet-based registry is operational and shall conduct the training on an ongoing basis for new employees.

Sec. 49.003 [~~(c) The department shall implement the program only to the extent that funds are available from Section 521.421(g) or 521.422(e), Transportation Code.~~

[~~Sec. 49.002~~]. EDUCATION FOR HEALTH CARE PROVIDERS AND ATTORNEYS. (a) The department shall develop a program to educate health care providers and attorneys in this state regarding anatomical gifts.

(b) The department through the program shall encourage attorneys to provide organ donation information to clients seeking legal advice for end-of-life decisions.

(c) The department shall encourage medical schools and nursing schools in this state to include mandatory organ donation education in the schools' curriculums.

(d) The department shall encourage medical schools in this state to require a physician in a neurology or neurosurgery residency program to complete an advanced course in organ donation education.

[~~(e) The department shall implement the program only to the extent that:~~

[~~(1) funds are available from Section 521.421(g) or 521.422(e), Transportation Code;~~

[~~(2) money or in-kind donations are donated to the department for the purpose of implementing the program; or~~

[~~(3) the legislature specifically appropriates money from another source for the purpose of implementing the program.~~]

SECTION 5. Subtitle E, Title 2, Health and Safety Code, is amended by adding Chapter 113 to read as follows:

CHAPTER 113. TEXAS ORGAN, TISSUE, AND EYE DONOR COUNCIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.001. DEFINITIONS. In this chapter:

(1) "Council" means the Texas Organ, Tissue, and Eye Donor Council.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(4) "Public safety director" means the public safety director of the Department of Public Safety.

Sec. 113.002. SUNSET PROVISION; ABOLISHMENT. The Texas Organ, Tissue, and Eye Donor Council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2017, unless the department and the council mutually determine that the public interest is best served by abolition of the council and agree to abolish the council on an earlier date.

[Sections 113.003-113.050 reserved for expansion]

SUBCHAPTER B. COUNCIL

Sec. 113.051. COMPOSITION OF COUNCIL. (a) The council is composed of:

(1) a representative of the department appointed by the commissioner;

(2) a representative of the Department of Public Safety appointed by the public safety director;

(3) a representative of the Texas Department of Transportation appointed by the executive director of that agency;

(4) five professional members appointed by the commissioner as follows:

(A) one representative from each of the state's three federally qualified organ procurement organizations nominated by each organization;

(B) one representative who is a transplant physician or nurse licensed in this state; and

(C) one representative of an acute care hospital in this state; and

(5) two public members appointed by the commissioner.

(b) A public member of the council must:

(1) be a donor, recipient, or member of a donor's family; and

(2) be selected from a pool of members compiled from the recommendations of the following nonprofit organizations in the field of transplantation and organ donor education:

(A) the Texas Medical Association;

(B) the Texas Transplantation Society;

(C) the Transplant Nurses' Association;

(D) the National Kidney Foundation;

(E) the National Minority Organ Tissue Transplant Education Program; and

(F) the American Society of Minority Health and Transplant Professionals.

(c) A member of the council who is a representative of an agency of this state is a nonvoting member of the council.

(d) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 113.052. MEMBERSHIP ELIGIBILITY. A person is not eligible for appointment as a professional or public member of the council if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the council or from the department regarding a matter on which the council advises the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the council or from the department regarding a matter on which the council advises the department; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the council or from the department regarding a matter on which the council advises the department, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

Sec. 113.053. TERMS; VACANCY. (a) Council members appointed by the commissioner serve for staggered six-year terms, with the terms of two or three members, as applicable, expiring February 1 of each odd-numbered year.

(b) A council member appointed as a representative of an agency serves at the will of the appointing agency.

(c) If a vacancy occurs, the commissioner or other appropriate appointing authority shall appoint a person, in the same manner as the original appointment, to serve for the remainder of the unexpired term.

(d) An appointed member may not serve more than one term consecutively.

Sec. 113.054. PRESIDING OFFICER. The commissioner shall designate a public member of the council as the presiding officer of the council to serve in that capacity at the will of the commissioner.

Sec. 113.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the council that a member:

(1) does not have at the time of taking office the qualifications required by this chapter;

(2) does not maintain during service on the council the qualifications required by this chapter;

(3) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(4) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

(b) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a council member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer of the council of the potential ground. The presiding officer shall then notify the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer or most senior member of the council, who shall then notify the attorney general that a potential ground for removal exists.

Sec. 113.056. MEETINGS; QUORUM. (a) The council shall meet at least twice each calendar year and at the call of the presiding officer.

(b) The council shall adopt bylaws for the conduct of its meetings.

(c) Any action taken by the council requires two-thirds of the members to be present and the action must be approved by a majority of the members present.

Sec. 113.057. COMPENSATION. (a) A member of the council may not receive compensation for service on the council.

(b) A member shall be reimbursed for the member's actual and necessary expenses for meals, lodging, transportation, and incidental expenses incurred while performing council business, subject to any applicable limitation on reimbursement prescribed by the General Appropriations Act.

Sec. 113.058. INFORMATION ABOUT STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the council, as often as necessary, information regarding the requirements for membership on the council under this chapter, including information regarding a person's responsibilities under laws relating to applicable standards of conduct.

[Sections 113.059-113.100 reserved for expansion]

SUBCHAPTER C. COUNCIL POWERS AND DUTIES

Sec. 113.101. GENERAL DUTIES. The council as required by the department shall:

(1) advise the department concerning the Donor Education, Awareness, and Registry Program of Texas established under Chapter 49;

(2) advise the department on priorities for the initiatives to be implemented under the Donor Education, Awareness, and Registry Program of Texas established under Chapter 49;

(3) advise the department regarding donor education, awareness, and registry outreach specifically targeted at African American and Hispanic populations;

(4) advise the commissioner, public safety director, and director of the Texas Department of Transportation on the allocation of money received by the comptroller for the activities authorized under Chapter 49; and

(5) advise the department, Department of Public Safety, and the Texas Department of Transportation regarding necessary performance standards and quality control measures concerning the operation of the statewide Internet-based donor registry, as well as related donor educational programs.

Sec. 113.102. REPORT. Before December 1 of each even-numbered year, the council shall submit a report of the council's activities and recommendations to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature.

Sec. 113.103. AUDIT. The financial transactions pertaining to the council are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Sec. 113.104. COSTS IN ADMINISTERING PROGRAM. Ten percent of all money collected under Sections 521.421(g), 521.422(c), and 502.1745, Transportation Code, may be appropriated only to the department to administer this chapter.

SECTION 6. Subsection (g), Section 521.421, Transportation Code, is amended to read as follows:

(g) The department shall collect an additional fee of $1 for the issuance or renewal of a license, including a duplicate license, a license issued to reflect an additional authorization or a change in classification, or a license issued or renewed over the Internet or by other electronic means, to pay the costs of the Donor Education, Awareness, and Registry Program of Texas, established under Chapter 49, Health and Safety Code, and, subject to Section 113.104, Health and Safety Code, of the Texas Organ, Tissue, and Eye Donor Council, established under Chapter 113 [~~fund the anatomical gift educational program established under Chapter 49~~], Health and Safety Code, if the person applying for, [~~or~~] renewing, or changing a license opts to pay the additional fee. The department shall remit fees collected under this subsection to the comptroller, who shall maintain the identity of the source of the fees. Subject to appropriation, the department may retain three percent of the money collected under this subsection to cover the costs in administering this subsection.

SECTION 7. Subsection (c), Section 521.422, Transportation Code, is amended to read as follows:

(c) The department shall collect an additional fee of $1 for the issuance or renewal of a personal identification card, including a duplicate personal identification card or a personal identification card issued or renewed over the Internet or by other electronic means, to pay the costs of the Donor Education, Awareness, and Registry Program of Texas, established under Chapter 49, Health and Safety Code, and, subject to Section 113.104, Health and Safety Code, of the Texas Organ, Tissue, and Eye Donor Council, established under Chapter 113 [~~fund the anatomical gift educational program established under Chapter 49~~], Health and Safety Code, if the person applying for or renewing a personal identification card opts to pay the additional fee. The department shall remit fees collected under this subsection to the comptroller, who shall maintain the identity of the source of the fees. Subject to appropriation, the department may retain three percent of the money collected under this subsection to cover the costs in administering this subsection.

SECTION 8. Subchapter D, Chapter 502, Transportation Code, is amended by adding Section 502.1745 to read as follows:

Sec. 502.1745. VOLUNTARY FEE. (a) The department shall provide to each county assessor-collector the educational materials for prospective donors provided as required by the Donor Education, Awareness, and Registry Program of Texas under Chapter 49, Health and Safety Code. A county assessor-collector shall make the educational materials available in each office authorized to accept applications for registration of motor vehicles.

(b) A county assessor-collector shall collect an additional fee of $1 for the registration or renewal of registration of a motor vehicle to pay the costs of the Donor Education, Awareness, and Registry Program of Texas, established under Chapter 49, Health and Safety Code, and of the Texas Organ, Tissue, and Eye Donor Council, established under Chapter 113, Health and Safety Code, if the person registering or renewing the registration of a motor vehicle opts to pay the

additional fee. Notwithstanding any other provision of this chapter, the county assessor-collector shall remit all fees collected under this subsection to the comptroller, who shall maintain the identity of the source of the fees.

(c) Three percent of all money collected under this section may be appropriated only to the department to administer this section.

SECTION 9. Notwithstanding any other provision of law, 25 percent of the money collected under Section 502.1745, Transportation Code, as added by this Act, shall be deposited in the state highway fund for the initial costs estimated to be incurred by the Texas Department of Transportation in the state fiscal biennium beginning September 1, 2005, to implement the changes in law made by this Act.

SECTION 10. (a) Promptly after this Act takes effect, the following shall appoint a representative of their agency to serve as a member of the Texas Organ, Tissue, and Eye Donor Council:

(1) the commissioner of state health services for the Department of State Health Services;

(2) the public safety director of the Department of Public Safety of the State of Texas; and

(3) the executive director of the Texas Department of Transportation.

(b) Promptly after this Act takes effect, the commissioner of state health services shall appoint five professional and two public members to the Texas Organ, Tissue, and Eye Donor Council. In appointing the professional members, the commissioner shall appoint one person to a term expiring February 1, 2007, two persons to a term expiring February 1, 2009, and two persons to a term expiring February 1, 2011. In appointing the public members, the commissioner shall appoint one person to a term expiring February 1, 2007, and one person to a term expiring February 1, 2009.

SECTION 11. (a) The Department of State Health Services shall contract with an organization for the establishment and maintenance of a registry for organ, tissue, and eye donors in accordance with Chapter 49, Health and Safety Code, as amended by this Act, and ensure the organization establishes the registry not later than September 1, 2006.

(b) The Department of Public Safety of the State of Texas must be in compliance with the changes in law made by this Act to Subsection (g), Section 521.421, and Subsection (c), Section 521.422, Transportation Code, related to duplicate or changed licenses or personal identification cards and related to transactions conducted over the Internet or by other electronic means not later than June 1, 2006.

SECTION 12. (a) Except as provided by Subsection (b) of this section, 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, 2005.

(b) Section 8 of this Act takes effect September 1, 2005.

HB 183 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative F. Brown called up with senate amendments for consideration at this time,

HB 183, A bill to be entitled An Act relating to the prosecution of offenses involving the use of safety belts and child passenger safety seat systems.

Representative F. Brown 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 183**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 183**: F. Brown, chair; Krusee; Callegari; Anchia; and Flores.

HB 925 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Chavez called up with senate amendments for consideration at this time,

HB 925, A bill to be entitled An Act relating to creating an interagency work group on border issues.

Representative Chavez 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 925**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 925**: Chavez, chair; Griggs; Castro; Solis; and Keel.

HB 1317 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Driver called up with senate amendments for consideration at this time,

HB 1317, A bill to be entitled An Act relating to the licensing and regulation of certain electricians.

Representative Driver moved to concur in the senate amendments to **HB 1317**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 930): 133 Yeas, 8 Nays, 4 Present, not voting.

Yeas — Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Eiland; Eissler; Elkins; Escobar; Farabee; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; Kolkhorst; Kuempel; Laney; Laubenberg; Luna; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Dutton; Edwards; Farrar; Herrero; Leibowitz; Martinez; Solis.

Present, not voting — Mr. Speaker; Berman; Chisum(C); King, T.

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Senate Committee Substitute

CSHB 1317, A bill to entitled An Act relating to the licensing and regulation of certain electricians.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1305.002, Occupations Code, is amended by adding Subdivisions (1-a) and (12-a) to read as follows:

(1-a) "Agricultural use" means a use or activity involving agriculture, as defined by Section 11.002, Water Code, other than the processing of an agricultural commodity.

(12-a) "Person" means an individual.

SECTION 2. Section 1305.003, Occupations Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) This chapter does not apply to:

(1) the installation of electrical equipment in a ship, watercraft other than a floating building, railway rolling stock, aircraft, [~~or a~~] motor vehicle, [~~other than a mobile home~~] or recreational vehicle;

(2) the installation of electrical equipment underground in a mine and in self-propelled mobile surface mining machinery and its attendant electrical trailing cable;

(3) the installation of electrical equipment for generation, transformation, transmission, or distribution of power used exclusively to operate railway rolling stock or exclusively for signaling and communications purposes;

(4) the installation, maintenance, alteration, or repair of communications equipment provided by a telecommunications provider;

(5) the installation, maintenance, alteration, or repair of electrical equipment under the exclusive control of an electric utility, power generation company as defined by Sections 31.002(1) and (10), Utilities Code, electric cooperative, or municipally owned utility and used for communications or metering, or for the generation, control, transformation, transmission, and distribution of electrical energy, and located:

(A) in a building used exclusively by a utility or affiliated power generation company for those purposes;

(B) outdoors on property owned or leased by the utility or affiliated power generation company;

(C) on public highways, streets, roads, or other public rights-of-way; or

(D) outdoors by established rights in vaults or on private property;

(6) work not specifically regulated by a municipal ordinance that is performed in or on a dwelling by a person who owns and resides in the dwelling;

(7) work involved in the manufacture of electrical equipment that includes the on-site and off-site manufacturing, commissioning, testing, calibrating, coordinating, troubleshooting, or evaluating of electrical equipment, the repairing or retrofitting of electrical equipment with components of the same ampacity, and the maintenance and servicing of electrical equipment within the equipment's enclosure that is performed by an authorized employee of an electrical equipment manufacturer and limited to the type of products manufactured by the manufacturer;

(8) electrical maintenance work if:

(A) the work is performed by a person regularly employed as a maintenance person at the building or premises;

(B) the work is performed in conjunction with the business in which the person is employed; and

(C) the person does not engage in electrical work for the public;

(9) the installation, maintenance, alteration, or repair of electrical equipment or associated wiring under the exclusive control of a gas utility and used for communications or metering or for the control, transmission, or distribution of natural gas;

(10) thoroughfare lighting, traffic signals, intelligent transportation systems, and telecommunications controlled by a governmental entity;

(11) electrical connections supplying heating, ventilation, and cooling and refrigeration equipment, including any required disconnect exclusively for the equipment, if the service is performed by a licensed air conditioning and refrigeration contractor under Chapter 1302;

(12) the design, installation, erection, repair, or alteration of Class 1, Class 2, or Class 3 remote control, signaling, or power-limited circuits, fire alarm circuits, optical fiber cables, or communications circuits, including raceways, as defined by the National Electrical Code;

(13) landscape irrigation installers, as necessary to perform the installation and maintenance of irrigation control systems, and landscapers, as necessary to perform the installation and maintenance of low-voltage exterior lighting and holiday lighting excluding any required power source;

(14) [~~a person who is employed by and performs~~] electrical work performed at [~~solely for~~] a [~~private industrial~~] business[~~, including a business~~] that operates:

(A) a chemical plant, petrochemical plant, refinery, natural gas plant, natural gas treating plant, pipeline, or oil and gas exploration and production operation by a person who works solely for and is employed by that business; or

(B) a chemical plant, petrochemical plant refinery, natural gas plant, or natural gas treatment plant by a person who under a contract of at least 12 months' duration performs electrical work for that plant and:

(i) the electrical work is not performed during new construction as defined by rules adopted under Chapter 151, Tax Code; or

(ii) the person is not working for a contractor that has a principal place of business in another state or territory of the United States or a foreign country;

(15) the installation, maintenance, alteration, or repair of elevators, escalators, or related equipment, excluding any required power source, regulated under Chapter 754, Health and Safety Code;

(16) the installation, maintenance, alteration, or repair of equipment or network facilities provided or utilized by a cable operator, as that term is defined by 47 U.S.C. Section 522, as amended; [~~and~~]

(17) the location, design, construction, extension, maintenance, and installation of on-site sewage disposal systems in accordance with Chapter 366, Health and Safety Code, or an on-site sewage facility installer licensed under Chapter 37, Water Code;

(18) electrical work performed on a building, structure, or equipment in agricultural use;

(19) the installation, maintenance, alteration, or repair of well pumps and equipment in accordance with Chapter 1902; and

(20) electrical work required for the assembly of HUD-code manufactured housing or modular housing and building units, other than the installation of service entrance conductors, that is performed by a person licensed as an installer under Chapter 1201 or 1202, as applicable, if the work performed is within the scope of the person's license as defined by applicable administrative rules.

(d) This chapter does not require a political subdivision of this state, including a school district or a municipality, to hold an electrical contractor license or an electrical sign contractor license under this chapter to be authorized to employ a person to perform electrical work for the political subdivision.

(e) Subsection (d) does not exempt an employee of a political subdivision from the requirement of holding the appropriate license under this chapter to perform electrical work.

SECTION 3. Section 1305.151, Occupations Code, is amended to read as follows:

Sec. 1305.151. LICENSE REQUIRED. Except as provided by Section 1305.003, a person or business may not perform or offer to perform electrical work unless the person or business holds an appropriate license issued or recognized under this chapter.

SECTION 4. Section 1305.153, Occupations Code, is amended to read as follows:

Sec. 1305.153. [~~REQUIREMENTS FOR~~] MASTER ELECTRICIAN. (a) An applicant for a license as a master electrician must:

(1) have at least 12,000 hours of on-the-job training under the supervision of a master electrician; [~~and~~]

(2) have held a journeyman electrician license for at least two years; and

(3) pass a master electrician examination administered under this chapter.

(b) A master electrician may:

(1) perform all electrical work, including electrical work performed by a master sign electrician;

(2) supervise an electrician;

(3) verify compliance with on-the-job training requirements for issuance of a master electrician license, master sign electrician license, journeyman electrician license, or journeyman sign electrician license; and

(4) serve as master of record for an electrical sign contractor.

SECTION 5. Section 1305.160(b), Occupations Code, is amended to read as follows:

(b) A person who holds a master sign electrician license issued or recognized under this chapter may only be assigned to a single electrical sign contractor, unless the master sign electrician owns more than 50 percent of the electrical sign contracting business.

SECTION 6. Section 1305.161, Occupations Code, is amended to read as follows:

Sec. 1305.161. [~~ELECTRICAL~~] APPRENTICE; TEMPORARY APPRENTICE. (a) Except as provided by Subsection (b), an [~~An~~] applicant for a license as an electrical apprentice must be at least 16 years of age and be engaged in the process of learning and assisting in the installation of electrical work under the supervision of a licensed master electrician.

(b) An applicant for a license as an electrical sign apprentice must be at least 18 years of age and be engaged in the process of learning and assisting in the performance of electrical sign work under the supervision of a licensed master sign electrician.

(c) On the request of an applicant for an apprentice license, the executive director shall issue a temporary apprentice license that expires on the 21st day after the date of issuance to an applicant who meets the qualifications established by the executive director.

(d) The commission by rule shall set the fee, establish the qualifications, and provide for the issuance of a temporary apprentice license under this section.

SECTION 7. Subchapter D, Chapter 1305, Occupations Code, is amended by adding Sections 1305.1615 and 1305.1616 to read as follows:

Sec. 1305.1615. EMERGENCY ELECTRICIAN LICENSE. (a) The commission by rule shall establish criteria and procedures for the issuance of an emergency electrician license following a disaster, as that term is defined by Section 418.004, Government Code, to a person licensed as an electrician in another state of the United States.

(b) An emergency license issued under this section expires on the 90th day after the date of issuance.

(c) The commission, with the advice of the advisory board, may adopt rules that provide for the extension of an emergency license issued under this section.

Sec. 1305.1616. CERTAIN APPLICANTS WHO ARE VETERANS. (a) The department shall issue a license without examination to an individual who:

(1) was on active duty in the United States armed forces during the period of March 1, 2004, to June 1, 2004;

(2) submits an application and any other information required by department rule to the department not later than the 90th day after the date the individual is released or discharged from active duty in the armed forces;

(3) has the experience required for a license under this chapter; and

(4) pays the application fee.

(b) This section expires January 1, 2007.

SECTION 8. Section 1305.168(c), Occupations Code, is amended to read as follows:

(c) The executive director by rule shall approve continuing education courses, online continuing education courses, course content, and course providers. The commission may adopt a fee for the administration of the department's duties regarding continuing education.

SECTION 9. Section 1305.202, Occupations Code, is amended to read as follows:

Sec. 1305.202. SCOPE OF MUNICIPAL OR REGIONAL LICENSE. (a) A license to perform electrical work issued by a municipality or region is valid only in the municipality or region or in another municipality or region under a reciprocal agreement.

(b) A person who holds a license to perform electrical work or electrical sign work issued by a municipality or region that elects to discontinue issuing or renewing licenses may apply for an equivalent license under this chapter without complying with the applicable examination requirement if the person:

(1) held the municipal or regional license for the preceding year; and

(2) submits an application for a license under this chapter within 90 days of the date the municipality or region stops issuing or renewing licenses.

SECTION 10. Section 3(k), Chapter 1062, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(k) This section expires December 31, 2005 [~~September 1, 2005~~].

SECTION 11. Section 1305.167(d), Occupations Code, is repealed.

SECTION 12. (a) Notwithstanding Section 3(a)(1), Chapter 1062, Acts of the 78th Legislature, Regular Session, 2003, an applicant for a license under that section must apply not later than December 31, 2005, and meet the requirements under that section not later than December 31, 2005.

(b) For purposes of the issuance of a license under Section 3, Chapter 1062, Acts of the 78th Legislature, Regular Session, 2003:

(1) the executive director of the Texas Department of Licensing and Regulation shall accept alternative documentation of on-the-job experience approved by the department if the license applicant is applying for a license in an area in which a municipal or regional licensing program does not exist and is unable to provide proof of on-the-job training certified by a master electrician or master sign electrician, as appropriate; and

(2) a person applying for a license in an area in which a municipal or regional licensing program exists is eligible only for an equivalent license issued by the department.

(c) The Texas Department of Licensing and Regulation shall provide notice of the period extended as provided by this section in which an applicant may apply for a license under Section 3, Chapter 1062, Acts of the 78th Legislature, Regular Session, 2003, to:

(1) all municipal and regional licensing programs in this state;

(2) all counties in this state; and

(3) all businesses in this state that sell electrical supplies and equipment.

(d) In the notice required under Subsection (c)(1) of this section, the Texas Department of Licensing and Regulation shall request that the municipal or regional licensing program provide notice of the extended application period to all persons holding electrical licenses issued by that program.

SECTION 13. 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, 2005.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **CSHB 1317** (Senate Committee Printing) in SECTION 2 of the bill, by striking Subdivision (8), Subsection (a), Section 1305.003, Occupations Code (page 2, lines 1 through 7) and substituting the following:

(8) electrical [~~maintenance~~] work if:

(A) the work is performed by a person <u>who does not engage in electrical work for the public</u> [~~regularly employed as a maintenance person at the building or premises~~];

(B) the work is performed <u>by a person regularly employed as a maintenance person or maintenance electrician for a</u> [~~in conjunction with the~~] business [~~in which the person is employed~~]; and

(C) the [~~person does not engage in~~] electrical work <u>does not involve the installation of electrical equipment during new construction as defined by rules adopted under Chapter 151, Tax Code</u> [~~for the public~~];

Senate Amendment No. 2 (Senate Floor Amendment No. 2)

Amend **CSHB 1317** (Senate Committee Printing) as follows:

(1) In SECTION 2 of the bill, in amended Paragraphs (A) and (B), Subdivision (5), Subsection (a), Section 1305.003, Occupations Code (page 1, lines 44 and 46), strike "affiliated" each place the term appears.

(2) In SECTION 2 of the bill, in proposed Subdivision (20), Subsection (a), Section 1305.003, Occupations Code (page 2, line 65), between "required for the" and "assembly", insert "construction or".

(3) In SECTION 2 of the bill, in proposed Subdivision (20), Subsection (a), Section 1305.003, Occupations Code (page 2, line 68), strike "person licensed as an installer" and substitute "manufacturer or installer licensed".

(4) In SECTION 2 of the bill, in proposed Subdivision (20), Subsection (a), Section 1305.003, Occupations Code (page 3, line 1), strike "person's".

(5) In Subdivision (1), Subsection (b), SECTION 12, of the bill (page 4, line 62), between "on-the-job" and "experience", insert "electronical".

(6) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION ___. In the event of a conflict between a provision of this Act and another Act passed by the 79th Legislature, Regular Session, 2005, that becomes law, this Act prevails and controls regardless of the relative dates of enactment.

Senate Amendment No. 3 (Senate Floor Amendment No. 3)

Amend **CSHB 1317**, in SECTION 2 of the bill, by striking Section 1305.003(a)(20), Occupations Code, (Senate committee printing page 2, line 65 through page 3, line 2) and substituting the following:

(20) electrical work required for the construction and assembly of HUD-code manufactured housing or modular housing and building units, other than the installation of service entrance conductors, that is performed by a licensed manufacturer or installer under Chapter 1201 or 1202, as applicable, if work performed is within the scope of the license as defined by applicable statutes and administrative rules.

HB 1771 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Delisi called up with senate amendments for consideration at this time,

HB 1771, A bill to be entitled An Act relating to the Medicaid managed care delivery system.

Representative Delisi moved to concur in the senate amendments to **HB 1771**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 931): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Senate Committee Substitute

CSHB 1771, A bill to be entitled An Act relating to the Medicaid managed care delivery system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 533, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. INTEGRATED CARE MANAGEMENT MODEL

Sec. 533.061. INTEGRATED CARE MANAGEMENT MODEL. (a) The executive commissioner, by rule, shall develop an integrated care management model of Medicaid managed care. The "integrated care management model" is a noncapitated primary care case management model of Medicaid managed care with enhanced components to:

(1) improve patient health and social outcomes;

(2) improve access to care;

(3) constrain health care costs; and

(4) integrate the spectrum of acute care and long-term care services and supports.

(b) In developing the integrated care management model, the executive commissioner shall ensure that the integrated care management model utilizes managed care principles and strategies to assure proper utilization of acute care and long-term care services and supports. The components of the model must include:

(1) the assignment of recipients to a medical home;

(2) utilization management to assure appropriate access and utilization of services, including prescription drugs;

(3) health risk or functional needs assessment;

(4) a method for reporting to medical homes and other appropriate health care providers on the utilization by recipients of health care services and the associated cost of utilization of those services;

(5) mechanisms to reduce inappropriate emergency department utilization by recipients, including the provision of after-hours primary care;

(6) mechanisms that ensure a robust system of care coordination for assessing, planning, coordinating, and monitoring recipients with complex, chronic, or high-cost health care or social support needs, including attendant care and other services needed to remain in the community;

(7) implementation of a comprehensive, community-based initiative to educate recipients about effective use of the health care delivery system;

(8) strategies to prevent or delay institutionalization of recipients through the effective utilization of home and community-based support services; and

(9) any other components the executive commissioner determines will improve a recipient's health outcome and are cost-effective.

(c) For purposes of this chapter, the integrated care management model is a managed care plan.

Sec. 533.062. CONTRACTING FOR INTEGRATED CARE MANAGEMENT. (a) The commission may contract with one or more administrative services organizations to perform the coordination of care and other services and functions of the integrated care management model developed under Section 533.061.

(b) The commission may require that each administrative services organization contracting with the commission under this section assume responsibility for exceeding administrative costs and not meeting performance standards in connection with the provision of acute care and long-term care services and supports under the terms of the contract.

(c) The commission may include in a contract awarded under this section a written guarantee of state savings on Medicaid expenditures for recipients receiving services provided under the integrated care management model developed under Section 533.061.

(d) The commission may require that each administrative services organization contracting with the commission under this section establish pay-for-performance incentives for providers to improve patient outcomes.

(e) In this section, "administrative services organization" means an entity that performs administrative and management functions, such as the development of a physician and provider network, care coordination, service coordination, utilization review and management, quality management, and patient and provider education, for a noncapitated system of health care services, medical services, or long-term care services and supports.

Sec. 533.063. STATEWIDE INTEGRATED CARE MANAGEMENT ADVISORY COMMITTEE. (a) The executive commissioner may appoint an advisory committee to assist the executive commissioner in the development and implementation of the integrated care management model.

(b) The advisory committee is subject to Chapter 551.

SECTION 2. (a) The Health and Human Services Commission shall require each administrative services organization contracting with the commission to perform services under Section 533.062, Government Code, as added by this Act, to coordinate with, use, and otherwise interface with the fee-for-service claims payment contractor operating in this state on August 31, 2005, until the date the claims payment contract expires, subject to renewal of the contract.

(b) The commission may require each administrative services organization contracting with the commission to perform services under Section 533.062, Government Code, as added by this Act, to incorporate disease management into the integrated care management model established under Section 533.061, Government Code, as added by this Act, utilizing the Medicaid disease management contractor operating in this state on November 1, 2004, until the date the disease management contract expires, subject to renewal of the contract.

SECTION 3. If before implementing any provision of this Act a state agency determines that a waiver or other authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4. If any provision of this Act conflicts with a statute enacted by the 79th Legislature, Regular Session, 2005, the provision of this Act controls.

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, 2005.

HB 1546 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative McClendon called up with senate amendments for consideration at this time,

HB 1546, A bill to be entitled An Act relating to the administration and use of the Texas rail relocation and improvement fund and the issuance of obligations for financing the relocation, construction, reconstruction, acquisition, improvement, rehabilitation, and expansion of certain rail facilities.

Representative McClendon moved to concur in the senate amendments to **HB 1546**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 932): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen, A.; Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Herrero; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Talton; Taylor; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee; Pitts.

Absent — Thompson.

Senate Amendment No. 1 (Senate Floor Amendment No. 1)

Amend **HB 1546** (Committee printing version) as follows:

(1) In SECTION 1 of the bill, in added Section 201.973(f)(1), Transportation Code (page 2, line 69), strike "principal" and substitute "debt service".

(2) Add the following at the end of SECTION 1 of the bill (page 4, between lines 22-23):

Sec. 201.978. ACQUISITION AND DISPOSAL OF PROPERTY. (a) The department may acquire by purchase property or an interest in property necessary or convenient for one or more of the purposes for which obligations may be issued under Section 201.973(d).

(b) Property acquired under Subsection (a) may be used for any transportation pupose.

(c) Notwithstanding Chapter 202, the department may sell or lease property acquired under Subsection (a) that is no longer needed for a transportation purpose. Revenue from a sale or lease shall be deposited in the fund.

HB 2161 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative West called up with senate amendments for consideration at this time,

HB 2161, A bill to be entitled An Act relating to the power of the Railroad Commission of Texas to adopt and enforce safety standards and practices applicable to the transportation by pipeline of certain substances and to certain pipeline facilities; imposing an administrative penalty.

Representative West 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 2161**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2161**: West, chair; Crabb; Crownover; Howard; and Gonzalez Toureilles.

HB 2201 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Hughes called up with senate amendments for consideration at this time,

HB 2201, A bill to be entitled An Act relating to implementing a clean coal project in this state.

Representative Hughes 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 2201**.

The motion prevailed.

(Pitts now present)

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2201**: Hughes, chair; R. Cook; Kolkhorst; P. King; and Hopson.

HB 2221 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Luna called up with senate amendments for consideration at this time,

HB 2221, A bill to be entitled An Act relating to the territory of a public junior college district and to the provision of services by a junior college district to students residing outside the district.

Representative Luna 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 2221**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2221**: Luna, chair; Morrison; Turner; Callegari; and Seaman.

HB 10 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Pitts called up with senate amendments for consideration at this time,

HB 10, A bill to be entitled An Act relating to making supplemental appropriations and reductions in appropriations.

Representative Pitts 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 10**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 10**: Pitts, chair; J. Davis; Isett; Guillen; and Dukes.

HB 10 - STATEMENT OF LEGISLATIVE INTENT

Children are currently taking their tests online and it is time that teachers did as well. It will save time and money and pencil and paper testing is antiquated. There is no reason to appropriate money for status quo testing. The intent was to bring teacher testing into the 21st century.

F. Brown

HB 2329 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Morrison called up with senate amendments for consideration at this time,

HB 2329, A bill to be entitled An Act relating to authorizing the issuance of revenue bonds or other obligations to fund capital projects at public institutions of higher education.

Representative Morrison 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 2329**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2329**: Morrison, chair; Woolley; Turner; Rose; and Pitts.

HB 2572 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Truitt called up with senate amendments for consideration at this time,

HB 2572, A bill to be entitled An Act relating to the functions of local mental health and mental retardation authorities.

Representative Truitt 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 2572**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2572**: Truitt, chair; J. Davis; Isett; Farabee; and Hupp.

HB 3001 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Morrison called up with senate amendments for consideration at this time,

HB 3001, A bill to be entitled An Act relating to the amount of the annual constitutional appropriation to certain agencies and institutions of higher education and to the allocation of those funds to those agencies and institutions.

Representative Morrison 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 3001**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3001**: Morrison, chair; Branch; Dawson; Kolkhorst; and Turner.

HB 3556 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative B. Brown called up with senate amendments for consideration at this time,

HB 3556, A bill to be entitled An Act relating to the creation of Las Lomas Municipal Utility District No. 4 of Kaufman County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

Representative B. Brown 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 3556**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 3556**: B. Brown, chair; Denny; Crownover; McClendon; and Hopson.

HB 2876 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Callegari called up with senate amendments for consideration at this time,

HB 2876, A bill to be entitled An Act relating to certificates of public convenience and necessity for water service and sewer service.

Representative Callegari 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 2876**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2876**: Callegari, chair; Puente; Geren; Hope; and Hardcastle.

HB 2793 - HOUSE REFUSES TO CONCUR IN SENATE AMENDMENTS CONFERENCE COMMITTEE APPOINTED

Representative Bonnen called up with senate amendments for consideration at this time,

HB 2793, A bill to be entitled An Act relating to the removal and collection of convenience switches from motor vehicles; providing penalties.

Representative Bonnen 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 2793**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 2793**: Bonnen, chair; Kuempel; Howard; T. King; and Homer.

SB 34 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Morrison, the house granted the request of the senate for the appointment of a conference committee on **SB 34**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 34**: Morrison, chair; Campbell; Rose; Harper-Brown; and Goolsby.

SB 330 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative McReynolds, the house granted the request of the senate for the appointment of a conference committee on **SB 330**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 330**: McReynolds, chair; Delisi; Dawson; Zedler; and Martinez.

SB 712 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative R. Cook, the house granted the request of the senate for the appointment of a conference committee on **SB 712**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 712**: R. Cook, chair; Bonnen; West; P. King; and Geren.

SB 743 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Morrison, the house granted the request of the senate for the appointment of a conference committee on **SB 743**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 743**: P. King, chair; Baxter; R. Cook; Turner; and Swinford.

SB 757 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Solomons, the house granted the request of the senate for the appointment of a conference committee on **SB 757**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 757**: Solomons, chair; McCall; Orr; Guillen; and Flynn.

SB 771 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Hartnett, the house granted the request of the senate for the appointment of a conference committee on **SB 771**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 771**: Hartnett, chair; Veasey; Anchia; Geren; and Giddings.

SB 982 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Puente, the house granted the request of the senate for the appointment of a conference committee on **SB 982**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 982**: Puente, chair; Hunter; Corte; Leibowitz; and Straus.

SB 988 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Flynn, the house granted the request of the senate for the appointment of a conference committee on **SB 988**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 988**: Flynn, chair; McCall; Madden; Riddle; and T. King.

SB 1142 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Hamric, the house granted the request of the senate for the appointment of a conference committee on **SB 1142**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1142**: Hamric, chair; Dukes; Hodge; Hunter; and Hilderbran.

SB 1176 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Straus, the house granted the request of the senate for the appointment of a conference committee on **SB 1176**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1176**: Eiland, chair; Straus; Flynn; Baxter; and Kolkhorst.

SB 1297 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Talton, the house granted the request of the senate for the appointment of a conference committee on **SB 1297**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1297**: Talton, chair; Van Arsdale; Farrar; Hilderbran; and Bailey.

SB 1604 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative B. Cook, the house granted the request of the senate for the appointment of a conference committee on **SB 1604**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1604**: B. Cook, chair; Hardcastle; D. Jones; Eissler; and Griggs.

HB 2894 - HOUSE CONCURS IN SENATE AMENDMENTS
TEXT OF SENATE AMENDMENTS

Representative Phillips called up with senate amendments for consideration at this time,

HB 2894, A bill to be entitled An Act relating to the marketing and sale of certain license plates by a private vendor.

Representative Phillips moved to concur in the senate amendments to **HB 2894**.

A record vote was requested.

The motion to concur in senate amendments prevailed by (Record 933): 131 Yeas, 7 Nays, 2 Present, not voting.

Yeas — Allen, R.; Alonzo; Anchia; Anderson; Bailey; Baxter; Berman; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Casteel; Castro; Chavez; Cook, B.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Eiland; Eissler; Elkins; Escobar; Farabee; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; King, P.; King, T.; Kolkhorst; Kuempel; Laney; Laubenberg; Luna; Madden; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega, M.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Puente; Quintanilla; Raymond; Reyna; Riddle; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Vo; West; Wong; Woolley; Zedler.

Nays — Allen, A.; Coleman; Edwards; Farrar; Herrero; Leibowitz; Solis.

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

Absent, Excused — Blake; Villarreal.

Absent, Excused, Committee Meeting — Krusee.

Absent — Bohac; Cook, R.; Keffer, J.; Martinez; Pitts; Ritter.

Senate Committee Substitute

CSHB 2894, A bill to be entitled An Act relating to the marketing and sale of certain license plates by a private vendor.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 504.851, Transportation Code, is amended by amending Subsections (a), (b), (c), (e), (f), (g), and (h) and adding Subsections (g-1) and (k)-(m) to read as follows:

(a) The [~~commission may authorize the~~] department shall [~~to~~] enter into a contract with the private vendor whose proposal is most advantageous to the state, as determined from competitive sealed proposals that satisfy the requirements of this section, for the marketing and sale of:

(1) personalized [~~prestige~~] license plates authorized by Section 504.101; or

(2) with the agreement of the private vendor, other specialty [~~specialized~~] license plates authorized by this subchapter.

(b) Instead of the fees established by Section 504.101(c), [~~if the commission authorizes the department to contract with a private vendor under Subsection (a)(1) for the marketing and sale of personalized prestige license plates,~~] the commission by rule shall establish fees for the issuance or renewal of personalized [~~prestige~~] license plates that are marketed and sold by the private vendor. Fees must be reasonable and not less than the greater of:

(1) the amounts necessary to allow the department to recover all reasonable costs to the department associated with the evaluation of the competitive sealed proposals received by the department and with the implementation and enforcement of the contract, including direct, indirect, and administrative costs; or

(2) the amount established by Section 504.101(c).

(c) The [~~If the commission authorizes the department to contract with a private vendor under Subsection (a)(2) for the marketing and sale of other specialized license plates authorized by this subchapter, including specialized license plates that may be personalized, the~~] commission by rule shall establish the fees for the issuance or renewal of souvenir license plates, specialty [~~specialized~~] license plates, or souvenir or specialty license plates that are personalized that are marketed and sold by the private vendor. Fees must be reasonable and not less than the amounts necessary to allow the department to recover all reasonable costs to the department associated with the evaluation of the competitive sealed proposals received by the department and with the implementation and enforcement of the contract, including direct, indirect, and administrative costs. A fee established under this subsection is in addition to:

(1) the registration fee and any optional registration fee prescribed by this chapter for the vehicle for which specialty [~~the specialized~~] license plates are issued;

(2) any additional fee prescribed by this subchapter for the issuance of specialty [~~the specialized~~] license plates for that vehicle; and

(3) any additional fee prescribed by this subchapter for the issuance of personalized license plates for that vehicle.

(e) The portion of a [~~A~~] contract with a private vendor regarding the marketing and sale of personalized license plates [~~under Subsection (a)(1)~~] is payable only from amounts derived from the collection of the fee established under Subsection (b). The portion of a [~~A~~] contract with a private vendor regarding the marketing and sale of souvenir license plates, specialty license

plates, or souvenir or specialty license plates that are personalized under Section 504.102 [~~under Subsection (a)(2)~~] is payable only from amounts derived from the collection of the fee established under Subsection (c).

(f) The department may approve [~~create~~] new design and color combinations for personalized [~~prestige~~] license plates that are marketed and [~~or~~] sold by a private vendor under a contract entered into with the private vendor [~~under Subsection (a)(1)~~]. Each approved license plate design and color combination remains the property of the department.

(g) The department may approve [~~create~~] new design and color combinations for specialty [~~specialized~~] license plates authorized by this chapter, including specialty [~~specialized~~] license plates that may be personalized, that are marketed and [~~or~~] sold by a private vendor under a contract entered into with the private vendor [~~under Subsection (a)(2)~~]. Each approved license plate design and color combination remains the property of the department. Except as otherwise provided by this chapter, this [~~This~~] subsection does not authorize:

(1) the department to approve a design or color combination for a specialty [~~specialized~~] license plate that is inconsistent with the design or color combination specified for the license plate by the section of this chapter [~~subchapter~~] that authorizes the issuance of the specialty [~~specialized~~] license plate; or

(2) the private vendor to market and [~~or~~] sell a specialty [~~specialized~~] license plate with a design or color combination that is inconsistent with the design or color combination specified by that section.

(g-1) The department may not:

(1) publish a proposed design or color combination for a specialty license plate for public comment in the Texas Register or otherwise, except on the department's website for a period not to exceed 10 days; or

(2) restrict the background color, color combinations, or color alphanumeric license plate numbers of a specialty license plate, except as determined by the Department of Public Safety as necessary for law enforcement purposes.

(h) Subject to the limitations provided by Subsections (g) and (g-1) [~~In connection with a license plate that is marketed or sold by a private vendor under contract~~], the department may cancel a license plate or require the discontinuation of a license plate design or color combination that is marketed and sold by a private vendor under contract at any time if the department determines that the cancellation or discontinuation is in the best interest of this state or the motoring public.

(k) The department shall certify to the comptroller the estimate, with a detailed explanation of the basis on which the estimate is calculated, of all reasonable costs to the department associated with the evaluation of competitive sealed proposals received by the department under this section and associated with the implementation and enforcement of a contract entered into under this section, including direct, indirect, and administrative costs for the issuance or renewal of personalized license plates or specialty license plates.

(l) A contract entered into with the private vendor shall provide for the department to recover all costs incurred by the department in implementing this section. Under the contract, the department may require the private vendor to reimburse the department in advance for:

(1) not more than one-half of the department's anticipated costs in connection with the contract; and

(2) the department's anticipated costs in connection with the introduction of a new specialty license plate.

(m) To the extent that specialty license plate fees collected under this section are in excess of the minimum amount required under Subsection (b) or (c), the excess amount shall be deposited to the credit of the general revenue fund.

SECTION 2. Subchapter J, Chapter 504, Transportation Code, is amended by adding Section 504.852 to read as follows:

Sec. 504.852. CONTRACT LIMITATIONS. (a) In a contract under Section 504.851, the department may not:

(1) unreasonably disapprove or limit any aspect of a private vendor's marketing and sales plan;

(2) unreasonably interfere with the selection, assignment, or management by the private vendor of the private vendor's employees, agents, or subcontractors; or

(3) require a private vendor to market and sell souvenir license plates, specialty license plates, or souvenir or specialty license plates personalized under Section 504.102.

(b) If a private vendor contracts to market and sell souvenir license plates, specialty license plates, or souvenir or specialty license plates personalized under Section 504.102, the initial term of the contract shall be for at least five years from the effective date of the contract. The contract may provide, with the agreement of the department and the private vendor, a second term at least equal in length to the initial term of the contract.

(c) Notwithstanding Subsection (b), a private vendor may not market and sell souvenir license plates, specialty license plates, or souvenir or specialty license plates personalized under Section 504.102 that compete directly for sales with another specialty license plate issued under this chapter unless the department and the sponsoring agency or organization of the other license plate approve.

SECTION 3. A contract awarded by the Texas Department of Transportation to a private vendor under the provisions of Section 504.851, Transportation Code, is not valid to the extent that the contract does not comply with the changes in law made by this Act.

SECTION 4. 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, 2005.

RESOLUTIONS ADOPTED

Representative Strama moved to suspend all necessary rules in order to take up and consider at this time **HR 284**, **HR 1147**, **HR 1242**, **HR 1419**, **HR 2173**, **HR 2175**, **HR 2180**, **HR 2181**, **HR 2184**, **HR 2188**, **HR 2189**, and **HR 2194**.

The motion prevailed.

The following resolutions were laid before the house:

HR 284 (by Anchia), Honoring NFL great Emmitt Smith on his retirement from professional football.

HR 1147 (by Martinez), Honoring Socorro Cano for her volunteer work with Mercedes schools.

HR 1242 (by Edwards), Directing the Office of the Attorney General of Texas to conduct a study to ensure that high gasoline prices in Texas are not the result of consumer fraud and to provide information to help Texas consumers find the lowest possible price for gasoline in their community.

HR 1419 (by Hilderbran), Recognizing the 100th anniversary of Stowers Ranch in Kerr County.

HR 2173 (by Kuempel), Commending Charles Ruppert on his tenure as mayor of Cibolo from 2001 to 2005.

HR 2175 (by Dutton), Honoring the Ella Bouldin Women's Missionary Society's 4th Annual Three Score and Ten Senior Recognition Program in June 2005.

HR 2180 (by Hamric), Honoring the staff of Special Services for their contributions to the 79th Legislature.

HR 2181 (by Flynn), Honoring Darryl Dean Mayo of Van Zandt County for his lifelong service as a minister.

HR 2184 (by Chavez), Commending the El Paso City-County Health District's Dental Clinic and expressing support for its efforts to obtain continued funding.

HR 2188 (by Dutton), Congratulating KTSU and Texas Southern University on the opening of the Tavis Smiley Center for Professional Media Studies.

HR 2189 (by Dutton), Honoring the Reverend Robert L. Thomas, Jr., of Houston on his first anniversary as pastor of Olivet Missionary Baptist Church.

HR 2194 (by J. Keffer), Directing the Brazos River Authority to work with the leaseholders and residents of Possum Kingdom Lake Community.

The resolutions were adopted.

SB 1863 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Pitts, the house granted the request of the senate for the appointment of a conference committee on **SB 1863**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1863**: Pitts, chair; Isett; Chisum; Gattis; and Dukes.

(Speaker in the chair)

HR 2186 - ADOPTED
(by Bonnen)

Representative Bonnen moved to suspend all necessary rules to take up and consider at this time **HR 2186**.

The motion prevailed.

The following resolution was laid before the house:

HR 2186, Honoring the Danbury High School Lady Panthers softball team on winning the 2004 Conference 2A UIL State Softball Championship.

HR 2186 was adopted.

ADJOURNMENT

Representative Hegar moved that the house adjourn until 11 a.m. tomorrow.

The motion prevailed.

The house accordingly, at 6:56 p.m, adjourned until 11 a.m. tomorrow.

ADDENDUM

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 53

HB 43, **HB 62**, **HB 126**, **HB 129**, **HB 135**, **HB 157**, **HB 251**, **HB 270**, **HB 308**, **HB 370**, **HB 381**, **HB 407**, **HB 418**, **HB 473**, **HB 474**, **HB 480**, **HB 484**, **HB 505**, **HB 506**, **HB 511**, **HB 573**, **HB 578**, **HB 582**, **HB 617**, **HB 629**, **HB 637**, **HB 638**, **HB 647**, **HB 659**, **HB 669**, **HB 681**, **HB 699**, **HB 703**, **HB 706**, **HB 776**, **HB 825**, **HB 860**, **HB 867**, **HB 868**, **HB 900**, **HB 915**, **HB 967**, **HB 970**, **HB 989**, **HB 994**, **HB 1030**, **HB 1054**, **HB 1055**, **HB 1063**, **HB 1071**, **HB 1102**, **HB 1111**, **HB 1132**, **HB 1161**, **HB 1173**, **HB 1209**, **HB 1234**, **HB 1248**, **HB 1268**, **HB 1287**, **HB 1404**, **HB 1413**, **HB 1414**, **HB 1426**, **HB 1438**, **HB 1462**, **HB 1472**, **HB 1475**, **HB 1509**, **HB 1535**, **HB 1547**, **HB 1572**, **HB 1596**, **HB 1614**, **HB 1631**, **HB 1632**, **HB 1647**, **HB 1648**, **HB 1659**, **HB 1664**, **HB 1673**, **HB 1681**, **HB 1744**, **HB 1765**, **HB 1789**, **HB 1812**, **HB 1831**, **HB 1891**, **HB 1896**, **HB 1919**, **HB 1925**, **HB 1945**, **HB 1981**, **HB 1984**, **HB 1987**, **HB 1999**, **HB 2036**, **HB 2064**, **HB 2065**, **HB 2068**, **HB 2069**, **HB 2071**, **HB 2077**, **HB 2100**, **HB 2101**, **HB 2109**, **HB 2134**, **HB 2140**, **HB 2158**, **HB 2194**, **HB 2195**, **HB 2197**, **HB 2199**, **HB 2228**, **HB 2235**, **HB 2243**, **HB 2254**, **HB 2273**, **HB 2280**, **HB 2294**, **HB 2296**, **HB 2300**, **HB 2301**, **HB 2333**, **HB 2348**,

HB 2384, **HB 2388**, **HB 2414**, **HB 2422**, **HB 2437**, **HB 2440**, **HB 2441**, **HB 2454**, **HB 2458**, **HB 2470**, **HB 2471**, **HB 2476**, **HB 2495**, **HB 2507**, **HB 2509**, **HB 2526**, **HB 2581**, **HB 2590**, **HB 2594**, **HB 2613**, **HB 2614**, **HB 2618**, **HB 2626**, **HB 2650**, **HB 2677**, **HB 2695**, **HB 2696**, **HB 2755**, **HB 2765**, **HB 2791**, **HB 2826**, **HB 2837**, **HB 2866**, **HB 2879**, **HB 2926**, **HB 2931**, **HB 2942**, **HB 2956**, **HB 2957**, **HB 2988**, **HB 2999**, **HB 3016**, **HB 3029**, **HB 3036**, **HB 3045**, **HB 3047**, **HB 3048**, **HB 3101**, **HB 3140**, **HB 3144**, **HB 3149**, **HB 3169**, **HB 3200**, **HB 3250**, **HB 3269**, **HB 3297**, **HB 3300**, **HB 3302**, **HB 3357**, **HB 3376**, **HB 3384**, **HB 3409**, **HB 3425**, **HB 3428**, **HB 3441**, **HB 3460**, **HB 3461**, **HB 3468**, **HB 3476**, **HB 3478**, **HB 3479**, **HB 3490**, **HB 3497**, **HB 3498**, **HB 3502**, **HB 3513**, **HB 3515**, **HB 3519**, **HB 3520**, **HB 3524**, **HB 3530**, **HB 3535**, **HB 3537**, **HB 3541**, **HB 3548**, **HB 3549**, **HB 3550**, **HB 3554**, **HB 3557**, **HB 3560**, **HB 3568**, **HB 3570**, **HB 3576**, **HCR 35**, **HCR 105**, **HCR 108**, **HCR 138**, **HCR 153**

Senate List No. 31

SB 189, **SB 271**, **SB 291**, **SB 308**, **SB 314**, **SB 423**, **SB 465**, **SB 471**, **SB 483**, **SB 502**, **SB 511**, **SB 593**, **SB 702**, **SB 739**, **SB 815**, **SB 829**, **SB 866**, **SB 867**, **SB 920**, **SB 951**, **SB 955**, **SCR 12**, **SCR 16**, **SCR 17**, **SCR 18**, **SCR 19**, **SCR 21**, **SCR 27**, **SCR 30**, **SCR 36**

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Friday, May 27, 2005

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:

HCR 166 Chisum SPONSOR: Staples
Memorializing congress to increase funding to the fully authorized level and include advance funds for the Low Income Home Energy Assistance Program and to pursue a more equitable funding allocation formula for the program.

HCR 193 Davis, John SPONSOR: Staples
Supporting Texas' application for a Mental Health Transformation State Incentive Grant from the U.S. Department of Health and Human Services.

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 34
Senate Conferees: Zaffirini - Chair/Seliger/Shapiro/Van de Putte/West, Royce

SB 330
Senate Conferees: Deuell - Chair/Averitt/Lindsay/Van de Putte/West, Royce

SB 712
Senate Conferees: Carona - Chair/Eltife/Estes/Fraser/Lucio

SB 743
Senate Conferees: Fraser - Chair/Averitt/Estes/Janek/West, Royce

SB 757
Senate Conferees: Armbrister - Chair/Brimer/Estes/Fraser/Lucio

SB 771
Senate Conferees: West, Royce - Chair/Brimer/Deuell/Ellis/Gallegos

SB 982
Senate Conferees: Van de Putte - Chair/Armbrister/Ellis/Eltife/Harris

SB 988
Senate Conferees: Carona - Chair/Brimer/Estes/Fraser/Lucio

SB 1142
Senate Conferees: Carona - Chair/Averitt/Eltife/Lucio/Ogden

SB 1176
Senate Conferees: Armbrister - Chair/Barrientos/Brimer/Duncan/Jackson, Mike

SB 1297
Senate Conferees: Armbrister - Chair/Fraser/Gallegos/Jackson, Mike/Staples

SB 1604
Senate Conferees: Staples - Chair/Brimer/Eltife/Madla/Seliger

SB 1863
Senate Conferees: Ogden - Chair/Duncan/Shapiro/Staples/West, Royce

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 268
Senate Conferees: Hinojosa - Chair/Duncan/Ellis/Harris/Seliger

HB 283
Senate Conferees: Zaffirini - Chair/Averitt/Hinojosa/Shapiro/Van de Putte

HB 585
Senate Conferees: Wentworth - Chair/Brimer/Deuell/Madla/Whitmire

HB 1225
Senate Conferees: Duncan - Chair/Armbrister/Madla/Seliger/Staples

HB 1835
Senate Conferees: Armbrister - Chair/Fraser/Lucio/Madla/Wentworth

HB 2438
Senate Conferees: Armbrister - Chair/Brimer/Fraser/Harris/Lucio

HB 2465
Senate Conferees: Fraser - Chair/Duncan/Lucio/Shapleigh/Williams

HB 2678
Senate Conferees: Seliger - Chair/Armbrister/Averitt/Duncan/West, Royce

HB 2702
Senate Conferees: Staples - Chair/Ellis/Eltife/Fraser/Shapleigh

HB 3540
Senate Conferees: Ogden - Chair/Averitt/Shapiro/Staples/Whitmire

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 122 (31 Yeas, 0 Nays)

SB 1050 (31 Yeas, 0 Nays)

THE SENATE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 419 (23 Yeas, 7 Nays, 1 PNV)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Friday, May 27, 2005 - 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:

HCR 204 Homer SPONSOR: Deuell
Recognizing George Law of Sulphur Springs on his selection as Sulphur Springs Kiwanis Layperson of the Year.

HCR 214 Hilderbran SPONSOR: Shapiro
Recognizing the 2005 and 2006 appointments of State Poet Laureate, State Musician, and State Visual Artists.

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Friday, May 27, 2005 - 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:

HCR 207 Craddick
Honoring Dilly Mendoza of Austin for her outstanding tenure as captain's secretary for the Department of Public Safety Capitol Detail.

HCR 216 Craddick SPONSOR: Seliger
Honoring U.S. Marine Corps Captain Van Taylor of Dallas for his service to his country.

HCR 222 Craddick SPONSOR: Seliger
Congratulating Francis Vernon Ruble and Aimer Loutency Ruble on their 63rd wedding anniversary.

HCR 225 West, George "Buddy" SPONSOR: Nelson
Recalling **HB 872** from the Secretary of the Senate.

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 23 (29 Yeas, 0 Nays)

SB 40 (29 Yeas, 0 Nays)

SB 51 (29 Yeas, 0 Nays)

SB 166 (29 Yeas, 0 Nays)

SB 269 (29 Yeas, 0 Nays)

SB 327 (29 Yeas, 0 Nays)

SB 369 (29 Yeas, 0 Nays)

SB 522 (29 Yeas, 0 Nays)

SB 573 (29 Yeas, 0 Nays)

SB 623 (29 Yeas, 0 Nays)

SB 630 (29 Yeas, 0 Nays)

SB 747 (29 Yeas, 0 Nays)

SB 781 (29 Yeas, 0 Nays)

SB 826 (27 Yeas, 2 Nays)

SB 837 (29 Yeas, 0 Nays)

SB 890 (29 Yeas, 0 Nays)

SB 921 (29 Yeas, 0 Nays)

SB 995 (29 Yeas, 0 Nays)

SB 1112 (29 Yeas, 0 Nays)

SB 1130 (29 Yeas, 0 Nays)

SB 1149 (29 Yeas, 0 Nays)

SB 1255	(29 Yeas, 0 Nays)
SB 1264	(29 Yeas, 0 Nays)
SB 1283	(29 Yeas, 0 Nays)
SB 1340	(29 Yeas, 0 Nays)
SB 1525	(29 Yeas, 0 Nays)
SB 1579	(29 Yeas, 0 Nays)
SB 1691	(24 Yeas, 5 Nays)
SB 1704	(29 Yeas, 0 Nays)
SB 1707	(29 Yeas, 0 Nays)
SB 1740	(29 Yeas, 0 Nays)
SB 1772	(29 Yeas, 0 Nays)
SB 1821	(29 Yeas, 0 Nays)
SB 1823	(29 Yeas, 0 Nays)
SB 1836	(29 Yeas, 0 Nays)
SB 1871	(29 Yeas, 0 Nays)
SB 1887	(29 Yeas, 0 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 4

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Friday, May 27, 2005 - 4

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 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 52
Senate Conferees: Nelson - Chair/Armbrister/Carona/Hinojosa/Janek

SB 444
Senate Conferees: Staples - Chair/Armbrister/Deuell/Eltife/Jackson, Mike

SB 567
Senate Conferees: Deuell - Chair/Janek/Madla/Seliger/Staples

SB 825
Senate Conferees: Shapleigh - Chair/Barrientos/Ellis/Eltife/Gallegos

SB 872
Senate Conferees: Nelson - Chair/Carona/Deuell/Hinojosa/Zaffirini

SB 1188
Senate Conferees: Nelson - Chair/Carona/Janek/Lucio/Seliger

SB 1227
Senate Conferees: Shapiro - Chair/Duncan/Janek/Ogden/Zaffirini

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 664
Senate Conferees: Duncan - Chair/Armbrister/Brimer/Madla/Seliger

HB 836
Senate Conferees: Ogden - Chair/Armbrister/Deuell/Gallegos/Nelson

HB 1690
Senate Conferees: West, Royce - Chair/Carona/Duncan/Ellis/Harris

HB 1830
Senate Conferees: Ellis - Chair/Lindsay/Madla/Wentworth/Whitmire

HB 1855
Senate Conferees: Ellis - Chair/Fraser/Harris/Hinojosa/Van de Putte

HB 2048
Senate Conferees: Ellis - Chair/Barrientos/Eltife/Nelson/Williams

HB 2421
Senate Conferees: Zaffirini - Chair/Carona/Fraser/Shapiro/West, Royce

HB 2510
Senate Conferees: Jackson, Mike - Chair/Armbrister/Estes/Fraser/Madla

HB 2604
Senate Conferees: Van de Putte - Chair/Estes/Fraser/Seliger/Shapleigh

HB 3526
Senate Conferees: Ellis - Chair/Lindsay/Madla/Wentworth/Whitmire

Respectfully,
Patsy Spaw
Secretary of the Senate

APPENDIX

ENGROSSED

May 26 - HCR 7

ENROLLED

May 26 - HB 43, HB 137, HB 418, HB 480, HB 484, HB 582, HB 706, HB 776, HB 833, HB 860, HB 915, HB 967, HB 970, HB 1030, HB 1038, HB 1044, HB 1054, HB 1063, HB 1161, HB 1404, HB 1413, HB 1414, HB 1462, HB 1480, HB 1509, HB 1535, HB 1547, HB 1609, HB 1614, HB 1632, HB 1647, HB 1648, HB 1659, HB 1664, HB 1673, HB 1708, HB 1744, HB 1891, HB 1919, HB 2064, HB 2069, HB 2071, HB 2077, HB 2158, HB 2194, HB 2195, HB 2280, HB 2294, HB 2296, HB 2300, HB 2333, HB 2348, HB 2388, HB 2414, HB 2437, HB 2440, HB 2454, HB 2458, HB 2509, HB 2581, HB 2594, HB 2613, HB 2647, HB 2651, HB 2695, HB 2696, HB 2755, HB 2765, HB 2931, HB 2942, HB 2956, HB 2988, HB 2999, HB 3029, HB 3036, HB 3041, HB 3045, HB 3047, HB 3048, HB 3144, HB 3147, HB 3149, HB 3169, HB 3181, HB 3200, HB 3269, HB 3297, HB 3300, HB 3357, HB 3409, HB 3423, HB 3428, HB 3476, HB 3478, HB 3479, HB 3490, HB 3498, HB 3502, HB 3515, HB 3519, HB 3520, HB 3554, HB 3568, HB 3570, HJR 79

RECOMMENDATIONS FILED WITH THE SPEAKER

May 27 - HB 3480, HB 3482, HB 3484, HB 3487, HB 3488

SENT TO THE GOVERNOR

May 26 - HB 56, HB 57, HB 68, HB 93, HB 209, HB 240, HB 248, HB 252, HB 258, HB 291, HB 322, HB 345, HB 352, HB 410, HB 422, HB 481, HB 540, HB 544, HB 549, HB 551, HB 598, HB 657, HB 788, HB 798, HB 841, HB 856, HB 874, HB 956, HB 993, HB 1045, HB 1059, HB 1095, HB 1098, HB 1107, HB 1137, HB 1170, HB 1179, HB 1213, HB 1224, HB 1232, HB 1235, HB 1267, HB 1283, HB 1318, HB 1339, HB 1346, HB 1394, HB 1403, HB 1458, HB 1481, HB 1485, HB 1586, HB 1599, HB 1630, HB 1642, HB 1645, HB 1685, HB 1697, HB 1705, HB 1734, HB 1747, HB 1791, HB 1833, HB 1892, HB 1938, HB 2017, HB 2018, HB 2019, HB 2039, HB 2080, HB 2108, HB 2172, HB 2193, HB 2200, HB 2223, HB 2272, HB 2275, HB 2331, HB 2371, HB 2390, HB 2587, HB 2701, HB 2746, HB 2868, HB 2885, HB 2900, HB 2902, HB 2921, HB 2932, HB 3010, HB 3098, HB 3111, HB 3113, HB 3163, HB 3195, HB 3199, HB 3263, HB 3481, HB 3527, HB 3534, HB 3546, HB 3547, HB 3569, HB 3574, HB 3582, HCR 6, HCR 195

SENT TO THE SECRETARY OF THE STATE

May 26 - HJR 87