

SEVENTY-THIRD DAY

TUESDAY, MAY 18, 1999

PROCEEDINGS

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Nixon, Ogden, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Absent-excused: Luna.

The President announced that a quorum of the Senate was present.

Senate Doorkeeper Don Long offered the invocation as follows:

Almighty God, author of law, right, and justice, You have placed these Senators in this Chamber to shape and fashion the laws that will benefit all the citizens of Texas. Keep these Senators from enacting laws that are marred by prejudice, favoritism, or inequity. Restrain them from acting hastily or reacting in vengeance. Give Lieutenant Governor Perry the wisdom and courage to conduct all business in peace and harmony. As the legislators of Texas face the enemies of justice and the foes of right, may they remember the words of the poet:

What though I stand with the winners,
Or perish with those who fall?
Only the cowards are sinners,
Fighting the fight is all.

Strong is my foe who advances,
Snapped is my blade, O Lord;
See their proud banners and lances,
But spare me the stub of a sword.

Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

On motion of Senator Barrientos, Senator Luna was granted leave of absence for today on account of illness.

GUESTS PRESENTED

Senator West was recognized and introduced to the Senate Martha de la Paz, a student at Obadiah Knight Elementary School in Dallas, accompanied by the sixth-grade class and their principal, Mirta Lopez.

The Senate welcomed its guests.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 18, 1999

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

SCR 77, Congratulating Paris Junior College on the occasion of its 75th anniversary.

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 64 (Viva-voce vote)

HB 79 (141 AYES, 0 NAYS, 2 PRESENT NOT VOTING)

HB 347 (143 AYES, 0 NAYS, 1 PRESENT NOT VOTING)

HB 1196 (Viva-voce vote)

HB 1359 (Viva-voce vote)

HB 1396 (142 ayes, 0 nays, 1 present not voting)

HB 1411 (Viva-voce vote)

HB 1713 (Viva-voce vote)

HB 1976 (Viva-voce vote)

HB 2061 (Viva-voce vote)

HB 2617 (Viva-voce vote)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 676

House Conferees: Isett - Chair/Alexander/Edwards/Hawley/Noriega

HB 819

House Conferees: Naishtat - Chair/Goodman/Morrison/Reyna, Arthur/Reyna, Elvira

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 507 (141 AYES, 0 NAYS, 1 PRESENT NOT VOTING)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

CAPITOL PHYSICIAN

The President recognized Senator Jackson, who presented Dr. P. J. Mock of Pasadena, accompanied by his wife, Pat, as the "Doctor for the Day."

Dr. Mock, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was made welcome by the Senate.

SENATE RESOLUTION 995

Senator Zaffirini offered the following resolution:

WHEREAS, The Senate of the State of Texas is proud to pay tribute to Angela Scovazzo Borchers for her many contributions to the citizens of Laredo and the State of Texas; and

WHEREAS, Born on August 22, 1910, in Los Angeles, California, she is the daughter of the late Dr. and Mrs. Charles Scovazzo; her parents died when she was 10 years old, and she moved to Galveston to be raised by her aunt, Mrs. F. Guisti; and

WHEREAS, Attending Ursuline Academy in Galveston until her sophomore year, she then went to Ball High School and graduated in 1927; this talented young woman earned her bachelor's degree at Our Lady of the Lake College in San Antonio, majoring in mathematics and minoring in economics; and

WHEREAS, Angela Scovazzo married Elmore Herman Borchers and they have lived in Laredo together since 1934; they were blessed with four children: Mrs. George E. Powell, Dr. E. H. Borchers, Jr., Charles R. Borchers, who predeceased his parents in 1997, and Ralph L. Borchers; they also have several grandchildren; and

WHEREAS, Mrs. Borchers helped organize the Laredo Civic Music Association and served as its secretary for many years; she is also a member of the Pan American Round Table, where she has chaired many programs and a charter member of the Sultannas of Alhambra, where she has held a variety of offices; and

WHEREAS, An active participant in the Parents Club of Saint Joseph's Academy for 19 years, she has managed the bingo games of the carnival held each year for the academy's benefit; and

WHEREAS, Dedicated to volunteerism, she has been a member of the board of directors of the Laredo Public Library for 20 years, a founding member of the Colonial Ladies, a member of the Mercy Hospital Auxiliary, and an honorary member of the Caballeros Club; and

WHEREAS, A member of the Society of Martha Washington since 1949, she has been president and has served in various offices; Angela and Elmore Borchers were selected to portray Martha and George Washington in 1956, and Mrs. Borchers was a parade marshal in 1989; and

WHEREAS, Mrs. Borchers served as president of the Blessed Sacrament Altar Society for two years and as chairman of the visiting committee for 10 years, calling

on people in nursing homes and visiting those who have recently had a death in the family; and

WHEREAS, Devoutly religious, Mrs. Borchers entered the Lady of the Holy Sepulcher, the highest honor bestowed on a lay Catholic, in 1976; she served as a Confraternity of Christian Doctrine teacher at Blessed Sacrament Church for many years; this distinguished lady is certainly deserving of legislative recognition; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby congratulate Angela Scovazzo Borchers for her innumerable achievements, which have greatly benefitted the citizens of Laredo and the people of the Lone Star State; and, be it further

RESOLVED, That a copy of this Resolution be prepared for her as an expression of the highest esteem and regard of the Texas Senate.

The resolution was read.

On motion of Senator Moncrief and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Zaffirini, the resolution was adopted by a viva voce vote.

GUEST PRESENTED

Senator Zaffirini was recognized and introduced to the Senate Angela Scovazzo Borchers of Laredo.

The Senate welcomed Mrs. Borchers.

(Senator Truan in Chair)

SENATE RESOLUTION 1003

Senator Fraser offered the following resolution:

WHEREAS, The Senate of the State of Texas is proud to recognize Holly Mills for her yearlong reign as Miss Texas U.S.A. in 1998; and

WHEREAS, Holly Mills is a seventh-generation Texan who was born and raised in San Antonio; she graduated from Southwest Texas State University with a bachelor of business administration degree; she received the university's Sales and Marketing Award and participated on the Small Business Institute consulting team; she was an officer of Alpha Delta Pi Sorority; and

WHEREAS, Holly earned the title of Miss San Antonio U.S.A., advanced to the state pageant, and was named third runner-up at the Miss U.S.A. pageant; she was crowned Miss Texas U.S.A. out of a group of 125 women who were competing for the title; and

WHEREAS, Holly represented the citizens of Texas with professionalism and embraced her new responsibilities with dedication and tenacity; she travelled more than 100,000 miles in 14 months as a spokesperson for Texas, the most miles logged by anyone during a Miss Texas U.S.A. term; during her travels, she focused on being a positive influence on those she met and on serving the people of Texas and the pageant's sponsors; and

WHEREAS, A talented orator, Holly has been sought after to address corporate and convention audiences and to speak at schools and universities throughout Texas;

during her tenure as Miss Texas U.S.A., she was invited by former President George Bush to be a guest presenter at the America's Promise Summit in Houston; and

WHEREAS, Holly has been active in a number of charitable causes and has given her enthusiastic support to such organizations as the American Heart Association, Ronald McDonald House, American Cancer Society, Special Olympics, and the D.A.R.E. Program, which honored her as the 1998 D.A.R.E. Volunteer of the Year; and

WHEREAS, While serving as Miss Texas U.S.A., she hosted and cohosted pageants, award shows, and television programs; she appeared in several television commercials and programs, including the popular CBS series "Nash Bridges"; and

WHEREAS, Intelligent, hardworking, and goal-oriented, Holly has now embarked on a career in a sales and marketing position with Blythe-Nelson, a management services and systems engineering firm in Austin; and

WHEREAS, Holly is an exemplary young woman of style, grace, charm, and beauty whose intelligence and notable achievements have brought honor to her family and her community and whose dedication to her fellowman and hard work have made her a treasured citizen of our state; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby congratulate Holly Mills on her many accomplishments during her reign as Miss Texas U.S.A. 1998 and extend best wishes to her for continued success in the future; and, be it further

RESOLVED, That a copy of this Resolution be prepared for her as an expression of regard from the Texas Senate.

The resolution was read and was adopted by a viva voce vote.

GUEST PRESENTED

Senator Fraser was recognized and introduced to the Senate Holly Mills of San Antonio, Miss Texas U.S.A. 1998.

The Senate welcomed Ms. Mills.

SENATE RESOLUTION 1013

Senator Armbrister offered the following resolution:

WHEREAS, Duly noted as the 127th legislative day of the 76th Texas Legislature, May 18, 1999, is memorable as the birthday of Senate Parliamentarian Walter Fisher; and

WHEREAS, Born 40-something years ago, Walter is the son of Wanda and Walter Conrad Fisher; and

WHEREAS, After graduating from Del Rio High School, Walter moved to Austin to begin an unforeseen seven-year plan at The University of Texas; like many students, his studies were interrupted by heavy work schedules: in Walter's case, his work with the Texas Legislative Council; and

WHEREAS, At the Legislative Council, Walter had the good fortune to work with the legendary Bob Johnson, who quickly became Walter's mentor; and

WHEREAS, Assistant Parliamentarian in the Texas House for several sessions, Walter gained considerable knowledge of the ins and outs of Texas politics, which he has put to good use as Senate Parliamentarian; and

WHEREAS, When not secreting himself in his second-floor cubbyhole, Walter enjoys fishing and bird hunting; and

WHEREAS, Walter has become a valued member of the Senate family, and it is with great pleasure that the Texas Senate honor him on his birthday; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby extend sincere birthday wishes with many happy returns to Walter Fisher; and, be it further

RESOLVED, That a copy of this Resolution be prepared for Walter as an expression of deepest friendship and respect from the Texas Senate.

The resolution was read.

On motion of Senator Brown and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Armbrister, the resolution was adopted by a viva voce vote.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 18, 1999

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 274, Honoring Robert Flowers on the occasion of his retirement from the State Commission on Judicial Conduct.

HCR 281, Recalling **HB 1987** from the governor.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

GUESTS PRESENTED

Senator Zaffirini, joined by Senator Barrientos, was recognized and introduced to the Senate a group of students from Sims Elementary School in Austin, accompanied by their teacher, Valerie Borchers, and their principal, Texanna Turner-Grady.

The Senate welcomed its guests.

(President in Chair)

HOUSE CONCURRENT RESOLUTION 264

The President laid before the Senate the following resolution:

HCR 264, Instructing the enrolling clerk of the House to make corrections in **HB 1402**.

MADLA

The resolution was read.

On motion of Senator Madla and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

**VOTE RECONSIDERED ON
HOUSE BILL 2450**

On motion of Senator Jackson and by unanimous consent, the vote by which **HB 2450** was finally passed was reconsidered.

HB 2450, Relating to the discipline of certain individuals authorized to sell certain alcoholic beverages.

Question—Shall **HB 2450** be finally passed?

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2450** on third reading as follows:

- (1) In Section 1 of the bill on page 1, line 16, strike "and" and replace it with "or".
- (2) In Section 2 of the bill on page 2, line 7, strike "and" and replace it with "or".

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator Jackson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 2450 as amended was again finally passed by a viva voce vote.

CONCLUSION OF MORNING CALL

The President at 11:06 a.m. announced the conclusion of morning call.

**SENATE CONCURRENT RESOLUTION 75
ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

SCR 75, Memorializing congress to take certain actions regarding qualification of reimbursement under Medicaid.

The resolution was read second time and was adopted by a viva voce vote.

SENATE BILL 193 ON SECOND READING

Senator Ogden asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

SB 193, Relating to disadvantaged county designation for purposes of financing a highway project.

There was objection.

Senator Ogden then moved to suspend the regular order of business and take up **SB 193** for consideration at this time.

The motion prevailed by the following vote: Yeas 26, Nays 4.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Nixon, Ogden, Ratliff, Shapiro, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Gallegos, Moncrief, Nelson, Shapleigh.

Absent-excused: Luna.

The bill was read second time.

Senator Ogden offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **SB 193** (introduced version) as follows:

(1) Add a new SECTION 2 and SECTION 3 to read as follows:

"SECTION 2. In order to comply with the change in law made by this Act, the Texas Transportation Commission may not expend more funds in any fiscal year of the 2000-2001 biennium to adjust the minimum local matching funds requirement of economically disadvantaged counties than what was expended for that purpose in fiscal year 1999.

SECTION 3. This Act takes effect only if a specific appropriation for the implementation of this Act is provided in **HB 1** (General Appropriations Act), Acts of the 76th Legislature, Regular Session, 1999. If no specific appropriation is provided in **HB 1**, the General Appropriations Act, this Act has no effect."

(2) Renumber subsequent SECTIONS appropriately.

The committee amendment was read and was adopted by a viva voce vote.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 193** (Senate Committee Report) on page 1 by striking SECTION 3 of the bill in its entirety and renumbering subsequent SECTIONS appropriately.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Ogden and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

RECORD OF VOTES

Senators Gallegos, Moncrief, Nelson, and Shapleigh asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

SENATE BILL 193 ON THIRD READING

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 193** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 4.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Nixon, Ogden, Ratliff, Shapiro, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Gallegos, Moncrief, Nelson, Shapleigh.

Absent-excused: Luna.

SB 193 was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Gallegos, Moncrief, Nelson, and Shapleigh asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE
SENATE BILL 899 ON SECOND READING**

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

CSSB 899, Relating to certain investments by insurance companies and related organizations; providing an administrative penalty.

The bill was read second time.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 899** as follows:

(1) In Section 1 of the bill, Article 4.57(b) (page 5, line 35, committee printing) between "determination" and "." insert "or notify the certified capital company that an additional 15 days will be needed to review and make the determination".

(2) In Section 1 of the bill, Article 4.61(c) (page 6, line 39, committee printing) strike "department" and substitute "comptroller".

(3) In Section 1 of the bill, Article 4.62 (page 6, line 67-69 and page 7, lines 1-5, committee printing), substitute existing subsection (c) with the following:

(c) Certified capital companies assessed penalties under this Subchapter may request a redetermination as provided in Chapter 111, Tax Code.

(4) In Section 1 of the bill, Article 4.69(e) (page 9, line 20, committee printing), following the period insert "Each certified capital company shall notify each qualified investor of their premium tax credit allocation.".

The amendment was read and was adopted by a viva voce vote.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 899** by adding the following appropriately numbered SECTION and renumbering subsequent sections accordingly:

SECTION _____. This Act does not take effect unless the legislature appropriates money specifically for the purpose of administering this Act.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Sibley and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 899 ON THIRD READING**

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 899** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSSB 899 was read third time.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 899**, Senate Committee Printing, as follows:

1. On page 10, between lines 10-33 and 10-34, create a new SECTION 2 of the bill, to read as follows:

SECTION 2. Section 6, Article 5.131, Insurance Code, is amended to read as follows:

Sec. 6. DURATION OF REDUCTION. Unless the commissioner grants relief under Section 4 or 5 of this article, each rate resulting from the reduction required under Section 3 of this article remains in effect until January 1, 2003 [~~2001~~].

2. Renumber the subsequent SECTIONS accordingly.

ELLIS
FRASER

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator Sibley and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSSB 899 as again amended was finally passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

SENATE BILL 1875 ON SECOND READING

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

SB 1875, Relating to the creation of the County Court at Law of Brown County.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 1875 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1875** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

SB 1875 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

(Senator Bivins in Chair)

(President in Chair)

SENATE BILL 1905 ON SECOND READING

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

SB 1905, Relating to the acquisition of certain property by navigation districts.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 1905 ON THIRD READING

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1905** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

SB 1905 was read third time and was passed by a viva voce vote.

HOUSE CONCURRENT RESOLUTION 281

The President laid before the Senate the following resolution:

HCR 281, Recalling **HB 1987** from the governor.

CAIN

The resolution was read.

On motion of Senator Cain and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

MOTION TO PLACE**SENATE BILL 713 ON SECOND READING**

Senator Ogden asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

SB 713, Relating to the county and road district highway fund.

There was objection.

Senator Ogden then moved to suspend the regular order of business and take up **SB 713** for consideration at this time.

The motion was lost by the following vote: Yeas 16, Nays 13. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Barrientos, Bivins, Brown, Duncan, Fraser, Haywood, Lucio, Madla, Nixon, Ogden, Ratliff, Sibley, Truan, Wentworth, Zaffirini.

Nays: Bernsen, Carona, Ellis, Gallegos, Harris, Jackson, Lindsay, Moncrief, Nelson, Shapiro, Shapleigh, West, Whitmire.

Absent: Cain.

Absent-excused: Luna.

HOUSE JOINT RESOLUTION 29 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HJR 29, Proposing a constitutional amendment authorizing the legislature to provide that certain state boards, commissions, or other agencies shall be governed by a board composed of an odd number of three or more members.

The resolution was read second time and was passed to third reading by a viva voce vote.

HOUSE JOINT RESOLUTION 29 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 29** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HJR 29 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE JOINT RESOLUTION 69 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HJR 69, Proposing a constitutional amendment permitting a political subdivision to purchase property and casualty insurance from certain mutual insurance companies.

The resolution was read second time and was passed to third reading by a viva voce vote.

HOUSE JOINT RESOLUTION 69 ON THIRD READING

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 69** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HJR 69 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE JOINT RESOLUTION 71 ON SECOND READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HJR 71, Proposing a constitutional amendment to provide for the number of precincts that certain counties must create for justices of the peace and constables.

The resolution was read second time.

Senator Ratliff offered the following committee amendment to the resolution:

Committee Amendment No. 1

Amend **HJR 71** as follows:

On page 2, line 13, strike "may" and substitute "shall".

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Ratliff and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

The resolution as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Harris asked to be recorded as voting "Nay" on the passage of the resolution to third reading.

HOUSE JOINT RESOLUTION 71 ON THIRD READING

Senator Ratliff moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 71** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Harris.

Absent-excused: Luna.

HJR 71 was read third time and was passed by the following vote: Yeas 29, Nays 1. (Same as previous roll call)

HOUSE BILL 110 ON SECOND READING

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 110, Relating to public access to certain information regarding medical practitioners.

The bill was read second time.

Senator Moncrief offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 110** on page 3 by striking lines 25 through 27 and replacing with the following:

(13) a description of the final resolution taken by the Board on medical malpractice claims or complaints required to be opened by the Board under Section 5.05(f) of the Act.

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Moncrief and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 110 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 110** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 110 was read third time and was passed by a viva voce vote.

(Senator Brown in Chair)

HOUSE BILL 1051 ON SECOND READING

Senator Madla asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

HB 1051, Relating to the regulation of the practice of therapeutic optometry.

There was objection.

Senator Madla then moved to suspend the regular order of business and take up **HB 1051** for consideration at this time.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Nixon, Ogden, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire.

Nays: Moncrief, Nelson, Zaffirini.

Absent-excused: Luna.

The bill was read second time.

Senator Madla offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend engrossed **HB 1051** as follows:

Page 3, line 5, strike subsection (d) and substitute "(d) The board shall adopt rules setting forth the classifications of [specific] pharmaceutical agents therapeutic optometrists may use in the practice of therapeutic optometry as authorized by this Act. Additional classifications of medications as authorized by Section 1.03(c)(3) may only be approved as provided in Section 1.03A. Use by a therapeutic optometrist of pharmaceutical agents not authorized by the board or otherwise authorized by law shall constitute a violation of this Act."

The committee amendment was read and was adopted by a viva voce vote.

Senator Madla offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **HB 1051** as follows:

(1) On page 2, line 11, strike "topical, oral, or parenteral" and substitute "topical or oral".

(2) On page 2, line 15, insert the following after the period and before "A": "In addition, a therapeutic optometrist may administer medication by parenteral means for the purposes and in the manner set out in subsection (h) of this section."

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Madla and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Moncrief, Nelson, and Zaffirini asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1051 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1051** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Nixon, Ogden, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire.

Nays: Moncrief, Nelson, Zaffirini.

Absent-excused: Luna.

HB 1051 was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Moncrief, Nelson, and Zaffirini asked to be recorded as voting "Nay" on the final passage of the bill.

STATEMENT OF LEGISLATIVE INTENT

Senator Madla submitted the following statement of legislative intent for **HB 1051**.

This bill does not take away any current authorities from optometrists. If a therapeutic optometrist can legally do something today, they will be able to do the same thing after this bill passes. It is a grant of new authority, not a limitation on existing authority.

This bill calls for therapeutic optometrists and ophthalmologists to work together regarding treatment of glaucoma. While the ophthalmologist may, in his or her discretion, require that the patient visit the ophthalmologist for a face-to-face visit, such a face-to-face visit is not mandated. And, to save the patient the cost of double testing and double office visits, the ophthalmologist may,

at the ophthalmologist's discretion, rely upon the results of diagnostic tests performed by the optometrist.

MADLA

HOUSE BILL 3778 ON SECOND READING

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3778, Relating to coordination by the Department of Protective and Regulatory Services of investigation of reports of child abuse or neglect.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3778**, adding an appropriately numbered SECTION to read as follows:

"SECTION _____. This Act takes effect only if a specific appropriation for the implementation of this Act is provided in **HB 1** (General Appropriations Act), Acts of the 76th Legislature, Regular Session, 1999. If no specific appropriation is provided in **HB 1**, the General Appropriations Act, this Act has no effect."

The amendment was read and was adopted by a viva voce vote.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 3778** (Senate Committee Printing) as follows:

- (1) In SECTION 1, page 1, line 32, strike "and".
- (2) In SECTION 1, page 1, line 35, strike the period and insert " : and" after "child".
- (3) In SECTION 1, page 1, after line 35, insert a new subsection (4) as follows:
(4) provide assistance to the Texas Department of Health to insure that recipients of appropriated funds are in compliance with the requirement to report cases of abuse under Section 261.101.

The amendment was read.

Senator Gallegos moved to table Floor Amendment No. 2.

The motion to table was lost by the following vote: Yeas 12, Nays 16.

Yeas: Barrientos, Bernsen, Cain, Carona, Ellis, Gallegos, Madla, Moncrief, Shapleigh, Wentworth, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Duncan, Fraser, Harris, Haywood, Jackson, Lindsay, Lucio, Nixon, Ogden, Ratliff, Shapiro, Sibley, Truan.

Absent: Nelson, West.

Absent-excused: Luna.

Question recurring on the adoption of Floor Amendment No. 2, the amendment was adopted by a viva voce vote.

On motion of Senator Gallegos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 3778 ON THIRD READING

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3778** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 3778 was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 610 ON SECOND READING

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 610, Relating to health care providers under certain health benefit plans.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 610** as follows:

(1) Add a new subsection (d) on page 1, line 42, and renumber subsequent sections accordingly.

"(d) If a prescription benefit claim is electronically adjudicated, and the health maintenance organization or its designated agent authorizes treatment, the claim must be paid not later than the 14th day after the treatment is authorized."

(2) Add a new subsection (d) on page 2, line 58 and number subsequent sections accordingly.

"(d) If a prescription benefit claim is electronically adjudicated, and the preferred provider or its designated agent authorizes treatment, the claim must be paid not later than the 14th day after the treatment is authorized."

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Moncrief asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 1.

On motion of Senator Carona and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 610 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 610** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSHB 610 was read third time and was passed by a viva voce vote.

HOUSE BILL 633 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 633, Relating to the transfer of assistive technology devices for students with disabilities who leave certain school districts.

The bill was read second time.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 633** as follows:

On page 1, line 24, after "lease," and before "loan", insert "or". Between "loan" and "the device" delete ", or give".

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 633 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 633** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 633 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

COMMITTEE SUBSTITUTE SENATE BILL 1751 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

CSSB 1751, Relating to funds maintained by and for the Texas Turnpike Authority division of the Texas Department of Transportation.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1751** by adding the following section, appropriately numbered, and renumbering the existing sections appropriately:

SECTION _____. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Wentworth and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1751 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1751** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSSB 1751 was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1622 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 1622, Relating to the parent-child relationship and to suits affecting the parent-child relationship.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1622** as follows:

(1) Insert the following appropriately numbered SECTIONS to read as follows and renumber the subsequent SECTIONS accordingly:

SECTION _____. Section 45.002(b), Family Code, is amended to read as follows:

(b) If the child is 10 [+2] years of age or older, the child's written consent to the change of name must be attached to the petition.

SECTION _____. Section 153.008, Family Code, is amended to read as follows:

Sec. 153.008. CHILD'S CHOICE OF MANAGING CONSERVATOR. If the child is 10 [+2] years of age or older, the child may, by writing filed with the court, choose the managing conservator, subject to the approval of the court.

SECTION _____. Section 156.006(b), Family Code, is amended to read as follows:

(b) While a suit for modification is pending, the court may not render a temporary order that has the effect of changing the designation of a sole or joint managing conservator appointed in a final order unless:

(1) the order is necessary because the child's present living environment may endanger the child's physical health or significantly impair the child's emotional development;

(2) the child's managing conservator has voluntarily relinquished the actual care, control, and possession of the child for more than six months and the temporary order is in the best interest of the child; or

(3) the child is 10 [~~12~~] years of age or older and has filed with the court in writing the name of the person who is the child's choice for managing conservator and the temporary order naming that person as managing conservator is in the best interest of the child.

SECTION __. Section 156.101(b), Family Code, is amended to read as follows:

(b) The court may modify an order that designates a sole managing conservator of a child 10 [~~12~~] years of age or older if:

(1) the child has filed with the court in writing the name of the person who is the child's choice for managing conservator; and

(2) the court finds that the appointment of the named person is in the best interest of the child.

(2) In SECTION 46 of the bill (senate committee report, page 14, between lines 36 and 37), insert a new Subsection (b) to read as follows and reletter the subsequent subsections appropriately:

(b) The change in law made by this Act to Section 45.002(b), Family Code, applies only to a petition for a change of name of a child that is 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.

(3) In SECTION 46 of the bill, in Subsection (b) of that section (senate committee report, page 14, lines 37-38), strike "by Sections 1-5 and 11 of this Act" and substitute "to Sections 102.003, 105.001(b) and (d), 107.0135, 107.014(a), 107.015, 153.008, 153.434, 156.006(b), and 156.101(b), Family Code, by this Act".

The amendment was read and was adopted by a viva voce vote.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 1622** by adding the following appropriately numbered section and renumbering the sections of the bill as appropriate:

SECTION __. (a) Section 156.301, Family Code, is amended to read as follows:

Sec. 156.301. **GROUND FORS FOR MODIFICATION OF POSSESSION AND ACCESS.** The court may modify an order that sets the terms and conditions for possession of or access to a child or that prescribes the relative rights, privileges, duties, and powers of conservators if:

(1) the circumstances of the child or a person affected by the order have materially and substantially changed since the date of the rendition of the order;

(2) the order has become unworkable or inappropriate under existing circumstances;

(3) the notice of change of a conservator's residence required by Chapter 105 [~~153~~] was not given or there was a change in a conservator's residence to a place outside this state; [~~or~~]

(4) a conservator has repeatedly failed to give notice of an inability to exercise possessory rights; or

(5) a conservator of the child has a significant history of alcohol or drug abuse.

(b) The change in law made by this section applies only to a motion to modify an order or portion of a decree providing for possession of or access to a

child on or after the effective date of this Act. A motion filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose. The enactment of this section does not by itself constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for possession of or access to a child rendered before the effective date of this Act.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1622 ON THIRD READING

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1622** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSHB 1622 was read third time and was passed by a viva voce vote.

HOUSE BILL 494 ON SECOND READING

On motion of Senator Moncrief and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 494, Relating to drug benefits available under certain health care programs administered by the Texas Department of Health.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 494** (Senate Committee Printing) as follows:

On page 1, line 23, after "develop a" and before "drug manufacturer rebate program", insert the word "voluntary".

On page 1, line 29, after "for the new" and before "rebate program" insert the word "voluntary".

On page 1, line 62, after "program and the" and before "drug rebate program" insert the word "voluntary".

On page 2, line 3, after "implementation of the" and before "drug" insert the word "voluntary".

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Moncrief and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 494 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 494** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 494 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE BILL 744 ON SECOND READING

On motion of Senator Bernsen and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 744, Relating to revolving credit accounts.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 744** as follows:

(1) On page 1, after line 52, insert a new subsection (c) to read as follows:

(c) The customer's monthly statement must contain the following notice printed or typed in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

"A LATE CHARGE OF FIVE PERCENT OF THE PAYMENT DUE OR A MAXIMUM OF \$15 WILL BE ASSESSED FOR PAYMENTS MADE 10 DAYS OR MORE AFTER THE DATE PAYMENT OF THIS BILL IS DUE."

(2) On page 2, after line 31, insert a new subsection (e) to read as follows:

(e) The customer's monthly statement must contain the following notice printed or typed in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

"A DELINQUENCY CHARGE OF \$15 WILL BE ASSESSED FOR PAYMENTS MADE AFTER THE DATE PAYMENT OF THIS BILL IS DUE."

The amendment was read and was adopted by a viva voce vote.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 744** by adding a new subsection (e) (Senate committee printing, page 2, line 32) to read as follows:

(e) If the Consumer Credit Commissioner determines that any seller that was operating under this chapter on September 1, 1999, has after that date moved its credit operations out of this state in a manner that results in the seller's retail installment contracts not being subject to this chapter, the Consumer Credit Commissioner shall notify the Finance Commission of Texas and the Finance Commission shall by rule reduce the maximum delinquency charge that may be collected under this subsection to \$10.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Bernsen and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Shapleigh and Truan asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 744 ON THIRD READING

Senator Bernsen moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 744** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Nixon, Ogden, Ratliff, Shapiro, Sibley, Wentworth, West, Whitmire, Zaffirini.

Nays: Shapleigh, Truan.

Absent-excused: Luna.

HB 744 was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Shapleigh and Truan asked to be recorded as voting "Nay" on the final passage of the bill.

RESOLUTION SIGNED

The Presiding Officer, Senator Brown in Chair, announced the signing of the following enrolled resolution in the presence of the Senate: **HCR 281**.

COMMITTEE SUBSTITUTE

SENATE BILL 1274 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

CSSB 1274, Relating to certain procedures involving retainage payments to real property construction subcontractors.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1274** as follows:

On page one, line 16, after the word "at" and before "the prime rate" insert the following: "two points below"

The amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 1274** by adding the following section, appropriately numbered, and renumbering the existing sections appropriately:

SECTION _____. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Wentworth and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

RECORD OF VOTE

Senator Ogden asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**COMMITTEE SUBSTITUTE
SENATE BILL 1274 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1274** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Ogden.

Absent-excused: Luna.

CSSB 1274 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Ogden asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1837 ON SECOND READING**

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 1837, Relating to certain insurance taxes.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1837 ON THIRD READING**

Senator Ratliff moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1837** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSHB 1837 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

(Senator Ratliff in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 846 ON SECOND READING**

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 846, Relating to the administration, management, operation, and authority of water districts and authorities; providing a penalty.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 846** by striking SECTION 17 of the bill and renumbering the remaining SECTIONS appropriately (Committee Printing, page 5, lines 1-27).

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 846** by adding a new SECTION, appropriately numbered, to read as follows:

SECTION __. Chapter 49, Water Code, is amended by adding Section 49.234 to read as follows:

Sec. 49.234. JURISDICTION OF COMMISSION. (a) The commission has jurisdiction over the development of water pollution control and abatement programs developed by a district. The commission shall review the water pollution control and abatement program of a district to ensure that its objectives are met.

(b) Notwithstanding any other law, a groundwater conservation district that is located in the extraterritorial jurisdiction of a municipality that has any part of its extraterritorial jurisdiction in the county in which the district is located and that is not the county in which the majority of the territory inside the municipality's corporate boundaries is located has jurisdiction over water pollution control and abatement programs and regulation and control of nonpoint source water pollution within the district's boundaries if:

(1) the county has not granted its consent to the municipality to enforce a water pollution control and abatement program or regulate or control nonpoint source water pollution in the county; and

(2) the county has granted its consent to the district to enforce a water pollution control and abatement program or regulate or control nonpoint source water pollution in the county.

If a county does not grant consent to either the district or the municipality, it assumes the authority of and limitations on the municipality under Section 26.177.

(c) This section does not apply to:

- (1) a municipality located in a county in which a subsidence district is located; or
(2) a municipality with a population of less than 160,000 that is located in two counties.

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSHB 846**, as follows:

(1) Strike SECTION 1 of the bill in its entirety, and substitute the following:

SECTION 1. Section 36.001(8), Water Code, is amended to read as follows:

(8) "Waste" means any one or more of the following:

(A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;

(C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(E) wilfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;

(F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; ~~or~~

(G) pumping groundwater from one aquifer to another aquifer for artificial recharge if:

(i) the board of the district with jurisdiction over either the supplying or the receiving aquifer finds that the recharge project will pollute or degrade the supplying or the receiving aquifer or the artificially recharged waters; or

(ii) the point of artificial recharge into the receiving aquifer is 30 miles or less from the point of withdrawal of groundwater for artificial recharge from the supplying aquifer; or

(H) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205.

(2) Strike SECTION 5 of the bill in its entirety and renumber the remaining sections.

(3) Add a new SECTION ___ of the bill to read as follows:

SECTION ___. Section 36.122(d), Water Code, is amended to read as follows:

(d) In determining whether to issue a permit under this section, the district shall consider:

(1) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;

(2) the availability of feasible and practicable alternative supplies to the applicant;

(3) the amount and purposes of use in the proposed receiving area for which water is needed;

(4) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; ~~and~~

(5) the approved regional water plan and certified district management plan;

The amendment was read.

On motion of Senator Armbrister and by unanimous consent, Floor Amendment No. 3 was temporarily withdrawn.

Senator Cain offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSHB 846** as follows:

Amend SECTION 11. Section 49.066(a), Water Code, by adding sections (b) and (c) to read as follows:

(b) **LIABILITY FOR AQUATIC HERBICIDE APPLICATION DEFINITION.** In this chapter, "commercially licensed aquatic herbicide applicator" means a person who holds a commercial license or permit issued by the Department of Agriculture under Chapter 76, Agriculture Code, that authorizes the commercial application of aquatic herbicides.

(c) **LIABILITY FOR DAMAGES FROM AQUATIC HERBICIDE APPLICATION.** Except as provided by Chapter 12, Parks and Wildlife Code, a commercially licensed aquatic herbicide applicator contracting with a water district or authority is not liable for damages for personal injury, property damage, or death resulting from the application by the applicator of aquatic herbicide in compliance with applicable law and the terms of the license or permit that exceed \$2 million.

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister again offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSHB 846**, as follows:

(1) Strike SECTION 1 of the bill in its entirety, and substitute the following: SECTION 1. Section 36.001(8), Water Code, is amended to read as follows:

(8) "Waste" means any one or more of the following:

(A) withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;

(C) escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;

(D) pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;

(E) wilfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26;

(F) groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; ~~or~~

(G) pumping groundwater from one aquifer to another aquifer for artificial recharge if:

(i) the board of the district with jurisdiction over either the supplying or the receiving aquifer finds that the recharge project will pollute or degrade the supplying or the receiving aquifer or the artificially recharged waters; or

(ii) the point of artificial recharge into the receiving aquifer is 30 miles or less from the point of withdrawal of groundwater for artificial recharge from the supplying aquifer; or

(H) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205.

(2) Strike SECTION 5 of the bill in its entirety and renumber the remaining sections.

(3) Add a new SECTION ___ of the bill to read as follows:

SECTION ___. Section 36.122(d), Water Code, is amended to read as follows:

(d) In determining whether to issue a permit under this section, the district shall consider:

(1) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;

(2) the availability of feasible and practicable alternative supplies to the applicant;

(3) the amount and purposes of use in the proposed receiving area for which water is needed;

(4) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; ~~and~~

(5) the approved regional water plan and certified district management plan;

The amendment was again read and was adopted by a viva voce vote.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 5

Amend **CSHB 846** at page 8, line 15 by adding a new SECTION 24 to read as follows and renumbering subsequent SECTIONs accordingly:

SECTION 24. Section 49.234, Water Code, is added to read as follows:

Sec. 49.234. ELECTRIC GENERATION, TRANSMISSION, AND DISTRIBUTION FOR CERTAIN DISTRICTS. (a) A district that owns or operates raw water pipelines which convey surface water, groundwater, or both through more than ten counties for municipal and industrial purposes may:

(1) develop, generate, transmit, or distribute water power and electric energy inside the district's boundaries for its own use, provided that the district may not generate electric energy under this section by means of hydroelectric generation;

(2) purchase electric energy from any available source for use at a facility the district owns, operates, and maintains inside the district's boundaries;

(3) enter into an agreement to acquire, install, construct, finance, operate, make an addition to, own, or operate an electric energy generating, transmission, or distribution facility jointly with another person; or

(4) sell or otherwise dispose of any of the district's interest in a jointly owned facility described by Subdivision (3) of this subsection.

(b) This section does not affect the applicability of Title 2, Utilities Code, to a district or to actions of a district.

The amendment was read and was adopted by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 6

Amend **CSHB 846** by adding an appropriately numbered new SECTION to the bill and appropriately renumbering subsequent SECTIONS of the bill to read as follows:

SECTION __. Section 1.16(e), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(e) To the extent water is available for permitting, the board shall issue the existing user a permit for withdrawal of an amount of water equal to the user's maximum beneficial use of water without waste during any one calendar year of the historical period. If a water user does not have historical use for a full year, then the authority shall issue a permit for withdrawal based on an amount of water that would normally be beneficially used without waste for the intended purpose for a calendar year. If the total amount of water determined to have been beneficially used without waste under this subsection exceeds the amount of water available for permitting, the authority shall adjust the amount of water authorized for withdrawal under the permits proportionately to meet the amount available for permitting. An existing irrigation user shall receive a permit for not less than two acre-feet a year for each acre of land the user actually irrigated using water from the Edwards Aquifer, either exclusively or commingled with other groundwater, in any one calendar year during the historical period. An existing user who has operated a well for three or more years during the historical period shall receive a permit for at least the average amount of water withdrawn annually during the historical period.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 846 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 846** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSHB 846 was read third time and was passed by a viva voce vote.

(President in Chair)

HOUSE BILL 1532 ON SECOND READING

On motion of Senator Nixon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1532, Relating to the Henderson County Juvenile Board.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1532 ON THIRD READING

Senator Nixon moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1532** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 1532 was read third time and was passed by a viva voce vote.

HOUSE BILL 1516 ON SECOND READING

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1516, Relating to the representation of applicants for writs of habeas corpus in capital cases.

The bill was read second time.

Senator Duncan offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1516**, SECTION 2, Article 11.071, Code of Criminal Procedure, by striking Sec. 2A(a) and (b) (page 4, lines 17-page 5, line 1) and replacing it with the following:

Sec. 2A. STATE REIMBURSEMENT; COUNTY OBLIGATION. (a) The state shall reimburse a county for compensation of counsel under Section 2 and payment of expenses under Section 3. The total amount of reimbursement to which a county is entitled under this section for an application under this article may not exceed \$25,000. Compensation and expenses in excess of the \$25,000 reimbursement provided by the state are the obligation of the county.

(b) A convicting court seeking reimbursement for a county shall certify to the comptroller of public accounts the amount of compensation that the county is entitled to receive under this section. The comptroller of public accounts shall issue a warrant to the county in the amount certified by the convicting court, not to exceed \$25,000.

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Duncan and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1516 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1516** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 1516 was read third time and was passed by a viva voce vote.

HOUSE BILL 1777 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1777, Relating to the provision of local exchange telephone service in a municipality and the management by the municipality of public rights-of-way used by providers of that service.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1777** as follows:

In Sec. 283.053(d)(2) following the word "revenue." delete the words: "excluding any amount received under Section 4A or 4B, Development Corporation Act of 1979 (Article 5190.6 Vernon's Texas Civil Statutes), or that imposed for a municipal transit department under Chapter 453, Transportation code, received by the municipality in 1998." and insert the following:

"received by the city pursuant to Chapter 321 of the tax code. The amount does not include sales and use taxes collected under:

A) Chapters 451, 452, 453, or 454 of the Transportation Code for a mass transit authority;

B) Texas Revised Civil Statutes 5190.6, for a 4A or 4B Development Corporation;

C) Chapters 334 and 335 of the Local Government Code; or

D) Chapters 321, 322, and 323 of the Municipal Sales and Use Tax Act for a special district, including health service, crime control, hospital and emergency service districts.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Lucio and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1777 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1777** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 1777 was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 326 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

CSSB 326, Relating to the applicability of the death penalty to a capital offense committed by a person with mental retardation.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 326** as follows:

(1) In SECTION 1 of the bill, in proposed Chapter 46B, Code of Criminal Procedure, (Senate Committee Printing, Page 1, between lines 56 and 57), add the following:

(c) The court must, not later than 10 days before the date on which the trial of the offense under Section 19.03, Penal Code, commences, make the finding described by Subsection (b) or announce that the court will not make the finding.

Art. 46B.06. APPOINTMENT OF DISINTERESTED EXPERTS. On the request of either party or on the court's own motion, the court shall appoint disinterested experts experienced and qualified in the field of diagnosing mental retardation to examine the defendant and determine whether the defendant is a person with mental retardation. The court may order the defendant to submit to an examination by experts appointed under this article.

Art. 46B.07. INTERLOCUTORY APPEAL. (a) The defendant and the state are entitled to appeal an order of a court making a finding described by Article 46B.05(b) or the court's decision not to make a finding under that article.

(b) The court of criminal appeals shall adopt rules as necessary for the administration of the appeals process established by this article.

(c) An appeal under this article is a direct appeal to the court of criminal appeals, and the court of criminal appeals, as provided by court rule, shall give priority to the review of an appeal under this article over other cases before the court.

(2) Strike SECTION 2 of the bill and substitute the following:

SECTION 2. This Act takes effect September 1, 1999 and 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 the effective date.

(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.

The amendment was read and was adopted by a viva voce vote.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 326** by adding the following sections, appropriately numbered, and renumbering the existing sections appropriately.

SECTION __. Section 508.046, Government Code, is amended to read as follows:
Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on parole an inmate who was convicted of [~~a capital felony or~~] an offense under Section 21.11(a)(1) or 22.021, Penal Code, or who is required under Section 508.145(c) to serve 35 calendar years before becoming eligible for release on parole, all members of the board must vote on the release on parole of the inmate, and at least two-thirds of the members must vote in favor of the release on parole. A member of the board may not vote on the release unless the member first receives a copy of a written report from the department on the probability that the inmate would commit an offense after being released on parole.

SECTION __. Section 508.145(b), Government Code, is amended to read as follows:

(b) An inmate serving a life sentence for a capital felony is not eligible for release on parole [~~until the actual calendar time the inmate has served, without consideration of good conduct time, equals 40 calendar years~~].

SECTION __. Section 2, Article 37.071, Code of Criminal Procedure, is amended by amending Subsection (e) to read as follows:

(e)(1) The court shall instruct the jury that if the jury returns an affirmative finding to each issue submitted under Subsection (b) of this article, it shall answer the following issue:

Whether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed.

(2) The court shall charge the jury that if the jury returns an affirmative finding on the issue submitted under this subsection, the court shall sentence the defendant to confinement in the institutional division of the Texas Department of Criminal Justice for life. The court shall further charge the jury that a defendant sentenced to confinement for life under this article is ineligible for release from the department on parole or mandatory supervision.

SECTION __. (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 the effective date.

(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.

The amendment was read.

On motion of Senator Lucio and by unanimous consent, Floor Amendment No. 2 was withdrawn.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 326** Section 2 by adding the following:

If the federal constitution or the Texas Constitution were authoritatively construed to prohibit the purely prospective application of this Chapter, the chapter

shall be deemed to have no force whatsoever and apply neither prospectively nor retroactively.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Ellis and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by the following vote: Yeas 22, Nays 8.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Cain, Carona, Duncan, Ellis, Gallegos, Harris, Lindsay, Lucio, Madla, Moncrief, Nixon, Ratliff, Shapleigh, Sibley, Truan, West, Whitmire, Zaffirini.

Nays: Brown, Fraser, Haywood, Jackson, Nelson, Ogden, Shapiro, Wentworth.

Absent-excused: Luna.

**MOTION TO PLACE
COMMITTEE SUBSTITUTE
SENATE BILL 326 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 326** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 22, Nays 8. (Not receiving four-fifths vote of Members present)

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Cain, Carona, Duncan, Ellis, Gallegos, Harris, Lindsay, Lucio, Madla, Moncrief, Nixon, Ratliff, Shapleigh, Sibley, Truan, West, Whitmire, Zaffirini.

Nays: Brown, Fraser, Haywood, Jackson, Nelson, Ogden, Shapiro, Wentworth.

Absent-excused: Luna.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

SB 135, SB 495, SB 601, SB 631, SB 746, SB 828, SB 843, SB 1019, SB 1124, SB 1187, SB 1298, SB 1352, SB 1666, HB 128, HB 313, HB 368, HB 516, HB 692, HB 794, HB 889, HB 912, HB 1053, HB 1069, HB 1112, HB 1162, HB 1274, HB 1318, HB 1351, HB 1363, HB 1477, HB 1588, HB 2320, HB 2597, HCR 236, HCR 254, HB 127, HB 856, HB 1085.

HOUSE BILL 1285 ON SECOND READING

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1285, Relating to requiring attendance of a child's parent, guardian, or other authorized adult at well-child examinations under the state Medicaid program.

The bill was read second time.

Senator Nelson offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1285** as follows:

(1) In SECTION 1 of the bill, in the introductory language (House engrossment, page 1, lines 6 and 7), strike "Section 32.024(s), Human Resources Code, is amended" and substitute "Section 32.024, Human Resources Code, is amended by amending Subsection (s) and adding Subsection (s-1)".

(2) In SECTION 1 of the bill, immediately following amended Section 32.024(s), Human Resources Code (House engrossment, page 1, between lines 22 and 23), insert the following:

(s-1) Subsection (s)(2) does not apply to services provided by a school health clinic, Head Start program, or child-care facility, as defined by Section 42.002, if the clinic, program, or facility:

(1) obtains written consent to the services from the child's parent or guardian within the one-year period preceding the date on which the services are provided, and that consent has not been revoked; and

(2) encourages parental involvement in and management of the health care of children receiving services from the clinic, program, or facility.

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Nelson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1285 ON THIRD READING

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1285** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 1285 was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 82 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

CSSB 82, Relating to benefits payable by the Judicial Retirement System of Texas Plan Two.

The bill was read second time and was passed to engrossment by a viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 82 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 82** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSSB 82 was read third time and was passed by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2021 ON SECOND READING**

On motion of Senator Lindsay and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 2021, Relating to the requirements for purchasing in school districts that adopt site-based decision-making plans.

The bill was read second time.

Senator Lindsay offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2021** as follows:

(1) In SECTION 1, in new Sec. 44.031(m), Education Code, after "contracts.", insert "A district that adopts site-based purchasing under this subsection shall adopt a policy to ensure that campus purchases achieve the best value to the district and are not intended or used to avoid the requirement that a district aggregate purchases under Subsection (a)."

(2) In SECTION 2, in new Sec. 44.033(e), Education Code, after "contracts.", insert "A district that adopts site-based purchasing under this subsection shall adopt a policy to ensure that campus purchases achieve the best value to the district and are not intended or used to avoid the requirement that a district aggregate purchases under Subsection (a)."

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Lindsay and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2021 ON THIRD READING**

Senator Lindsay moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2021** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSHB 2021 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

(Senator Fraser in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 2037 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 2037, Relating to late fees for the renewal of the licenses of home and community support services agencies.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2037** as follows:

(1) In SECTION 1 of the bill, in added Section 142.0105(c), Health and Safety Code (senate committee report, lines 25-27), strike "but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee." and substitute "may obtain a new license by complying with the requirements and procedures for obtaining an original license."

(2) In SECTION 1 of the bill, in added Section 142.0105, Health and Safety Code, strike Subsection (d) (senate committee report, lines 28-31).

(3) In SECTION 1 of the bill, in added Section 142.0105(e), Health and Safety Code (senate committee report, line 32), strike "(e) Not later than the 30th" and substitute "(d) Not later than the 60th".

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Carona and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2037 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2037** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSHB 2037 was read third time and was passed by a viva voce vote.

HOUSE BILL 1387 ON SECOND READING

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 1387, Relating to investigating certain deaths and performing autopsies on certain bodies.

The bill was read second time.

Senator Madla offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1387** by adding the following (c) on page 1, line 23 and renumber subsequent sections appropriately.

"(c) Reimbursement required by (b) of this section is subject to the availability of funds."

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Madla and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1387 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1387** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 1387 was read third time and was passed by a viva voce vote.

HOUSE BILL 2130 ON SECOND READING

On motion of Senator Nixon and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2130, Relating to disposition of out-of-county crimes.

The bill was read second time.

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2130** by adding the following appropriately numbered SECTIONS to the bill and renumbering the existing SECTIONS of the bill accordingly:

SECTION __. Article 45.06, Code of Criminal Procedure, is amended to read as follows:

Art. 45.06. FINES AND SPECIAL EXPENSES. (a) The governing body of each incorporated city, town or village shall by ordinance prescribe such rules, not inconsistent with any law of this State, as may be proper to enforce, by execution against the property of the defendant, or imprisonment of the defendant, the collection of all fines imposed by such court, and shall also have power to adopt such rules and regulations concerning the practice and procedure in such court as said governing body may deem proper, not inconsistent with any law of this State. All such fines; a special expense, not to exceed \$25 for the issuance and service of a warrant of arrest for an offense under Section 38.10, Penal Code, or under Section 543.009, Transportation Code [~~149, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes)~~]; and the special expenses described in Article 17.04 dealing with the requisites of a personal bond and a special expense for the issuance and service of a warrant of arrest, after due notice, not to exceed \$25, shall be paid into the city treasury for the use and benefit of the city, town or village. The

governing body of each incorporated city, town or village may by ordinance authorize a municipal court to collect a special expense for services performed in cases in which the laws of this State require that the case be dismissed because of actions by or on behalf of the defendant which were subsequent to the date of the alleged offense. Such actions are limited to compliance with Sections 543.102-543.104, Transportation Code [the provisions of Subsection (a), Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes)]. Such special expense shall not exceed the actual expenses incurred for the services or \$10, whichever is less.

(b) On receipt of money representing a fine collected from a defendant who was taken before a magistrate in accordance with Article 15.18, the custodian of the city treasury shall pay 25 percent of the money received to the treasurer of the county or city, town, or village in which the defendant was arrested.

SECTION _____. Article 103.004, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c) On receipt of money representing a fine collected from a defendant who was taken before a magistrate in accordance with Article 15.18, the custodian of the county treasury shall pay 25 percent of the money received to the treasurer of the county or municipality in which the defendant was arrested.

The amendment was read and was adopted by the following vote: Yeas 16, Nays 12.

Yeas: Barrientos, Bernsen, Brown, Carona, Ellis, Harris, Haywood, Lindsay, Lucio, Madla, Nixon, Shapiro, Shapleigh, Truan, West, Whitmire.

Nays: Armbrister, Bivins, Cain, Duncan, Fraser, Moncrief, Nelson, Ogden, Ratliff, Sibley, Wentworth, Zaffirini.

Absent: Gallegos, Jackson.

Absent-excused: Luna.

On motion of Senator Nixon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Duncan, Harris, Nelson, Ratliff, and Sibley asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 2130 ON THIRD READING

Senator Nixon moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2130** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Ellis, Fraser, Gallegos, Haywood, Jackson, Lindsay, Lucio, Madla, Moncrief, Nixon, Ogden, Shapiro, Shapleigh, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Duncan, Harris, Nelson, Ratliff, Sibley.

Absent-excused: Luna.

HB 2130 was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Duncan, Harris, Nelson, Ratliff, and Sibley asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 2619 ON SECOND READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2619, Relating to the collection and management of used oil filters; providing civil and administrative penalties.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2619 ON THIRD READING

Senator Ratliff moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2619** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 2619 was read third time and was passed by a viva voce vote.

HOUSE BILL 2615 ON SECOND READING

Senator Brown asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

HB 2615, Relating to the application of the oil and gas severance taxes to high-cost gas production and inactive oil and gas leases.

There was objection.

Senator Brown then moved to suspend the regular order of business and take up **HB 2615** for consideration at this time.

The motion prevailed by the following vote: Yeas 26, Nays 1, Present-not voting 3.

Yeas: Armbrister, Barrientos, Bernsen, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Nelson, Nixon, Ratliff, Shapiro, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Shapleigh.

Present-not voting: Bivins, Moncrief, Ogden.

Absent-excused: Luna.

The bill was read second time and was passed to third reading by the following vote: Yeas 25, Nays 2, Present-not voting 3.

Yeas: Armbrister, Bernsen, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Nelson, Nixon, Ratliff, Shapiro, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Shapleigh.

Present-not voting: Bivins, Moncrief, Ogden.

Absent-excused: Luna.

(Senator Truan in Chair)

HOUSE BILL 2615 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2615** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 2, Present-not voting 3.

Yeas: Armbrister, Bernsen, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Nelson, Nixon, Ratliff, Shapiro, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Shapleigh.

Present-not voting: Bivins, Moncrief, Ogden.

Absent-excused: Luna.

HB 2615 was read third time and was passed by the following vote: Yeas 25, Nays 2, Present-not voting 3. (Same as previous roll call)

COMMITTEE SUBSTITUTE

HOUSE BILL 1961 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 1961, Relating to fines collected for thwarting the compulsory school attendance law.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator West asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE

HOUSE BILL 1961 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1961** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: West.

Absent-excused: Luna.

CSHB 1961 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator West asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1058 ON SECOND READING**

On motion of Senator Bivins and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 1058, Relating to limiting the liability of a municipality for certain recreational activities.

The bill was read second time.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1058** as follows:

On page one, lines 22-24, delete subsection (f) in its entirety and replace it with "(f) Subsection (e) limits the liability of a municipality only for those damages arising directly from a recreational activity described in subsection (e) but does not limit the liability of a municipality for gross negligence or acts conducted in bad faith or with malicious intent.

On page one, line 25, add a new subsection (g) which states:

(g) Any municipality which owns, operates or maintains a facility in which the recreational activities described in subsection (e) are conducted shall post and maintain a clearly readable sign in a clearly visible location on or near the building. The sign shall contain the following warning language:

WARNING

TEXAS LAW (CHAPTER 75, CIVIL PRACTICES AND REMEDIES CODE), LIMITS THE LIABILITY OF A MUNICIPALITY WHICH OWNS, OPERATES OR MAINTAINS A FACILITY IN WHICH HOCKEY, IN-LINE HOCKEY, SKATING, IN-LINE SKATING, ROLLER-SKATING, SKATEBOARDING OR ROLLER-BLADING ARE CONDUCTED FOR DAMAGES ARISING DIRECTLY FROM SUCH RECREATIONAL ACTIVITIES.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTES

Senators Barrientos and Gallegos asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 1.

On motion of Senator Bivins and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Barrientos and Gallegos asked to be recorded as voting "Nay" on the passage of the bill to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1058 ON THIRD READING**

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1058** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Armbrister, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Nixon, Ogden, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Gallegos.

Absent-excused: Luna.

CSHB 1058 was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Barrientos and Gallegos asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2867 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 2867, Relating to a program that allows institutions of higher education in Texas to match a scholarship offered to Texas students by out-of-state institutions.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2867 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2867** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSHB 2867 was read third time.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2867** as follows:

(1) In SECTION 1 of the bill, in added Section 61.086, Education Code (Committee printing page 1, between lines 30 and 31), insert the following:

(c) Each public or private or independent institution of higher education shall report to the board all scholarships or grants offered by out-of-state institutions for

which the reporting institution offered a matching scholarship or grant under this section and all scholarships or grants offered or awarded by the reporting institution under this section and the methods used to encourage Texas high school graduates to attend that institution. The report shall include the race or ethnicity and gender of each person to whom that institution offered or awarded a scholarship or grant, the high school from which the person graduated, the out-of-state institution that offered the scholarship or grant, and the value and type of each scholarship or grant.

(2) In SECTION 2 of the bill, strike Subsection (b) (Committee printing page 1, lines 35 through 43) and substitute the following:

(b) Not later than December 31, 2000, the Texas Higher Education Coordinating Board shall report on the initial implementation of this Act. The report shall include a description of the students to whom scholarships were offered and awarded as reported to the coordinating board by each institution covered by Section 61.086, Education Code, as added by this Act. The report shall also include a description of the methods used by each institution to encourage Texas high school graduates to attend Texas institutions of higher education. The coordinating board shall deliver the report to the presiding officer of the standing committee on higher education in each house of the legislature.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator West and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 2867 as amended was finally passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

COMMITTEE SUBSTITUTE HOUSE BILL 2846 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 2846, Relating to the operation of a commissary in the county jail in certain counties.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTE

Senator Nelson asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 2846 ON THIRD READING

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2846** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Nelson.

Absent-excused: Luna.

CSHB 2846 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Nelson asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 2685 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2685, Relating to the execution of credit agreements and issuance of anticipation notes by certain school districts.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2685** as follows:

(1) Add a new Section 2 of the bill (Committee Printing page 1, between lines 55 and 56) to read as follows and renumber subsequent sections accordingly:

SECTION 2. Section 2, Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) An issuer that is an independent school district may not issue obligations under this article unless such obligations are authorized in accordance with the provisions of Section 45.003, Education Code.

(2) In Sec. 3, Article 717w, Revised Statute (Committee Printing page 2, lines 21-32), strike Subsection (b) and substitute the following new Subsection (b):

(b) The governing body of an eligible school district may authorize anticipation notes for:

(1) any or all of the purposes described in Section 3(a)(3), (4), and (5) of this section; or

(2) paying a contractual obligation incurred or to be incurred for the purchase of materials, supplies, equipment, and machinery for an issuer's authorized needs and purposes.

(3) In Section 6(e), Article 717w, Revised Statutes (Committee Printing page 2, line 59), after "Anticipation notes issued for a purpose described by Section 3(a)(1), (2), or (3)", insert "or Section 3(b)(2)".

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2685 ON THIRD READING

Senator Brown moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2685** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 2685 was read third time and was passed by a viva voce vote.

HOUSE BILL 2671 ON SECOND READING

On motion of Senator Shapleigh and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2671, Relating to the admissibility of a statement made by a child and to the requirement that the Department of Protective and Regulatory Services notify the parent or guardian of certain children taken into possession by a law enforcement agency.

The bill was read second time.

Senator Shapleigh offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 2671** as follows:

SECTION 1, Section 51.095, Family Code, page 5, line 5, strike "questioning" insert "interrogation". Page 5, line 8, strike "behavior" insert "conduct".

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Shapleigh and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2671 ON THIRD READING

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2671** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 2671 was read third time and was passed by a viva voce vote.

(President in Chair)

HOUSE BILL 2821 ON SECOND READING

On motion of Senator Cain and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2821, Relating to property tax exemptions for charitable organizations.

The bill was read second time.

Senator Cain offered the following committee amendment to the bill:

Committee Amendment No. 1

HB 2821 is amended by adding Section 4 as follows:

SECTION 2. Subsections (a) and (e). Section 11.435, Tax Code, are amended to read as follows:

(a) The chief appraiser shall accept and approve ~~or deny~~ an application for an exemption under Sections 11.18(d)(2) ~~or (5)~~ of this code after the filing deadline provided by Section 11.43 of this code if the application is filed not later than December 31 of the second year after the year in which the taxes for which the exemption is claimed were imposed.

(e) An application may not be filed under this section after December 31, ~~1997~~ 1999, and renumbering subsequent sections as appropriate.

The committee amendment was read and was adopted by a viva voce vote.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2821** by adding a new section to the bill, appropriately numbered, to read as follows, and renumbering subsequent sections of the bill accordingly:

SECTION __. (a) Section 11.23, Tax Code, is amended by adding Subsection (h) to read as follows:

(h) County Fair Associations. A county fair association organized to hold agricultural fairs and encourage agricultural pursuits is entitled to an exemption from taxation of the land and buildings that it owns and uses to hold agricultural fairs. To qualify for an exemption under this subsection, a county fair association must:

(1) be a nonprofit corporation as defined by the Texas Non-Profit Corporation Act;

(2) be exempt from federal income taxes as an organization described by Section 501(c)(3), Internal Revenue Code of 1986, as amended;

(3) qualify for an exemption from the franchise tax under Section 171.060; and

(4) meet the requirements of a charitable organization provided by Sections 11.18(e) and (f), for which purpose the functions for which the association is organized are considered to be charitable functions.

(b) This section takes effect January 1, 2000, and applies only to ad valorem taxes imposed for a tax year that begins on or after that date.

The amendment was read.

Senator Duncan offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **HB 2821** as follows:

(1) On page 1 of the amendment, on line 8, between "taxation" and "of the land", insert "by a taxing unit".

(2) On page 1 of the amendment, on line 9, between "fairs" and the period, insert ", if the exemption is approved by the governing body of the taxing unit".

The amendment to Floor Amendment No. 1 was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

On motion of Senator Cain and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2821 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2821** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 2821 was read third time and was passed by a viva voce vote.

HOUSE BILL 2208 ON SECOND READING

On motion of Senator Lindsay and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2208, Relating to the authority of the office of the attorney general to contract with a statewide organization to provide services to children's advocacy centers.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2208 ON THIRD READING

Senator Lindsay moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2208** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 2208 was read third time and was passed by a viva voce vote.

HOUSE BILL 3021 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3021, Relating to a health maintenance organization's complaint and appeals procedures.

The bill was read second time.

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3021** as follows:

(1) In Article 3.70-3D, Insurance Code, as added by SECTION 5 of the bill (Committee Printing page 4, lines 52-69 and page 5, lines 1-17) by striking SECTION 5 and substituting the following:

SECTION 5. Subchapter G, Chapter 3, Insurance Code, is amended by adding Article 3.70-3D to read as follows:

Art. 3.70-3D. CONSUMER ASSISTANCE PROGRAM FOR HEALTH MAINTENANCE ORGANIZATIONS. (a) The consumer assistance program for health maintenance organizations is established. The commissioner may contract, through a request for proposals, with a nonprofit organization to operate the program.

(b) The program shall:

(1) assist individual consumers in complaints or appeals within the operation of a health maintenance organization, and outside of the operation of a health maintenance organization, including appeals under Article 21.58A of this code or in Medicaid and Medicare fair hearings; and

(2) refer consumers to other programs or agencies if appropriate.

(c) The program may:

(1) operate a statewide clearinghouse for objective consumer information about health care coverage, including options for obtaining health care coverage; and

(2) accept gifts, grants, or donations from any source for the purpose of operating the program. The program may charge reasonable fees to consumers to support the program.

(d) The commissioner or an entity contracting with the commissioner to implement this article may establish an advisory committee composed of consumers, health care providers, and health care plan representatives.

(e) A nonprofit organization contracting with the commissioner pursuant to subsection (a) must not be involved in providing health care or health care plans and must demonstrate that it has expertise in providing direct assistance to consumers with respect to their concerns and problems with health maintenance organizations.

(2) Add the following appropriately numbered SECTION and renumber subsequent sections accordingly:

SECTION _____. The changes made by Section 5 of this Act do not take effect unless the legislature appropriates money specifically for the purpose of administering that section.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Sibley and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 3021 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3021** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 3021 was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2660 ON SECOND READING

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 2660, Relating to state drought planning and preparation.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2660** (Senate Committee Printing) as follows:

(1) On page 2, line 42, add a new Subsection (8) and renumber the subsequent Subsections so that the new Subsection (8) reads as follows:

(8) the Texas Department of Housing and Community Affairs;

(2) On page 2, line 46, insert "who is appointed by the governor" between the word "interests" and the period.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Ogden and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2660 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2660** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSHB 2660 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE BILL 3224 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 3224, Relating to the issuance of public securities by or on behalf of the state and political subdivisions.

The bill was read second time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3224** as follows:

(1) In SECTION 2 of the bill, in the introductory language (senate committee report, page 1, lines 18 and 19), strike "by amending the heading and Subsection (a)".

(2) In SECTION 2 of the bill, in amended Section 1201.027(a), Government Code (senate committee report, page 1, lines 21-22), strike "The governing body of an issuer [a]" and substitute "An issuer [~~The governing body of a~~".

(3) In SECTION 2 of the bill, in amended Section 1201.027(a), Government Code (senate committee report, page 1, line 27), strike "governing body" and substitute "issuer".

(4) In SECTION 2 of the bill, following amended Section 1201.027(a), Government Code (senate committee report, page 1, between lines 35 and 36), insert the following:

(b) Subsection (a) does not impair the authority of the attorney general under Section 402.0212 to approve a contract for legal services entered into by a state agency.

(c) Except as provided by Subsection (b), to [Tø] the extent of a conflict between this section and another law or a municipal charter, this section controls.

The amendment was read.

On motion of Senator West and by unanimous consent, Floor Amendment No. 1 was withdrawn.

HB 3224 was passed to third reading by a viva voce vote.

HOUSE BILL 2725 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2725, Relating to the collection of costs in criminal cases.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2725** as follows:

(1) In Section 2 of the bill, strike the existing subsection (b) and substitute the following in its place:

(b) A commissioners court that enters into a contract with a private attorney under this article may authorize the addition of attorneys fees in the amount of 28% on each debt or account receivable which is more than 60 days past due and has been referred to the attorney for collection.

(2) In Section 2 of the bill, add a subsection (c) to read as follows:

(c) A defendant is not liable for the attorneys fees authorized under subsection (b) if a court has determined the defendant is indigent, or has insufficient resources or income, or is otherwise unable to pay all or part of the underlying fine or costs.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Lucio and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2725 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2725** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 2725 was read third time and was passed by a viva voce vote.

HOUSE BILL 2960 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

HB 2960, Relating to the evaluation of proposals for contracts by institutions of higher education for energy conservation measures.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2960** as follows:

(1) In SECTION 1 of the bill, in amended Subsection (h), Section 51.927, Education Code, immediately after "or otherwise associated with the contract." (page 1, line 24, Senate committee report), insert: "An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract."

(2) In SECTION 1 of the bill, in amended Subsection (h), Section 51.927, Education Code, immediately after "approved by the State Energy Conservation Office or Texas Energy Coordination Council." (page 1, line 26, Senate committee report), insert: "Section 19, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), applies to work performed under the contract."

(3) Insert a new SECTION to the bill, appropriately numbered, to read as follows, and renumber the other SECTIONS accordingly:

SECTION ____ . Section 2166.406(h), Government Code, is amended to read as follows:

(h) A contract under this section [~~chapter~~] may be let under competitive sealed proposal procedures. Notice of the request for proposals shall be given in the manner provided for in Chapter 2156[~~, Government Code~~]. A contract under this section must comply with the guidelines established under Section 51.927(h), Education Code. The cost savings projected by an offeror must be reviewed by a licensed professional engineer who is not an officer or employee of an offeror or otherwise associated with a proposed contract. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. A contract is not required to be reviewed or approved by the State Energy Conservation Office or the Texas Energy Coordination Council. Section 19, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), applies to work performed under the contract. [~~Before awarding the contract, the state agency shall submit the selected proposal to the State Energy Conservation Office and the Texas Energy Coordination Council for review and comment before awarding the contract. The State Energy Conservation Office and the Texas Energy Coordination Council will provide a cost-benefit analysis of the proposals and an analysis of the guaranteed savings projected by offerors and may charge a fee for this service.~~] The contract shall be awarded to the responsible offeror whose proposal, following negotiations, is determined to be the most advantageous to the state agency considering the savings and other evaluation factors set forth in the request for proposals, except that if the state agency finds that no offer is acceptable, it shall refuse all offers.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2960 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2960** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

HB 2960 was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 3158 ON SECOND READING

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

CSHB 3158, Relating to terms of trustees of certain special-purpose school districts.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 3158** in SECTION 1 of the bill, in Subsection (b), Section 11.352, Education Code (Senate committee report, page 1, line 21), by striking "Enlisted military" and substituting "Military [~~Enlisted military~~]".

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Madla and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 3158 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3158** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

CSHB 3158 was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

SENATE BILL 1260 WITH HOUSE AMENDMENT

Senator Moncrief called **SB 1260** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1260** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to certain advance directives for medical treatment; providing administrative penalties.

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

ARTICLE 1. ADVANCE DIRECTIVES

SECTION 1.01. Subtitle H, Title 2, Health and Safety Code, is amended by adding a chapter heading for Chapter 166 to read as follows:

CHAPTER 166. ADVANCE DIRECTIVES

SECTION 1.02. Subtitle H, Title 2, Health and Safety Code, is amended by adding Subchapter A, Chapter 166, to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 166.001. SHORT TITLE. This chapter may be cited as the Advance Directives Act.

Sec. 166.002. DEFINITIONS. In this chapter:

(1) "Advance directive" means:

(A) a directive, as that term is defined by Section 166.031;

(B) an out-of-hospital DNR order, as that term is defined by Section 166.081; or

(C) a medical power of attorney under Subchapter D.

(2) "Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

(3) "Attending physician" means a physician selected by or assigned to a patient who has primary responsibility for a patient's treatment and care.

(4) "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(5) "Declarant" means a person who has executed or issued a directive under this chapter.

(6) "Ethics or medical committee" means a committee established under Sections 161.031-161.033.

(7) "Health care or treatment decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual's physical or mental condition.

(8) "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(9) "Irreversible condition" means a condition, injury, or illness:

(A) that may be treated but is never cured or eliminated;

(B) that leaves a person unable to care for or make decisions for the person's own self; and

(C) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

(10) "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(11) "Medical power of attorney" means a document delegating to an agent authority to make health care decisions executed or issued under Subchapter D.

(12) "Physician" means:

(A) a physician licensed by the Texas State Board of Medical Examiners; or

(B) a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

(13) "Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care. A patient who has been admitted to a program under which the person receives hospice services provided by a home and community support services agency licensed under Chapter 142 is presumed to have a terminal condition for purposes of this chapter.

(14) "Witness" means a person who may serve as a witness under Section 166.003.

Sec. 166.003. WITNESSES. In any circumstance in which this chapter requires the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed:

(1) each witness must be a competent adult; and

(2) at least one of the witnesses must be a person who is not:

(A) a person designated by the declarant to make a treatment decision;

(B) a person related to the declarant by blood or marriage;

(C) a person entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;

(D) the attending physician;

(E) an employee of the attending physician;

(F) an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(G) a person who, at the time the written advance directive is executed or, if the directive is a nonwritten directive issued under this chapter, at the time the nonwritten directive is issued, has a claim against any part of the declarant's estate after the declarant's death.

Sec. 166.004. STATEMENT RELATING TO ADVANCE DIRECTIVE. (a) In this section, "health care provider" means:

(1) a hospital;

(2) an institution licensed under Chapter 242, including a skilled nursing facility;

(3) a home and community support services agency;

(4) a personal care facility; and

(5) a special care facility.

(b) A health care provider shall maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the health care provider is unwilling or unable to provide or withhold in accordance with an advance directive.

(c) Except as provided by Subsection (g), the health care provider shall provide written notice to an individual of the written policies described by Subsection (b). The notice must be provided at the earlier of:

(1) the time the individual is admitted to receive services from the health care provider; or

(2) the time the health care provider begins providing care to the individual.

(d) If, at the time notice is to be provided under Subsection (c), the individual is incompetent or otherwise incapacitated and unable to receive the notice required by this section, the provider shall provide the required written notice, in the following order of preference, to:

(1) the individual's legal guardian;

(2) a person responsible for the health care decisions of the individual;

(3) the individual's spouse;

(4) the individual's adult child;

(5) the individual's parent; or

(6) the person admitting the individual.

(e) If Subsection (d) applies and except as provided by Subsection (f), if a health care provider is unable, after diligent search, to locate an individual listed by Subsection (d), the health care provider is not required to provide the notice.

(f) If an individual who was incompetent or otherwise incapacitated and unable to receive the notice required by this section at the time notice was to be provided under Subsection (c) later becomes able to receive the notice, the health care provider shall provide the written notice at the time the individual becomes able to receive the notice.

(g) This section does not apply to outpatient hospital services, including emergency services.

Sec. 166.005. ENFORCEABILITY OF ADVANCE DIRECTIVES EXECUTED IN ANOTHER JURISDICTION. An advance directive or similar instrument validly executed in another state or jurisdiction shall be given the same effect as an advance directive validly executed under the law of this state. This section does not authorize the administration, withholding, or withdrawal of health care otherwise prohibited by the laws of this state.

Sec. 166.006. EFFECT OF ADVANCE DIRECTIVE ON INSURANCE POLICY AND PREMIUMS. (a) The fact that a person has executed or issued an advance directive does not:

(1) restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person; or

(2) modify the terms of an existing life insurance policy.

(b) Notwithstanding the terms of any life insurance policy, the fact that life-sustaining treatment is withheld or withdrawn from an insured qualified patient under this chapter does not legally impair or invalidate that person's life insurance policy and may not be a factor for the purpose of determining, under the life insurance policy, whether benefits are payable or the cause of death.

(c) The fact that a person has executed or issued or failed to execute or issue an advance directive may not be considered in any way in establishing insurance premiums.

Sec. 166.007. EXECUTION OF ADVANCE DIRECTIVE MAY NOT BE REQUIRED. A physician, health facility, health care provider, insurer, or health care

service plan may not require a person to execute or issue an advance directive as a condition for obtaining insurance for health care services or receiving health care services.

Sec. 166.008. CONFLICT BETWEEN ADVANCE DIRECTIVES. To the extent that a treatment decision or an advance directive validly executed or issued under this chapter conflicts with another treatment decision or an advance directive executed or issued under this chapter, the treatment decision made or instrument executed later in time controls.

Sec. 166.009. CERTAIN LIFE-SUSTAINING TREATMENT NOT REQUIRED. This chapter may not be construed to require the provision of life-sustaining treatment that cannot be provided to a patient without denying the same treatment to another patient.

SECTION 1.03. Chapter 672, Health and Safety Code, is transferred to Subtitle H, Title 2, Health and Safety Code, is redesignated as Subchapter B, Chapter 166, Health and Safety Code, and is amended to read as follows:

SUBCHAPTER B. DIRECTIVE TO PHYSICIANS

[CHAPTER 672. NATURAL [DEATH ACT

[Sec. 672.001. SHORT TITLE. This chapter may be cited as the Natural Death Act.]

Sec. 166.031 [672.002]. DEFINITIONS. In this subchapter [chapter]:

(1) ["Attending physician" means the physician who has primary responsibility for a patient's treatment and care.

[(2) "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

[(3) "Declarant" means a person who has executed or issued a directive under this chapter.

[(4)] "Directive" means an instruction made under Section 166.032, 166.034, or 166.035 [672.003, 672.005, or 672.006] to administer, withhold, or withdraw life-sustaining treatment [procedures] in the event of a terminal or irreversible condition.

(2) [(5) "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

[(6) "Life-sustaining procedure" means a medical procedure or intervention that uses mechanical or other artificial means to sustain, restore, or supplant a vital function, and only artificially postpones the moment of death of a patient in a terminal condition whose death is imminent or will result within a relatively short time without the application of the procedure. The term does not include the administration of medication or the performance of a medical procedure considered to be necessary to provide comfort or care or to alleviate pain.

[(7) "Physician" means a physician licensed by the Texas State Board of Medical Examiners or a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

[(8)] "Qualified patient" means a patient with a terminal or irreversible condition that has been diagnosed and certified in writing by the attending physician [and one other physician who have personally examined the patient].

~~[(9) "Terminal condition" means an incurable or irreversible condition caused by injury, disease, or illness that would produce death without the application of life-sustaining procedures, according to reasonable medical judgment, and in which the application of life-sustaining procedures serves only to postpone the moment of the patient's death.]~~

Sec. 166.032 [672.003]. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN. (a) A competent adult may at any time execute a written directive.

(b) The declarant must sign the directive in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The [and those] witnesses must sign the directive.

(c) ~~[A witness may not be:~~

~~[(1) a person designated by the declarant to make a treatment decision;~~

~~[(2) a person related to the declarant by blood or marriage;~~

~~[(3) a person entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;~~

~~[(4) the attending physician;~~

~~[(5) an employee of the attending physician;~~

~~[(6) an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or~~

~~[(7) a person who, at the time the written directive is executed or if the directive is a nonwritten directive issued under Section 672.005, at the time the nonwritten directive is issued, has a claim against any part of the declarant's estate after the declarant's death.~~

~~[(d)] A declarant may include in a directive directions other than those provided by Section 166.033 [672.004] and may designate in a directive a person to make a treatment decision for the declarant in the event the declarant becomes [comatose,] incompetent[;] or otherwise mentally or physically incapable of communication.~~

~~[(d) [(e)]] A declarant shall notify the attending physician of the existence of a written directive. If the declarant is [comatose,] incompetent[;] or otherwise mentally or physically incapable of communication, another person may notify the attending physician of the existence of the written directive. The attending physician shall make the directive a part of the declarant's medical record.~~

Sec. 166.033 [672.004]. FORM OF WRITTEN DIRECTIVE. A written directive may be in the following form:

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual

hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

I, _____, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

_____ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

_____ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make treatment decisions with my physician compatible with my personal values:

1. _____
2. _____

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed _____

Date _____

City, County, State of Residence _____

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 _____

Witness 2 _____

Definitions:

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"Irreversible condition" means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions for the person's own self; and
- (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

["DIRECTIVE TO PHYSICIANS

["Directive made this _____ day of _____ (month, year):

["I _____, being of sound mind, wilfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth in this directive:

["1. If at any time I should have an incurable or irreversible condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and if the application of life-sustaining procedures would serve only to artificially postpone the moment of my death, and if my attending physician determines that my death is imminent or will result within a relatively short time without the application of life-sustaining procedures, I direct that those procedures be withheld or withdrawn, and that I be permitted to die naturally.

["2. In the absence of my ability to give directions regarding the use of those life-sustaining procedures, it is my intention that this directive be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from that refusal.

["3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive has no effect during my pregnancy.

["4. This directive is in effect until it is revoked.

["5. I understand the full import of this directive and I am emotionally and mentally competent to make this directive:

["6. I understand that I may revoke this directive at any time:

["Signed _____

[(City, County, and State of Residence)

[I am not a person designated by the declarant to make a treatment decision. I am not related to the declarant by blood or marriage. I would not be entitled to any portion of the declarant's estate on the declarant's death. I am not the attending physician of the declarant or an employee of the attending physician. I have no claim against any portion of the declarant's estate on the declarant's death. Furthermore, if I am an employee of a health care facility in which the declarant is a patient, I am not involved in providing direct patient care to the declarant and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility:

["Witness _____

["Witness _____"]

Sec. 166.034 [672.005]. ISSUANCE OF NONWRITTEN DIRECTIVE BY COMPETENT ADULT QUALIFIED PATIENT. (a) A competent qualified patient who is an adult may issue a directive by a nonwritten means of communication.

(b) A declarant must issue the nonwritten directive in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). ~~[The witnesses must possess the same qualifications as are required by Section 672.003(c).]~~

(c) The physician shall make the fact of the existence of the directive a part of the declarant's medical record, and the names of the witnesses shall be entered ~~[sign the entry]~~ in the medical record.

Sec. ~~166.035~~ [672-006]. EXECUTION OF DIRECTIVE ON BEHALF OF PATIENT YOUNGER THAN 18 YEARS OF AGE. The following persons may execute a directive on behalf of a qualified patient who is younger than 18 years of age:

- (1) the patient's spouse, if the spouse is an adult;
- (2) the patient's parents; or
- (3) the patient's legal guardian.

Sec. ~~166.036~~. NOTARIZED DOCUMENT NOT REQUIRED; REQUIREMENT OF SPECIFIC FORM PROHIBITED. (a) A written directive executed under Section 166.033 or 166.035 is effective without regard to whether the document has been notarized.

(b) A physician, health care facility, or health care professional may not require that:

- (1) a directive be notarized; or
- (2) a person use a form provided by the physician, health care facility, or health care professional.

Sec. ~~166.037~~ [672-007]. PATIENT DESIRE SUPERSEDES DIRECTIVE. The desire of a ~~[competent]~~ qualified patient, including a ~~[competent]~~ qualified patient younger than 18 years of age, supersedes the effect of a directive.

Sec. ~~166.038~~ [672-008]. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when an adult qualified patient has executed or issued a directive and is ~~[comatose;]~~ incompetent~~[-]~~ or otherwise mentally or physically incapable of communication.

(b) If the adult qualified patient has designated a person to make a treatment decision as authorized by Section ~~166.032(c)~~ [672-003(d)], the attending physician and the designated person may make a treatment decision in accordance with the declarant's directions ~~[to withhold or withdraw life-sustaining procedures from the patient].~~

(c) If the adult qualified patient has not designated a person to make a treatment decision, the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the patient's present desire.

Sec. ~~166.039~~ [672-009]. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED A DIRECTIVE AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult qualified patient has not executed or issued a directive and is ~~[comatose;]~~ incompetent~~[-]~~ or otherwise mentally or physically incapable of communication, the attending physician and the patient's legal guardian or an agent under a medical power of attorney may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment ~~[procedures]~~ from the patient.

(b) If the patient does not have a legal guardian or an agent under a medical power of attorney, the attending physician and one person, if available, from one ~~[at least two]~~

persons, if available,] of the following categories, in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment [~~procedures~~]:

- (1) the patient's spouse;
- (2) [~~a majority of~~] the patient's reasonably available adult children;
- (3) the patient's parents; or
- (4) the patient's nearest living relative.

(c) A treatment decision made under Subsection (a) or (b) must be based on knowledge of what the patient would desire, if known.

(d) A treatment decision made under Subsection (b) must be documented in the patient's medical record and signed by the attending physician.

(e) If the patient does not have a legal guardian and a person listed in Subsection (b) is not available, a treatment decision made under Subsection (b) must be concurred in [~~witnessed~~] by another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

(f) The fact that an adult qualified patient has not executed or issued a directive does not create a presumption that the patient does not want a treatment decision to be made to withhold or withdraw life-sustaining treatment [~~procedures~~].

(g) A person listed in Subsection (b) who wishes to challenge a treatment decision made under this section must apply for temporary guardianship under Section 875, Texas Probate Code. The court may waive applicable fees in that proceeding.

Sec. 166.040 [~~672.010~~]. PATIENT CERTIFICATION AND PREREQUISITES FOR COMPLYING WITH DIRECTIVE. (a) An attending physician who has been notified of the existence of a directive shall provide for the declarant's certification as a qualified patient on diagnosis of a terminal or irreversible condition.

(b) Before withholding or withdrawing life-sustaining treatment [~~procedures~~] from a qualified patient under this subchapter [~~chapter~~], the attending physician must[:
~~(1) determine that the patient's death is imminent or will result within a relatively short time without application of those procedures;~~

~~(2) note that determination in the patient's medical record; and~~

~~(3) determine that the steps proposed to be taken are in accord with this subchapter~~ [~~chapter~~] and the patient's existing desires.

Sec. 166.041 [~~672.011~~]. DURATION OF DIRECTIVE. A directive is effective until it is revoked as prescribed by Section 166.042 [~~672.012~~].

Sec. 166.042 [~~672.012~~]. REVOCATION OF DIRECTIVE. (a) A declarant may revoke a directive at any time without regard to the declarant's mental state or competency. A directive may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction canceling, defacing, obliterating, burning, tearing, or otherwise destroying the directive;

(2) the declarant signing and dating a written revocation that expresses the declarant's intent to revoke the directive; or

(3) the declarant orally stating the declarant's intent to revoke the directive.

(b) A written revocation executed as prescribed by Subsection (a)(2) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of its existence or mails the revocation to the attending physician.

The attending physician or the physician's designee shall record in the patient's medical record the time and date when the physician received notice of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(c) An oral revocation issued as prescribed by Subsection (a)(3) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of the revocation. The attending physician or the physician's designee shall record in the patient's medical record the time, date, and place of the revocation, and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designees shall also enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(d) Except as otherwise provided by this subchapter [~~chapter~~], a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

Sec. 166.043 [~~672.013~~]. REEXECUTION OF DIRECTIVE. A declarant may at any time reexecute a directive in accordance with the procedures prescribed by Section 166.032 [~~672.003~~], including reexecution after the declarant is diagnosed as having a terminal or irreversible condition.

~~[Sec. 672.014. EFFECT OF DIRECTIVE ON INSURANCE POLICY AND PREMIUMS. (a) The fact that a person has executed or issued a directive under this chapter does not:~~

~~[(1) restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person; or~~

~~[(2) modify the terms of an existing life insurance policy.~~

~~[(b) Notwithstanding the terms of any life insurance policy, the fact that life-sustaining procedures are withheld or withdrawn from an insured qualified patient under this chapter does not legally impair or invalidate that person's life insurance policy.~~

~~[(c) A physician, health facility, health provider, insurer, or health care service plan may not require a person to execute or issue a directive as a condition for obtaining insurance for health care services or receiving health care services.~~

~~[(d) The fact that a person has executed or issued or failed to execute or issue a directive under this chapter may not be considered in any way in establishing insurance premiums.]~~

Sec. 166.044 [~~672.015~~]. LIMITATION OF LIABILITY FOR WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING PROCEDURES. (a) A physician or health care facility that causes life-sustaining treatment [~~procedures~~] to be withheld or withdrawn from a qualified patient in accordance with this subchapter [~~chapter~~] is not civilly liable for that action unless the physician or health care facility fails to exercise reasonable care when applying the patient's advance directive [~~negligent~~].

(b) A health professional, acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment [~~procedures~~] from a qualified patient in accordance with this subchapter [~~chapter~~] is not civilly liable for that action unless the health professional fails to exercise reasonable care when applying the patient's advance directive [~~negligent~~].

(c) A physician, or a health professional acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment [~~procedures~~] from a qualified patient in accordance with this subchapter [~~chapter~~] is not criminally

liable or guilty of unprofessional conduct as a result of that action unless the physician or health professional fails to exercise reasonable care when applying the patient's advance directive [negligent].

(d) The standard of care that a physician, health care facility, or health care professional shall exercise under this section is that degree of care that a physician, health care facility, or health care professional, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or a similar community.

Sec. 166.045 [672.016]. [~~LIMITATION OF~~] LIABILITY FOR FAILURE TO EFFECTUATE DIRECTIVE. (a) A physician, health care facility, or health care professional who has no knowledge of a directive is not civilly or criminally liable for failing to act in accordance with the directive.

(b) A physician, or a health professional acting under the direction of a physician, is subject to review and disciplinary action by the appropriate licensing board [not civilly or criminally liable] for failing to effectuate a qualified patient's directive in violation of this subchapter or other laws of this state. This subsection does not limit remedies available under other laws of this state.

(c) If an attending physician refuses to comply with a directive or treatment decision and does not wish to follow the procedure established under Section 166.046, life-sustaining treatment shall be provided to the patient, but only until a reasonable opportunity has been afforded for the [physician shall make a reasonable effort to] transfer of the patient to another physician or health care facility willing to comply with the directive or treatment decision.

(d) A physician, health professional acting under the direction of a physician, or health care facility is not civilly or criminally liable or subject to review or disciplinary action by the person's appropriate licensing board if the person has complied with the procedures outlined in Section 166.046.

Sec. 166.046. PROCEDURE IF NOT EFFECTUATING A DIRECTIVE. (a) If an attending physician refuses to honor a patient's advance directive or a treatment decision under Section 166.039, the physician's refusal shall be reviewed by an ethics or medical committee. The attending physician may not be a member of that committee. The patient shall be given life-sustaining treatment during the review.

(b) The patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision:

(1) shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement; and

(2) is entitled to:

(A) attend the meeting; and

(B) receive a written explanation of the decision reached during the review process.

(c) The written explanation required by Subsection (b)(2)(B) must be included in the patient's medical record.

(d) If the attending physician, the patient, or the person responsible for the health care decisions of the individual does not agree with the decision reached during the review process under Subsection (b), the physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive. If the patient is a patient in a health care facility, the facility's personnel shall assist the physician in arranging the patient's transfer to:

- (1) another physician;
- (2) an alternative care setting within that facility; or
- (3) another facility.

(e) If the patient is requesting life-sustaining treatment that the attending physician and the review process have decided is inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). The patient is responsible for any costs incurred in transferring the patient to another facility. The physician and the health care facility are not obligated to provide life-sustaining treatment after the 10th day after the written decision required under Subsection (b) is provided to the patient or the person responsible for the health care decisions of the patient unless ordered to do so under Subsection (g).

(f) Life-sustaining treatment under this section may not be entered in the patient's medical record as medically unnecessary treatment until the time period provided under Subsection (e) has expired.

(g) At the request of the patient or the person responsible for the health care decisions of the patient, the appropriate district or county court shall extend the time period provided under Subsection (e) only if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive will be found if the time extension is granted.

(h) This section may not be construed to impose an obligation on a facility or a home and community support services agency licensed under Chapter 142 or similar organization that is beyond the scope of the services or resources of the facility or agency. This section does not apply to hospice services provided by a home or community support services agency licensed under Chapter 142.

Sec. 166.047 [672.017]. HONORING DIRECTIVE DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding or withdrawing life-sustaining treatment [procedures] from a qualified patient in accordance with this subchapter [chapter].

Sec. 166.048 [672.018]. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's directive without that person's consent. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause life-sustaining treatment [procedures] to be withheld or withdrawn from another person contrary to the other person's desires, falsifies or forges a directive or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes life-sustaining treatment [procedures] to be withheld or withdrawn from the other person with the result that the other person's death is hastened.

Sec. 166.049 [672.019]. PREGNANT PATIENTS. A person may not withdraw or withhold life-sustaining treatment [procedures] under this subchapter [chapter] from a pregnant patient.

Sec. 166.050 [672.020]. MERCY KILLING NOT CONDONED. This subchapter [chapter] does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter [chapter].

Sec. 166.051 [672.021]. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter [chapter] does not impair or supersede any legal right or

responsibility a person may have to effect the withholding or withdrawal of life-sustaining treatment [~~procedures~~] in a lawful manner, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.

SECTION 1.04. Chapter 674, Health and Safety Code, is transferred to Subtitle H, Title 2, Health and Safety Code, is redesignated as Subchapter C, Chapter 166, Health and Safety Code, and is amended to read as follows:

SUBCHAPTER C [~~CHAPTER 674~~].

OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDERS

Sec. 166.081 [~~674.001~~]. DEFINITIONS. In this subchapter [~~chapter~~]:

(1) [~~"Attending physician" means the physician who has primary responsibility for a person's treatment and care.~~

[(2) "Board" means the Texas Board of Health.

[(3)] "Cardiopulmonary resuscitation" means any medical intervention used to restore circulatory or respiratory function that has ceased [~~includes a component of cardiopulmonary resuscitation~~].

(2) [(4)] "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of, and reasonable alternatives to, a proposed treatment decision:

[(5)] "Declarant" means a person who has executed or issued an out-of-hospital do-not-resuscitate order under this chapter:

[(6)] "Department" means the Texas Department of Health:

[(7)] "DNR identification device" means an identification device specified by the board under Section 166.101 [~~674.023~~] that is worn for the purpose of identifying a person who has executed or issued an out-of-hospital DNR order or on whose behalf an out-of-hospital DNR order has been executed or issued under this subchapter [~~chapter~~].

(3) [(8)] "Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions for a person in accordance with Chapter 135, Civil Practice and Remedies Code:

[(9)] "Emergency medical services" has the meaning assigned by Section 773.003.

(4) [(10)] "Emergency medical services personnel" has the meaning assigned by Section 773.003.

(5) [(11)] "Health care professionals" means physicians, physician assistants, nurses, and emergency medical services personnel and, unless the context requires otherwise, includes hospital emergency personnel.

(6) [(12)] "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of, and reasonable alternatives to, a proposed treatment decision:

[(13)] "Life-sustaining procedure" means a medical procedure, treatment, or intervention that uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and, when applied to a person in a terminal

condition, serves only to prolong the process of dying. The term does not include the administration of medication or the performance of a medical procedure considered to be necessary to provide comfort or care or to alleviate pain or the provision of water or nutrition.

~~(14)~~ "Out-of-hospital DNR order":

(A) means a legally binding out-of-hospital do-not-resuscitate order, in the form specified by the board under Section 166.083 ~~[674.003]~~, prepared and signed by the attending physician of a person ~~[who has been diagnosed as having a terminal condition]~~, that documents the instructions of a person or the person's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment ~~[procedures]~~:

(i) cardiopulmonary resuscitation;

(ii) ~~[endotracheal intubation or other means of]~~ advanced airway management;

(iii) artificial ventilation;

(iv) defibrillation;

(v) transcutaneous cardiac pacing; and

(vi) ~~[the administration of cardiac resuscitation medications; and~~

~~(vii)]~~ other life-sustaining treatment ~~[procedures]~~ specified by the board under Section 166.101(a) ~~[674.023(a)]~~; and

(B) does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort ~~[or]~~ care or to alleviate pain or to provide water or nutrition.

~~(7)~~ ~~(15)~~ "Out-of-hospital setting" means a location ~~[any setting outside of a licensed acute care hospital]~~ in which health care professionals are called for assistance, including long-term care facilities, in-patient hospice facilities, private homes, hospital outpatient or emergency departments, physician's offices, and vehicles during transport.

~~(8)~~ ~~(16)~~ "Physician" means a physician licensed by the Texas State Board of Medical Examiners or a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

~~(17)~~ "Proxy" means a person designated and authorized by a directive executed or issued in accordance with Subchapter B ~~[Chapter 672]~~ to make a treatment decision for another person in the event the other person becomes ~~[comatose;]~~ incompetent~~;~~ or otherwise mentally or physically incapable of communication.

~~(9)~~ ~~(18)~~ "Qualified relatives" means those persons authorized to execute or issue an out-of-hospital DNR order on behalf of a person who is ~~[comatose;]~~ incompetent~~;~~ or otherwise mentally or physically incapable of communication under Section 166.088 ~~[674.008]~~.

~~(10)~~ ~~(19)~~ "Statewide out-of-hospital DNR protocol" means a set of statewide standardized procedures adopted by the board under Section 166.101(a) ~~[674.023]~~ for withholding cardiopulmonary resuscitation and certain other life-sustaining treatment ~~[procedures]~~ by health care professionals acting in out-of-hospital settings.

~~(20)~~ "Terminal condition" means an incurable or irreversible condition caused by injury, disease, or illness that would produce death without the application

of life-sustaining procedures, according to reasonable medical judgment, and in which the application of life-sustaining procedures serves only to postpone the moment of the person's death.]

Sec. 166.082 [674.002]. OUT-OF-HOSPITAL DNR ORDER; DIRECTIVE TO PHYSICIANS. (a) A competent person [~~who has been diagnosed by a physician as having a terminal condition~~] may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment [~~procedures~~] designated by the board.

(b) The declarant must sign the out-of-hospital DNR order in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The [~~and those~~] witnesses must sign the order. The attending physician of the declarant must sign the order and shall make the fact of the existence of the order and the reasons for execution of the order a part of the declarant's medical record.

(c) [~~A witness must have the same qualifications as those provided by Section 672.003(e).~~]

[(d)] If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B [Chapter 672], the physician may rely on the directive as the person's instructions to issue an out-of-hospital DNR order and shall place a copy of the directive in the person's medical record. The physician shall sign the order in lieu of the person signing under Subsection (b).

(d) [(e)] If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B [Chapter 672] designating a proxy, the proxy may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(e) [(f)] If the person is now incompetent but previously executed or issued a medical [durable] power of attorney [for health care in accordance with Chapter 135; Civil Practice and Remedies Code,] designating an agent, the agent may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(f) [(g)] The board, on the recommendation of the department, shall by rule adopt procedures for the disposition and maintenance of records of an original out-of-hospital DNR order and any copies of the order.

(g) [(h)] An out-of-hospital DNR order is effective on its execution.

Sec. 166.083 [674.003]. FORM OF OUT-OF-HOSPITAL DNR ORDER. (a) A written out-of-hospital DNR order shall be in the standard form specified by board rule as recommended by the department.

(b) The standard form of an out-of-hospital DNR order specified by the board must, at a minimum, contain the following:

(1) a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;

(2) a title that readily identifies the document as an out-of-hospital DNR order;

(3) the printed or typed name of the person;

(4) a statement that the physician signing the document is the attending physician of the person[~~, that the physician has diagnosed the person as having a~~

~~terminal condition,~~] and that the physician is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment [procedures] on behalf of the person, and a listing of those procedures not to be initiated or continued;

(5) a statement that the person understands that the person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;

(6) places for the printed names and signatures of the witnesses and attending physician of the person and the medical license number of the attending physician;

(7) a separate section for execution of the document by the legal guardian of the person, the person's proxy, an agent of the person having a medical [durable] power of attorney [~~for health care~~], or the attending physician attesting to the issuance of an out-of-hospital DNR order by nonwritten means of communication or acting in accordance with a previously executed or previously issued directive to physicians under Section 166.082(c) [~~674.002(d)~~] that includes the following:

(A) a statement that the legal guardian, the proxy, the agent, the person by nonwritten means of communication, or the physician directs that each [the] listed life-sustaining treatment [procedures] should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and, as applicable, the legal guardian, proxy, agent, or physician;

(8) a separate section for execution of the document by at least one [two] qualified relative [relatives] of the person when the person does not have a legal guardian, proxy, or agent having a medical [durable] power of attorney [~~for health care~~] and is [~~comatose,~~] incompetent[;] or otherwise mentally or physically incapable of communication, including:

(A) a statement that the relative [relatives] of the person is [are] qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment [procedures] under Section 166.088 [~~674.008~~] and, based on the known desires of the person or a determination of the best interest of the person, directs [direct] that each [the] listed life-sustaining treatment [procedures] should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and qualified relative [relatives] of the person;

(9) a place for entry of the date of execution of the document;

(10) a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11) a statement that the document must accompany the person during transport;

(12) a statement regarding the proper disposition of the document or copies of the document, as the board determines appropriate; and

(13) a statement at the bottom of the document, with places for the signature of each person executing the document, that the document has been properly completed.

(c) The board may, by rule and as recommended by the department, modify the standard form of the out-of-hospital DNR order described by Subsection (b) in order to accomplish the purposes of this subchapter [chapter].

(d) A photocopy or other complete facsimile of the original written out-of-hospital DNR order executed under this subchapter may be used for any purpose for which the original written order may be used under this subchapter.

Sec. 166.084 [~~674.004~~]. ISSUANCE OF OUT-OF-HOSPITAL DNR ORDER BY NONWRITTEN COMMUNICATION. (a) A competent person who is an adult may issue an out-of-hospital DNR order by nonwritten communication.

(b) A declarant must issue the nonwritten out-of-hospital DNR order in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). [~~The witnesses must possess the same qualifications as those provided by Section 672.003(e).~~]

(c) The attending physician and witnesses shall sign the out-of-hospital DNR order in the [that] place of the document provided by Section 166.083(b)(7) [674.003(b)(7)] and the attending physician shall sign the document in the place required by Section 166.083(b)(13) [674.003(b)(13)]. The physician shall make the fact of the existence of the out-of-hospital DNR order a part of the declarant's medical record and the names of the witnesses shall be entered [sign that entry] in the medical record.

(d) An out-of-hospital DNR order issued in the manner provided by this section is valid and shall be honored by responding health care professionals as if executed in the manner provided by Section 166.082 [~~674.002~~].

Sec. 166.085 [~~674.005~~]. EXECUTION OF OUT-OF-HOSPITAL DNR ORDER ON BEHALF OF A MINOR. The following persons may execute an out-of-hospital DNR order on behalf of a minor:

- (1) the minor's parents;
- (2) the minor's legal guardian; or
- (3) the minor's managing conservator.

Sec. 166.086 [~~674.006~~]. DESIRE OF PERSON SUPERSEDES OUT-OF-HOSPITAL DNR ORDER. The desire of a competent person, including a competent minor, supersedes the effect of an out-of-hospital DNR order executed or issued by or on behalf of the person when the desire is communicated to responding health care professionals as provided by this subchapter [~~chapter~~].

Sec. 166.087 [~~674.007~~]. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when a person 18 years of age or older has executed or issued an out-of-hospital DNR order and subsequently becomes [~~comatose,~~] incompetent[;] or otherwise mentally or physically incapable of communication.

(b) If the adult person has designated a person to make a treatment decision as authorized by Section 166.032(c) [~~672.003(d)~~], the attending physician and the designated person shall comply with the out-of-hospital DNR order.

(c) If the adult person has not designated a person to make a treatment decision as authorized by Section 166.032(c) [~~672.003(d)~~], the attending physician shall comply with the out-of-hospital DNR order unless the physician believes that the order does not reflect the person's present desire.

Sec. 166.088 [~~674.008~~]. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED OUT-OF-HOSPITAL DNR ORDER AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult person has not executed or issued an out-of-hospital DNR order and is [~~comatose,~~]

incompetent[;] or otherwise mentally or physically incapable of communication, the attending physician and the person's legal guardian, proxy, or agent having a medical [durable] power of attorney [for health care] may execute an out-of-hospital DNR order on behalf of the person.

(b) If the person does not have a legal guardian, proxy, or agent under a medical power of attorney, the attending physician and at least one [two] qualified relative from a category listed by Section 166.039(b), subject to the priority established under that subsection, [relatives] may execute an out-of-hospital DNR order in the same manner as a treatment decision made under Section 166.039(b) [672.009(b)].

(c) A decision to execute an out-of-hospital DNR order made under Subsection (a) or (b) must be based on knowledge of what the person would desire, if known.

(d) An out-of-hospital DNR order executed under Subsection (b) must be made in the presence of at least two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2) [who possess the same qualifications that are required by Section 672.003(e)].

(e) The fact that an adult person has not executed or issued an out-of-hospital DNR order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment [procedures] designated by the board.

(f) If there is not a qualified relative available to act for the person under Subsection (b), an out-of-hospital DNR order must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of the ethics or medical committee of the health care facility in which the person is a patient.

(g) A person listed in Section 166.039(b) who wishes to challenge a decision made under this section must apply for temporary guardianship under Section 875, Texas Probate Code. The court may waive applicable fees in that proceeding.

Sec. 166.089 [674.009]. COMPLIANCE WITH OUT-OF-HOSPITAL DNR ORDER. (a) When responding to a call for assistance, health care professionals shall honor an out-of-hospital DNR order in accordance with the statewide out-of-hospital DNR protocol and, where applicable, locally adopted out-of-hospital DNR protocols not in conflict with the statewide protocol if:

(1) the responding health care professionals discover an executed or issued out-of-hospital DNR order form on their arrival at the scene; and

(2) the responding health care professionals comply with this section.

(b) If the person is wearing a DNR identification device, the responding health care professionals must comply with Section 166.090 [674.010].

(c) The responding health care professionals must establish the identity of the person as the person who executed or issued the out-of-hospital DNR order or for whom the out-of-hospital DNR order was executed or issued.

(d) The responding health care professionals must determine that the out-of-hospital DNR order form appears to be valid in that it includes:

(1) written responses in the places designated on the form for the names, signatures, and other information required of persons executing or issuing, or witnessing the execution or issuance of, the order;

(2) a date in the place designated on the form for the date the order was executed or issued; and

(3) the signature of the declarant or persons executing or issuing the order and the attending physician in the appropriate places designated on the form for indicating that the order form has been properly completed.

(e) If the conditions prescribed by Subsections (a) through (d) are not determined to apply by the responding health care professionals at the scene, the out-of-hospital DNR order may not be honored and life-sustaining procedures otherwise required by law or local emergency medical services protocols shall be initiated or continued. Health care professionals acting in out-of-hospital settings are not required to accept or interpret an out-of-hospital DNR order that does not meet the requirements of this subchapter [chapter].

(f) The out-of-hospital DNR order form or a copy of the form, when available, must accompany the person during transport.

(g) A record shall be made and maintained of the circumstances of each emergency medical services response in which an out-of-hospital DNR order or DNR identification device is encountered, in accordance with the statewide out-of-hospital DNR protocol and any applicable local out-of-hospital DNR protocol not in conflict with the statewide protocol.

(h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter [chapter] is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

(1) identify themselves as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a medical [durable] power of attorney [for health care] who executed or issued the out-of-hospital DNR order on behalf of the person; and

(2) request that cardiopulmonary resuscitation or certain other life-sustaining treatment [procedures] designated by the board be initiated or continued.

(i) If the policies of a health care facility preclude compliance with the out-of-hospital DNR order of a person or an out-of-hospital DNR order issued by an attending physician on behalf of a person who is admitted to or a resident of the facility, or if the facility is unwilling to accept DNR identification devices as evidence of the existence of an out-of-hospital DNR order, that facility shall take all reasonable steps to notify the person or, if the person is incompetent, the person's guardian or the person or persons having authority to make health care treatment decisions on behalf of the person, of the facility's policy and shall take all reasonable steps to effect the transfer of the person to the person's home or to a facility where the provisions of this subchapter [chapter] can be carried out.

Sec. 166.090 [674.010]. DNR IDENTIFICATION DEVICE. (a) A person who has a valid out-of-hospital DNR order under this subchapter [chapter] may wear a DNR identification device around the neck or on the wrist as prescribed by board rule adopted under Section 166.101 [674.023].

(b) The presence of a DNR identification device on the body of a person is conclusive evidence that the person has executed or issued a valid out-of-hospital DNR order or has a valid out-of-hospital DNR order executed or issued on the person's behalf. Responding health care professionals shall honor the DNR identification device as if a valid out-of-hospital DNR order form executed or issued by the person were found in the possession of the person.

Sec. ~~166.091~~ [674.011]. DURATION OF OUT-OF-HOSPITAL DNR ORDER. An out-of-hospital DNR order is effective until it is revoked as prescribed by Section ~~166.092~~ [674.012].

Sec. ~~166.092~~ [674.012]. REVOCATION OF OUT-OF-HOSPITAL DNR ORDER. (a) A declarant may revoke an out-of-hospital DNR order at any time without regard to the declarant's mental state or competency. An order may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction destroying the order form and removing the DNR identification device, if any;

(2) a person who identifies himself or herself as the legal guardian, as a qualified relative, or as the agent of the declarant having a medical [durable] power of attorney [~~for health care~~] who executed the out-of-hospital DNR order or another person in the person's presence and at the person's direction destroying the order form and removing the DNR identification device, if any;

(3) the declarant communicating the declarant's intent to revoke the order; or

(4) a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical [durable] power of attorney [~~for health care~~] who executed the out-of-hospital DNR order orally stating the person's intent to revoke the order.

(b) An oral revocation under Subsection (a)(3) or (a)(4) takes effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical [durable] power of attorney [~~for health care~~] who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the board and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

(c) Except as otherwise provided by this subchapter [~~chapter~~], a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

Sec. ~~166.093~~ [674.013]. REEXECUTION OF OUT-OF-HOSPITAL DNR ORDER. A declarant may at any time reexecute or reissue an out-of-hospital DNR order in accordance with the procedures prescribed by Section ~~166.082~~ [674.002], including reexecution or reissuance after the declarant is diagnosed as having a terminal or irreversible condition.

~~[Sec. 674.014. CONFLICT WITH NATURAL DEATH ACT OR DURABLE POWER OF ATTORNEY FOR HEALTH CARE. To the extent that an out-of-hospital DNR order conflicts with a directive or treatment decision executed or issued under Chapter 672 or a durable power of attorney for health care executed or issued in accordance with Chapter 135, Civil Practice and Remedies Code, the instrument executed later in time controls.]~~

~~[Sec. 674.015. EFFECT OF OUT-OF-HOSPITAL DNR ORDER ON INSURANCE POLICY AND PREMIUMS. (a) The fact that a person has executed or issued an out-of-hospital DNR order under this chapter does not:~~

~~(1) restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person; or~~

~~(2) modify the terms of an existing life insurance policy.~~

~~(b) Notwithstanding the terms of any life insurance policy, the fact that cardiopulmonary resuscitation or certain other life-sustaining procedures designated by the board are withheld from an insured person under this chapter does not legally impair or invalidate that person's life insurance policy and may not be a factor for the purpose of determining the payability of benefits or the cause of death under the life insurance policy.~~

~~(c) A physician, health facility, health care provider, insurer, or health care service plan may not require a person to execute or issue an out-of-hospital DNR order as a condition for obtaining insurance for health care services or receiving health care services.~~

~~[(d) The fact that a person has executed or issued or failed to execute or issue an out-of-hospital DNR order under this chapter may not be considered in any way in establishing insurance premiums.]~~

Sec. 166.094 [674.016]. LIMITATION ON LIABILITY FOR WITHHOLDING CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING PROCEDURES. (a) A health care professional or health care facility or entity that in good faith causes cardiopulmonary resuscitation or certain other life-sustaining treatment [~~procedures~~] designated by the board to be withheld from a person in accordance with this subchapter [~~chapter~~] is not civilly liable for that action.

(b) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment [~~procedures~~] designated by the board from a person in accordance with this subchapter [~~chapter~~] is not civilly liable for that action.

(c) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment [~~procedures~~] designated by the board from a person in accordance with this subchapter [~~chapter~~] is not criminally liable or guilty of unprofessional conduct as a result of that action.

(d) A health care professional or health care facility or entity that in good faith causes or participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment [~~procedures~~] designated by the board from a person in accordance with this subchapter [~~chapter~~] and rules adopted under this subchapter [~~chapter~~] is not in violation of any other licensing or regulatory laws or rules of this state and is not subject to any disciplinary action or sanction by any licensing or regulatory agency of this state as a result of that action.

Sec. 166.095 [674.017]. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE OUT-OF-HOSPITAL DNR ORDER. (a) A health care professional or health care facility or entity that has no actual knowledge of an out-of-hospital DNR order is not civilly or criminally liable for failing to act in accordance with the order.

(b) A health care professional or health care facility or entity is subject to review and disciplinary action by the appropriate licensing board [~~not civilly or criminally~~]

hable] for failing to effectuate an out-of-hospital DNR order. This subsection does not limit remedies available under other laws of this state.

(c) If an attending physician refuses to execute or comply with an out-of-hospital DNR order, the physician shall inform the person, the legal guardian or qualified relatives of the person, or the agent of the person having a medical [durable] power of attorney [~~for health care~~] and, if the person or another authorized to act on behalf of the person so directs, shall make a reasonable effort to transfer the person to another physician who is willing to execute or comply with an out-of-hospital DNR order.

Sec. 166.096 [674.018]. HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding cardiopulmonary resuscitation or certain other life-sustaining treatment [procedures] designated by the board from a person in accordance with this subchapter [chapter].

Sec. 166.097 [674.019]. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's out-of-hospital DNR order or DNR identification device without that person's consent or the consent of the person or persons authorized to execute or issue an out-of-hospital DNR order on behalf of the person under this subchapter [chapter]. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause cardiopulmonary resuscitation or certain other life-sustaining treatment [procedures] designated by the board to be withheld from another person contrary to the other person's desires, falsifies or forges an out-of-hospital DNR order or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes cardiopulmonary resuscitation and certain other life-sustaining treatment [procedures] designated by the board to be withheld from the other person with the result that the other person's death is hastened.

Sec. 166.098 [674.020]. PREGNANT PERSONS. A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining treatment [procedures] designated by the board under this subchapter [chapter] from a person known by the responding health care professionals to be pregnant.

Sec. 166.099 [674.021]. MERCY KILLING NOT CONDONED. This subchapter [chapter] does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter [chapter].

Sec. 166.100 [674.022]. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter [chapter] does not impair or supersede any legal right or responsibility a person may have under a constitution, other statute, regulation, or court decision to effect the withholding of cardiopulmonary resuscitation or certain other life-sustaining treatment [procedures] designated by the board.

Sec. 166.101 [674.023]. DUTIES OF DEPARTMENT AND BOARD. (a) The board shall, on the recommendation of the department, adopt all reasonable and necessary rules to carry out the purposes of this subchapter [chapter], including rules:

(1) adopting a statewide out-of-hospital DNR order resuscitation and certain other life-sustaining treatment [procedures] by health care professionals acting in out-of-hospital settings;

(2) designating life-sustaining treatment [~~procedures~~] that may be included in an out-of-hospital DNR order, including all procedures listed in Sections 166.081(6)(A)(i) through (v) [~~Section 674.001(14)(A)(i) through (vi)~~]; and

(3) governing recordkeeping in circumstances in which an out-of-hospital DNR order or DNR identification device is encountered by responding health care professionals.

(b) The rules adopted by the board under Subsection (a) are not effective until approved by the Texas State Board of Medical Examiners.

(c) Local emergency medical services authorities may adopt local out-of-hospital DNR order protocols if the local protocols do not conflict with the statewide out-of-hospital DNR order protocol adopted by the board.

(d) The board by rule shall specify a distinctive standard design for a necklace and a bracelet DNR identification device that signifies, when worn by a person, that the possessor has executed or issued a valid out-of-hospital DNR order under this subchapter [~~chapter~~] or is a person for whom a valid out-of-hospital DNR order has been executed or issued.

(e) The department shall report to the board from time to time regarding issues identified in emergency medical services responses in which an out-of-hospital DNR order or DNR identification device is encountered. The report may contain recommendations to the board for necessary modifications to the form of the standard out-of-hospital DNR order or the designated life-sustaining procedures listed in the standard out-of-hospital DNR order, the statewide out-of-hospital DNR order protocol, or the DNR identification devices.

~~[Sec. 674.024. RECOGNITION OF OUT-OF-HOSPITAL DNR ORDER EXECUTED OR ISSUED IN OTHER STATE. An out-of-hospital DNR order executed, issued, or authorized in another state or a territory or possession of the United States in compliance with the law of that jurisdiction is effective for purposes of this chapter.]~~

SECTION 1.05. Chapter 135, Civil Practice and Remedies Code, is transferred to Subtitle H, Title 2, Health and Safety Code, is redesignated as Subchapter D, Chapter 166, Health and Safety Code, and is amended to read as follows:

SUBCHAPTER D [~~CHAPTER 135~~]. MEDICAL

[DURABLE] POWER OF ATTORNEY [FOR HEALTH CARE]

Sec. 166.151 [~~135.001~~]. DEFINITIONS. In this subchapter [~~chapter~~]:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Agent" means an adult to whom authority to make health care decisions is delegated under a medical [~~durable~~] power of attorney [~~for health care~~].

(3) ["Attending physician"] means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.

~~[(4) "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care.~~

~~[(5) "Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions as provided by this chapter.~~

~~[(6) "Health care decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.~~

~~[(7)]~~ "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician.

~~(4) [(8) "Physician" means:~~

~~[(A) a physician licensed by the Texas State Board of Medical Examiners; or~~

~~[(B) a physician with proper credentials who holds a commission in a branch of the armed services of the United States and who is serving on active duty in this state.~~

~~[(9)]~~ "Principal" means an adult who has executed a medical ~~[durable]~~ power of attorney ~~[for health care]~~.

~~(5) [(4)]~~ "Residential care provider" means an individual or facility licensed, certified, or otherwise authorized to operate, for profit or otherwise, a residential care home.

Sec. ~~166.152~~ ~~[(35.002)]~~. SCOPE AND DURATION OF AUTHORITY.

(a) Subject to this subchapter ~~[chapter]~~ or any express limitation on the authority of the agent contained in the medical ~~[durable]~~ power of attorney ~~[for health care]~~, the agent may make any health care decision on the principal's behalf that the principal could make if the principal were competent ~~[but for the principal's lack of capacity to make health care decisions]~~.

(b) An agent may exercise authority only if the principal's attending physician certifies in writing and files the certification in the principal's medical record that, based on the attending physician's reasonable medical judgment, the principal is incompetent ~~[lacks capacity to make health care decisions]~~.

(c) Notwithstanding any other provisions of this subchapter ~~[chapter]~~, treatment may not be given to or withheld from the principal if the principal objects regardless of whether, at the time of the objection:

(1) a medical ~~[durable]~~ power of attorney ~~[for health care]~~ is in effect; or

(2) the principal is competent ~~[has the capacity to make health care decisions]~~.

(d) The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's advance directive.

(e) After consultation with the attending physician and other health care providers, the agent shall make a health care decision:

(1) according to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs; or

(2) if the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.

(f) Notwithstanding any other provision of this subchapter ~~[chapter]~~, an agent may not consent to:

(1) voluntary inpatient mental health services;

(2) convulsive treatment;

(3) psychosurgery;

(4) abortion; or

(5) neglect of the principal through the omission of care primarily intended to provide for the comfort of the principal.

(g) The power of attorney is effective indefinitely on execution as provided by this ~~subchapter~~ ~~[chapter]~~ and delivery of the document to the agent, unless it is revoked as provided by this ~~subchapter~~ ~~[chapter]~~ or the principal ~~becomes competent~~ ~~[regains the capacity to make health care decisions]~~. If the ~~medical~~ ~~[durable]~~ power of attorney includes an expiration date and on that date the principal ~~is incompetent~~ ~~[lacks the capacity to make health care decisions]~~, the power of attorney continues to be effective until the principal ~~becomes competent~~ ~~[regains the capacity to make health care decisions]~~ unless it is revoked as provided by this ~~subchapter~~ ~~[chapter]~~.

Sec. 166.153 [435.003]. PERSONS WHO MAY NOT EXERCISE AUTHORITY OF AGENT. A person may not exercise the authority of an agent while the person serves as:

- (1) the principal's health care provider;
- (2) an employee of the principal's health care provider unless the person is a relative of the principal;
- (3) the principal's residential care provider; or
- (4) an employee of the principal's residential care provider unless the person is a relative of the principal.

Sec. 166.154 [435.004]. EXECUTION AND WITNESSES. (a) The ~~medical~~ ~~[durable]~~ power of attorney ~~[for health care]~~ must be signed by the principal in the presence of ~~[at least]~~ two ~~[or more subscribing]~~ witnesses ~~who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the document.~~

- (b) ~~[A witness may not, at the time of execution, be:~~
- ~~[(1) the agent;~~
 - ~~[(2) the principal's health or residential care provider or the provider's employee;~~
 - ~~[(3) the principal's spouse or heir;~~
 - ~~[(4) a person entitled to any part of the estate of the principal on the death of the principal under a will or deed in existence or by operation of law; or~~
 - ~~[(5) any other person who has any claim against the estate of the principal.~~

~~[(c) The witnesses shall affirm that, at the time the durable power of attorney for health care was signed, the principal:~~

- ~~[(1) appeared to be of sound mind to make a health care decision;~~
- ~~[(2) stated in the witness's presence that the principal was aware of the nature of the durable power of attorney for health care and that the principal was signing the document voluntarily and free from any duress; and~~
- ~~[(3) requested that the witness serve as a witness to the principal's execution of the document.~~

~~[(d)] If the principal is physically unable to sign, another person may sign the ~~medical~~ ~~[durable]~~ power of attorney ~~[for health care]~~ with the principal's name in the principal's presence and at the principal's express direction.~~

Sec. 166.155 [435.005]. REVOCATION. (a) A ~~medical~~ ~~[durable]~~ power of attorney ~~[for health care]~~ is revoked by:

- (1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to ~~whether the principal is competent or the principal's mental state~~ ~~[-competency, or capacity to make health care decisions]~~;

(2) execution by the principal of a subsequent medical [~~medical~~] power of attorney [~~for health care~~]; or

(3) the divorce of the principal and spouse, if the spouse is the principal's agent, unless the medical power of attorney provides otherwise.

(b) A principal's licensed or certified health or residential care provider who is informed of or provided with a revocation of a medical [~~medical~~] power of attorney [~~for health care~~] shall immediately record the revocation in the principal's medical record and give notice of the revocation to the agent and any known health and residential care providers currently responsible for the principal's care.

Sec. 166.156 [~~135.006~~]. APPOINTMENT OF GUARDIAN. (a) On motion filed in connection with a petition for appointment of a guardian or, if a guardian has been appointed, on petition of the guardian, a probate court shall determine whether to suspend or revoke the authority of the agent.

(b) The court shall consider the preferences of the principal as expressed in the medical [~~medical~~] power of attorney [~~for health care~~].

(c) During the pendency of the court's determination under Subsection (a), the guardian has the sole authority to make any health care decisions unless the court orders otherwise. If a guardian has not been appointed, the agent has the authority to make any health care decisions unless the court orders otherwise.

(d) A person, including any attending physician or health or residential care provider, who does not have actual knowledge of the appointment of a guardian or an order of the court granting authority to someone other than the agent to make health care decisions is not subject to criminal or civil liability and has not engaged in unprofessional conduct for implementing an agent's health care decision.

Sec. 166.157 [~~135.007~~]. DISCLOSURE OF MEDICAL INFORMATION. Subject to any limitations in the medical [~~medical~~] power of attorney [~~for health care~~], an agent may, for the purpose of making a health care decision:

(1) request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;

(2) execute a release or other document required to obtain the information; and

(3) consent to the disclosure of the information.

Sec. 166.158 [~~135.008~~]. DUTY OF HEALTH OR RESIDENTIAL CARE PROVIDER. (a) A principal's health or residential care provider and an employee of the provider who knows of the existence of the principal's medical [~~medical~~] power of attorney [~~for health care~~] shall follow a directive of the principal's agent to the extent it is consistent with the desires of the principal, this subchapter [~~chapter~~], and the medical [~~medical~~] power of attorney [~~for health care~~].

(b) The attending physician does not have a duty to verify that the agent's directive is consistent with the principal's wishes or religious or moral beliefs.

(c) A principal's health or residential care provider who finds it impossible to follow a directive by the agent because of a conflict with this subchapter [~~chapter~~] or the medical [~~medical~~] power of attorney [~~for health care~~] shall inform the agent as soon as is reasonably possible. The agent may select another attending physician. The procedures established under Sections 166.045 and 166.046 apply if the agent's directive concerns providing, withholding, or withdrawing life-sustaining treatment.

(d) This subchapter [~~chapter~~] may not be construed to require a health or residential care provider who is not a physician to act in a manner contrary to a physician's order.

Sec. 166.159 [435.009]. DISCRIMINATION RELATING TO EXECUTION OF MEDICAL [~~DURABLE~~] POWER OF ATTORNEY [~~FOR HEALTH CARE~~]. A health or residential care provider, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital service plan may not:

(1) charge a person a different rate solely because the person has executed a medical [~~durable~~] power of attorney [~~for health care~~];

(2) require a person to execute a medical [~~durable~~] power of attorney [~~for health care~~] before:

(A) admitting the person to a hospital, nursing home, or residential care home;

(B) insuring the person; or

(C) allowing the person to receive health or residential care; or

(3) refuse health or residential care to a person solely because the person has executed a medical [~~durable~~] power of attorney [~~for health care~~].

Sec. 166.160 [435.010]. LIMITATION ON LIABILITY. (a) An agent is not subject to criminal or civil liability for a health care decision if the decision is made in good faith under the terms of the medical [~~durable~~] power of attorney [~~for health care~~] and the provisions of this subchapter [~~chapter~~].

(b) An attending physician, health or residential care provider, or a person acting as an agent for or under the physician's or provider's control is not subject to criminal or civil liability and has not engaged in unprofessional conduct for an act or omission if the act or omission:

(1) is done in good faith under the terms of the medical [~~durable~~] power of attorney [~~for health care~~], the directives of the agent, and the provisions of this subchapter [~~chapter~~]; and

(2) does not constitute a failure to exercise reasonable [~~due~~] care in the provision of health care services.

(c) The standard of care that the attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control shall exercise under Subsection (b) is that degree of care that an attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or similar community.

(d) [~~(e)~~] An attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control has not engaged in unprofessional conduct for:

(1) failure to act as required by the directive of an agent or a medical [~~durable~~] power of attorney [~~for health care~~] if the physician, provider, or person was not provided with a copy of the medical [~~durable~~] power of attorney [~~for health care~~] or had no knowledge of a directive; or

(2) acting as required by an agent's directive if the medical [~~durable~~] power of attorney [~~for health care~~] has expired or been revoked but the physician, provider, or person does not have knowledge of the expiration or revocation.

Sec. 166.161 [435.011]. LIABILITY FOR HEALTH CARE COSTS. Liability for the cost of health care provided as a result of the agent's decision is the same as if the health care were provided as a result of the principal's decision.

~~[Sec. 135.012. NATURAL DEATH ACT. To the extent that a durable power of attorney for health care conflicts with a directive or treatment decision executed under the Natural Death Act (Chapter 672, Health and Safety Code), the instrument executed later in time controls. A physician who withholds or withdraws life-sustaining procedures from a principal with a terminal condition as required by an agent's directive is not required to comply with the Natural Death Act.~~

~~[Sec. 135.013. ENFORCEABILITY OF DURABLE POWER OF ATTORNEY EXECUTED IN ANOTHER JURISDICTION. This chapter does not limit the enforceability of a durable power of attorney for health care or similar instrument executed in another state or jurisdiction if the instrument complies with the law of the state or jurisdiction.]~~

Sec. 166.162 [435.014]. DISCLOSURE STATEMENT. A medical [durable] power of attorney [for health care] is not effective unless the principal, before executing the medical [durable] power of attorney [for health care], signs a statement that the principal has received a disclosure statement and has read and understood its contents.

Sec. 166.163 [435.015]. FORM OF DISCLOSURE STATEMENT. The disclosure statement must be in substantially the following form:

INFORMATION CONCERNING THE MEDICAL
[DURABLE] POWER OF ATTORNEY [FOR HEALTH CARE]
THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence [capacity] to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care

provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical [durable] power of attorney [~~for health care~~]. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT [OR MORE QUALIFIED] WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage [your health or residential care provider or an employee of your health or residential care provider];
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law [your spouse];
- (4) your attending physician [lawful heirs or beneficiaries named in your will or a deed]; [or]
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death [creditors or persons who have a claim against you].

Sec. 166.164 [435.016]. FORM OF MEDICAL [DURABLE] POWER OF ATTORNEY. The medical [durable] power of attorney [~~for health care~~] must be in substantially the following form:

**MEDICAL [DURABLE] POWER OF ATTORNEY [~~FOR HEALTH CARE~~]
DESIGNATION OF HEALTH CARE AGENT.**

I, _____ (insert your name) appoint:

Name: _____

Address: _____

Phone _____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical [~~durable~~] power of attorney [~~for health care~~] takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS: _____

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name: _____

Address: _____

Phone _____

B. Second Alternate Agent

Name: _____

Address: _____

Phone _____

The original of this document is kept at:

The following individuals or institutions have signed copies:

Name: _____

Address: _____

Name: _____

Address: _____

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical [~~durable~~] power of attorney [~~for health care~~].

ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY.)

I sign my name to this medical [durable] power of attorney [~~for health care~~] on _____ day of _____ (month, year) [~~19~~] at

(City and State)

(Signature)

(Print Name)

STATEMENT OF FIRST WITNESS [WITNESSES].

[I declare under penalty of perjury that the principal has identified himself or herself to me, that the principal signed or acknowledged this durable power of attorney in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, that] I am not the person appointed as agent by this document. [~~and that~~] I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility [~~a provider of health or residential care, an employee of a provider of health or residential care, the operator of a community care facility, or an employee of an operator of a health care facility~~].

[I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to any part of the estate of the principal on the death of the principal under a will or by operation of law].

[Witness] Signature: _____

Print Name: _____ Date: _____

Address: _____

SIGNATURE OF SECOND WITNESS.

[Witness] Signature: _____

Print Name: _____ Date: _____

Address: _____

Sec. 166.165 [~~135.017~~]. CIVIL ACTION. (a) A person who is a near relative of the principal or a responsible adult who is directly interested in the principal, including a guardian, social worker, physician, or clergyman, may bring an action in district court to request that the medical [durable] power of attorney [~~for health care~~] be revoked because the principal, at the time the medical [durable] power of attorney [~~for health care~~] was signed:

- (1) was not competent [~~of sound mind to make a health care decision~~]; or
- (2) was under duress, fraud, or undue influence.

(b) The action may be brought in the county of the principal's residence or the residence of the person bringing the action.

(c) During the pendency of the action, the authority of the agent to make health care decisions continues in effect unless the district court orders otherwise.

Sec. 166.166 [~~135.018~~]. OTHER RIGHTS OR RESPONSIBILITIES NOT AFFECTED. This subchapter [~~chapter~~] does not limit or impair any legal right or responsibility that any person, including a physician or health or residential care provider, may have to make or implement health care decisions on behalf of a person, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Subsection (a), Section 313.003, Health and Safety Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) a decision to withhold or withdraw life-sustaining treatment from qualified terminal or irreversible patients under Subchapter B, Chapter 166 [~~the terms of Chapter 672~~];

(2) a health care decision made under a medical [~~health care~~] [durable] power of attorney under Subchapter D, Chapter 166 [~~Chapter 135, Civil Practice and Remedies Code~~], or under Chapter XII, Texas Probate Code;

(3) consent to medical treatment of minors under Chapter 32 [~~35~~], Family Code;

(4) consent for emergency care under Chapter 773;

(5) hospital patient transfers under Chapter 241; or

(6) a patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment.

SECTION 2.02. Subchapter A, Chapter 142, Health and Safety Code, is amended by adding Section 142.0145 to read as follows:

Sec. 142.0145. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a home and community support services agency that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

SECTION 2.03. Subsections (a) and (c), Section 241.059, Health and Safety Code, are amended to read as follows:

(a) The commissioner of health may assess an administrative penalty against a hospital that violates this chapter, a rule adopted pursuant to this chapter, a special license provision, an order or emergency order issued by the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter. The commissioner shall assess an administrative penalty against a hospital that violates Section 166.004.

(c) The penalty may not exceed \$1,000 for each violation, except that the penalty for a violation of Section 166.004 shall be \$500. Each day of a continuing violation, other than a violation of Section 166.004, may be considered a separate violation.

SECTION 2.04. Subchapter C, Chapter 242, Health and Safety Code, is amended by adding Section 242.0663 to read as follows:

Sec. 242.0663. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty under this subchapter against an institution that violates Section 166.004.

(b) Notwithstanding Sections 242.066(b) and (c), a penalty assessed in accordance with this section shall be \$500 and a separate penalty may not be assessed for a separate day of a continuing violation.

(c) Section 242.0665 does not apply to a penalty assessed in accordance with this section.

SECTION 2.05. Subchapter C, Chapter 247, Health and Safety Code, is amended by adding Section 247.0455 to read as follows:

Sec. 247.0455. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a personal care facility that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

SECTION 2.06. Subchapter C, Chapter 248, Health and Safety Code, is amended by adding Section 248.0545 to read as follows:

Sec. 248.0545. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a special care facility that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

ARTICLE 3. TRANSITION AND EMERGENCY CLAUSE

SECTION 3.01. This Act takes effect September 1, 1999.

SECTION 3.02. (a) The change in law made by this Act does not affect the validity of a document executed under Chapter 672 or 674, Health and Safety Code, or Chapter 135, Civil Practice and Remedies Code, before the effective date of this Act. A document executed before the effective date of this Act is governed by the law in effect on the date the document was executed, and that law continues in effect for that purpose.

(b) A reference in a law to a durable power of attorney for health care means a medical power of attorney, as defined by Section 166.002, Health and Safety Code, as added by this Act.

SECTION 3.03. (a) The change in law made by this Act applies only to the punishment for 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 the effective date.

(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.

SECTION 3.04. The change in law made by this Act to Sections 166.045(b) and 166.095(b), Health and Safety Code, as redesignated by this Act, applies only to conduct that occurs on or after January 1, 2000. Conduct that occurs before January 1, 2000, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3.05. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Moncrief, the Senate concurred in the House amendment to **SB 1260** by a viva voce vote.

SENATE BILL 1128 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 1128** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1128** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to systems and programs administered by the Teacher Retirement System of Texas.

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

SECTION 1. Section 822.201, Government Code, is amended by amending Subsection (b), as amended by Chapters 330 and 1035, Acts of the 75th Legislature, Regular Session, 1997, and adding Subsection (e) to read as follows:

(b) "Salary and wages" as used in Subsection (a) means:

(1) normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed;

(2) amounts by which the member's salary is reduced under a salary reduction agreement authorized by Chapter 610;

(3) amounts that would otherwise qualify as salary and wages under Subdivision (1) but are not received directly by the member pursuant to a good faith, voluntary written salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the Internal Revenue Code of 1986 (26 U.S.C. Section 125), if:

(A) the program or benefit options are made available to all employees of the employer; and

(B) the benefit options in the cafeteria plan are limited to one or more options that provide deferred compensation, group health and disability insurance, group term life insurance, dependent care assistance programs, or group legal services plans; ~~and~~

(4) performance pay awarded to an employee by a school district as part of a total compensation plan approved by the board of trustees of the district and meeting the requirements of Subsection (e); and[-]

(5) [~~(4)~~] the benefit replacement pay a person earns under Subchapter H, Chapter 659, as added by Chapter 417, Acts of the 74th Legislature, 1995, except as provided by Subsection (c).

(e) For purposes of Subsection (b)(4), a total compensation plan must:

(1) describe all elements of compensation received by or available to all employees of the employer;

(2) provide for the availability of at least one type of performance pay to classroom teachers employed by the employer;

(3) identify each type of performance pay, the performance criteria for each type of performance pay, and the classes of employees eligible for each type of performance pay;

(4) contain sufficient information concerning the plan to ascertain the amount of each qualifying employee's pay under the plan;

(5) contain performance criteria for earning performance pay that preclude the exercise of discretion for awarding the pay on any basis other than an evaluation of employee or group performance or availability of funding; and

(6) satisfy any other requirements adopted by the retirement system.

SECTION 2. Subchapter A, Chapter 823, Government Code, is amended by adding Section 823.006 to read as follows:

Sec. 823.006. PERMISSIVE SERVICE CREDIT RESTRICTIONS. (a) In this section:

(1) "Nonqualified service" means service for which permissive service credit is authorized by this subtitle, other than:

(A) military service; and

(B) service for any agency or instrumentality of this state, including a political subdivision of this state, or for any public school supported by the United States or a state or territory of the United States, if credit for the service would not cause a person to receive a retirement benefit for the same service from more than one retirement system or program.

(2) "Permissive service credit" means service credit:

(A) that is not membership credit authorized to be reinstated;

(B) that is recognized under this subtitle for purposes of computing a member's benefit under the retirement system;

(C) for which the member has not received credit with the retirement system; and

(D) that a member may receive only by making a voluntary additional contribution in an amount determined as provided by this subtitle that does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) The purchase of permissive service credit by a person who first becomes a member of the retirement system after August 31, 2000, is subject to the restrictions and conditions of Subsection (d) in addition to all other requirements of this subtitle applicable to the purchase.

(c) The purchase by any person of permissive service credit that was first made available under the retirement system after December 31, 1997, is subject to the restrictions and conditions of Subsection (d) in addition to all other requirements of this subtitle applicable to the purchase.

(d) Under a circumstance described by Subsection (b) or (c), a member may not purchase more than five years of permissive service credit for nonqualified service, and a member may not purchase service credit for nonqualified service before the member has at least five years of membership service credit.

SECTION 3. Subchapter C, Chapter 823, Government Code, is amended by adding Section 823.203 to read as follows:

Sec. 823.203. MEMBERSHIP SERVICE FOR OPTIONAL RETIREMENT PROGRAM. A member may not establish service credit in the retirement system for any period when the member was participating in the optional retirement program under Chapter 830.

SECTION 4. Section 823.401, Government Code, is amended by adding Subsection (j) to read as follows:

(j) The board of trustees may adopt rules providing for the adoption of a reciprocal agreement with a state or territory of a member's previous employment for the payment for service credit established under this section through the transfer from the state or territory to the retirement system of contributions made on behalf of the member in the form of an eligible rollover distribution as provided by Section 401(a)(31), Internal Revenue Code of 1986, and its subsequent amendments.

SECTION 5. Sections 823.501(b) and (f), Government Code, are amended to read as follows:

(b) A person eligible to reinstate service credit under this section is one who is a [~~contributing~~] member of the retirement system at the time the service is reinstated.

(f) A [~~contributing~~] member may have an account that was terminated by absence from service reactivated by requesting the reactivation in writing. The beneficiary of a decedent who was a [~~contributing~~] member at the time of death may have an account that was terminated by the decedent's absence from service reactivated by requesting the reactivation in writing before the first payment of a death benefit.

SECTION 6. Section 824.101(c), Government Code, is amended to read as follows:

(c) Only one person may be designated as beneficiary of an optional retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5), and a designation of beneficiary under any of those options may not be made, changed, or revoked, except as provided by Sections 824.1011, [~~and~~] 824.1012, and 824.1013, after the later of the date on which the retirement system makes the first annuity payment to the retiree or the date the first payment becomes due. For purposes of this section, the term "makes payment" includes the depositing in the mail of a payment warrant or the crediting of an account with payment through electronic funds transfer.

SECTION 7. Section 824.1011(a), Government Code, is amended to read as follows:

(a) A retiree who is receiving a standard service or disability retirement annuity under Section 824.203 or 824.304(b) and who marries after the date of the person's retirement may replace the annuity by selecting an optional retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5) or under Section 824.308(c)(1), (c)(2), or (c)(5), as applicable, and designating the person's spouse as beneficiary before the second [~~first~~] anniversary of the marriage in the same manner as an annuity selection and designation of beneficiary may be made before retirement.

SECTION 8. Section 824.1012, Government Code, as added by Chapter 1416, Acts of the 75th Legislature, Regular Session, 1997, is redesignated as Section 824.1013 to read as follows:

Sec. ~~824.1012~~ [824.1012]. CHANGE OF BENEFICIARY AFTER RETIREMENT. (a) A retiree receiving an optional retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5) or Section 824.308(c)(1), (c)(2), or (c)(5) may change the designated beneficiary as provided by this section for the benefits payable after the retiree's death under those sections.

(b) If the beneficiary designated at the time of the retiree's retirement is the spouse or former spouse of the retiree:

(1) the spouse or former spouse must give written, notarized consent to the change; or

(2) a court with jurisdiction over the marriage must have ordered the change.

(c) A beneficiary designated under this section is entitled on the retiree's death to receive monthly payments of the survivor's portion of the retiree's optional retirement annuity for the shorter of:

(1) the remainder of the life expectancy of the beneficiary designated as of the effective date of the retiree's retirement; or

(2) the remainder of the new beneficiary's life.

(d) A retiree may not change a beneficiary under this section after retirement if the retiree has previously changed or designated after retirement a beneficiary for optional retirement annuity payments under this subtitle.

SECTION 9. Sections 824.203(a) and (e), Government Code, are amended to read as follows:

(a) Except as provided by Subsections (c), (d), and (e), the standard service retirement annuity is an amount computed on the basis of the member's average annual compensation for the three years of service, whether or not consecutive, in which the member received the highest annual compensation, times 2.2 [~~two~~] percent for each year of service credit in the retirement system.

(e) The annual standard service retirement annuity for a person who immediately before retirement holds a position as a classroom teacher or full-time librarian, or the annual death benefit annuity based on the service of a member who at the time of death held a position as a classroom teacher or full-time librarian, may not be less than an amount computed on the basis of the minimum annual salary provided by the Education Code for a classroom teacher or full-time librarian, multiplied by 2.2 [~~two~~] percent for each year of service credit in the retirement system.

SECTION 10. Subchapter C, Chapter 824, Government Code, is amended by adding Section 824.2045 to read as follows:

Sec. 824.2045. PARTIAL LUMP-SUM OPTION. (a) A member who is eligible for an unreduced service retirement annuity and is not participating in the deferred retirement option plan under Subchapter I may select a standard service retirement annuity or an optional service retirement annuity described by Section 824.204, together with a partial lump-sum distribution.

(b) The amount of the lump-sum distribution under this section may not exceed the sum of 36 months of a standard service retirement annuity computed without regard to this section.

(c) The service retirement annuity selected by the member shall be actuarially reduced to reflect the lump-sum option selected by the member and shall be actuarially equivalent to a standard or optional service retirement annuity, as applicable, without the partial lump-sum distribution. The annuity and lump sum shall be computed to result in no actuarial loss to the retirement system.

(d) The retiring member may choose a lump sum equal to 12 months of a standard service retirement annuity and payable at the same time that the first monthly payment of the annuity is paid, a lump sum equal to 24 months of a standard annuity and payable in one or two annual payments, or a lump sum equal to 36 months of a standard annuity and payable in one, two, or three annual payments. At the option of the member, a payment under this subsection may be made as provided by Section 825.509.

(e) The amount of the lump-sum distribution will be deducted from any amounts otherwise payable under Section 824.503.

(f) The partial lump-sum option under this section may be elected only once by a member and may not be elected by a retiree. A member retiring under the proportionate retirement program under Chapter 803 is not eligible for the partial lump-sum option.

(g) Before a retiring member selects a partial lump-sum distribution under this section, the retirement system shall provide a written notice to the member of the amount by which the member's annuity will be reduced because of the selection. The member shall be asked to sign a copy of or receipt for the notice, and the retirement system shall maintain the signed copy or receipt.

(h) The board of trustees may adopt rules for the implementation of this section.

SECTION 11. Section 824.502, Government Code, is amended to read as follows:

Sec. 824.502. BENEFITS ON DEATH OF DISABILITY RETIREE. The designated beneficiary of a disability retiree who retires before September 1, 1992, who has not selected an optional annuity under Section 824.308, and who dies while receiving a retirement benefit may elect to receive, instead of survivor benefits provided by Section 824.501, a benefit available under Section 824.402, computed as if the decedent had been in service at the time of death.

SECTION 12. Sections 824.602(a) and (d), Government Code, are amended to read as follows:

(a) Subject to Section 825.506, the [The] retirement system may not, under Section 824.601, withhold a monthly benefit payment if the retiree is employed in a Texas public educational institution:

(1) as a substitute only with pay not more than the daily rate of substitute pay established by the employer and, if the retiree is a disability retiree, the employment has not exceeded a total of 90 days in the school year;

(2) in a position, other than as a substitute, on no more than a one-half time basis for the month;

(3) in one or more positions on as much as a full-time basis, if[-

[(A)] the work occurs in not more than six months of a school year that begins after the retiree's effective date of retirement;

[(B)] the work occurs in no more than six months of the school year; and

[(C)] the retiree executes on a form and within any deadline prescribed by the retirement system a written election to have this exception apply for the school year in determining whether benefits are to be suspended for employment after retirement; or]

(4) in a position, other than as a substitute, on no more than a one-half time basis for no more than 90 days in the school year, if the retiree is a disability retiree; or

(5) in a position as a classroom teacher on as much as a full-time basis, if the retiree has retired under Section 824.202(a) without reduction for retirement at an

early age, is certified under Subchapter B, Chapter 21, Education Code, to teach the subjects assigned, is teaching in an acute shortage area as defined by the commissioner of education, and has been separated from service with all public schools for at least 12 months.

(d) A retiree to whom ~~[who has elected to avoid loss of monthly benefits in a school year pursuant to]~~ Subsection (a)(3) applies is not eligible during that school year for any other exceptions to loss of benefits provided in this section. If a retiree is employed under ~~[elects]~~ the exemption provided in Subsection (a)(3) for a school year, the retirement system must include any previous employment during the school year, including any employment that relied upon the exemptions in Subsection (a)(1) or (a)(2), in determining whether and when the retiree has exceeded six months of employment in the school year.

SECTION 13. Sections 824.804(a) and (d), Government Code, are amended to read as follows:

(a) On the effective date of a member's participation in the plan, the retirement system shall make the transfers required by Section 825.309 to the retired reserve account as if the member had retired on that date. The retirement system shall transfer monthly, during the period of the member's participation in the plan, from the retired reserve account to an account for the member in the deferred retirement option account an amount equal to:

(1) 60 percent of the amount the member would have received that month under a standard service retirement annuity if the member had retired under the multiplier currently in effect; or

(2) if the member began participation in the plan before September 1, 1999, 79 percent of the amount the member would have received that month under a standard service retirement annuity if the member had retired under the multiplier currently in effect [on the effective date of plan participation].

(d) Payment of the benefit provided under the plan is in addition to any annuity otherwise payable under this subtitle. The retiring member may choose a DROP payment in accordance with the provisions of Section 825.509.

SECTION 14. Section 824.805, Government Code, is amended to read as follows:

Sec. 824.805. TERMINATION OF PARTICIPATION IN PLAN. (a) Except as provided by Subsection (b), a [A] member terminates participation in the plan by:

(1) retirement;

(2) death; or

(3) expiration of the period for which participation was approved.

(b) A member participating in the plan on September 1, 1999, may, before September 1, 2000, elect to discontinue participation in the plan on a form prescribed by and filed with the retirement system. The retirement system shall make account transfers and change records for a member who elects under this subsection to discontinue participation in the plan as if the member had never participated in the plan.

SECTION 15. The heading of Section 825.303, Government Code, is amended to read as follows:

Sec. 825.303. SECURITIES CUSTODY AND SECURITIES LENDING.

SECTION 16. Section 825.303(a), Government Code, is amended to read as follows:

(a) The retirement system may, in the exercise of its constitutional discretion to manage the assets of the retirement system, select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the system's securities and to lend the securities under rules adopted by the board of trustees and as required by this section. The retirement system may select one or more commercial banks, depository trust companies, or other entities to act independently of the custodian and lend the securities under board rules and as required by this section.

SECTION 17. Section 825.405(c), Government Code, is amended to read as follows:

(c) Monthly, employers shall:

(1) report to the retirement system in a form prescribed by the system a certification of the total amount of salary paid above the statutory minimum salary and the total amount of employer contributions due under this section for the payroll period; and

(2) retain information, as determined by the retirement system, sufficient to allow administration of this section, [~~The employer's form showing deductions and certification of earnings must provide the retirement system with information sufficient to administer this section, as determined by the system,~~] including information for each employee showing the applicable minimum salary as well as aggregate annual compensation.

SECTION 18. Section 825.406(c), Government Code, is amended to read as follows:

(c) Monthly, employers shall:

(1) report to the retirement system in a form prescribed by the system a certification of the total amount of salary paid from federal funds and private grants and the total amounts provided by the funds and grants for state contributions for the employees; and

(2) retain the following information:

(A) [~~(1)~~] the name of each employee paid in whole or part from a grant;

(B) [~~(2)~~] the source of the grant;

(C) [~~(3)~~] the amount of the employee's salary paid from the grant;

(D) [~~(4)~~] the amount of the money provided by the grant for state contributions for the employee; and

(E) [~~(5)~~] any other information the retirement system determines is necessary to enforce this section.

SECTION 19. Section 825.407(c), Government Code, is amended to read as follows:

(c) The designated disbursing officer of each general academic teaching institution and the designated disbursing officer of each medical and dental unit shall:

(1) submit to the retirement system, at a time and in the manner prescribed by the retirement system, a monthly report containing a certification of the total amount of salary paid from noneducational and general funds and the total amount of employer contributions due under this section for the payroll period; and

(2) maintain and retain the following information:

(A) [~~(1)~~] the name of each member employed by the institution or unit who, for the most recent payroll period, was paid wholly or partly from noneducational and general funds;

(B) [(2)] the amount of the employee's salary for the most recent payroll period that was paid from noneducational and general funds;

[(3) a certification of the total amount of employer contributions due under this section for the payroll period;] and

(C) [(4)] any other information the retirement system determines is necessary to administer this section.

SECTION 20. Section 825.408(a), Government Code, is amended to read as follows:

(a) An employing district that fails to remit, before the 11th day after the last day of a month, all member and employer deposits and documentation of the deposits required by this subchapter to be remitted by the district for the month shall pay to the retirement system, in addition to the deposits, interest on the unpaid or undocumented amounts at an annual rate compounded monthly. The rate of interest is the rate established under Section 825.313(b)(2), plus two percent. Interest required under this section is creditable to the interest account.

SECTION 21. Section 825.515, Government Code, is amended to read as follows:

Sec. 825.515. INFORMATION ABOUT MEMBER POSITIONS. (a) At least annually, the [The] retirement system shall acquire and maintain records identifying members and the types of positions they hold [have held] as members[-the length of service in each type of position, and whether service in each type of position is or was as a full-time employee]. The type of position shall be identified as Administrative/Professional, Teacher/Full-Time Librarian, Support, or Bus Driver. [The retirement system shall cooperate with the commissioner of education in maintaining information about the employment status of members of the retirement system.]

(b) [Each school year, the retirement system shall provide to the commissioner of education information, of a type and in a form determined by the commissioner, that allows contributing members of the retirement system to be identified in information submitted to the commissioner by school districts under the Education Code.

[(c)] Information contained in records of the retirement system maintained under this section is confidential within the limits prescribed by Section 825.507.

SECTION 22. Sections 825.516(a) and (b), Government Code, are amended to read as follows:

(a) A retiree who is receiving an annuity from the retirement system may request the system to withhold from the retiree's monthly annuity payment membership dues for a nonprofit association of retired school employees in this state, if the association is statewide and its membership includes at least five percent of all retirees of the retirement system. The request for withholding must be on a form provided by the retirement system.

(b) After the retirement system receives a request authorized by this section, the system may [shall] make the requested deductions until the earlier of:

(1) the date the annuity is terminated; or

(2) the first payment of the annuity after the date the system receives a written request signed by the retiree canceling the request for the withholding.

SECTION 23. Section 16A(d), Article 3.50-4, Insurance Code, is amended to read as follows:

(d) Monthly, employers shall:

(1) report to the trustee in a form prescribed by the trustee a certification of the total amount of salary paid from federal funds and private grants and the total amounts provided by the funds and grants for state contributions for the employees; and

(2) maintain and retain the following information:

(A) [(H)] the name of each [active] employee paid in whole or part from a grant;

(B) [(2)] the source of the grant;

(C) [(3)] the amount of the [active] employee's salary paid from the grant;

(D) [(4)] the amount of the money provided by the grant for state contributions for the [active] employee; and

(E) [(5)] any other information the trustee determines is necessary to enforce this section.

SECTION 24. Subchapter E, Chapter 3, Insurance Code, is amended by adding Article 3.50-4A to read as follows:

Art. 3.50-4A. INSURANCE FOR SCHOOL DISTRICT EMPLOYEES AND RETIREES

Sec. 1. DEFINITIONS. In this article:

(1) "Employee" means a person who is a participating member of the Teacher Retirement System of Texas and is not participating in a group insurance program under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) or the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code).

(2) "Retiree" means a person who:

(A) has retired under the Teacher Retirement System of Texas with at least 10 years of credit for service in public schools of this state or has retired under that system for disability and is entitled to receive an annuity from the system based on the person's service; and

(B) is not eligible to participate in the group insurance program provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) or the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code).

(3) "Trustee" means the Teacher Retirement System of Texas.

Sec. 2. INSURANCE COVERAGE. (a) The trustee shall contract with one or more carriers authorized to provide life insurance in this state to offer employees and retirees optional permanent life insurance coverage.

(b) The trustee shall contract with one or more carriers authorized to provide long-term care insurance in this state to offer employees and retirees optional long-term care insurance coverage. The long-term care insurance coverage shall include home, community, and institutional care.

(c) The trustee shall contract with one or more carriers authorized to provide disability insurance in this state to offer employees optional insurance against short-term or long-term loss of salary because of disability.

(d) In contracting for any benefits under this article, competitive bidding shall be required under rules adopted by the trustee. The rules may provide criteria to

determine qualified carriers. The trustee is not required to select the lowest bid but also may consider ability to service contracts, past experiences, financial stability, and other relevant criteria. If the trustee awards a contract to an entity whose bid deviates from that advertised, the deviation shall be recorded and the reasons for the deviation shall be fully justified in the minutes of the next meeting of the trustee.

(e) Insurance coverage provided under this section shall be made available periodically during open enrollment periods determined by the trustee.

Sec. 3. ADMINISTRATION. (a) The trustee shall adopt rules for the selection of contractors under this article. The rules must require the contractors to administer enrollment, adjudication of claims, and coordination of services under the insurance coverages and require the contractors to account for premiums collected and disbursed under the coverages.

(b) The trustee may adopt other rules necessary to administer the program provided under this article.

Sec. 4. PARTICIPATION IN COVERAGE. (a) The trustee shall offer the coverages provided under this article to employees through their employers and to retirees through the trustee's administration of the retirement system.

(b) The full cost of premiums in a plan of insurance coverage provided under this article is the responsibility of the enrollees.

(c) An employee participating in a plan of insurance coverage provided under this article shall pay premiums by payroll deduction remitted by the employee's employer at the times and in the manner provided by the trustee.

(d) A retiree participating in a plan of insurance coverage provided under this article shall pay premiums by deduction from the retiree's monthly retirement annuity.

Sec. 5. SCHOOL DISTRICT EMPLOYEES AND RETIREES OPTIONAL INSURANCE TRUST FUND. (a) The school district employees and retirees optional insurance trust fund is created as a trust fund with the comptroller and shall be administered by the trustee on behalf of the participants in the plans of insurance coverage provided under this article.

(b) Premiums paid by enrollees, amounts recovered under contracts for the implementation of the program provided by this article, and investment and depository income of the fund shall be credited to the fund.

(c) Money in the fund may be used only for the purpose of providing the program of insurance coverage provided under this article, including the expenses of administering the program.

(d) The trustee may invest the fund in the manner provided by Section 67(a)(3), Article XVI, Texas Constitution.

SECTION 25. Sections 22.004(c) and (d), Education Code, are amended to read as follows:

(c) Each district shall report the district's compliance with this subsection to the executive director of the Teacher Retirement System of Texas not later than March ~~November~~ 1 of each even-numbered year in the manner required by the board of trustees of the Teacher Retirement System of Texas. The report must be based on the district group health coverage plan in effect during the current plan year ~~on November 1~~ and must include:

(1) appropriate documentation of:

(A) the district's contract for group health coverage with a provider licensed to do business in this state by the Texas Department of Insurance or a risk pool authorized under Chapter 172, Local Government Code; or

(B) a resolution of the board of trustees of the district authorizing a self-insurance plan for district employees and of the district's review of district ability to cover the liability assumed;

(2) the schedule of benefits;

(3) the premium rate sheet, including the amount paid by the district and employee;

(4) the number of employees covered by each health coverage plan offered by the district; and

(5) any other information considered appropriate by the executive director of the Teacher Retirement System of Texas.

(d) Based on the criteria prescribed by Subsection (a), the executive director of the Teacher Retirement System of Texas shall certify whether a district's coverage is comparable to the basic health coverage provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code). If the executive director of the Teacher Retirement System of Texas determines that the group health coverage offered by a district is not comparable, the executive director shall report that information to the district and to the Legislative Budget Board. The executive director shall submit a report to the legislature not later than ~~September~~ ~~[January]~~ 1 of each ~~even-numbered~~ ~~[odd-numbered]~~ year describing the status of each district's group health coverage program based on the information contained in the report required by Subsection (c) and the certification required by this subsection.

SECTION 26. (a) Monthly payments of a death or retirement benefit annuity by the Teacher Retirement System of Texas are increased beginning with the payment due at the end of September 1999.

(b) The increase does not apply to payments under Section 824.304(a), 824.404, or 824.501, Government Code.

(c) Except as provided by Subsection (d) of this section, the amount of the monthly increase is computed by multiplying the previous monthly benefit by a percentage determined in accordance with the following table:

LATEST RETIREMENT DATE OR, IF APPLICABLE, DATE OF DEATH	INCREASE
Before September 1, 1973	5%
On or after September 1, 1973, but before September 1, 1974	6%
On or after September 1, 1974, but before September 1, 1979	5%
On or after September 1, 1979, but before September 1, 1981	6%
On or after September 1, 1981, but before September 1, 1982	7%
On or after September 1, 1982, but before September 1, 1983	6%
On or after September 1, 1983, but before September 1, 1990	7%
On or after September 1, 1990, but before September 1, 1991	6%
On or after September 1, 1991, but before September 1, 1992	7%
On or after September 1, 1992, but before September 1, 1995	6%
On or after September 1, 1995, but before September 1, 1997	5%
On or after September 1, 1997, but before September 1, 1998	2%

(d) After making the computations required by Subsection (c) of this section, the retirement system shall increase each annuity payable by the system on September 1, 1999, other than an annuity under Section 824.304(a), 824.404, or 824.501, Government Code, by 10 percent, which is a benefit equivalent to the benefit provided by using a 2.2 percent multiplier for computing annuities.

SECTION 27. (a) Notwithstanding Section 824.1011, Government Code, as amended by this Act, a person who is receiving a standard service or disability retirement annuity under Section 824.203 or 824.304(b), Government Code, on the effective date of this Act and who married after retirement but before that date may, before September 1, 2000, replace the annuity by selecting an optional annuity and designating the person's spouse as beneficiary as if the person had married after the effective date of this Act.

(b) Notwithstanding Section 824.1011, Government Code, as amended by this Act, a person who retired before September 1, 1992, and is receiving a standard disability retirement annuity under Section 824.304(b), Government Code, on the effective date of this Act may before September 1, 2001, replace the annuity by selecting an optional annuity described by Section 824.308, Government Code. An optional annuity selected under this subsection shall be actuarially reduced according to the ages of the retiree and the designated beneficiary at the time the annuity is selected.

SECTION 28. This Act takes effect September 1, 1999, except Section 12, which takes effect at the beginning of the 1999-2000 school year.

SECTION 29. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Floor Amendment No. 1

Amend **CSSB 1128** as follows:

(1) Add the following appropriately numbered SECTION to the bill to read as follows:

SECTION __. Section 824.1012(a), Government Code, as added by Chapter 401, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(a) As an exception to Section 824.101(c), a retiree who selected an optional service retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5) or an optional disability retirement annuity under Section 824.308(c)(1), (c)(2), or (c)(5) may revoke the designation of the beneficiary to receive the annuity on the death of the retiree, if a court in a divorce proceeding involving the retiree and beneficiary approves or orders the revocation in the divorce decree or acceptance of a property settlement or if the beneficiary is an adult child of the retiree and signs a notarized consent to the revocation. The revocation takes effect when the retirement system receives it.

(2) Renumber existing SECTIONS of the bill and change the cross-reference in existing SECTION 28 of the bill accordingly.

Floor Amendment No. 2

Amend **CSSB 1128** by adding a new section as follows:

Section __. Amend Section 824.402, Government Code, by adding the following subsection (b) and renumbering subsequent sections accordingly:

(b) In addition to the benefits provided in accordance with the subsection (a), the designated beneficiary of a member who is an employee of a school district and who dies as a result of a physical assault during the performance of the employee's regular duties is eligible to receive a lump sum death benefit payment in the amount of \$160,000.

The amendments were read.

Senator Armbrister moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 1128** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Bernsen, Bivins, Lucio, and Nelson.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

HB 2, HB 347, HB 469, HB 523, HB 681, HB 1615, HB 1713, HB 1723, HB 1739, HB 1767, HB 1845, HB 1877, HB 1879, HB 2060, HB 2061, HB 2199, HB 2200, HB 2209, HB 2223, HB 2235, HB 2238, HB 2296, HB 2299, HB 2303, HB 2314, HB 2354, HB 2374, HB 2407, HB 2490, HB 2492, HB 2593, HB 2594, HB 2622, HB 2626, HB 2662, HB 3089, HB 3122, HB 3133, HB 3232, HB 3294, HB 3299, HB 3337, HB 3366, HB 3377, HB 3477, HB 3532, HB 3771, HB 3772, HCR 135, HCR 235, HCR 237, HCR 281, HB 2066, HB 3531.

CONFERENCE COMMITTEE ON HOUSE BILL 1362

Senator Ogden called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1362** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 1362** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ogden, Chair; Fraser, Moncrief, Madla, and Lindsay.

HOUSE BILL 3224 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3224** be placed on its third reading and final passage.

HB 3224, Relating to the issuance of public securities by or on behalf of the state and political subdivisions.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

The bill was read third time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3224** as follows:

(1) In SECTION 2 of the bill, in the introductory language (senate committee report, page 1, lines 18 and 19), strike "by amending the heading and Subsection (a)".

(2) In SECTION 2 of the bill, in amended Section 1201.027(a), Government Code (senate committee report, page 1, lines 21-22), strike "The governing body of an issuer [a" and substitute "An issuer [~~The governing body of a~~".

(3) In SECTION 2 of the bill, in amended Section 1201.027(a), Government Code (senate committee report, page 1, line 27), strike "governing body" and substitute "issuer".

(4) In SECTION 2 of the bill, following amended Section 1201.027(a), Government Code (senate committee report, page 1, between lines 35 and 36), insert the following:

(b) Subsection (a) does not impair the authority of the attorney general under Section 402.0212 to approve a contract for legal services entered into by a state agency.

(c) Except as provided by Subsection (b), to [Tø] the extent of a conflict between this section and another law or a municipal charter, this section controls.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator West and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 3224 as amended was finally passed by a viva voce vote.

SENATE BILL 333 WITH HOUSE AMENDMENT

Senator Sibley called **SB 333** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 333** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the treatment of certain annuities as charitable gift annuities and the application of the Insurance Code and certain other laws to charitable gift annuities.

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

SECTION 1. Section 2, Article 1.14-1A, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) Any person or entity involved in the issuance of a qualified charitable gift annuity shall have immunity from suit, including both a defense to liability and the right not to bear the cost, burden, and risk of discovery and trial, as to any claim brought by or on behalf of the donor or the donor's heirs or distributees alleging that the issuance of a charitable gift annuity constitutes engaging in the business of insurance in this state. An interlocutory appeal may be taken if a court denies or otherwise fails to grant a motion for summary judgment that is based on an assertion of the immunity provided in this subsection.

SECTION 2. Article 1.14-1A, Insurance Code, is amended by adding Section 7 to read as follows:

Sec. 7. TREATMENT OF ANNUITY AS CHARITABLE GIFT ANNUITY; ESTOPPEL. In any litigation or other proceeding brought by or on behalf of a donor or the donor's heirs or distributees, an annuity that the donor has treated as a charitable gift annuity in a filing with the United States Internal Revenue Service shall be considered to be a charitable gift annuity issued by a charitable organization, as described by Sections 1, 2, and 6 of this article and Section 2(b), Article 1.14-1 of this code.

SECTION 3. (a) Sections 1, 2, 6, and 7, Article 1.14-1A, Insurance Code and Section 2(b), Article 1.14-1, Insurance Code, as those sections exist on the effective date of this Act, apply to any charitable gift annuity issued before, on, or after the effective date of this Act, including any charitable gift annuity that is the subject of litigation or another proceeding that is pending before, on, or after the effective date of this Act.

(b) This section applies without regard to the effective date of the legislation enacting Article 1.14-1A, Insurance Code, or any other legislation enacted by any legislature that amended the provisions of Article 1.14-1A, Insurance Code.

SECTION 4. This Act applies to any charitable gift annuity issued before, on, or after the effective date of this Act, including any charitable gift annuity that is the subject of litigation or another proceeding that is pending before, on, or after the effective date of this Act.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

On motion of Senator Sibley, the Senate concurred in the House amendment to **SB 333** by a viva voce vote.

SENATE BILL 358 WITH HOUSE AMENDMENTS

Senator Madla called **SB 358** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 358** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation and functions of the Texas Department of Mental Health and Mental Retardation.

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

SECTION 1. Section 532.002, Health and Safety Code, is amended to read as follows:

Sec. 532.002. SUNSET PROVISION. The Texas Department of Mental Health and Mental Retardation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the department is abolished and this chapter expires September 1, 2011 [~~1999~~].

SECTION 2. Chapter 532, Health and Safety Code, is amended by adding Section 532.0035 to read as follows:

Sec. 532.0035. BOARD 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 session that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the department and board;
- (2) the programs operated by the department;
- (3) the roles and functions of the department;
- (4) the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the department;
- (6) the results of the most recent formal audit of the department;
- (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the department 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 3. Subsections (d) and (e), Section 532.016, Health and Safety Code, are amended to read as follows:

(d) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements [~~to assure implementation of~~] a program of equal employment opportunity to ensure that [~~under which~~] all personnel decisions [~~transactions~~] are made without regard to race, color, disability [~~handicap~~], sex, religion, age, or national origin. The policy statement must include:

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

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

[(2) a comprehensive analysis of the department work force that meets federal and state guidelines]; and

(3) procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

(e) ~~The [A] policy statement [prepared under Subsection (d)] must:~~

(1) ~~[cover an annual period;~~

~~[(2)] be updated [at least] annually;~~

~~(2) be reviewed by the Commission on Human Rights for compliance with Subsection (d)(1); and~~

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

SECTION 4. Subchapter A, Chapter 533, Health and Safety Code, is amended by adding SECTION 533.013 to read as follows:

Sec. 533.013. DUPLICATION OF REHABILITATION SERVICES. The department shall enter into an agreement with the Texas Rehabilitation Commission that defines the roles and responsibilities of the department and the commission regarding the agencies' shared client populations. The agreement must establish methods to prevent the duplication and fragmentation of employment services provided by the agencies.

SECTION 5. Section 533.032, Health and Safety Code, is amended to read as follows:

Sec. 533.032. LONG-RANGE PLANNING [PLAN]. (a) The department shall have a long-range plan covering at least six years that includes at least the provisions required by Sections 531.022 and 531.023, Government Code [Section 10; Article 4413(502), Revised Statutes], and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons the department serves are met.

(b) In developing the plan, the department shall:

(1) solicit input from:

(A) local authorities for mental health and mental retardation;

(B) community representatives;

(C) consumers of mental health and mental retardation services, including consumers of campus-based services, and family members of consumers of those services; and

(D) other interested persons; and

(2) consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for state schools and state hospitals;

(2) document the methodology used to develop the projection of future bed requirements;

(3) project maintenance costs for institutional facilities;

(4) recommend strategies to maximize the use of institutional facilities; and

(5) specify how each state school and state hospital will:

(A) serve and support the communities and consumers in its service area; and

(B) fulfill statewide needs for specialized services.

- (d) In developing the report under Subsection (c) the department shall consider:
- (1) the medical needs of the most medically fragile of its clients;
 - (2) the provision of services to clients with severe and profound mental retardation and to persons with mental retardation who are medically fragile or have behavioral problems;
 - (3) the program and service preference information collected under Section 533.038; and
 - (4) input solicited from consumers of services of state schools and state hospitals.
- (e) The department shall:
- (1) attach the report to the department's legislative appropriations request for each biennium;
 - (2) at the time the department presents its legislative appropriations request, present the report to the:
 - (A) governor;
 - (B) governor's budget office;
 - (C) lieutenant governor;
 - (D) speaker of the house of representatives;
 - (E) Legislative Budget Board; and
 - (F) Health and Human Services Commission; and
 - (3) update the department's long-range plan biennially and include the report in the plan.

SECTION 6. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0325 to read as follows:

Sec. 533.0325. CONTINUUM OF SERVICES IN CAMPUS FACILITIES. The board by rule shall establish criteria regarding the uses of the department's campus-based facilities as part of a full continuum of services.

SECTION 7. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Sections 533.0345 and 533.0346 to read as follows:

Sec. 533.0345. STATE AGENCY SERVICES STANDARDS. (a) The department by rule shall develop model program standards for mental health and mental retardation services for use by each state agency that provides or pays for mental health or mental retardation services. The department shall provide the model standards to each agency that provides mental health or mental retardation services as identified by the Health and Human Services Commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of mental health and mental retardation services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

Sec. 533.0346. AUTHORITY TO TRANSFER SERVICES TO COMMUNITY CENTERS. The department may transfer operations of and services provided at the Amarillo State Center, Beaumont State Center, or Laredo State Center to a community center established under Chapter 534.

SECTION 8. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0351 to read as follows:

Sec. 533.0351. LOCAL AUTHORITY TECHNICAL ADVISORY COMMITTEE. (a) In this section "local authority" means a local mental health or mental retardation authority.

(b) The commissioner shall establish a nine-member local authority advisory committee to advise the commissioner on technical and administrative issues that directly affect local authority responsibilities.

(c) The committee is composed of representatives of local authorities and one member representing the public appointed by the commissioner. In appointing the members, the commissioner shall ensure a balanced representation of:

- (1) different regions of this state;
- (2) rural and urban counties; and
- (3) single-county and multicounty local authorities.

(d) Except for the member representing the public, members appointed to the advisory committee must have expertise in the day-to-day operations of a local authority.

(e) The advisory committee shall:

(1) review rules and proposed rules related to local authority operations;
(2) advise the commissioner regarding evaluation and coordination of initiatives related to local authority operations;

(3) advise and assist the department in developing a method of contracting with local authorities that will result in contracts that are flexible and responsive to:

- (A) the needs and services of local communities; and
- (B) the department's performance expectations;

(4) coordinate with and monitor the activities of work groups whose actions may affect local authority operations;

(5) report to the board on the committee's activities and recommendations at least once each fiscal quarter; and

(6) work with the commissioner as the commissioner directs.

(f) For any written recommendation the committee makes to the department, the department shall provide to the committee a written response regarding any action taken on the recommendation or the reasons for the department's inaction on the subject of the recommendation.

(g) The committee is subject to Chapter 2110, Government Code. The department by rule shall provide, in accordance with Section 2110.008, Government Code, that the committee is abolished on September 1, 2007, unless the board affirmatively votes to continue the committee in existence.

SECTION 9. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0356 to read as follows:

Sec. 533.0356. LOCAL BEHAVIORAL HEALTH AUTHORITIES. (a) In this section, "commission" means the Texas Commission on Alcohol and Drug Abuse.

(b) The department and the commission jointly may designate a local behavioral health authority in a local service area to provide mental health and chemical dependency services in that area. The board and the commission may delegate to an authority designated under this section the authority and responsibility for planning, policy development, coordination, resource allocation, and resource development for and oversight of mental health and chemical dependency services in that service area. An authority designated under this section has:

(1) all the responsibilities and duties of a local mental health authority provided by Section 533.035 and by Subchapter B, Chapter 534; and

(2) the responsibility and duty to ensure that chemical dependency services are provided in the service area as described by the statewide service delivery plan adopted under Section 461.0124.

(c) In the planning and implementation of services, the authority shall give proportionate priority to mental health services and chemical dependency services that ensures that funds purchasing services are used in accordance with specific regulatory and statutory requirements that govern the respective funds.

(d) A local mental health authority may apply to the department and commission for designation as a local behavioral health authority.

(e) The department and commission, by contract or by a case-rate or capitated arrangement or another method of allocation, may disburse money, including federal money, to a local behavioral health authority for services.

(f) A local behavioral health authority, with the approval of the department or the commission as provided by contract, shall use money received under Subsection (e) to ensure that mental health and chemical dependency services are provided in the local service area at the same level as the level of services previously provided through:

(1) the local mental health authority; and

(2) the commission.

(g) In determining whether to designate a local behavioral health authority for a service area and in determining the functions of the authority if designated, the department and commission shall solicit and consider written comments from any interested person including community representatives, persons who are consumers of the proposed services of the authority, and family members of those consumers.

(h) An authority designated under this section shall demonstrate to the department and the commission that services involving state funds that the authority oversees comply with relevant state standards.

(i) The board and the commission jointly may adopt rules to govern the operations of local behavioral health authorities. The department and the commission jointly may assign the local behavioral health authority the duty of providing a single point of entry for mental health and chemical dependency services.

SECTION 10. Section 533.038, Health and Safety Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) A person with mental retardation, or a person's legally authorized representative, seeking residential services shall receive a clear explanation of programs and services for which the person is determined to be eligible, including state schools, community ICF-MR programs waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services. The preferred programs and services chosen by the person or the person's legally authorized representative shall be documented in the person's record. If the preferred programs or services are not available, the person or the person's legally authorized representative shall be given assistance in gaining access to alternative services and the selected waiting list.

(e) The department shall ensure that the information regarding program and service preferences collected under Subsection (d) is documented and maintained in a manner that permits the department to access and use the information for planning activities conducted under Section 533.032.

(f) The department may spend money appropriated for the state school system only in accordance with limitations imposed by the General Appropriations Act.

SECTION 11. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.039 to read as follows:

Sec. 533.039. CLIENT SERVICES OMBUDSMAN. (a) The commissioner shall employ an ombudsman responsible for assisting a person, or a parent or guardian of a person, who has been denied service by the department, a department program or facility, or a local mental health or mental retardation authority.

(b) The ombudsman shall:

(1) explain and provide information on department and local mental health or mental retardation authority services, facilities, and programs and the rules, procedures, and guidelines applicable to the person denied services; and

(2) assist the person in gaining access to an appropriate program or in placing the person on an appropriate waiting list.

SECTION 12. Subsection (a), Section 534.004, Health and Safety Code, is amended to read as follows:

(a) The local agency or organizational combination of local agencies that establishes a community center shall prescribe:

(1) the application procedure for a position on the board of trustees;

(2) the procedure and criteria for making appointments to the board of trustees;

(3) the procedure for posting notice of and filling a vacancy on the board of trustees; and

(4) the grounds and procedure for removing a member of the board of trustees[; ~~and~~

~~[(5) a procedure to ensure that an appointed member of a board of trustees appointed by a local agency or organizational combination of local agencies primarily located in only one county serves not more than four consecutive and complete two-year terms].~~

SECTION 13. Section 534.005, Health and Safety Code, is amended to read as follows:

Sec. 534.005. TERMS; VACANCIES. (a) Appointed members of the board of trustees who are not members of a local agency's governing body serve staggered two-year terms. In appointing the initial members, the appointing authority shall designate not less than one-third or more than one-half of the members to serve one-year terms and shall designate the remaining members to serve two-year terms.

(b) A vacancy on a board of trustees composed of qualified voters is filled by appointment for the remainder of the unexpired term.

~~[(c) If the local agency or organizational combination of local agencies that appoints the board of trustees is primarily located in only one county, a person appointed to the board of trustees may not serve more than four consecutive and complete two-year terms.]~~

SECTION 14. Section 534.007, Health and Safety Code, is amended to read as follows:

Sec. 534.007. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES; OFFENSE. (a) A ~~[For one year after the date on which a]~~ former officer or employee of a community center who ceases ~~[terminates]~~ service or employment with the center~~[-the individual]~~ may not represent any person or receive

compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official~~[, directly or indirectly, attempt or aid in the attempt to procure a contract with the community center in which the individual served or was employed if the contract relates to a program or service in which the individual was directly concerned or for which the individual had administrative] responsibility.~~

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for ~~[step 1]~~ salary group 17, Schedule A, or salary group 9, Schedule B, of the position classification salary schedule; or

(2) a former officer or employee who is employed by a state agency or another community center.

(c) Subsection (a) does not apply to a proceeding related to policy development that was concluded before the officer's or employee's service or employment ceased.

(d) A former officer or employee of a community center commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

(e) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, proceeding related to the development of policy, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

SECTION 15. Subsection (b), Section 534.065, Health and Safety Code, is amended to read as follows:

(b) The mental health or mental retardation authority may ~~[shall]~~ renew the contract only if the contract meets the criteria provided by Section 533.016 ~~[if the authority finds that:~~

~~[(1) funding is available;~~

~~[(2) the authority plans to continue the services;~~

~~[(3) the provider is in substantial compliance with each material provision of the contract, unless the authority determines that the provision is not legal and enforceable under applicable state and federal law;~~

~~[(4) the provider is providing a reasonably adequate level of service in accordance with the contract and at a reasonable cost;~~

~~[(5) the provider agrees to a renewal contract that is substantially in compliance with a model contract developed by the department under Section 534.055;~~

~~[(6) the provider was during the term of any contract with the authority and is at the time of renewal in compliance with applicable laws governing the subject matter of the contract; and~~

~~[(7) neither the provider nor any of its officers, directors, or principal employees has been convicted or found by a final administrative decision to have been guilty of fraud or abuse in the provision of health care services under a contract with a state or federal agency].~~

SECTION 16. Chapter 461, Health and Safety Code, is amended by adding Section 461.0128 to read as follows:

Sec. 461.0128. STATE AGENCY SERVICES STANDARDS. (a) The commission by rule shall develop model program standards for substance abuse services for use by each state agency that provides or pays for substance abuse services. The commission shall provide the model standards to each agency that provides substance abuse as identified by the Health and Human Services Commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of substance abuse services provided by or through a state agency.

(c) Biennially the commission shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

SECTION 17. Chapter 461, Health and Safety Code, is amended by adding Section 461.0129 to read as follows:

Sec. 461.0129. LOCAL BEHAVIORAL HEALTH AUTHORITIES. The commission may designate and provide services through local behavioral health authorities as provided by Section 533.0356 and rules adopted jointly with the Texas Board of Mental Health and Mental Retardation.

SECTION 18. (a) The changes in law made by Section 532.0035, Health and Safety Code, as added by this Act, apply only to a member of the Texas Board of Mental Health and Mental Retardation appointed on or after the effective date of this Act. The qualifications of a board member appointed before the effective date of this Act are governed by the law as it existed immediately before that date and the former law is continued in effect for that purpose.

(b) The changes in law to Section 534.007, Health and Safety Code, made by this Act apply only to a person who ceases employment on or after the effective date of this Act. The relationship between a community center and a former employee who terminated employment before the effective date of this Act is governed by Section 534.007, Health and Safety Code, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(c) The changes in law to Subsection (b), Section 534.065, Health and Safety Code, made by this Act apply only to a contract considered for renewal on or after the effective date of this Act. Actions related to the renewal of a contract that are taken before the effective date of this Act and a contract renewed before that date are governed by Section 534.065, Health and Safety Code, as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 19. This Act takes effect September 1, 1999.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 358** by striking Subsection (d) of SECTION 5 of the bill (Committee Printing page 5, line 21 through page 6, line 4) and substitute the following:

(d) In developing the report under Subsection (c) the department shall:

(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interested parties; and

(2) consider:

(a) the medical needs of the most medically fragile of its clients;

(b) the provision of services to clients with severe and profound mental retardation and to persons with mental retardation who are medically fragile or have behavioral problems;

(c) the program and service preference information collected under Section 533.038; and

(d) input solicited from consumers of services of state schools and hospitals.

Floor Amendment No. 2

Amend **CSSB 358** (House Committee Report) in Section 7 of the bill by striking added Section 533.0346, Health and Safety Code (page 7, lines 14-18), and substituting the following:

Sec. 533.0346. AUTHORITY TO TRANSFER SERVICES TO COMMUNITY CENTERS. (a) The department may transfer operations of and services provided at the Beaumont State Center, and Laredo State Center to a community center established under Chapter 534, including a newly established center providing mental retardation services or mental health and mental retardation services.

(b) The transfer may occur only on the department's approval of a plan submitted in accordance with Section 534.001(d) or of an amendment to a previously approved plan. In developing the plan or plan amendment, the center or proposed center proposing to accept the state center operation and service responsibilities shall consider input from consumers of mental health and mental retardation services and family members of and advocates for those consumers, organizations that represent affected employees, and other providers of mental health and mental retardation services.

(c) The center or proposed center proposing to accept the state center operation and service responsibilities shall publish notice of the initial planning meeting regarding the content of the plan or plan amendment and of the meeting to review the content of the proposed plan or plan amendment before it is submitted under Section 534.001(d). The notices must include the time and location of the meeting. The notice of the meeting to review the content of the plan or amendment must include information regarding how to obtain a copy of the proposed plan or amendment. The notices must be published not fewer than 30 days and not more than 90 days before the date set for the meeting in a newspaper of general circulation in each county containing any part of the proposed service area. If a county in which notice is required to be published does not have a newspaper of general circulation, the notices shall be published in a newspaper of general circulation in the nearest county in which a newspaper of general circulation is published.

(d) At the time the operations and services are transferred to the community center, money supporting the cost of providing operations and services at a state center shall be transferred to the community center to ensure continuity of services.

Floor Amendment No. 3

Amend **CSSB 358** as follows:

On page 6, between lines 17 and 18, insert the following new subsection:

Sec. 532.032(f) The department shall, in coordination with The Health and Human Services Commission, evaluate the current and long-term costs associated with serving in-patient psychiatric needs of persons living in counties now served by at least three state hospitals within 120 miles of one another. This evaluation shall take into consideration the condition of the physical plants and other long-term asset management issues associated with the operation of the hospitals, as well as other issues associated with quality psychiatric care. After such determination is made, the Health and Human Services Commission shall begin to take action to influence the utilization of these state hospitals in order to ensure efficient service delivery.

Floor Amendment No. 4

Amend **CSSB 358** by adding the following appropriately numbered section and by renumbering subsequent sections accordingly:

SECTION _____. (a) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall implement a program to demonstrate the effectiveness of interagency cooperation for providing supported housing services to individuals with mental illness who reside in personal care facilities.

(b) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall design the supported housing services to give individualized assistance to persons to acquire and retain living arrangements that are:

(1) typical of the general population in the area in which the services are provided; and

(2) located among residences of individuals who are not receiving the services.

(c) The supported housing services under the program must be provided in accordance with rules of the Texas Department of Mental Health and Mental Retardation and may include:

(1) rental assistance for an individual who:

(A) meets income guidelines of the Texas Department of Housing and Community Affairs; and

(B) is not receiving housing assistance from the federal government;

(2) consumer rehabilitation services; and

(3) support services.

(d) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall work with the Texas Department of Human Services to allocate resources for the demonstration program so that priority is given to communities that:

(1) have the greatest number of personal care facilities and facilities that do not comply with licensing rules for personal care facilities; and

(2) have supported housing plans that the Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs have found to be consistent with the purposes of the demonstration program.

(e) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall establish an application process for communities that seek to participate in the demonstration program.

(f) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall establish a committee to supervise the design and implementation of the demonstration program. The committee must include representatives of:

- (1) the Texas Department of Mental Health and Mental Retardation;
- (2) the Texas Department of Housing and Community Affairs;
- (3) the Texas Department of Human Services;
- (4) consumers of mental health services; and
- (5) advocates of persons with mental illness.

(g) A community may not be selected to participate in the demonstration program unless the person that applies for the community's participation demonstrates collaboration between the local mental health authority and a public housing authority, community housing development organization, community development corporation, or other housing organization.

(h) An individual is not eligible for assistance under the demonstration program if the individual:

- (1) does not have a mental illness;
- (2) does not reside in a licensed or unlicensed personal care facility at the time the individual is first offered services under the demonstration program; or
- (3) was placed in a licensed or unlicensed personal care facility for the sole purpose of becoming eligible for the demonstration program.

(i) The Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall implement the demonstration program required by this section as soon as possible after the effective date of this Act and not later than January 1, 2000.

(j) On or before January 15, 2001, the Texas Department of Mental Health and Mental Retardation and the Texas Department of Housing and Community Affairs shall make a joint report to the governor, the lieutenant governor, and the speaker of the house of representatives. The report must include an evaluation of the demonstration program's benefits for individuals who received services and recommendations on the continuation or termination of the project or commencement of a similar project.

(k) This section expires August 31, 2001.

Floor Amendment No. 5

Amend **CSSB 358** by adding the following appropriately numbered section and by renumbering subsequent sections accordingly:

SECTION _____. (a) On September 1, 2001, or an earlier date provided by an interagency agreement between the Texas Department of Human Services and the Texas Department of Mental Health and Mental Retardation, the licensing, surveying, and regulation of intermediate care facilities for the mentally retarded under Chapters 222 and 252, Health and Safety Code, are transferred from the Texas Department of Human Services to the Texas Department of Mental Health and Mental Retardation.

(b) On September 1, 2001, or an earlier date provided by an interagency agreement between the Texas Department of Human Services and the Texas Department of Mental Health and Mental Retardation, all funds, obligations, and contracts of the Texas Department of Human Services related to a function listed in Subsection (a) of this section are transferred to the Texas Department of Mental Health and Mental Retardation.

(c) On September 1, 2001, or an earlier date provided by an interagency agreement between the Texas Department of Human Services and the Texas Department of Mental Health and Mental Retardation, all property and records in the custody of the Texas Department of Human Services related to a function listed in Subsection (a) of this section and all funds appropriated by the legislature to the Texas Department of Human Services for a function listed in Subsection (a) of this section are transferred to the Texas Department of Mental Health and Mental Retardation.

(d) On September 1, 2001, or an earlier date provided by an interagency agreement between the Texas Department of Human Services and the Texas Department of Mental Health and Mental Retardation, all employees of the Texas Department of Human Services who perform duties related to a function listed in Subsection (a) of this section become employees of the Texas Department of Mental Health and Mental Retardation, to be assigned duties by that department.

(e) A rule or form adopted by the Texas Department of Human Services that relates to a function listed in Subsection (a) of this section is a rule or form of the Texas Department of Mental Health and Mental Retardation and remains in effect until altered by that department. The secretary of state is authorized to adopt rules as necessary to expedite the implementation of this subsection.

(f) The transfer of the functions listed in Subsection (a) of this section does not affect or impair any act done, any obligation, right, order, license, permit, rule, criterion, standard, or requirement existing, any investigation begun, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

(g) An action brought or proceeding commenced before the transfer required by this section is effected, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding before the date of the transfer.

(h) After the transfer required by this section is effected:

(1) a reference in law to the Texas Department of Human Services that relates to a function listed in Subsection (a) of this section means the Texas Department of Mental Health and Mental Retardation; and

(2) a reference in law to the Texas Board of Human Services that relates to a function listed in Subsection (a) of this section means the Texas Board of Mental Health and Mental Retardation.

(i) The commissioner of health and human services shall facilitate and supervise the transfer required by Subsection (a) and shall ensure the proper transfer of money, information, equipment, employees, property, and other items necessary for the Texas Department of Mental Health and Mental Retardation and the Texas Board of Mental Health and Mental Retardation to assume responsibility for the licensing, surveying, and regulation of intermediate care facilities for the mentally retarded.

Floor Amendment No. 6

Amend **CSSB 358** in SECTION 10 of the bill, in added Section 533.038, Health and Safety Code, immediately following "ICF-MR programs" (Committee Report Printing, page 11, line 20), by inserting a comma.

Floor Amendment No. 7

Amend **CSSB 358** by adding the following appropriately numbered SECTIONS to the bill and by renumbering existing SECTIONS of the bill accordingly:

SECTION ____ . Section 574.083, Health and Safety Code, is amended to read as follows:

Sec. 574.083. RETURN TO FACILITY UNDER [~~FACILITY ADMINISTRATOR'S CERTIFICATE OR~~] COURT ORDER. (a) The facility administrator of a facility to which a patient was admitted for court-ordered inpatient health care services may have an absent patient taken into custody, detained, and returned to the facility by filing an affidavit as prescribed by Subsection (c)[:

~~[(1) signing a certificate authorizing the patient's return; or~~

~~[(2) filing the certificate]~~ with a magistrate and requesting the magistrate to order the patient's return.

(b) A magistrate may issue an order directing a peace or health officer to take a patient into custody and return the patient to the facility if the facility administrator files the affidavit ~~[certificate as]~~ prescribed by Subsection (c) ~~[this section]~~. An order issued under this subsection extends to any part of this state and authorizes any peace officer to whom the order is directed or transferred to execute the order.

(c) An affidavit filed under Subsection (a) must set out facts establishing that the patient is receiving court-ordered inpatient mental health services at a facility and show that [The facility administrator may sign or file the certificate if] the facility administrator reasonably believes that:

(1) the patient is absent without authority from the facility;

(2) the patient has violated the conditions of a pass or furlough; or

(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(d) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by ~~[the facility administrator's certificate or]~~ the court order.

(e) The peace or health officer may take the patient into custody without having the ~~[certificate or]~~ court order in the officer's possession.

(f) A peace or health officer who cannot immediately return a patient to the facility named in the order may transport the patient to a local facility for detention. The patient may not be detained in a nonmedical facility that is used to detain persons who are charged with or convicted of a crime unless detention in the facility is warranted by an extreme emergency. If the patient is detained at a nonmedical facility:

(1) the patient:

(A) may not be detained in the facility for more than 24 hours; and

(B) must be isolated from all persons charged with or convicted of a crime; and

(2) the facility must notify the county health authority of the detention.

(g) The county health authority shall ensure that a patient detained in a nonmedical facility under Subsection (f) receives proper care and medical attention.

(h) Notwithstanding other law regarding confidentiality of patient information, the facility administrator may release to a law enforcement official information about the patient if the administrator determines the information is needed to facilitate the return of the patient to the facility.

SECTION ____. Section 593.012, Health and Safety Code, is amended to read as follows:

Sec. 593.012. ABSENT WITHOUT AUTHORITY ~~[PERMISSION]~~. (a) The superintendent of a residential care facility to which a client has been admitted for court-ordered care and treatment may have a client who is absent without authority taken into custody, detained, and returned to the facility by filing an affidavit with a magistrate in the manner prescribed by Section 574.083 ~~[may immediately issue an order authorizing a peace officer to detain a resident committed to the facility under Subchapter C who is absent from the facility without proper permission].~~

(b) The client shall be returned to the residential care facility in accordance with the procedures prescribed by Section 574.083 ~~[A peace officer shall immediately notify the superintendent when the officer takes a resident into custody and shall promptly arrange the return of the resident to the assigned facility on request of the superintendent].~~

Floor Amendment No. 8

Amend **CSSB 358** by adding the following appropriately numbered section and by renumbering subsequent sections appropriately:

SECTION ____. Subchapter C, Chapter 534, Health and Safety Code, is amended by adding Section 534.106 to read as follows:

Sec. 534.106. CONDITIONS FOR CERTAIN CONTRACTS. (a) The department may not contract with a health maintenance organization formed by one or more community centers unless the board of directors of the health maintenance organization:

(1) includes an individual appointed by the governor; and

(2) does not include a trustee or executive director of a community center.

(b) A contract between the department and a health maintenance organization formed by one or more community centers must provide that the health maintenance organization may not form a for-profit entity unless the organization transfers all of the organization's assets to the control of the boards of trustees of the community centers that formed the organization.

Floor Amendment No. 9

Amend the Delisi amendment to **CSSB 358**, in Subsection (a)(2), added Section 534.106, Health and Safety Code (page 1, line 12), by striking "a trustee or" and substituting "an".

Floor Amendment No. 1 on Third Reading

Amend **CSSB 358** on third reading as follows:

(1) on page 4, line 25, insert after "campus-based" and before "services", the phrase "and community-based";

(2) on page 6, between lines 4 and 5, insert a new subsection (e) to read as follows:

(e) The department shall develop a report analyzing state and federally funded residential services for persons with mental retardation. The report shall:

(1) determine any disparity in cost and quality outcomes achieved between services provided in state-operated programs, including but not limited to ICFs-MR and HCS, and the same or comparable services provided by private sector providers; and

(2) identify and quantify the reasons for any disparity that exists. The department, in preparing the report, shall obtain ongoing input from stakeholders, including department staff, private providers, advocates, consumers, and family members of consumers.

(3) on page 6, line 5, renumber subsection (e) as (f);

(4) on page 6, line 6, delete "report" and insert "reports required by subsections (c) and (e)":

(5) on page 6, line 9, delete "report" and insert "reports"; and

(6) on page 6, line 17, delete "report" and insert "reports".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 358** (House Committee Report as amended on Second Reading) on third reading in Section 533.0346 of the bill as follows:

In subsection (a) of Section 533.0346 after "provided at the" and before "Beaumont State Center" add "Amarillo State Center."

In Section 533.0346, add a new subsection (e) as follows:

(e) The Amarillo State Center is exempt from the requirements listed in subsections (b) and (c) above.

The amendments were read.

Senator Madla moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 358** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Harris, Nixon, Moncrief, and Brown.

SENATE BILL 371 WITH HOUSE AMENDMENTS

Senator Brown called **SB 371** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1

Amend **SB 371**, in SECTION 1 of the bill, by striking proposed Section 501.133(a)(4), Government Code (page 2, lines 1 through 5, senate engrossment), and substituting the following:

"(4) three public members appointed by the governor who are not affiliated with the department, at least one of whom is a practicing physician in a rural area and one of whom is a rural hospital administrator."

Amendment No. 2

Amend Committee Amendment No. 1 to **SB 371**, by striking the amendment in its entirety and substituting the following as Section 501.133(a)(4), Government Code:

"(4) three public members appointed by the governor at least two of whom are practicing physicians and one of whom is a hospital administrator in a rural area. At least one of the two physicians appointed by the governor shall be a practicing physician in a rural area."

Committee Amendment No. 2

Amend **SB 371** as follows:

(1) In SECTION 1 of the bill, immediately after proposed Section 501.148, Government Code (page 10, line 26, Senate Engrossment), add new Sections 501.149 and 501.1491, Government Code, to read as follows:

Sec. 501.149. USE OF RURAL HOSPITAL CONTRACTS. The University of Texas Medical Branch at Galveston and the Texas Tech Health Sciences Center, in conjunction with the committee, shall develop and implement a comprehensive plan for expanding the use of rural hospital contracts for inmate care. The plan must include measures designed to reduce inmate transportation costs, including transportation-related security costs, and health care costs.

Sec. 501.1491. REPORT TO LEGISLATURE. The Correctional Managed Health Care Committee shall report to the 77th Legislature regarding the progress made in expanding the use of rural hospital contracts in providing inmate health care services and reducing inmate transportation and health care costs. The report must include implementation plans, a timetable, and an analysis of costs incurred and savings realized through expanding the use of rural hospital contracts. This section expires September 1, 2001.

(2) In SECTION 1 of the bill, (page 11, line 1 to page 12, line 16, Senate Engrossment), renumber proposed Sections 501.149, 501.150, and 501.151, Government Code, as Sections 501.150, 501.151, and 501.152, Government Code, respectively.

(3) Add a new SECTION 5 to the bill to read as follows and renumber the subsequent SECTIONS of the bill accordingly:

SECTION 5. The University of Texas Medical Branch at Galveston and the Texas Tech Health Sciences Center, in conjunction with the Correctional Managed Health Care Committee, shall develop and begin implementation of the comprehensive plan required by Section 501.149, Government Code, as added by this Act, not later than January 1, 2000.

Amendment No. 4

Amend Committee Amendment No. 2 to **SB 371**, by striking the amendment in its entirety and substituting the following:

(1) In SECTION 1 of the bill, immediately after proposed Section 501.148, Government Code, to read as follows:

Sec. 501.149. REVIEW OF RURAL HOSPITAL CONTRACTS. The University of Texas Medical Branch at Galveston and the Texas Tech Health Sciences Center, in conjunction with the committee, shall develop and implement a comprehensive plan for review of the use of rural hospital contracts for inmate care. The plan must include measures designed to reduce inmate transportation costs, including

transportation-related security costs, health care costs and help preserve the local health care delivery infrastructure.

Sec. 501.1491. REPORT TO LEGISLATURE. The Correctional Managed Health Care Committee shall report to the 77th Legislature, the Texas Board of Criminal Justice, and the State Auditor's Office regarding the use of rural hospital contracts in providing inmate health care services and the impact on inmate transportation, health care costs, maintenance of local health care infrastructure and medical personnel retention. The report must include recommendations concerning the best use of contracts with rural hospitals. This section expires September 1, 2001.

(2) In SECTION 1 of the bill, (page 11, line 1 to page 12, line 16, senate engrossment), renumber proposed Sections 501.149, 501.150 and 501.151, Government Code as Sections 501.150, 501.151, and 501.152, Government Code respectively.

(3) Add a new SECTION 5 to the bill to read as follows and renumber the subsequent sections of the bill accordingly.

SECTION 5. The University of Texas Medical Branch at Galveston and the Texas Tech Health Sciences Center, in conjunction with the Correctional Managed Health Care Committee, shall develop the comprehensive plan and begin the review required by Section 501.149, Government Code, as added by this Act, not later than January 1, 2000.

Floor Amendment No. 5

Amend **SB 371** as follows:

(1) On page 11, line 15 after "committee" and before the period insert "and the Texas Board of Criminal Justice".

The amendments were read.

Senator Brown moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 371** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Nelson, Duncan, Jackson, and Whitmire.

SENATE BILL 775 WITH HOUSE AMENDMENT

Senator Bivins called **SB 775** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 775** by inserting a new SECTION 5 of the bill (House Committee Report, page 3, between lines 24 and 25) to read as follows and renumbering subsequent sections appropriately:

SECTION 5. Section 643.153(f), Transportation Code, is amended to read as follows:

(f) The unauthorized practice of the insurance business under Article 1.14-1, Insurance Code, does not include the offer of insurance by a household goods motor carrier, or its agent, that transports ~~[transporting household]~~ goods for up to the full value of a customer's property transported or stored, if the offer is authorized by a rule adopted under Subsection (c).

The amendment was read.

On motion of Senator Bivins, the Senate concurred in the House amendment to **SB 775** by a viva voce vote.

SENATE BILL 890 WITH HOUSE AMENDMENT

Senator Harris called **SB 890** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 890** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the delegation of certain functions by health maintenance organizations.

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

SECTION 1. Section 2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), is amended by adding Subsections (dd) and (ee) to read as follows:

(dd) "Delegation agreement" means an agreement by which a health maintenance organization assigns the responsibility for a function regulated under this Act.

(ee) "Delegated network" means an entity, other than a health maintenance organization authorized to do business under this Act or an insurer authorized to do business under Chapter 3, Insurance Code, which (i) by itself, or through one or more entities, undertakes to arrange for or to provide medical care to an enrollee in exchange for a predetermined payment on a prospective basis, and (ii) performs on behalf of the health maintenance organization, any function regulated by this Act. The term does not include an individual physician or a group of employed physicians practicing medicine under one federal tax identification number and whose total claims paid to providers not employed by the group is less than 20 percent of the total collected revenue of the group calculated on a calendar year basis.

SECTION 2. The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding Section 18C to read as follows:

Sec. 18C. DELEGATION OF CERTAIN FUNCTIONS TO DELEGATED NETWORKS. (a) A health maintenance organization that enters into a delegation agreement with a delegated network shall execute a written agreement with the delegated network. The health maintenance organization shall file the written agreement with the department not later than the 30th day after the date the agreement is executed. The written agreement must contain:

(1) a monitoring plan, which includes:

(A) a description of financial practices that will ensure that the delegated network tracks and reports liabilities that have been incurred but not reported;

(B) a summary of the total amount paid by the delegated network to physicians and providers on a monthly basis; and

(C) a summary of complaints from physicians, enrollees and providers regarding delays in payments of claims or nonpayment of claims, including the status of each complaint, on a monthly basis;

(2) a provision that the agreement cannot be terminated without cause by the delegated network or the health maintenance organization without written notice provided before the 90th day preceding the termination date;

(3) a provision that prohibits the delegated network and the physicians and providers with whom it has contracted from billing or attempting to collect from an enrollee under any circumstance, including the insolvency of the health maintenance organization or delegated network, payments for covered services other than authorized copayments and deductibles;

(4) a provision that the delegation agreement may not be construed to limit in any way the health maintenance organization's authority or responsibility including financial responsibility to comply with all statutory and regulatory requirements;

(5) a provision that requires the delegated network to comply with all statutory and regulatory requirements relating to any function, duty responsibility or delegation assumed by or carried out by the delegated network;

(6) a provision that requires a delegated network or a third party to provide a license number and to certify that the network or third party is licensed as a third party administrator under Article 21.07-6, Insurance Code, if the health maintenance organization delegates its claims payment function to the delegated network or a third party;

(7) a provision that requires a delegated network or a third party to provide a license number and to certify that the network or third party is licensed as a utilization review agent under Article 21.58A, Insurance Code, if the health maintenance organization delegates its utilization review function to the delegated network or a third party, and that

(A) enrollees will receive notification at the time of enrollment which entity has responsibility for performing utilization review; and

(B) the delegated network or third party performing utilization review shall do so in accordance with Art. 21.58(A) of the Texas Insurance Code, and;

(C) utilization review decisions made by the delegated network or a third party shall be forwarded to the health maintenance organization on a monthly basis.

(8) an acknowledgment and agreement by the delegated network that:

(A) the health maintenance organization is:

(i) required to establish, operate, and maintain a health care delivery system, quality assurance system, provider credentialing system, and other systems and programs that meet statutory and regulatory standards;

(ii) directly accountable for compliance with those standards, and;

(iii) not precluded from contractually requesting that the delegated network provide proof of financial viability.

(B) the role of the delegated network and any entity with which it subcontracts in contracting with the health maintenance organization is limited to performing certain delegated functions of the health maintenance organization, using standards approved by the health maintenance organization and which are in compliance with applicable statutes and rules and subject to the health maintenance organization's oversight and monitoring of the delegated network's performance; and

(C) if the delegated network fails to meet monitoring standards established to ensure that functions delegated or assigned to the network under the delegation contract are in full compliance with all statutory and regulatory requirements, the health maintenance organization may cancel delegation of any or all delegated functions;

(9) a provision that requires the delegated network to make available to the health maintenance organization samples of contracts with physicians and providers to ensure compliance with the contractual requirements described by Subdivisions (2) and (3) of this subsection, except that the agreement may not require that the delegated network make available to the health maintenance organization contractual provisions relating to financial arrangements with the delegated network's physicians and providers; and

(10) a provision that requires the delegated network to provide the health maintenance organization, in a usable format necessary for audit purposes and at most quarterly unless otherwise specified in the agreement, the data necessary for the health maintenance organization to comply with the department's reporting requirements with respect to any delegated functions performed under the delegation agreement, including:

(A) a summary:

(i) describing the methods, including capitation, fee-for-service, or other risk arrangements, that the delegated network used to pay its physicians and providers; and

(ii) including the percentage of physicians and providers paid for each payment category;

(B) the period that claims and debts for medical services owed by the delegated network have been pending and the aggregate dollar amount of those claims and debts;

(C) information that will enable the health maintenance organization to file claims for reinsurance, coordination of benefits and subrogation, if required by the health maintenance organization's contract with the delegated network; and

(D) documentation, except for information, documents, and deliberations related to peer review that are confidential or privileged under Section 5.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), that relates to:

(i) a regulatory agency's inquiry or investigation of the delegated network or of an individual physician or provider with whom the delegated network contracts that relates to an enrollee of the health maintenance organization; and

(ii) the final resolution of a regulatory agency's inquiry or investigation; and

(11) a provision relating to enrollee complaints that requires the delegated network to ensure that:

(A) upon receipt of a complaint, as defined by this Act, a delegated network shall report the complaint to the health maintenance organization within two

business days, except in the case of a complaint involving emergency care as defined in this Act. In the case of a complaint involving emergency care, the delegated network shall forward the complaint immediately to the health maintenance organization. Nothing herein shall prohibit the delegated network from attempting to resolve a complaint.

(b) A health maintenance organization shall provide to each delegated network with which it has a delegation agreement the following information in standard electronic format, at least monthly unless otherwise provided in the agreement:

(1) the names and dates of birth or social security numbers of the enrollees of the health maintenance organization who are eligible or assigned to receive services from the delegated network, including the enrollees added and terminated since the previous reporting period;

(2) the age, sex, benefit plan and any riders to that benefit plan, and employer for the enrollees of the health maintenance organization who are eligible or assigned to receive services from the delegated network;

(3) if the health maintenance organization pays any claims for the delegated network, a summary of the number and amount of claims paid by the health maintenance organization on behalf of the delegated network during the previous reporting period. A delegated network is not precluded from receiving, upon request, additional non-proprietary information regarding such claims;

(4) if the health maintenance organization pays any claims for the delegated network, a summary of the number and amount of pharmacy prescriptions paid for each enrollee for which the delegated network has taken partial risk during the previous reporting period. A delegated network is not precluded from receiving, upon request, additional non-proprietary information regarding such claims;

(5) information that enables the delegated network to file claims for reinsurance, coordination of benefits and subrogation; and

(6) patient complaint data that relates to the delegated network.

(c) In addition to the information required by Subsection (b) of this section, a health maintenance organization shall provide to a delegated network with which it has a delegation agreement:

(1) detailed risk-pool data, reported quarterly and on settlement; and

(2) the percent of premium attributable to hospital or facility costs, if hospital or facility costs impact the delegated network's costs, reported quarterly; and if there are changes in hospital or facility contracts with the health maintenance organization, the projected impact of those changes on the percent of premium attributable to hospital and facility costs within thirty days of such changes.

(d) A health maintenance organization that receives information through the monitoring plan required by Subsection (a)(1) of this section that indicates the delegated network is not operating in accordance with its written agreement or is operating in a condition that renders the continuance of its business hazardous to the enrollees, shall, in writing:

(1) notify the delegated network of those findings; and

(2) request a written explanation of:

(A) the delegated network's noncompliance with the written agreement; or

(B) the existence of the condition that renders the continuance of the delegated network's business hazardous to the enrollees.

(e) A delegated network shall respond to a request from a health maintenance organization under Subsection (d) of this section in writing not later than the 30th day after the date the request is received.

(f) The health maintenance organization shall cooperate with the delegated network to correct any failure by the delegated network to comply with the regulatory requirements of the department relating to any matters:

(1) delegated to the delegated network by the health maintenance organization; or

(2) necessary for the health maintenance organization to ensure compliance with statutory or regulatory requirements.

(g) the health maintenance organization shall notify the department and request intervention if:

(1) the health maintenance organization does not receive a timely response from the delegated network as required by Subsection (e) of this section; or

(2) the health maintenance organization receives a timely response from the delegated network as required by Subsection (e) of this section, but the health maintenance organization and the delegated network are unable to reach an agreement as to whether the delegated network:

(A) is complying with the written agreement; or

(B) has corrected any problem regarding a practice that is hazardous to an enrollee of the health maintenance organization.

(h) On receipt of a request for intervention under Subsection (g) of this section, the department may:

(1) request financial and operational documents from the delegated network to further investigate deficiencies indicated by the monitoring plan;

(2) conduct an on-site audit of the delegated network if the department determines that the delegated network is not complying with the monitoring standards required under Subsection (a)(1) of this section; or

(3) notwithstanding any other provisions, upon violation of a monitoring plan, suspend or revoke the third party administrator license or utilization review agent license of:

(A) the delegated network; or

(B) a third party with which the delegated network has contracted.

(i) The department shall report to the delegated network and the health maintenance organization the results of its review not later than the 60th day after the date of the department's initial request for documentation; provided, however, the department shall not report to the health maintenance organization any information regarding fee schedules, prices, cost of care, or other information not relevant to the monitoring plan.

(j) The delegated network shall respond to the department's report and submit a corrective plan to the department and to the health maintenance organization not later than the 30th day after the date the delegated network receives the department's report. The delegated network may withhold information regarding, fee schedules, prices, cost of care, or other information not relevant to the monitoring plan.

(k) Reports and corrective plans required under Subsections (i) or (j) of this section shall be treated as public documents, except health care provider fee schedules, prices, costs of care or other information not relevant to the monitoring plan and any other information that is considered confidential by law shall be considered confidential.

(l) The department may request that a delegated network take corrective action to comply with the department's statutory and regulatory requirements that:

(1) relate to any matters delegated by the health maintenance organization to the delegated network; or

(2) are necessary to ensure the health maintenance organization's compliance with statutory and regulatory requirements.

(m) If a delegated network does not comply with the department's request for corrective action, the department may order the health maintenance organization to:

(1) temporarily or permanently cease assignment of new enrollees to the delegated network;

(2) temporarily or permanently transfer enrollees to alternative delivery systems to receive services; or

(3) modify or terminate its contract with the delegated network.

(n) The commissioner shall maintain enrollee and provider complaints in a manner that identifies complaints made about delegated networks.

(n) The commissioner may adopt rules as necessary to interpret, implement, and enforce this section.

SECTION 3. The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), Article 20A.11(b) is amended to read as follows:

(b) A health maintenance organization shall provide an accurate written description of health care plan terms and conditions including restrictions or limitations related to limited provider networks or delegated networks within a health care plan, to allow any current or prospective group contract holder and current or prospective enrollee eligible for enrollment in a health care plan to make comparisons and informed decisions before selecting among health care plans. The written description must be in a readable and understandable format as prescribed by the commissioner and shall include a current list of physicians and providers, including delineation of limited provider networks and delegated networks. The health maintenance organization may provide its hand book to satisfy this requirement provided the handbook's content is substantially similar to and achieves the same level of disclosure as the written description prescribed by the commissioner.

SECTION 4. This Act takes effect September 1, 1999, except that SECTION 3 takes effect for any contract entered into or renewed on or after January 1, 2000.

SECTION 5. Articles 20A.02(dd) and (ee) and 20A.18C, Insurance Code, as added by this Act, expire September 2, 2001 unless continued in existence by the Legislature by that date.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Harris, the Senate concurred in the House amendment to **SB 890** by a viva voce vote.

SENATE BILL 781 WITH HOUSE AMENDMENTS

Senator Madla called **SB 781** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 781** as follows:

(1) On page 1, line 19, after "may" and before "furnish", insert ", practicing within the scope of the law regulating podiatry,".

(2) On page 2, line 13, after "may" and before "furnish", insert ", practicing within the scope of the law regulating podiatry,".

Floor Amendment No. 1 on Third Reading

Amend **SB 781** on third reading by striking SECTIONS 3 and 4 and adding new SECTIONS 3, 4, and 5.

SECTION 3. Section 3, Art. 3.70-3C, Insurance Code, is amended to add a new subsection (o) to read as follows:

(o) For purposes of this subsection, "Hospitalist" means a physician who becomes a physician of record at a hospital for a patient of a participating podiatrist and who may return the care of the patient to that podiatrist at the end of the hospitalization. Any insurer which markets or sponsors a preferred provider benefit plan in its contracts with a podiatrist shall not require the mandatory use of a hospitalist.

SECTION 4. Section 18A, Texas Health Maintenance Organization Act (Article 20A.18A, Vernon's Texas Insurance Code) is amended to add a new subsection (k) to read as follows:

(k) For purposes of this subsection, "Hospitalist" means a physician who becomes a physician of record at a hospital for a patient of a participating podiatrist and who may return the care of the patient to that podiatrist at the end of the hospitalization. A contract between a health maintenance organization and a podiatrist shall not require the mandatory use of a hospitalist.

SECTION 5. The importance of the legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendments were read.

Senator Madla moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 781** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Carona, Armbrister, Jackson, and Nixon.

SENATE BILL 1367 WITH HOUSE AMENDMENT

Senator Harris called **SB 1367** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 1367**, in SECTION 2 of the bill (House Committee Printing, page 1, between lines 20-21), by adding Subsections (c)-(f) to added Section 323.019, Government Code, to read as follows:

(c) In order to develop and evaluate legislative policy, the council is entitled to collect data from any state agency, including data that is confidential under state or federal law. In addition to other uses consistent with this section, the council may use data collected for the purpose of matching data from various agencies. Confidential data collected by the council does not lose its character as confidential information because of its collection by the council, and the providing of that data to the council does not constitute a release of the information by the state agency. For the limited purpose of collecting and matching data subject to 20 U.S.C. Section 1232g or other federal law governing education records, employees of the council are considered state school officials.

(d) The council is subject to any federal law governing the release of or providing access to any personally identifiable information to the same extent as the agency from which the data is collected. The council may not release or distribute the data to any individual member of the legislature, or to any other person, in a form that contains personally identifiable information.

(e) In collecting personally identifiable information under this section, the council and the state agency from which the data is collected shall cooperate in the confidential handling of the data, such as the encoding, decoding, and reencoding of the information. Personally identifiable information may be used by the council solely for the purpose of statistical and policy analysis, including data matching, and must be destroyed immediately when no longer needed for that analysis.

(f) Using information collected and matched under this section, the council may produce and release statistical data that does not include any personally identifiable information.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 1367**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

SENATE BILL 1153 WITH HOUSE AMENDMENT

Senator Bivins called **SB 1153** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1153** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to fraternal benefit societies.

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

SECTION 1. Subsection (b), Article 10.01, Insurance Code, is amended to read as follows:

(b) A characteristic of a fraternal benefit society as defined by Section (a) of this article is that control must be ultimately vested in the membership as provided by this article, Articles 10.02 and 10.03 of this code, and other provisions of this chapter, and that control of the fraternal benefit society may be exercised by lodges and a supreme legislative or governing body elected in the manner provided by Article 10.03 of this code. The methods provided by this section for exercising control over a fraternal benefit society are exclusive. In this section, "control" has the meaning assigned by Section 2(d) [2(e)], Article 21.49-1, of this code.

SECTION 2. Article 10.03, Insurance Code, is amended to read as follows:

Art. 10.03. REPRESENTATIVE FORM OF GOVERNMENT DEFINED. A society has a representative form of government if:

(1) the society has a supreme governing body constituted:

(A) as an assembly as described by Article 10.03A of this chapter; or

(B) as a board as described by Article 10.03B of this chapter;

(2) the officers of the society are elected by the supreme governing body or by the board of directors;

(3) only benefit members are eligible to serve as members of the supreme governing body, the board of directors, or an intermediate assembly of the society;

(4) only benefit members may vote on the management of insurance affairs of the society;

(5) a voting member of the society has only one vote; and

(6) a voting member may not cast a vote by proxy. [Any society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws; provided, that the elective members shall constitute a majority in number and not less than the number of votes required to amend its constitution and laws; and provided, further, that the meetings of the supreme or governing body, and the election of officers, representatives or delegates shall be held as often as once in four calendar years. No member under age sixteen shall have voice or vote in the management of the society. No member, officer, representative or delegate shall vote by proxy.]

SECTION 3. Chapter 10, Insurance Code, is amended by adding Article 10.03A to read as follows:

Art. 10.03A. ASSEMBLY AS FORM OF SUPREME GOVERNING BODY; BOARD OF DIRECTORS. (a) The supreme governing body is an assembly if it is composed of:

(1) delegates elected directly by the members or at intermediate assemblies or conventions by the members or their representatives; and

(2) other delegates as prescribed by the society's laws.

(b) A society may provide for election of delegates by mail.

(c) The elected delegates to the assembly must:

(1) constitute a majority of the assembly in number; and

(2) be entitled to the greater of:

(A) two-thirds of the votes in the assembly; or

(B) the number of votes required to amend the society's laws.

(d) The assembly shall:

(1) meet at least once every four years; and

(2) elect a board of directors to conduct the business of the society between meetings of the assembly.

(e) A vacancy on the board of directors that occurs between elections may be filled as prescribed in the society's laws.

SECTION 4. Chapter 10, Insurance Code, is amended by adding Article 10.03B to read as follows:

Art. 10.03B. BOARD AS FORM OF SUPREME GOVERNING BODY.

(a) The supreme governing body is a board if it is composed of:

(1) persons elected either directly by the members or at intermediate assemblies by the members or their representatives; and

(2) other persons as prescribed by the society's laws.

(b) A society may provide for election of the board by mail.

(c) The persons elected to the board must:

(1) constitute a majority of the board in number; and

(2) have at least the number of votes required to amend the society's laws, other than laws of the society, if any, that must be amended by direct vote of the members.

(d) The term of a board member may not exceed four years.

(e) A vacancy on the board that occurs between elections may be filled in the manner prescribed by the society's laws. A person filling the unexpired term of an elected board member is considered to be an elected member.

(f) A board shall meet at least once each year to conduct the business of the society.

SECTION 5. Chapter 10, Insurance Code, is amended by adding Article 10.03-1 to read as follows:

Art. 10.03-1. DEFINITIONS. In this chapter:

(1) "Benefit contract" means the agreement for provision of benefits authorized by Article 10.05 of this chapter, as that agreement is described in Article 10.15 of this chapter.

(2) "Benefit member" means an adult member who is designated by the laws or rules of the society as a benefit member under a benefit contract.

(3) "Certificate" means a document issued as written evidence of a benefit contract.

(4) "Laws" means a society's articles of incorporation, constitution, and bylaws, however designated.

(5) "Lodge" means a subordinate member unit of a society, including a camp, court, council, or branch.

(6) "Premiums" means a premium, a rate, dues, or other required contributions that are payable under a certificate or benefit contract.

(7) "Rules" means a rule, regulation, or resolution adopted by the supreme governing body or board of directors that has general application to the members of the society.

SECTION 6. Article 10.05, Insurance Code, is amended to read as follows:

Art. 10.05. BENEFITS. (a) [(+)] A society authorized to do business in this State may provide for the payment of:

(1) [(*)] Death benefits in any form;

(2) [(*)] Endowment benefits;

- (3) ~~(e)~~ Annuity benefits;
- (4) ~~(d)~~ Temporary or permanent disability benefits as a result of disease or accident;
- (5) ~~(e)~~ Hospital, medical or nursing benefits due to sickness or bodily infirmity or accident;
- (6) ~~(f)~~ Monument or tombstone benefits to the memory of deceased members ~~[not exceeding in any case the sum of Three Hundred Dollars (\$300)];~~
- (7) ~~Funeral~~ ~~[(g) For the payment of funeral]~~ benefits;[;] and
- (8) Any other benefit that may be provided by a life, accident, or health insurance company, provided that the benefit is:

(A) offered in compliance with Chapter 3 of this code; and

(B) consistent with this chapter.

(b) A society shall:

(1) specify in its laws or rules those persons to whom a certificate may be issued or who may be covered by benefits; and

(2) make the provision of those benefits consistent with the provision of benefits to members and their beneficiaries.

(c) A society may appoint an agent licensed by the department under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), to sell benefits listed under Subsection (a) of this article to society members.

~~[(2) Such benefits may be provided on the lives of members or, upon application of a member, on the lives of the member's family, including the member, the member's spouse and minor children, in the same or separate certificates.]~~

SECTION 7. Subsection (a), Article 10.07, Insurance Code, is amended to read as follows:

(a) Fraternal benefit societies shall establish reserves for the types of coverage specified in Articles 10.05(a)(4) and (5) ~~[Article 10.05(1)(d) and (e)]~~ of this code in the same manner and to the same extent as required for companies organized under Chapter 3 of this code except:

(1) for certificates issued during the calendar year 1988, only one-third of the unearned premium reserve is required to be maintained during the first policy year; and

(2) for certificates issued during the calendar year 1989, only two-thirds of the unearned premium reserve is required to be maintained during the first policy year.

SECTION 8. Article 10.12, Insurance Code, is amended to read as follows:

Art. 10.12. QUALIFICATIONS FOR MEMBERSHIP; GRIEVANCE PROCEDURES. (a) A society shall specify in its laws or rules:

(1) the eligibility standards for each membership class, provided that if benefits are provided on the lives of children, the minimum age for adult membership is not less than 15 years of age and not more than 21 years of age;

(2) the process for admission for each membership class; and

(3) the rights and privileges of each membership class, provided that only benefit members may vote on the management of the insurance affairs of the society.

(b) A society may admit social members. A social member may not vote in the management of the insurance affairs of the society.

(c) Membership rights in the society are personal to the member. A member may not assign membership rights.

(d) A society may provide in its laws or rules for grievance or complaint procedures for members.

~~(e) [MEMBERS AND BENEFICIARIES. Any person may be admitted to beneficial, or general, or social membership in any society in such manner and upon such showing of eligibility as the laws of the society may provide, and any beneficial member may direct any benefit to be paid to such person or persons, entity, or interest as may be permitted by the laws of the society; provided, that no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable in conformity with the provisions of the contract of membership, and the member shall have full right to change his beneficiary, or beneficiaries, in accordance with the laws, rules, and regulations of the society.]~~

Nothing contained in this chapter shall be construed to affect or apply to societies which admit to membership only persons engaged in one or more hazardous occupations, in the same or similar lines of business.

SECTION 9. Chapter 10, Insurance Code, is amended by adding Article 10.12-1 to read as follows:

Art. 10.12-1. BENEFICIARIES. (a) The owner of a benefit contract may change the beneficiary at any time in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that a person whose designation as beneficiary is revocable may not have or obtain a vested interest in the proceeds, in conformity with the benefit contract.

(b) If, at the death of the deceased insured, a lawful beneficiary to whom the proceeds of the benefit contract are payable does not exist under the benefit contract, the amount of a benefit under a benefit contract shall be paid:

(1) to the personal representative of the deceased insured; or

(2) if the owner of the certificate is a person other than the deceased insured, to the owner of the certificate.

(c) Subsection (b) of this article does not apply to the extent funeral benefits may be paid under the benefit contract.

SECTION 10. Article 10.15, Insurance Code, is amended to read as follows:

Art. 10.15. CERTIFICATE. (a) Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions or amendments to said charter or articles of incorporation, or articles of association, or constitution or laws duly made or enacted subsequent to the issuance of the benefit certificates shall bind the member and the member's [his] beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

(b) A certificate may not be delivered or issued for delivery in this state unless the form of the certificate has been filed with the department under Article 3.42 of this

code. A life, accident, health, or disability insurance certificate or annuity certificate issued by a society must meet the requirements applicable to similar policies issued by an insurer in this state that are not inconsistent with this chapter as determined by rule of the commissioner.

(c) A society shall include in the terms of a certificate a grace period of at least one month for payment of premiums.

(d) Each certificate must state the amount of premiums that are payable under the certificate.

(e) If the laws of the society provide for expulsion or suspension of a member, the certificate must provide that a member who is expelled or suspended may maintain the certificate in force by continuing payment of the required premium, unless the expulsion or suspension:

(1) is for nonpayment of a premium; or

(2) occurs within the contestable period of the benefit contract and is for material misrepresentation in the application for membership or insurance.

(f) A life insurance benefit contract issued on the life of a person who is younger than the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect the transfer and may provide in all other respects for the regulation, government, and control of certificates and rights, obligations, and liabilities incident and connected to the certificate. Ownership rights under the certificate before a transfer must be specified in the certificate.

(g) A society may specify the terms and conditions for the assignment of a life insurance benefit contract.

SECTION 11. Article 10.18, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) A society may, pursuant to a resolution of its supreme governing body, establish and operate one or more separate accounts and issue benefit contracts on a variable basis, subject to the provisions of law regulating a life insurance company that establishes those types of accounts and issues those types of contracts. In order to comply with applicable federal or state laws or rules, the society may:

(1) issue contracts on a variable basis to which Articles 10.15(a) and 10.30(e) of this chapter do not apply; and

(2) adopt special procedures for the conduct of the business and affairs of a separate account and provide special voting and other rights for a person having beneficial interests in a separate account, including special procedures and rights relating to:

(A) investment policy;

(B) investment advisory services;

(C) selection of certified public accountants; and

(D) selection of a committee to manage the business and affairs of the account.

SECTION 12. Article 10.19, Insurance Code, is amended to read as follows:

Art. 10.19. QUALIFICATION. (a) Hereafter, only such corporation, society, order of voluntary association, having not less than five hundred (500) members and ten (10) subordinate lodges, without capital stock organized and carried on solely for the mutual benefit of its members, and not for profit, and having a lodge system and

representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government, may, provided that it has been in continuous operation for a period of not less than five (5) years immediately preceding the filing of its articles of incorporation or association as hereinafter provided, qualify as a Fraternal Benefit Society as defined in Article 10.01 for the purpose of providing for the payment of benefits as provided in Article 10.05, by filing with the department [~~Board~~] duly certified articles of incorporation or association. Such articles shall set out:

(1) [~~1-~~] The name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or lead to confusion.

(2) [~~2-~~] The purpose for which it is formed, which shall not include more liberal powers than are granted by this Chapter. Any lawful, social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised. These purposes may be carried out directly by the society or indirectly through subsidiary corporations or affiliated organizations.

(b) Such articles of incorporation or association and duly certified copies of the Constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of not less than Three Hundred Thousand Dollars (\$300,000.00) and not more than One Million Five Hundred Thousand Dollars (\$1,500,000.00), as required by the commissioner [~~Five Thousand Dollars (\$5,000.00)~~], with sureties approved by the commissioner [~~State Board of Insurance~~], conditioned upon the return of the advance payments, as provided in this article, to applicants, if the organization fails to qualify within one (1) year, shall be filed with the commissioner, [~~such Board~~] who may require such further information as the commissioner [~~it~~] deems necessary, and if the purposes of the society conform to the requirements of this law, and all provisions of law have been complied with, the commissioner [~~said Board~~] shall so certify and retain and record or file the articles of incorporation or association and furnish the incorporators a preliminary certificate authorizing said society to solicit from its members applications for insurance benefits as hereinafter provided.

(c) Upon receipt of said certificate from the department [~~State Board of Insurance~~], said society may solicit from its members applications for insurance benefits for the purpose of completing its qualification and shall collect from each applicant the amount of not less than one (1) regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred (500) lives for at least Two [~~One~~] Thousand Dollars (\$2,000.00) [~~(\$1,000.00)~~] each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examination have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten (10) subordinate lodges or branches into which said five hundred (500) applicants have been initiated; nor until there has been submitted to the department [~~said Board~~], under oath of the president

and secretary or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent (4%) per annum; nor until it shall be shown to the department [~~Board~~] by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred (500) applicants have each paid in cash at least one (1) regular monthly payment as herein provided per One Thousand Dollars (\$1,000.00) of indemnity to be effected, which payments in the aggregate shall amount to at least One Hundred Fifty Thousand Dollars (\$150,000.00) [~~Twenty-Five Hundred Dollars (\$2,500.00)~~]; all of which shall be credited to the mortuary or disability fund on account of such applicants and no part of which may be used for expenses.

(d) Said advanced payments shall, during the period of completing qualification, be held in trust, and if such qualification is not completed within one (1) year as hereinafter provided, returned to said applicants.

(e) The department [~~Board~~] may make such examination and require such further information as it deems advisable; and upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the department [~~Board~~] shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the qualification of such society at the date of such certificate. The department [~~Board~~] shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate.

(f) Unless the five hundred (500) applicants herein required have been secured and the organization has qualified as a fraternal benefit society as herein provided, the preliminary certificate granted under the provisions of this article shall be null and void after one (1) year from its date, or after such further period, not exceeding one (1) year, as may be authorized by the department [~~State Board of Insurance~~] upon cause shown.

(g) Provided, however, that this Article shall not apply to societies specifically exempted from the provisions of Chapter 10 of the Insurance Code and provided further, that the above provisions of this article shall not apply to Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965, so long as their licenses or renewals or extensions thereof continue in force. The following provisions of this article shall apply to such Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965.

(h) When any domestic society shall have discontinued business for the period of one (1) year, or has less than four hundred (400) members holding benefit certificates, its permanent certificate shall become null and void. Every such society shall have the power to make a constitution and bylaws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to, or amend such constitution and bylaws and shall have such other powers as are necessary and incidental to carrying into effect its object and purposes.

SECTION 13. Article 10.21, Insurance Code, is amended to read as follows:

Art. 10.21. MERGERS AND TRANSFERS. (a) No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the department [State Board of Insurance], together with a sworn statement of the financial condition of each of said societies by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds (2/3) of the members of the supreme legislative or governing body of each of said societies [~~A merger or transfer may not be made other than to another fraternal benefit society~~].

(b) Upon the submission of said contract, financial statements and certificates, the department [said Board] shall examine the same, and if it shall find that such statements are correct and the said contract to be in conformity with the provisions of this article, that such merger or transfer is just and equitable to the members of each of said societies, and that the new or surviving society complies with all of the requirements of a fraternal benefit society as set forth in this chapter, the department [Board] shall approve said merger or transfer, issue its certificate to that effect, and thereupon the said contract or merger or transfer shall be of full force and effect.

(c) Article 21.49-1 of this code applies to fraternal benefit societies. There may be no change in control of a fraternal benefit society that is inconsistent with the nature of a fraternal benefit society as specified in Article 10.01, 10.02, or 10.03 of this code and other applicable provisions of law.

SECTION 14. Article 10.26, Insurance Code, is amended to read as follows:

Art. 10.26. NO PERSONAL LIABILITY; INDEMNIFICATION OR REIMBURSEMENT. (a) Officers and members of the supreme, grand or any subordinate body of an ~~any such~~ incorporated society are [shall] not [be] individually liable for the payment of any disability or death benefit provided for in the laws and agreements of the ~~such~~ society. Those payments are ~~The same shall be~~ payable only out of the funds of the [such] society and in the manner provided by its law.

(b) A society may indemnify and reimburse a person for expenses reasonably incurred by, and liabilities imposed on, that person in connection with or arising out of an action, suit, or other proceeding, whether civil, criminal, administrative, or investigative, in which the person is involved, or in connection with or arising out of a threat of a proceeding against that person, because that person is or was a director, officer, employee, or agent of:

(1) the society; or

(2) a firm, corporation, or organization with which the person served in any capacity at the request of the society.

(c) Except as provided by Subsection (d) of this article, a person may not be indemnified or reimbursed in relation to:

(1) a matter in an action, suit, or other proceeding in which the person is finally adjudged guilty of breach of a duty as a director, officer, employee, or agent of the society; or

(2) an agreement that settles:

(A) a matter in an action, suit, or other proceeding described by Subdivision (1) of this subsection; or

(B) the threat of the proceeding.

(d) A society may indemnify or reimburse a person in relation to a matter described by Subsection (c) of this article only if the supreme governing body, the board of directors, or a court of competent jurisdiction determines that:

(1) the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society; and

(2) in a criminal action or proceeding, the person had no reasonable cause to believe that the person's conduct was unlawful.

(e) A determination by a supreme governing body or board of directors under Subsection (d) of this article must be made by majority vote of a quorum consisting of persons who were not parties to the action, suit, or other proceeding under review.

(f) The termination of an action or other proceeding by judgment, order, settlement, or conviction or on a plea of no contest does not create a conclusive presumption that a person does not meet the standard of conduct required in order to justify indemnification and reimbursement.

(g) The right of indemnification and reimbursement under this article is not exclusive of other rights to which a person may be entitled as a matter of law and inures to the benefit of the person's devisees, legatees, heirs, and estate.

(h) A society may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of another firm, corporation, or organization against a liability asserted against that person or incurred by that person in any capacity or arising out of that person's status as a director, officer, employee, or agent of the society or the other firm, corporation, or organization. A society may purchase and maintain insurance under this subsection regardless of whether the society has the power to indemnify or reimburse the person with respect to the covered liability under this article.

(i) A director, officer, employee, member, or volunteer of a society serving without compensation is not personally liable for damages resulting from an act or omission in the exercise of judgment or discretion in connection with the duties of that person for the society unless the act or omission involved wilful or wanton misconduct. This subsection does not limit a society's direct or indirect liability.

SECTION 15. Article 10.30, Insurance Code, is amended to read as follows:

Art. 10.30. ANNUAL REPORTS. (a) Every society transacting business in this State shall annually, on or before the first day of March, file with the department [~~State Board of Insurance~~] in such form as the commissioner [~~Board~~] may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and its transactions for the year ending on that date, and shall furnish such other information as the commissioner [~~said Board~~] may deem necessary to a proper exhibit of its business and plan of working. The commissioner [~~Board~~] may at other times require any further statement it may deem necessary to be made relating to such society.

(b) Each society shall include in its annual report to the department [~~said Board~~] a valuation of its certificates in force on December 31st last preceding. Such report of valuation shall show as contingent liabilities the present mid-year value of the promised benefits provided in the constitution and laws of such society, under the certificates subject to valuation; and as contingent assets the present mid-year value of the future net contributions provided in the Constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the

valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation including valuation of certificates shall be certified by an actuary, or, at the request and expense of the society, verified by the actuary of the Department of Insurance of the home State of the society. The legal minimum standard of valuation for all certificates, except for accident and health benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society, any table producing reserves in the aggregate at least as great as the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899; at the option of the society, the Commissioners 1941 Standard Ordinary Mortality Table; or at the option of the society, the Commissioners 1958 Standard Ordinary Mortality Table, except that for any category of such certificates issued on female risks, all modified net premiums and present values referred to in Article 3.28 of this code may be calculated according to an age not more than six (6) years younger than the actual age of the insured. The interest assumption to be used with any of the preceding mortality tables may not be more than four and one-half (4 1/2%) per centum per annum. As an alternative, the society may use a table based upon the society's own experience of at least twenty (20) years, and covering not less than one hundred thousand (100,000) lives with interest assumption not more than four (4%) per centum per annum, provided, however, that any society may value its certificates in accordance with valuation standards otherwise authorized by the laws of this state for the valuation of similar policies issued by life insurance companies provided that no society may use a table based on its own experience for certificates issued on or after January 1, 1989. Each such valuation report shall set forth clearly and fully the mortality and interest bases and the method of valuation. The annual report required by this article shall also include a valuation of certificates in accordance with Article 10.07 of this code.

(c) Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experiences, and in such cases a separation of the funds shall not be required.

(d) The annual report herein provided for may be used by the department [~~State Board of Insurance~~] or the State of Texas in determining the financial solvency of the society. A statement of the valuation provided by this article and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed [~~and mailed to each beneficiary member of the society not later than June 1st of each year; or in lieu thereof, such statement of valuation and showing of the society's condition as thereby disclosed may be published~~] in the society's official paper [~~and the issue containing the same mailed to each beneficiary member of the society~~].

(e) A society shall provide in the society's laws that if the society's reserves for any class of the society's certificates become impaired, the society's supreme governing body or board of directors may require the certificate holder to pay the society an equitable proportion of the deficiency as determined by the governing body or board.

(f) If the certificate holder does not pay the society the amount determined under Subsection (e) of this article, the holder, in a manner determined by the society, may elect to accept:

(1) the amount determined under Subsection (e) of this article as an indebtedness against the certificate, with the amount drawing interest at a rate that does not exceed the rate specified for a certificate loan under a certificate that has cash value;

(2) a proportionate reduction in the benefits under the certificate; or

(3) a combination of the limitations on the certificate as described by Subdivisions (1) and (2) of this subsection.

(g) The society may determine a presumed election for the certificate holder under Subsection (f) of this article if the holder fails to make an election.

~~(h) [The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contributions shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five (5%) per centum per annum. The existence of the right to assess members as provided by this article does not affect the test for financial solvency of the society.]~~

This chapter may not be construed to prevent or in any way limit any action by or remedy available to the department [~~State Board of Insurance~~] or the State of Texas under Article 21.28 or 21.28-A of this code or other applicable law.

SECTION 16. Chapter 10, Insurance Code, is amended by adding Article 10.31 to read as follows:

Art. 10.31. NONFORFEITURE BENEFITS. (a) For a certificate providing a nonforfeiture benefit that is issued before January 1, 2001, the value of the nonforfeiture benefit granted under the certificate must comply with the law applicable to the certificate immediately before that date.

(b) For a certificate providing a nonforfeiture benefit that is issued on or after January 1, 2001, the value of the nonforfeiture benefit granted under the certificate shall be computed as provided under the provisions of Articles 3.44a and 3.44b of this code applicable to life insurance companies issuing policies containing similar benefits and under the applicable tables established under those articles.

SECTION 17. Subsection (a), Article 10.33, Insurance Code, is amended to read as follows:

(a) Each domestic society is subject to Articles 1.15, 1.15A, and 1.16 of this code.

SECTION 18. Chapter 10, Insurance Code, is amended by adding Article 10.37-3 to read as follows:

Art. 10.37-3. LICENSING OF AGENTS. (a) A person may not solicit or procure insurance contracts for a society unless the person is licensed as an agent under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code).

(b) An agent, representative, or member of a fraternal benefit society who devotes less than 50 percent of the person's time to the solicitation and procurement of insurance contracts for that society is exempt from the requirements of Subsection (a) of this article.

(c) For the purposes of Subsection (b) of this article, a person is presumed for a calendar year to have devoted at least 50 percent of the person's time to the solicitation or procurement of insurance contracts if, in the preceding calendar year, the person solicited or procured on behalf of a society:

(1) life insurance contracts that have generated, in the aggregate, more than \$20,000 of direct premiums for all lives insured, provided that an interest-sensitive life insurance contract has not been solicited or procured by a person that exceeds \$35,000 of coverage on an individual life unless that person holds the designation of "Fraternal Benefit Counselor";

(2) insurance contracts, other than life insurance contracts, that have insured the individual lives of more than 25 persons; or

(3) variable life insurance or variable annuity contracts.

SECTION 19. Subsection (b), Section 1, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended to read as follows:

(b) The term "agent" for the purpose of this Act means any person, corporation, or bank that is an authorized agent of a legal reserve life insurance company, fraternal benefit society, or health maintenance organization, and any person who is a sub-agent of such agent, who acts as such, whether through an oral, written, or electronic communication or otherwise, in the solicitation of, negotiation for, or procurement of, or collection of premiums on, an insurance or annuity contract with a legal reserve life insurance company or who acts as described by Subsection (a-1) of this section. The term "agent" shall not include:

(1) any regular salaried officer or employee of a legal reserve life insurance company or a fraternal benefit society, or of a licensed life insurance agent, who devotes substantially all of the officer's or employee's time to activities other than the solicitation of applications for insurance or annuity contracts and receives no commission or other compensation directly dependent upon the business obtained, and who does not solicit or accept from the public applications for insurance or annuity contracts;

(1-A) any regular salaried officer or employee of a health maintenance organization or of a licensed health maintenance organization agent, who devotes substantially all of the officer's or employee's time to activities other than the solicitation of applications for health maintenance organization membership and receives no commission or other compensation directly dependent upon the business obtained and who does not solicit or accept from the public applications for health maintenance organization membership;

(2) employers or their officers or employees, or the trustees of any employee benefit plan, to the extent that such employers, officers, employees or trustees are engaged in the administration or operation of any program of employee benefits involving the use of insurance or annuities issued by a legal reserve life insurance company or memberships issued by a health maintenance organization, provided that such employers, officers, employees or trustees are not in any manner compensated, directly or indirectly, by the legal reserve life insurance company or health maintenance organization issuing the insurance or annuity contracts or memberships;

(3) except as provided by Section 4(f) of this act, banks, savings and loan associations, or credit unions, or the officers and employees of banks, savings and loan associations, or credit unions, to the extent that such banks, savings and loan

associations, credit unions, or officers and employees collect and remit premiums or charges by charging same against accounts of depositors on the orders of such depositors;

(4) a ticket-selling agent of a public carrier with respect to accident life insurance tickets covering risks of travel;

(5) an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or acting as agent or solicitor for health and accident insurance under license issued pursuant to the provisions of Article 21.14 of the Texas Insurance Code; or

(6) a person or the employee of a person who has contracted to provide administrative, management, or health care services to a health maintenance organization and who is compensated for those services by the payment of an amount calculated as a percentage of the revenues, net income, or profit of the health maintenance organization, if that method of compensation is the sole basis for subjecting that person or the employee of the person to this section.

SECTION 20. Subsection (a), Section 5, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), as amended by Chapters 596 and 716, Acts of the 75th Legislature, Regular Session, 1997, is reenacted and amended to read as follows:

(a) Each prospective applicant for a license to act as an agent within this State shall submit to a personal written examination administered in the English or Spanish language, as prescribed by the department [~~Texas Department of Insurance~~], to determine the applicant's competence with respect to insurance and annuity contracts, including medicare supplement contracts, and memberships, and the applicant's familiarity with the pertinent provisions of the laws of this State and the obligations and duties of an agent, and shall pass the same to the satisfaction of the department [~~Texas Department of Insurance~~]. A nonrefundable examination fee, in an amount determined by the Commissioner but not more than \$20, must accompany the application to take the examination. The department shall charge the fee each time the examination is taken. The department shall give certifications of a passing score to those applicants that obtain such a score. No written examination shall be required of:

(1) An applicant for the renewal of a license issued under [~~by the department pursuant to~~] Article 21.07, [~~Texas~~] Insurance Code, [~~1951,~~] which is currently in force at the time of the effective date of this Act;

(2) An applicant whose license as an agent expired less than one year prior to the date of application may, in the discretion of the department [~~Texas Department of Insurance~~], be issued a license without written examination;

(3) A person who holds the designation Chartered Life Underwriter (CLU);

(4) An applicant that is a partnership, corporation, or bank; or

(5) An applicant for a license under this section who is authorized to solicit or procure insurance for a fraternal benefit society on September 1, 1999, provided that the applicant:

(A) solicited or procured insurance on behalf of the fraternal benefit society for a period of at least 24 months immediately preceding September 1, 1999;

(B) does not solicit or procure insurance for any other insurer or a different fraternal benefit society on or after September 1, 1999;

(C) does not solicit or procure an insurance contract on or after September 1, 1999, except from a person who is eligible for membership in the fraternal benefit society; and

(D) does not solicit or procure an interest-sensitive life insurance contract that exceeds \$35,000 of coverage on an individual life on or after September 1, 1999, unless the applicant holds the designation of "Fraternal Insurance Counselor" at the time the contract is solicited or procured.

SECTION 21. Section 16, Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is amended by adding Subsection (d-1) to read as follows:

(d-1) A written examination is not required of an applicant for a license under this section who is authorized to solicit or procure insurance for a fraternal benefit society on September 1, 1999, provided that the applicant:

(1) solicited or procured insurance on behalf of the fraternal benefit society for a period of at least 24 months immediately preceding September 1, 1999;

(2) does not solicit or procure insurance for any other insurer or a different fraternal benefit society on or after September 1, 1999;

(3) does not solicit or procure an insurance contract on or after September 1, 1999, except from a person who is eligible for membership in the fraternal benefit society; and

(4) does not solicit or procure an interest-sensitive life insurance contract that exceeds \$35,000 of coverage on an individual life on or after September 1, 1999, unless the applicant holds the designation of "Fraternal Insurance Counselor" at the time the contract is solicited or procured.

SECTION 22. Articles 10.05-1 and 10.05-2, Insurance Code, are repealed.

SECTION 23. (a) This Act takes effect January 1, 2000, except that Section 22 of this Act takes effect January 1, 2001.

(b) The change made by this Act to Article 10.15, Insurance Code, applies only to a certificate that is delivered, issued for delivery, or renewed on or after January 1, 2001. A certificate that is delivered, issued for delivery, or renewed before January 1, 2001, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 24. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Bivins, the Senate concurred in the House amendment to **SB 1153** by a viva voce vote.

SENATE BILL 1112 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 1112** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1112** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the allocation of funding for certain programs maintained by the Texas Department of Housing and Community Affairs to the uniform state service regions.

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

SECTION 1. Section 2306.111, Government Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) The department shall allocate housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), housing trust funds administered by the department under Sections 2306.201-2306.206, and commitments issued under the federal low income housing tax credit program administered by the department under Sections 2306.671-2306.678 to each uniform state service region based on a formula developed by the department that is based on the need for housing assistance, provided that the allocations are consistent with applicable federal and state requirements and limitations. If the department determines under the formula that an insufficient number of eligible applications for assistance out of funds or credits allocable under this subsection are submitted to the department from a particular uniform state service region, the department shall use the unused funds or credits allocated to that region for all other regions based on identified need and financial feasibility.

(e) The department shall include in its annual low income housing plan under Section 2306.0721:

(1) the formula developed by the department under Subsection (d); and

(2) the allocation targets established under the formula for each uniform state service region.

(f) The department shall include in its annual low income housing report under Section 2306.072 the amounts of funds and credits allocated to each uniform state service region in the preceding year for each federal and state program affected by the requirements of Subsection (d).

SECTION 2. This Act takes effect September 1, 2000.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Shapleigh, the Senate concurred in the House amendment to **SB 1112** by a viva voce vote.

SENATE BILL 1196 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 1196** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 1196** by inserting a new SECTION 2 of the bill to read as follows (page 3, between lines 17 and 18, senate engrossment printing) and renumbering the subsequent SECTIONS of the bill appropriately:

SECTION 2. The purpose of this Act is to clarify existing law and practice as it relates to consent to the ownership of, or status as a beneficiary under, a life insurance policy. This Act is not intended to alter or modify the meaning of, or law relating to, former Section 4, Chapter 113, Acts of the 53rd Legislature,

Regular Session, 1953 (Article 3.49-1, Vernon's Texas Insurance Code), as that section existed immediately before the effective date of this Act.

The amendment was read.

On motion of Senator Shapiro, the Senate concurred in the House amendment to **SB 1196** by a viva voce vote.

SENATE BILL 1125 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1125** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 1125** in SECTION 1, in proposed Subsection (h), Article 26.13, Code of Criminal Procedure (Senate Engrossment, page 1, line 8), by striking "in relation to a felony criminal prosecution" and substituting "in relation to a criminal prosecution".

The amendment was read.

On motion of Senator Armbrister, the Senate concurred in the House amendment to **SB 1125** by a viva voce vote.

SENATE BILL 1446 WITH HOUSE AMENDMENT

Senator Barrientos called **SB 1446** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 1446**, as engrossed, page 1, line 5 as follows:

Section 1. (a) The General Services Commission, subject to the approval of the Legislative Budget Board and Office of the Governor, may convey, on behalf of the state, the state's interest in the real property described by Subsection (e) of this section to the City of Austin.

The amendment was read.

On motion of Senator Barrientos, the Senate concurred in the House amendment to **SB 1446** by a viva voce vote.

SENATE BILL 1574 WITH HOUSE AMENDMENT

Senator West called **SB 1574** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 1574** by adding the following new SECTIONS, appropriately numbered, and by renumbering the subsequent SECTIONS of the bill accordingly:

SECTION ____ Chapter 305, Labor Code, is transferred to Chapter 264, Family Code, is redesignated as Subchapter I, Chapter 264, Family Code, and is amended to read as follows:

SUBCHAPTER I [CHAPTER 305]. COMMUNITIES
IN SCHOOLS PROGRAM

[SUBCHAPTER A. GENERAL PROVISIONS]

Sec. 264.751 [305.001]. DEFINITIONS. In this subchapter [chapter]:

- (1) "Agency" means the Texas Education Agency.
- (2) "Communities In [in] Schools program" means an exemplary youth dropout prevention program.
- (3) "Delinquent conduct" has the meaning assigned by Section 51.03.
- (4) "Student at risk of dropping out of school" has the meaning assigned by Section 29.081, Education Code, or means a student who is eligible for a free or reduced lunch or is in family conflict or crisis.

Sec. 264.752 [305.002]. STATEWIDE OPERATION OF PROGRAM. It is the intent of the legislature that the Communities In [in] Schools program operate throughout this state. It is also the intent of the legislature that programs established under Chapter 305, Labor Code, and its predecessor statute, the Texas Unemployment Compensation Act (Article 5221b-9d, Vernon's Texas Civil Statutes), and programs established under this subchapter shall remain eligible to participate in the Communities In Schools program if funds are available and if their performance meets the criteria established by the department for renewal of their contracts.

[SUBCHAPTER B. OPERATION OF PROGRAM]

Sec. 264.753 [305.011]. STATE DIRECTOR [COORDINATOR]. The executive director of the department shall designate [appoint] a state director [coordinator] for the Communities In [in] Schools program.

Sec. 264.754 [305.012]. DUTIES OF STATE DIRECTOR [COORDINATOR]. The state director [coordinator] shall:

(1) coordinate the efforts of the Communities In Schools program with other social service organizations and agencies and with [of] public school personnel to provide services to students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis;

(2) set standards for the Communities In [in] Schools program and establish state performance goals, objectives, and measures for the program;

(3) obtain information [from each participating school district] to determine accomplishment of state performance goals, objectives, and measures [necessary program changes];

(4) promote and market the program in communities in which the program is not established;

(5) help communities that want to participate in the program establish a local funding base; and

(6) provide training and technical assistance [train a program director] for [each] participating communities and programs [community].

Sec. 264.755 [305.013]. AGENCY COOPERATION; MEMORANDUM OF UNDERSTANDING. (a) The agency, and the department, and Communities In Schools, Inc. [commission] shall work together to maximize the effectiveness of the Communities In [in] Schools program.

(b) The agency and the department [commission] shall develop and mutually agree to a memorandum of understanding to clearly define the responsibilities of the [each] agency and of the department under this subchapter [chapter]. The memorandum must address:

- (1) the role of the department [~~commission~~] in encouraging local business to participate in local Communities In [~~in~~] Schools programs;
- (2) the role of the agency in obtaining information from participating school districts;
- (3) the use of federal or state funds available to the agency or the department [~~commission~~] for programs of this nature; and
- (4) other areas identified by the agency and the department [~~commission~~] that require clarification.

(c) The agency and the department [~~commission~~] shall adopt rules to implement the memorandum and shall update the memorandum and rules annually.

~~[SUBCHAPTER C. PARTICIPATION IN
PROGRAM BY CERTAIN SCHOOLS]~~

Sec. ~~264.756~~ [305.021]. FUNDING; EXPANSION OF PARTICIPATION [~~DESIGNATION OF PARTICIPATING SCHOOLS~~]. (a) The department [~~(b) To determine participation in the second year of the 1996-97 state fiscal biennium and subsequently, the state coordinator~~] shall develop and implement an equitable [~~a~~] formula for the funding of local Communities In [~~in~~] Schools programs. The formula may provide for the reduction of [~~campuses that reduces, over a five-year period beginning September 1, 1996, the~~] funds annually contributed by the state to a local program by an amount not more [~~less~~] than 50 percent of the amount contributed by the state for [~~funding of the program in~~] the first year of the program [~~1996-97 state fiscal biennium~~]. The formula must consider the financial resources of individual communities and school districts. Savings accomplished through the implementation of the formula may be used to extend services to [~~participation in the program to additional campuses in~~] counties [~~or cities that are participating in the program~~] and municipalities currently not served by a local [~~to campuses in counties and cities that have not previously participated in the~~] program or to extend services to counties and municipalities currently served by an existing local program.

(b) [~~(c)~~] Each local Communities In [~~in~~] Schools program shall develop a [~~five-year~~] funding plan [~~for campuses located in the county or city that participate in the program under~~] which ensures that the level [~~levels~~] of services is [~~service to those campuses are~~] maintained if [~~as the proportion of~~] state funding is reduced.

(c) [~~(d)~~] A local Communities In [~~in~~] Schools program may accept federal funds, state funds, private contributions, grants, and public and school district funds to support a campus participating in the program.

Sec. ~~264.757~~ [305.022]. PARTICIPATION IN PROGRAM. An elementary or secondary school designated under Section ~~264.756~~ [305.021] shall participate in a local [~~the~~] Communities In [~~in~~] Schools program if the number of students enrolled in the school who are at risk of dropping out of school is equal to at least 10 percent of the number of students in average daily attendance at the school, as determined by the agency.

~~[SUBCHAPTER D. PROGRAM FUNDING]~~

Sec. ~~264.758~~ [305.031]. DONATIONS TO PROGRAM. (a) The department [~~commission~~] may accept a donation of services or money or other property that the department [~~commission~~] determines furthers the lawful objectives of the department [~~commission~~] in connection with the Communities In [~~in~~] Schools program.

(b) Each [~~Donations must be accepted in an open meeting by a majority of the voting members of the commission. The~~] donation, with the name of the donor and the purpose of the donation, must be reported in the public records of the department [~~commission~~].

SECTION __. Subsection (a), Section 302.021, Labor Code, is amended to read as follows:

(a) The following job-training, employment, and employment-related educational programs and functions are consolidated under the authority of the division:

- (1) adult education programs under Subchapter H, Chapter 29, Education Code;
- (2) proprietary school programs under Chapter 132, Education Code;
- (3) apprenticeship programs under Chapter 133, Education Code;
- (4) postsecondary vocational and technical job-training programs that are not a part of approved courses or programs that lead to licensing, certification, or an associate degree under Chapters 61, 130, and 135, Education Code, Subchapter E, Chapter 88, Education Code, and Subchapter E, Chapter 96, Education Code;
- (5) employment programs under Chapter 31, Human Resources Code;
- (6) the senior citizens employment program under Chapter 101, Human Resources Code;
- (7) the work and family policies program under Chapter 81;
- (8) job-training programs funded under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.) and under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.);
- (9) the job counseling program for displaced homemakers under Chapter 304;
- (10) ~~the Communities in Schools program under Chapter 305;~~
- ~~[(11)]~~ the reintegration of offenders program under Chapter 306;
- ~~[(12)]~~ the inmate employment counseling program under Section 499.051(f), Government Code;
- ~~[(13)]~~ the continuity of care program under Section 501.095, Government Code;
- ~~[(14)]~~ a literacy program from state, local, federal, and private funds available to the state for that purpose ~~[under Section 481.026, Government Code];~~
- ~~[(15)]~~ the employment service;
- ~~[(16)]~~ the community service program under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);
- ~~[(17)]~~ the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);
- ~~[(18)]~~ education, employment, employment support, training services, activities and programs funded under Temporary Assistance for Needy Families (42 U.S.C. Section 601 et seq.) ~~[(18) the Job Opportunities and Basic Skills program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682)];~~
- ~~[(19)]~~ the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d); and
- ~~[(20)]~~ the functions of the State Occupational Information Coordinating Committee.

SECTION __. Subsection (g), Section 302.062, Labor Code, is amended to read as follows:

- (g) Block grant funding under this section does not apply to:
- (1) the work and family policies program under Chapter 81;
 - (2) a program under the skills development fund created under Chapter 303;
 - (3) the job counseling program for displaced homemakers under Chapter 304;

(4) the Communities ~~In~~ Schools program under Subchapter I, Chapter 264, Family Code, to the extent that funds are available to the commission for that program ~~[Chapter 305]~~;

(5) the reintegration of offenders program under Chapter 306;

(6) apprenticeship programs under Chapter 133, Education Code;

(7) ~~[the inmate employment counseling program under Section 499.051(f), Government Code;~~

~~[(8)]~~ the continuity of care program under Section 501.095, Government Code;

~~[(9)]~~ employment programs under Chapter 31, Human Resources Code;

~~[(10)]~~ the senior citizens employment program under Chapter 101, Human Resources Code;

~~[(11)]~~ the programs described by Section 302.021(b)(3);

~~[(12)]~~ the community service program under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

~~[(13)]~~ the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);

~~[(14)]~~ the programs to enhance the employment opportunities of veterans; and

~~[(15)]~~ the functions of the State Occupational Information Coordinating Committee.

The amendment was read.

On motion of Senator West, the Senate concurred in the House amendment to **SB 1574** by a viva voce vote.

SENATE BILL 1690 WITH HOUSE AMENDMENTS

Senator Bernsen called **SB 1690** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 1690** as follows:

(1) In SECTION 4 of the bill, in proposed Section 33.607, Natural Resources Code, between Subsections (c) and (d) of the section (house committee report, page 11, between lines 23 and 24), insert the following:

(d) The Bureau of Economic Geology of The University of Texas at Austin shall make historical erosion data relating to a critical coastal erosion area available to each state agency, local government, or other person responsible for, or with jurisdiction over, the area.

(2) In SECTION 4 of the bill, in proposed Section 33.607(d), Natural Resources Code (house committee report, page 11, line 24), strike "(d)" and substitute "(e)".

Floor Amendment No. 2

Amend **SB 1690** as follows:

On Page 2, Line 2 of the engrossed version, after the ".", add a new sentence that reads "A person is not required to obtain a lease or other instrument from the

commissioner or board if the action is confined to land owned by a navigation district or municipality."

Floor Amendment No. 1 on Third Reading

Amend **SB 1690** (engrossed version) on third reading as follows:

On page 1, line 2, add a new Section 1 as follows:

SECTION 1. This act may be cited as the "Joe Faggard Coastal Erosion Planning and Response Act".

Renumber the remaining sections accordingly.

The amendments were read.

On motion of Senator Bernsen, the Senate concurred in the House amendments to **SB 1690** by a viva voce vote.

HOUSE CONCURRENT RESOLUTION 280

The President laid before the Senate the following resolution:

HCR 280, Instructing the enrolling clerk of the house to make technical corrections in **HB 1462**.

SHAPIRO

The resolution was read.

On motion of Senator Shapiro and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

MEMORIAL RESOLUTIONS

SR 1005 - by Gallegos: In memory of Doug Calmelet of Baytown.

SR 1011 - by Luna: In memory of Jesus V. Garcia of San Antonio.

SR 1015 - by Zaffirini: In memory of Alice Yvonne Acosta of Laredo.

CONGRATULATORY RESOLUTIONS

SR 1000 - by Shapleigh: Congratulating Dr. Guillermo Ortiz Fierro of El Paso.

SR 1001 - by Ellis: Congratulating Alex Pearce of Bellaire.

SR 1002 - by Ellis: Congratulating Ellis L. Tudzin of Houston.

SR 1006 - by Ratliff: Congratulating Robert E. Layton IV of Tyler.

SR 1007 - by West: Congratulating Pearl Garza Fracchia of Dallas.

SR 1008 - by West: Congratulating Representative Harryette Ehrhardt of Dallas.

SR 1009 - by West: Congratulating Dr. Gleniece Robinson of Fort Worth.

SR 1010 - by West: Congratulating Bradley Everett Cawyer of Rowlett.

SR 1012 - by Barrientos: Congratulating Hayden Denham, Jr.

SR 1014 - by Zaffirini: Congratulating Sister Antoinette Billeaud of Laredo.

ADJOURNMENT

On motion of Senator Truan, the Senate at 4:10 p.m. adjourned, in memory of the lives of John C. Bustin of Austin and Charles R. Borchers of Laredo, until 10:00 a.m. tomorrow.

APPENDIX

SIGNED BY GOVERNOR

May 14, 1999

SB 222, SB 355, SB 555, SB 574, SB 648, SB 757, SB 950, SB 1055, SB 1248, SB 1326, SCR 1, SCR 49, SCR 70

SENT TO GOVERNOR

May 18, 1999

SB 93, SB 94, SB 114, SB 130, SB 174, SB 175, SB 176, SB 417, SB 502, SB 708, SB 748, SB 1154, SB 1229, SB 1276, SB 1289, SB 1719, SB 1797, SCR 54

In Memory
of
John C. Bustin

Senator Barrientos offered the following resolution:

(Senate Resolution 709)

WHEREAS, The Senate of the State of Texas joins the family and friends of John C. Bustin in mourning the death of this beloved Austin citizen on April 8, 1998; and

WHEREAS, In a fitting tribute to his memory his family made a generous contribution to The Professional Touring Entertainment Archive at The University of Texas at Austin; in establishing The John C. Bustin Collection at the university's Center for American History, the family has provided an invaluable primary resource for Texas and the nation's students; and

WHEREAS, A native Austinite, John C. Bustin became one of the city's preeminent citizens; at an early age, he learned to love the arts, and they became a lifelong passion; when John died in 1998, at the age of 70, he had not only established a brilliant career as a savvy entertainment critic, but he had earned the respect and love of his community and colleagues; and

WHEREAS, A third-generation Austinite, Mr. Bustin began his notable career as amusements editor for the *Daily Texan* at The University of Texas; he then served as entertainment director at the United States Army's Camp Lee in Virginia; upon returning home, he earned a position as *The Austin American-Statesman's* amusements editor, where he developed the newspaper's first weekend magazine, *Show World*; the last paper he formally affiliated himself with was the *Austin Citizen*; and

WHEREAS, Over the course of his career, John Bustin penned countless reviews of both Austin's arts scene and the nation's cultural happenings; his discerning, droll prose earned him the loyalty of local readers and attracted the attention of the national and international press; and

WHEREAS, With Mr. Bustin's celebrity came offers to work for other city newspapers, but he remained loyal to his beloved Austin; his steadfastness to local arts resulted in his serving on boards and advisory councils of the city's leading cultural institutions, some of which include Ballet Austin, Austin Symphony Orchestra, Austin Choral Union, Austin Circle of Theaters, Capitol City Playhouse, Zachary Scott Theater Center, and KUT-FM; and

WHEREAS, The John C. Bustin Collection consists of more than 3,300 phonograph records and all of the newspaper columns he ever wrote; the collection also includes hundreds of playbills, press kits, photographs, films, and memorabilia; priceless documents, such as Mr. Bustin's personal interview notes with Hollywood elites like Woody Allen, Alfred Hitchcock,

William Holden, and Robert Mitchum, and letters from presidents and films stars, including Lyndon Johnson and Joan Crawford, are also part of the collection; and

WHEREAS, The University of Texas is proud to house the collection of one of its most esteemed alumni; John Bustin was a treasure to Austin and to the university; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby extend sincere condolences to the members of his family: his wife, Roselyn; his son, Greg; and his daughter, Laura; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of John C. Bustin.

The resolution was again read.

On motion of Senator Truan and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

The resolution was previously adopted on Wednesday, April 21, 1999.

Senator Barrientos was recognized and introduced to the Senate family members of John C. Bustin: his wife, Roselyn, and his children, Greg and Laura.

The Senate welcomed the family members and extended its condolences.

In Memory
of
Charles R. Borchers

Senator Zaffirini offered the following resolution:

(Senate Resolution 847)

WHEREAS, The Senate of the State of Texas joins the citizens of Laredo in honoring the memory of Charles R. Borchers, who died June 27, 1997; and

WHEREAS, Mr. Borchers attended Laredo schools and was graduated valedictorian of his class at Saint Joseph's Academy in 1960; after receiving a bachelor's degree from Saint Edward's University in 1963, Mr. Borchers attended The University of Texas School of Law; in 1966, he passed the bar and joined his father's law firm; and

WHEREAS, Mr. Borchers resided in Laredo his entire life, and he did much to improve the quality of life for its citizens; he served as district attorney for the 49th Judicial District which includes Webb, Zapata, and Dimmit counties; later, he served six years as trustee of the United Independent School District, acting as its president from 1986 to 1991; Mr. Borchers was a member of the Laredo-Webb County Bar Association and was a longtime member of the Laredo Rotary Club; and

WHEREAS, Colleagues respected Mr. Borchers as a dedicated professional; his wisdom, warmth, humor, and valued counsel will not be forgotten by those who knew him; and

WHEREAS, Charles Borchers was a devoted husband and father; upon his passing, he left behind memories that will be treasured forever by his family; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby extend sincere condolences to the members of his family: his beloved wife, Celita Pappas Borchers and his three daughters, Valerie Borchers, Katrina Borchers Mohrer, and Erica Borchers; and, be it further

RESOLVED, That a copy of this Resolution be prepared as an expression of sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Charles R. Borchers.

The resolution was read.

On motion of Senator Truan and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Zaffirini and by unanimous consent, the resolution was adopted by a rising vote of the Senate.

Senator Zaffirini was recognized and introduced to the Senate family members of Charles R. Borchers: his wife, Celita Pappas Borchers; his daughters, Valerie and Erica; and his mother, Angela Scovazzo Borchers.

The Senate welcomed the Borchers family and extended its condolences.