

# EIGHTY-THIRD DAY

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SUNDAY, MAY 30, 1999

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## PROCEEDINGS

The Senate met at 2:00 p.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:

Eternal Lord God, You alone control the destiny of the great state, Texas. Therefore, use these who are gathered under the dome of this magnificent edifice, these who have been chosen to legislate the affairs of our state, that they may serve Your righteous cause among all the peoples of Texas. Help them to judge rightly between trivial and the important. Enable them to speak honorably and responsibly. Keep them from oversight and neglect of duty. Prompt them to use their energies to full capacity and their abilities with wisdom.

And, we thank You for those who have made great sacrifices in defense of the freedoms we enjoy in this great country and especially those who gave their life's blood for our beloved land. And, God, bless each and every one in this Senate Chamber. 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.

## **SENATE RESOLUTION 1004**

Senator Truan offered the following resolution:

WHEREAS, The members of the 95th Bomb Group played a significant role in the defense of our country during World War II, and their achievements and sacrifices are indeed deserving of recognition; and

WHEREAS, Activated on June 15, 1942, the 95th Bomb Group was stationed in Horham, Suffolk, England, and flew strategic, dangerous raids in the European Theater until Allied victory was secured on that continent; and

WHEREAS, The 95th's place in history was assured when it became the first American group to attack Berlin from the air; in spite of bad weather and heavy enemy fighter cover, the group successfully completed its mission, although four B-17s were lost and nine sustained significant damage; and

WHEREAS, For its meritorious service, the 95th Bomb Group was awarded three Distinguished Unit Citations and was the only unit in the 8th Air Force to be so honored; and

WHEREAS, The airmen of this prestigious group have deep ties remaining from their service together; in 1976 the 95th Bomb Group Association was founded, and its members have continued to meet each year as former brothers in arms to share their experiences, reflect on their tenure in the military, and pay tribute to the more than 600 men who made the ultimate sacrifice in service of their country; and

WHEREAS, World War II was a defining moment in the history of the United States, and the world at large, and the actions of these patriotic Americans who risked their lives to preserve liberty and freedom are truly worthy of special praise at this time; now, therefore, be it

RESOLVED, That the Senate of the 76th Texas Legislature hereby honor the courageous individuals who answered their country's call to arms during World War II as members of the 95th Bomb Group for their exemplary service to their nation and extend to them sincere best wishes for a memorable reunion this year; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the 95th Bomb Group as an expression of high regard by 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 Truan, the resolution was adopted by a viva voce vote.

**(Senator Brown in Chair)**

**(President in Chair)**

### **GUESTS PRESENTED**

Senator Truan was recognized and introduced to the Senate members of the 95th Bomb Group Association, of which Lieutenant Governor Rick Perry's father, Ray Perry, is a member.

The Senate welcomed its guests.

### **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 46, SB 73, SB 223, SB 391, SB 403, SB 456, SB 463, SB 602, SB 669, SB 730, SB 754, SB 839, SB 875, SB 896, SB 955, SB 1088, SB 1100, SB 1122, SB 1165,**

**SB 1169, SB 1171, SB 1195, SB 1238, SB 1249, SB 1287, SB 1288, SB 1435, SB 1436, SB 1451, SB 1579, SB 1651, SB 1724, SB 1784, SB 1896, SB 1906, SCR 33, SCR 56, SCR 58, SCR 68.**

### **HOUSE CONCURRENT RESOLUTION 249**

The President laid before the Senate the following resolution:

**HCR 249**, Memorializing the U.S. Congress and urging the president, in considering Social Security reform legislation, to refrain from the inclusion of mandatory coverage for employees of previously noncovered state and local governments.

RATLIFF

The resolution was read.

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

**(Senator West in Chair)**

### **SENATE RESOLUTION 1183**

Senator Shapleigh offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences on **HB 1861**, relating to increasing private investments in transportation infrastructure in the border region, to consider and take action on the following matter:

Senate Rule 12.03(1) is suspended to permit the committee to change text in Section 201.109(b), Transportation Code, so that the language reads as follows:

(7) increasing private investment in the transportation infrastructure, including the acquisition of causeways, bridges, tunnels, turnpikes, or other transportation facilities, in the border region, including the counties of Atascosa, Bandera, Bexar, Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Live Oak, Maverick, McMullen, Medina, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zapata, and Zavala.

Explanation: This change is necessary to specify items included in the transportation infrastructure in the border region.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

### **GUEST PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate Charlie Ochoa of Laredo, a friend of Senator Zaffirini's son, Carlos.

The Senate welcomed Charlie.

**SENATE RESOLUTION 1190**

Senator Duncan offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, That Senate Rule 12.03 is suspended, as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences on **SB 1438**, relating to a pilot project transferring certain professional and occupational licensing boards to self-directed semi-independent status, to consider and take actions on the following matters:

(1) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Subsection (c), Section 6, Article 8930, Revised Statutes, as added by SECTION 2 of the bill, to read as follows:

(c) The Texas State Board of Public Accountancy shall annually remit \$500,000 to the general revenue fund, the Texas Board of Professional Engineers shall annually remit \$50,000 to the general revenue fund, and the Texas Board of Architectural Examiners shall annually remit \$700,000 to the general revenue fund.

Explanation: This change is necessary to specify the surplus amounts to be remitted by the pilot project agencies to the general revenue fund.

(2) Senate Rules 12.03(1) and (2) are suspended to permit the committee to omit the text of Subsection (a), Section 15, Article 8930, Revised Statutes, as added by SECTION 2 of the bill, and to change the section heading of that section, changing the section to read as follows:

Sec. 15. POST-PARTICIPATION LIABILITY. (a) If a state agency no longer has status under this Act as a self-directed semi-independent project agency either because of the expiration of this Act or for any other reason, the agency shall be liable for any expenses or debts incurred by the agency during the time the agency participated in the pilot project. The agency's liability under this section includes liability for any lease entered into by the agency. The state is not liable for any expense or debt covered by this subsection and money from the general revenue fund may not be used to repay the expense or debt.

(b) If a state agency no longer has status under this Act as a self-directed semi-independent project agency either because of the expiration of this Act or for any other reason, ownership of any property or other asset acquired by the agency during the time the agency participated in the pilot project shall be transferred to the state.

Explanation: This change is necessary to clarify the liability status of the pilot project agencies.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**SENATE CONCURRENT RESOLUTION 89**

The Presiding Officer laid before the Senate the following resolution:

WHEREAS, **SB 560** has been adopted by the senate and the house of representatives and is being prepared for enrollment; and

WHEREAS, The bill contains technical errors that should be corrected; now, therefore, be it

RESOLVED by the 76th Legislature of the State of Texas, That the enrolling clerk of the senate be instructed to correct **SB 560** at the end of Subsection (e), Section 54.102, Utilities Code, as added by SECTION 16 of the bill, by striking "local governmental entity. The commission has the authority to enforce this subsection.", and substituting "local governmental entity."

(f) The commission has the authority to enforce this section."

SIBLEY

The resolution was read.

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

### SENATE RESOLUTION 1189

Senator Ratliff offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **SB 178**, relating to state agency practices and duties, including codification of certain state agency practices and duties currently prescribed by the General Appropriations Act, to consider and take action on the following matters:

(1) Senate Rule 12.03(3) is suspended to permit the committee to add the following Subsection (c) to Section 2161.004, Government Code, as added by the bill:

(c) Section 2161.003 and Subsections (a) and (b) of this section do not apply to a project or contract subject to Section 201.702, Transportation Code.

Explanation: This addition is necessary to clarify that the historically underutilized businesses provisions of Sections 2161.003 and 2161.004, Government Code, as added by the bill, that are generally applicable to state agencies do not override the disadvantaged businesses provisions of current law in Section 201.702, Transportation Code, that are applicable to the Texas Department of Transportation.

(2) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 2161.122(d), Government Code, as redesignated by the bill, as follows:

(d) A state agency participating in a group purchasing program [described under Section 2155.139(b)] shall send to the commission in the agency's report under Section 2161.121 a separate list of purchases from historically underutilized businesses that are made through the group purchasing program, including the dollar amount of each purchase allocated to the reporting agency.

Explanation: This amendment is necessary to clarify that a state agency shall report its purchases from historically underutilized businesses under any group purchasing program.

(3) Senate Rule 12.03(3) is suspended to permit the committee to add the following Subdivision (4) to Section 2170.010, Government Code, as added by the bill:

(4) in the investigation of motor fuels tax fraud.

Explanation: This addition is necessary to allow the use of unlisted telephone numbers in the investigation of motor fuels tax fraud.

(4) Senate Rule 12.03(4) is suspended to permit the committee to add a new Article 2 to the bill to read as follows:

ARTICLE 2. CERTAIN OTHER PROVISIONS  
RELATED TO STATE AGENCY CONTRACTING WITH  
HISTORICALLY UNDERUTILIZED BUSINESSES

SECTION 2.01. Section 2155.074(g), Government Code, as added by Chapter 508, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(g) A state agency shall post in the business daily either the entire bid or proposal solicitation package or a notice that includes all information necessary to make a successful bid, proposal, or other applicable expression of interest for the procurement contract, including at a minimum the following information for each procurement that the state agency will make that is estimated to exceed \$25,000 in value:

(1) a brief description of the goods or services to be procured and any applicable state product or service codes for the goods and services;

(2) the last date on which bids, proposals, or other applicable expressions of interest will be accepted;

(3) the estimated quantity of goods or services to be procured;

(4) if applicable, the previous price paid by the state agency for the same or similar goods or services;

(5) the estimated date on which the goods or services to be procured will be needed; and

(6) the name, business mailing address, and business telephone number of the state agency employee a person may contact to inquire about ~~[obtain]~~ all necessary information related to making a bid or proposal or other applicable expression of interest for the procurement contract.

SECTION 2.02. Subchapter A, Chapter 2161, Government Code, is amended by adding Section 2161.0015 to read as follows:

Sec. 2161.0015. DETERMINING SIZE STANDARDS FOR HISTORICALLY UNDERUTILIZED BUSINESSES. The commission may establish size standards that a business may not exceed if it is to be considered a historically underutilized business under this chapter. In determining the size standards, the commission shall determine the size at which a business should be considered sufficiently large that the business probably does not significantly suffer from the effects of past discriminatory practices.

SECTION 2.03. Sections 2161.061(b) and (c), Government Code, are amended to read as follows:

(b) As one ~~[part]~~ of its certification procedures, the commission may:

(1) approve the [another] certification program of one or more local governments in this state that certify [certifies] historically underutilized businesses, minority business enterprises, women's business enterprises, or disadvantaged business enterprises under substantially the same definition, to the extent applicable, used by Section 2161.001; and

(2) certify a business certified under the local government program as a historically underutilized business under this chapter.

(c) To maximize the number of certified historically underutilized businesses, the commission shall enter into agreements with local governments in this state that conduct certification programs described by Subsection (b). The agreements must take effect immediately and:

(1) allow for automatic certification of businesses certified under the local government program;

(2) provide for the efficient updating of the commission database containing information about historically underutilized businesses and potential historically underutilized businesses; and

(3) provide for a method by which the commission may efficiently communicate with businesses certified under the local government program and provide those businesses with information about the state historically underutilized business program. [A municipality, in certifying historically underutilized businesses, may adopt the certification program of the commission, of the federal Small Business Administration, or of another political subdivision or other governmental entity.]

SECTION 2.04. Section 2161.062, Government Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The commission shall send historically underutilized businesses an orientation package on certification or recertification. The package shall include:

- (1) a certificate issued in the historically underutilized business's name;
- (2) a description of the significance and value of certification;
- (3) a list of state purchasing personnel;
- (4) information regarding electronic commerce opportunities;
- (5) information regarding the Texas Marketplace website; and
- (6) additional information about the state procurement process.

(e) A state agency with a biennial budget that exceeds \$10 million shall designate a staff member to serve as the historically underutilized businesses coordinator for the agency during the fiscal year. The procurement director may serve as the coordinator. In agencies that employ a historically underutilized businesses coordinator, the position of coordinator, within the agency's structure, must be at least equal to the position of procurement director. In addition to any other responsibilities, the coordinator shall:

- (1) coordinate training programs for the recruitment and retention of historically underutilized businesses;
- (2) report required information to the commission; and
- (3) match historically underutilized businesses with key staff within the agency.

SECTION 2.05. Section 2161.063(b), Government Code, is amended to read as follows:

(b) The commission shall assist the Texas Department of Economic Development [Commerce] in performing the department's duties under Section 481.0068 [481.103].

SECTION 2.06. Section 2161.064(b), Government Code, is amended to read as follows:

(b) The commission at least semiannually shall update the directory and provide access to the directory electronically or in another form [a copy of the directory] to each state agency.

SECTION 2.07. Sections 2161.121(a) and (e), Government Code, are amended to read as follows:

- (a) The commission shall prepare a consolidated report that:
  - (1) includes the number and dollar amount of contracts awarded and paid to historically underutilized businesses certified by the commission; ~~and~~
  - (2) analyzes the relative level of opportunity for historically underutilized businesses for various categories of acquired goods and services; and

(3) tracks, by vendor identification number and, to the extent allowed by federal law, by social security number, the graduation rates for historically underutilized businesses that grew to exceed the size standards determined by the commission.

(e) The commission shall send on October 15 of each year a report on the preceding fiscal year to the presiding officer of each house of the legislature[~~the members of the legislature;~~] and the joint committee.

SECTION 2.08. Subchapter B, Chapter 2161, Government Code, is amended by adding Sections 2161.065 and 2161.066 to read as follows:

Sec. 2161.065. MENTOR-PROTEGE PROGRAM. (a) The commission shall design a mentor-protége program to foster long-term relationships between prime contractors and historically underutilized businesses and to increase the ability of historically underutilized businesses to contract with the state or to receive subcontracts under a state contract. Each state agency with a biennial appropriation that exceeds \$10 million shall implement the program designed by the commission.

(b) Participation in the program must be voluntary for both the contractor and the historically underutilized business subcontractor.

Sec. 2161.066. HISTORICALLY UNDERUTILIZED BUSINESS FORUMS.

(a) The commission shall design a program of forums in which historically underutilized businesses are invited by state agencies to deliver technical and business presentations that demonstrate their capability to do business with the agency:

(1) to senior managers and procurement personnel at state agencies that acquire goods and services of a type supplied by the historically underutilized businesses; and

(2) to contractors with the state who may be subcontracting for goods and services of a type supplied by the historically underutilized businesses.

(b) The forums shall be held at state agency offices.

(c) Each state agency with a biennial appropriation that exceeds \$10 million shall participate in the program by sending senior managers and procurement personnel to attend relevant presentations and by informing the agency's contractors about presentations that may be relevant to anticipated subcontracting opportunities.

(d) Each state agency that has a historically underutilized businesses coordinator shall:

(1) design its own program and model the program to the extent appropriate on the program developed by the commission under this section; and

(2) sponsor presentations by historically underutilized businesses at the agency.

(e) The commission and each state agency that has a historically underutilized businesses coordinator shall aggressively identify and notify individual historically underutilized businesses regarding opportunities to make a presentation regarding the types of goods and services supplied by the historically underutilized business and shall advertise in appropriate trade publications that target historically underutilized businesses regarding opportunities to make a presentation.

SECTION 2.09. Subchapter C, Chapter 2161, Government Code, is amended by adding Sections 2161.126 and 2161.127 to read as follows:

Sec. 2161.126. EDUCATION AND OUTREACH BY COMMISSION. Before September 1 of each year, the commission shall report to the governor, the lieutenant governor, and the speaker of the house of representatives on the education and training



efforts that the commission has made toward historically underutilized businesses. The report must include the following as related to historically underutilized businesses:

- (1) the commission's vision, mission, and philosophy;
- (2) marketing materials and other educational materials distributed by the commission;
- (3) the commission's policy regarding education, outreach, and dissemination of information;
- (4) goals that the commission has attained during the fiscal year;
- (5) the commission's goals, objectives, and expected outcome measures for each outreach and education event; and
- (6) the commission's planned future initiatives on education and outreach.

Sec. 2161.127. LEGISLATIVE APPROPRIATIONS REQUESTS. Each state agency must include as part of its legislative appropriations request a detailed report for consideration by the budget committees of the legislature that shows the extent to which the agency complied with this chapter and rules of the commission adopted under this chapter during the two calendar years preceding the calendar year in which the request is submitted. To the extent the state agency did not comply, the report must demonstrate the reasons for that fact. The extent to which a state agency complies with this chapter and rules of the commission adopted under this chapter is considered a performance measure for purposes of the appropriations process.

SECTION 2.10. Chapter 2161, Government Code, is amended by adding Subchapter F to read as follows:

#### SUBCHAPTER F. SUBCONTRACTING

Sec. 2161.251. APPLICABILITY. (a) This subchapter applies to all contracts entered into by a state agency with an expected value of \$100,000 or more, including:

- (1) contracts for the acquisition of a good or service; and
- (2) contracts for or related to the construction of a public building, road, or other public work.

(b) This subchapter applies to the contract without regard to:

- (1) whether the contract is otherwise subject to this subtitle; or
- (2) the source of funds for the contract, except that to the extent federal funds are used to pay for the contract, this subchapter does not apply if federal law prohibits the application of this subchapter in relation to the expenditure of federal funds.

Sec. 2161.252. AGENCY DETERMINATION REGARDING SUBCONTRACTING OPPORTUNITIES; BUSINESS SUBCONTRACTING PLAN. (a) Each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest for the contract, determine whether there will be subcontracting opportunities under the contract. If the state agency determines that there is that probability, the agency shall require that each bid, proposal, offer, or other applicable expression of interest for the contract include a historically underutilized business subcontracting plan.

(b) When a state agency requires a historically underutilized business subcontracting plan under Subsection (a), a bid, proposal, offer, or other applicable expression of interest for the contract must contain a plan to be considered responsive.

Sec. 2161.253. GOOD FAITH COMPLIANCE WITH BUSINESS SUBCONTRACTING PLAN. (a) When a state agency requires a historically underutilized business subcontracting plan under Section 2161.252, the awarded

contract shall contain, as a provision of the contract that must be fulfilled, the plan that the contractor submitted in its bid, proposal, offer, or other applicable expression of interest for the contract. The contractor shall make good faith efforts to implement the plan.

(b) To the extent that subcontracts are not contracted for as originally submitted in the historically underutilized business subcontracting plan, the contractor shall report to the state agency all the circumstances that explain that fact and describe the good faith efforts made to find and subcontract with another historically underutilized business.

(c) The state agency shall audit the contractor's compliance with the historically underutilized business subcontracting plan. In determining whether the contractor made the required good faith effort, the agency may not consider the success or failure of the contractor to subcontract with historically underutilized businesses in any specific quantity. The agency's determination is restricted to considering factors indicating good faith.

(d) If a determination is made that the contractor failed to implement the plan in good faith, the agency, in addition to any other remedies, may bar the contractor from further contracting opportunities with the agency.

(e) The commission shall adopt rules to administer this subchapter.

SECTION 2.11. Subchapter F, Chapter 2161, Government Code, as added by this Act, applies only to subcontracting under a contract entered into by a state agency for which the request for bids, proposals, offers, or other applicable expressions of interest is disseminated on or after April 1, 2000.

Explanation: This addition is necessary to make changes in the state's historically underutilized businesses purchasing program.

(5) Senate Rule 12.03(4) is suspended to permit the committee to add a new Article 3 to the bill to read as follows:

ARTICLE 3. PROVISIONS RELATING TO STATE AGENCY  
CONTINGENCY FEE CONTRACTS FOR LEGAL SERVICES

SECTION 3.01. (a) The legislature finds that:

(1) a payment to a private attorney or law firm under a contingent fee contract for legal services entered into by a state governmental entity constitutes compensation paid to a public contractor for which the legislature must provide by law under Section 44, Article III, Texas Constitution; and

(2) funds recovered by a state governmental entity in litigation or in settlement of a matter that could have resulted in litigation are state funds that must be deposited in the state treasury and made subject to the appropriations process.

(b) It is the policy of this state that all funds recovered by a state governmental entity from an opposing party in litigation or in settlement of a matter that could have resulted in litigation, including funds designated as damages, amounts adjudged or awarded, attorney's fees, costs, interest, settlement proceeds, or expenses, are the property of the state governmental entity that must be deposited in the manner that public funds of the entity must be deposited. Legal fees and expenses may be paid from the recovered funds under a contingent fee contract for legal services only after the funds have been appropriately deposited and only in accordance with applicable law.

SECTION 3.02. Subchapter F, Chapter 404, Government Code, is amended by adding Section 404.097 to read as follows:

Sec. 404.097. DEPOSIT OF FUNDS RECOVERED BY LITIGATION OR SETTLEMENT. (a) Notwithstanding Section 404.093, this section applies by its terms to each state governmental entity.

(b) In this section, "contingent fee contract" and "state governmental entity" have the meanings assigned by Section 2254.101.

(c) All funds recovered by a state governmental entity in litigation or in settlement of a matter that could have resulted in litigation, including funds designated as damages, amounts adjudged or awarded, attorney's fees, costs, interest, settlement proceeds, or expenses, are public funds of the state or the state governmental entity and shall be deposited in the state treasury to the credit of the appropriate fund or account.

(d) Legal fees and expenses may be paid from the recovered funds under a contingent fee contract for legal services only:

(1) after the funds are deposited in accordance with this section; and

(2) in accordance with Subchapter C, Chapter 2254.

SECTION 3.03. Chapter 2254, Government Code, is amended by adding Subchapter C to read as follows:

#### SUBCHAPTER C. CONTINGENT FEE

#### CONTRACT FOR LEGAL SERVICES

Sec. 2254.101. DEFINITIONS. In this subchapter:

(1) "Contingent fee" means that part of a fee for legal services, under a contingent fee contract, the amount or payment of which is contingent on the outcome of the matter for which the services were obtained.

(2) "Contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.

(3) "State governmental entity":

(A) means the state or a board, commission, department, office, or other agency in the executive branch of state government created under the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code;

(B) includes the state when a state officer is bringing a parens patriae proceeding in the name of the state; and

(C) does not include a state agency or state officer acting as a receiver, special deputy receiver, liquidator, or liquidating agent in connection with the administration of the assets of an insolvent entity under Article 21.28, Insurance Code, or Chapter 36, 66, 96, or 126, Finance Code.

Sec. 2254.102. APPLICABILITY. (a) This subchapter applies only to a contingent fee contract for legal services entered into by a state governmental entity.

(b) The legislature by this subchapter is providing, in accordance with Section 44, Article III, Texas Constitution, for the manner in which and the situations under which a state governmental entity may compensate a public contractor under a contingent fee contract for legal services.

Sec. 2254.103. CONTRACT APPROVAL; SIGNATURE. (a) A state governmental entity that has authority to enter into a contract for legal services in its own name may enter into a contingent fee contract for legal services only if:

(1) the governing body of the state governmental entity approves the contract and the approved contract is signed by the presiding officer of the governing body; or

(2) for an entity that is not governed by a multimember governing body, the elected or appointed officer who governs the entity approves and signs the contract.

(b) The attorney general may enter into a contingent fee contract for legal services in the name of the state in relation to a matter that has been referred to the attorney general under law by another state governmental entity only if the other state governmental entity approves and signs the contract in accordance with Subsection (a).

(c) A state governmental entity, including the state, may enter into a contingent fee contract for legal services that is not described by Subsection (a) or (b) only if the governor approves and signs the contract.

(d) Before approving the contract, the governing body, elected or appointed officer, or governor, as appropriate, must find that:

(1) there is a substantial need for the legal services;

(2) the legal services cannot be adequately performed by the attorneys and supporting personnel of the state governmental entity or by the attorneys and supporting personnel of another state governmental entity; and

(3) the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

(e) Before entering into a contingent fee contract for legal services in which the estimated amount that may be recovered exceeds \$100,000, a state governmental entity that proposes to enter into the contract in its own name or in the name of the state must also notify the Legislative Budget Board that the entity proposes to enter into the contract, send the board copies of the proposed contract, and send the board information demonstrating that the conditions required by Subsection (d)(3) exist. If the state governmental entity finds under Subsection (d)(3) that the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract for the legal services providing only for the payment of hourly fees, the state governmental entity may not enter into the proposed contract in its own name or in the name of the state unless the Legislative Budget Board finds that the state governmental entity's finding with regard to available appropriated funds is correct.

(f) A contingent fee contract for legal services that is subject to Subsection (e) and requires a finding by the Legislative Budget Board is void unless the board has made the finding required by Subsection (e).

Sec. 2254.104. TIME AND EXPENSE RECORDS REQUIRED; FINAL STATEMENT. (a) The contract must require that the contracting attorney or law firm keep current and complete written time and expense records that describe in detail the time and money spent each day in performing the contract.

(b) The contracting attorney or law firm shall permit the governing body or governing officer of the state governmental entity, the attorney general, and the state auditor each to inspect or obtain copies of the time and expense records at any time on request.

(c) On conclusion of the matter for which legal services were obtained, the contracting attorney or law firm shall provide the contracting state governmental entity with a complete written statement that describes the outcome of the matter,

states the amount of any recovery, shows the contracting attorney's or law firm's computation of the amount of the contingent fee, and contains the final complete time and expense records required by Subsection (a). The complete written statement required by this subsection is public information under Chapter 552 and may not be withheld from a requestor under that chapter under Section 552.103 or any other exception from required disclosure.

(d) This subsection does not apply to the complete written statement required by Subsection (c). All time and expense records required under this section are public information subject to required public disclosure under Chapter 552. Information in the records may be withheld from a member of the public under Section 552.103 only if, in addition to meeting the requirements of Section 552.103, the chief legal officer or employee of the state governmental entity determines that withholding the information is necessary to protect the entity's strategy or position in pending or reasonably anticipated litigation. Information withheld from public disclosure under this subsection shall be segregated from information that is subject to required public disclosure.

Sec. 2254.105. CERTAIN GENERAL CONTRACT REQUIREMENTS. The contract must:

(1) provide for the method by which the contingent fee is computed;

(2) state the differences, if any, in the method by which the contingent fee is computed if the matter is settled, tried, or tried and appealed;

(3) state how litigation and other expenses will be paid and, if reimbursement of any expense is contingent on the outcome of the matter or reimbursable from the amount recovered in the matter, state whether the amount recovered for purposes of the contingent fee computation is considered to be the amount obtained before or after expenses are deducted;

(4) state that any subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm is an expense subject to reimbursement only in accordance with this subchapter; and

(5) state that the amount of the contingent fee and reimbursement of expenses under the contract will be paid and limited in accordance with this subchapter.

Sec. 2254.106. CONTRACT REQUIREMENTS: COMPUTATION OF CONTINGENT FEE; REIMBURSEMENT OF EXPENSES. (a) The contract must establish the reasonable hourly rate for work performed by an attorney, law clerk, or paralegal who will perform legal or support services under the contract based on the reasonable and customary rate in the relevant locality for the type of work performed and on the relevant experience, demonstrated ability, and standard hourly billing rate, if any, of the person performing the work. The contract may establish the reasonable hourly rate for one or more persons by name and may establish a rate schedule for work performed by unnamed persons. The highest hourly rate for a named person or under a rate schedule may not exceed \$1,000 an hour. This subsection applies to subcontracted work performed by an attorney, law clerk, or paralegal who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm as well as to work performed by a contracting attorney or by a partner, shareholder, or employee of a contracting attorney or law firm.

(b) The contract must establish a base fee to be computed as follows. For each attorney, law clerk, or paralegal who is a contracting attorney or a partner, shareholder,

or employee of a contracting attorney or law firm, multiply the number of hours the attorney, law clerk, or paralegal works in providing legal or support services under the contract times the reasonable hourly rate for the work performed by that attorney, law clerk, or paralegal. Add the resulting amounts to obtain the base fee. The computation of the base fee may not include hours or costs attributable to work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.

(c) Subject to Subsection (d), the contingent fee is computed by multiplying the base fee by a multiplier. The contract must establish a reasonable multiplier based on any expected difficulties in performing the contract, the amount of expenses expected to be risked by the contractor, the expected risk of no recovery, and any expected long delay in recovery. The multiplier may not exceed four without prior approval by the legislature.

(d) In addition to establishing the method of computing the fee under Subsections (a), (b), and (c), the contract must limit the amount of the contingent fee to a stated percentage of the amount recovered. The contract may state different percentage limitations for different ranges of possible recoveries and different percentage limitations in the event the matter is settled, tried, or tried and appealed. The percentage limitation may not exceed 35 percent without prior approval by the legislature. The contract must state that the amount of the contingent fee will not exceed the lesser of the stated percentage of the amount recovered or the amount computed under Subsections (a), (b), and (c).

(e) The contract also may:

- (1) limit the amount of expenses that may be reimbursed; and
- (2) provide that the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly rate basis without regard to the outcome of the matter.

(f) Except as provided by Section 2254.107, this section does not apply to a contingent fee contract for legal services:

- (1) in which the expected amount to be recovered and the actual amount recovered do not exceed \$100,000; or
- (2) under which a series of recoveries is contemplated and the amount of each individual recovery is not expected to and does not exceed \$100,000.

(g) This section applies to a contract described by Subsection (f) for each individual recovery under the contract that actually exceeds \$100,000, and the contract must provide for computing the fee in accordance with this section for each individual recovery that actually exceeds \$100,000.

Sec. 2254.107. MIXED HOURLY AND CONTINGENT FEE CONTRACTS; REIMBURSEMENT FOR SUBCONTRACTED WORK. (a) This section applies only to a contingent fee contract:

(1) under which the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly rate basis without regard to the outcome of the matter; or

(2) under which reimbursable expenses are incurred for subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.

(b) Sections 2254.106(a) and (e) apply to the contract without regard to the expected or actual amount of recovery under the contract.

(c) The limitations prescribed by Section 2254.106 on the amount of the contingent fee apply to the entire amount of the fee under the contingent fee contract, including the part of the fee the amount and payment of which is not contingent on the outcome of the matter.

(d) The limitations prescribed by Section 2254.108 on payment of the fee apply only to payment of the contingent portion of the fee.

Sec. 2254.108. FEE PAYMENT AND EXPENSE REIMBURSEMENT. (a) Except as provided by Subsection (b), a contingent fee and a reimbursement of an expense under a contract with a state governmental entity is payable only from funds the legislature specifically appropriates to pay the fee or reimburse the expense. An appropriation to pay the fee or reimburse the expense must specifically describe the individual contract, or the class of contracts classified by subject matter, on account of which the fee is payable or expense is reimbursable. A general reference to contingent fee contracts for legal services or to contracts subject to this subchapter or a similar general description is not a sufficient description for purposes of this subsection.

(b) If the legislature has not specifically appropriated funds for paying the fee or reimbursing the expense, a state governmental entity may pay the fee or reimburse the expense from other available funds only if:

(1) the legislature is not in session; and

(2) the Legislative Budget Board gives its prior approval for that payment or reimbursement under Section 69, Article XVI, Texas Constitution, after examining the statement required under Section 2254.104(c) and determining that the requested payment and the contract under which payment is requested meet all the requirements of this subchapter.

(c) A payment or reimbursement under the contract may not be made until:

(1) final and unappealable arrangements have been made for depositing all recovered funds to the credit of the appropriate fund or account in the state treasury; and

(2) the state governmental entity and the state auditor have received from the contracting attorney or law firm the statement required under Section 2254.104(c).

(d) Litigation and other expenses payable under the contract, including expenses attributable to attorney, paralegal, accountant, expert, or other professional work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, may be reimbursed only if the state governmental entity and the state auditor determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of the state governmental entity, and paid for by the contracting attorney or law firm. The contingent fee may not be paid until the state auditor has reviewed the relevant time and expense records and verified that the hours of work on which the fee computation is based were actually worked in performing reasonable and necessary services for the state governmental entity under the contract.

Sec. 2254.109. EFFECT ON OTHER LAW. (a) This subchapter does not limit the right of a state governmental entity to recover fees and expenses from opposing parties under other law.

(b) Compliance with this subchapter does not relieve a contracting attorney or law firm of an obligation or responsibility under other law, including under the Texas Disciplinary Rules of Professional Conduct.

(c) A state officer, employee, or governing body, including the attorney general, may not waive the requirements of this subchapter or prejudice the interests of the state under this subchapter. This subchapter does not waive the state's sovereign immunity from suit or its immunity from suit in federal court under the Eleventh Amendment to the federal constitution.

SECTION 3.04. The changes in law made by this article apply only to a contract entered into on or after September 1, 1999.

Explanation: This addition is necessary to regulate matters relating to contingent fee contracts for legal services entered into by state agencies.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

### SENATE RESOLUTION 1186

Senator Ellis offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, That Senate Rule 12.03 be suspended as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences between the house and senate versions of **SB 441**, relating to tax exemptions and credits, to consider and take action on the following matters:

(1) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section 10 of the bill, amending Section 171.002(d), Tax Code, to read as follows:

SECTION 10. Section 171.002(d), Tax Code, is amended to read as follows:

(d) A ~~[If the amount of tax computed for a corporation is less than \$100, the]~~ corporation is not required to pay any tax ~~[that amount]~~ and is not considered to owe any tax for a [that] period if:

(1) the amount of tax computed for the corporation is less than \$100; or

(2) the amount of the corporation's gross receipts:

(A) from its entire business under Section 171.105 is less than \$150,000; and

(B) from its entire business under Section 171.1051, including the amount excepted under Section 171.1051(a), is less than \$150,000.

Explanation: This change is necessary to provide an exemption for certain small corporations from the franchise tax.

(2) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section 11 of the bill, amending Section 171.203(a), Tax Code, to read as follows:

SECTION 11. Section 171.203(a), Tax Code, is amended to read as follows:

(a) A corporation on which the franchise tax is imposed, regardless of whether the corporation is required to pay any tax, shall file a report with the comptroller containing:

(1) the name of each corporation in which the corporation filing the report owns a 10 percent or greater interest and the percentage owned by the corporation;

(2) the name of each corporation that owns a 10 percent or greater interest in the corporation filing the report;



(3) the name, title, and mailing address of each person who is an officer or director of the corporation on the date the report is filed and the expiration date of each person's term as an officer or director, if any;

(4) the name and address of the agent of the corporation designated under Section 171.354 of this code; and

(5) the address of the corporation's principal office and principal place of business.

Explanation: This change is necessary to provide that certain corporations exempt from the franchise tax are subject to a limited reporting requirement.

(3) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section 12 of the bill, amending Section 171.204, Tax Code, to read as follows:

SECTION 12. Section 171.204, Tax Code, is amended to read as follows:

Sec. 171.204. INFORMATION REPORT. (a) Except as provided by Subsection (b), to [To] determine eligibility for the exemption provided by Section 171.2022, or to determine the amount of the franchise tax or the correctness of a franchise tax report, the comptroller may require an officer of a corporation that may be subject to the tax imposed under this chapter to file an information report with the comptroller stating the amount of the corporation's taxable capital and earned surplus, or any other information the comptroller may request.

(b) The comptroller may require an officer of a corporation that does not owe any tax because of the application of Section 171.002(d)(2) to file an abbreviated information report with the comptroller stating the amount of the corporation's gross receipts from its entire business. The comptroller may not require a corporation described by this subsection to file an information report that requires the corporation to report or compute its earned surplus or taxable capital.

Explanation: This change is necessary to provide that certain corporations exempt from the franchise tax are subject to a limited reporting requirement.

(4) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section 13 of the bill, adding Subchapter N, Chapter 171, Tax Code, to read as follows:

SECTION 13. Chapter 171, Tax Code, is amended by adding Subchapter N to read as follows:

**SUBCHAPTER N. TAX CREDIT FOR ESTABLISHING  
DAY-CARE CENTER OR PURCHASING CHILD-CARE SERVICES**

**Sec. 171.701. DEFINITIONS. In this subchapter:**

(1) "Day-care center" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Family home" has the meaning assigned by Section 42.002, Human Resources Code.

**Sec. 171.702. CREDIT. A corporation that meets the eligibility requirements under this subchapter is entitled to a credit in the amount allowed by this subchapter against the tax imposed under this chapter.**

**Sec. 171.703. CREDIT FOR DAY-CARE CENTER AND PURCHASED CHILD CARE. (a) A corporation may claim a credit under this subchapter only for a qualifying expenditure relating to:**

(1) the establishment and operation of a day-care center primarily to provide care for the children of employees of the corporation or of the corporation and one or more other entities sharing the costs of establishing and operating the center; or

(2) the purchase of child-care services that are actually provided to children of employees of the corporation at a:

(A) day-care center; or

(B) family home that is registered or listed with the Department of Protective and Regulatory Services under Chapter 42, Human Resources Code.

(b) A qualifying expenditure includes an expenditure for:

(1) planning the day-care center;

(2) preparing a site to be used for the day-care center;

(3) constructing the day-care center;

(4) renovating or remodeling a structure to be used for the day-care center;

(5) purchasing equipment necessary in the use of the day-care center and installed for permanent use in or immediately adjacent to the day-care center, including kitchen appliances and other food preparation equipment;

(6) expanding the day-care center;

(7) maintaining and operating the day-care center, including paying direct administration and staff costs; or

(8) purchasing all or part of child-care services that are actually provided to children of employees of the corporation at a day-care center or registered or listed family home.

(c) The amount of the credit is equal to the lesser of:

(1) \$50,000;

(2) 50 percent of the corporation's qualifying expenditures; or

(3) the amount of the limitation provided by Section 171.705(b).

(d) If a corporation shares in the cost of establishing and operating a day-care center, the corporation is entitled to a credit for the qualifying expenditures made by that corporation, subject to the limitation prescribed by Subsection (c).

Sec. 171.704. APPLICATION FOR CREDIT. (a) A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

(b) If the corporation is claiming a credit for a qualifying expenditure for purchasing child-care services, the corporation must maintain proof that the services were actually provided to children of employees of the corporation at a day-care center or registered or listed family home.

(c) The comptroller shall adopt a form for the application for the credit. A corporation must use this form in applying for the credit.

Sec. 171.705. PERIOD FOR WHICH CREDIT MAY BE CLAIMED. (a) A corporation may claim a credit under this subchapter for qualifying expenditures made during an accounting period only against the tax owed for the corresponding reporting period.

(b) A corporation may not claim a credit in an amount that exceeds 90 percent of the amount of tax due for the report.

Sec. 171.706. ASSIGNMENT PROHIBITED. A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Sec. 171.707. BIENNIAL REPORT BY COMPTROLLER. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the total amount of qualifying expenditures incurred by corporations that claim a credit under this subchapter;

(2) the total amount of credits applied against the tax under this chapter and the amount of unused credits including:

(A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter;

(C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees; and

(D) the two-digit standard industrial classification of corporations claiming a credit under this subchapter;

(3) the geographical distribution of qualifying expenditures giving rise to a credit authorized by this subchapter;

(4) the impact of the credit provided by this subchapter on promoting economic development in this state; and

(5) the impact of the credit provided under this subchapter on state tax revenues.

(b) The final report issued prior to the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.

(c) The comptroller may not include in the report information that is confidential by law.

(d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the corporation's qualifying expenditures and any other information necessary to complete the report required under this section.

Explanation: This change is necessary to provide a franchise tax credit for establishing a day-care center or purchasing child-care services.

(5) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section 14 of the bill, adding Subchapter O, Chapter 171, Tax Code, to read as follows:

SECTION 14. Chapter 171, Tax Code, is amended by adding Subchapter O to read as follows:

#### SUBCHAPTER O. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT ACTIVITIES

Sec. 171.721. DEFINITIONS. In this subchapter:

(1) "Base amount," "basic research payment," and "qualified research expense" have the meanings assigned those terms by Section 41, Internal Revenue Code, except that all such payments and expenses must be for research conducted within this state.

(2) "Strategic investment area" means an area that is determined by the comptroller under Section 171.726 that is:

(A) a county within this state with above state average unemployment and below state average per capita income; or

(B) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community.

Sec. 171.722. ELIGIBILITY. (a) A corporation is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter.

(b) A corporation may claim a credit under Section 171.723(d) or take a carryforward credit without regard to whether the strategic investment area in which it made qualified research expenses and basic research payments subsequently loses its designation as a strategic investment area.

Sec. 171.723. CALCULATION OF CREDIT. (a) The credit for any report equals five percent of the sum of:

(1) the excess of qualified research expenses incurred in this state during the period upon which the tax is based over the base amount for this state; and

(2) the basic research payments determined under Section 41(e)(1)(A), Internal Revenue Code, for this state during the period upon which the tax is based.

(b) A corporation may elect to compute the credit for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4), Internal Revenue Code, only if for the corresponding federal tax period:

(1) a federal election was made to compute the federal credit under Section 41(c)(4), Internal Revenue Code;

(2) the corporation was a member of a consolidated group for which a federal election was made under Section 41(c)(4), Internal Revenue Code; or

(3) the corporation did not claim the federal credit under Section 41(a)(1), Internal Revenue Code.

(c) For purposes of the alternate credit computation method in Subsection (b), the credit percentages applicable to qualified research expenses described in Sections 41(c)(4)(A)(i), (ii), and (iii), Internal Revenue Code, are 0.41 percent, 0.55 percent, and 0.69 percent, respectively.

(d) In computing the credit under this section, a corporation may multiply by two the amount of any qualified research expenses and basic research payments made in a strategic investment area.

(e) The burden of establishing entitlement to and the value of the credit is on the corporation.

(f) For the purposes of this section, "gross receipts" as used in Section 41, Internal Revenue Code, means gross receipts as determined under Section 171.1032.

Sec. 171.724. LIMITATIONS. (a) The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.725, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(b) The total credit claimed under this subchapter and Subchapters P and Q for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report after any other applicable credits.

(c) A corporation that establishes its eligibility for a credit under this subchapter is not eligible to establish a credit under Subchapter P.

Sec. 171.725. CARRYFORWARD. If a corporation is eligible for a credit that exceeds the limitation under Section 171.724(a) or (b), the corporation may carry the unused credit forward for not more than 20 consecutive reports. A credit carryforward from a previous report is considered to be utilized before the current year credit.

Sec. 171.726. DETERMINATION OF STRATEGIC INVESTMENT AREAS. (a) Not later than September 1 each year, the comptroller shall determine areas that qualify as strategic investment areas using the most recently completed full calendar year data available on that date and, not later than October 1, shall publish a list and map of the designated areas.

(b) The designation is effective for the following calendar year for purposes of credits available under this subchapter.

Sec. 171.727. BIENNIAL REPORT BY COMPTROLLER. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the total amount of expenses and payments incurred by corporations that claim a credit under this subchapter;

(2) the total amount of credits applied against the tax under this chapter and the amount of unused credits including:

(A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter;

(C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees; and

(D) the two-digit standard industrial classification of corporations claiming a credit under this subchapter;

(3) the geographical distribution of expenses and payments giving rise to a credit authorized by this subchapter;

(4) the impact of the credit provided by this subchapter on the amount of research and development performed in this state and employment in research and development in this state; and

(5) the impact of the credit provided under this subchapter on employment, capital investment, and personal income in this state and on state tax revenues.

(b) The final report issued prior to the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.

(c) The comptroller may not include in the report information that is confidential by law.

(d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the corporation's research expenses and payments in this state and any other information necessary to complete the report required under this section.

Sec. 171.728. COMPTROLLER POWERS AND DUTIES. The comptroller shall adopt rules and forms necessary to implement this subchapter.

Sec. 171.729. EXPIRATION. (a) This subchapter expires December 31, 2009.

(b) The expiration of this subchapter does not affect the carryforward of a credit under Section 171.725 for those credits to which a corporation is eligible before the date this subchapter expires.

Sec. 171.730. TEMPORARY CREDIT RATES AND LIMITATIONS. (a) Notwithstanding any other provision of this subchapter, this section applies to a report originally due before January 1, 2002.

(b) For purposes of computing the credit under Section 171.723(a) for a report described by Subsection (a), the credit equals four percent of the sum of:

(1) the excess of qualified research expenses incurred in this state during the period upon which the tax is based over the base amount for this state; and

(2) the basic research payments determined under Section 41(e)(1)(A), Internal Revenue Code, for this state during the period upon which the tax is based.

(c) For purposes of computing the credit under Section 171.723(d) for a report described by Subsection (a), a corporation may multiply by 1.5 the amount of any qualified research expenses and basic research payments made in a strategic investment area.

(d) The total credit claimed under this subchapter for a report described by Subsection (a), including the amount of any carryforward credit under Section 171.725, may not exceed 25 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(e) For purposes of the alternate credit computation method in Section 171.723(b), the credit percentages applicable to qualified research expenses described in Sections 41(c)(4)(A)(i), (ii), and (iii), Internal Revenue Code, are 0.33 percent, 0.44 percent, and 0.55 percent, respectively.

(f) This section expires January 1, 2002.

(g) The expiration of this section does not affect the carryforward of a credit under Section 171.725 for those credits to which a corporation is eligible before the date this section expires.

Explanation: This change is necessary to provide a franchise tax credit for certain research and development activities.

(6) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section 15 of the bill, adding Subchapter P, Chapter 171, Tax Code, to read as follows:

SECTION 15. Chapter 171, Tax Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. TAX CREDITS FOR  
CERTAIN JOB CREATION ACTIVITIES

Sec. 171.751. DEFINITIONS. In this subchapter:

(1) "Agricultural processing" means an establishment primarily engaged in activities described in categories 2011-2099, 2211, 2231, or 3111-3199 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(2) "Central administrative offices" means an establishment primarily engaged in performing management or support services for other establishments of the same enterprise. An enterprise consists of all establishments having more than 50 percent common direct or indirect ownership.

(3) "County average weekly wage" means the average weekly wage for all covered employment in the county as computed by the Texas Workforce Commission.

(4) "Data processing" means an establishment primarily engaged in activities described in categories 7371-7379 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(5) "Distribution" means an establishment primarily engaged in activities described in categories 5012-5199 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(6) "Group health benefit plan" means:

(A) a health plan provided by a health maintenance organization established under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code);

(B) a health benefit plan approved by the commissioner of insurance; or

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), as amended.

(7) "Manufacturing" means an establishment primarily engaged in activities described in categories 2011-3999 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(8) "Qualified business" means an establishment primarily engaged in agricultural processing, central administrative offices, distribution, data processing, manufacturing, research and development, or warehousing.

(9) "Qualifying job" means a new permanent full-time job that:

(A) is located in:

(i) a strategic investment area; or

(ii) a county within this state with a population of less than 50,000, if the job is created by a business primarily engaged in agricultural processing;

(B) requires at least 1,600 hours of work a year;

(C) pays at least 110 percent of the county average weekly wage for the county where the job is located;

(D) is covered by a group health benefit plan for which the business pays at least 80 percent of the premiums or other charges assessed under the plan for the employee;

(E) is not transferred from one area in this state to another area in this state; and

(F) is not created to replace a previous employee.

(10) "Research and development" means an establishment primarily engaged in activities described in category 8731 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(11) "Strategic investment area" has the meaning assigned that term by Section 171.721.

(12) "Warehousing" means an establishment primarily engaged in activities described in categories 4221-4226 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

Sec. 171.752. ELIGIBILITY. (a) A corporation is eligible for a credit against the tax imposed under this chapter if the corporation:

(1) is a qualified business as defined in Section 171.751;

(2) creates a minimum of 10 qualifying jobs; and

(3) pays an average weekly wage, for the year in which credits are claimed, of at least 110 percent of the county average weekly wage for the county where the qualifying jobs are located.

(b) A corporation may claim a credit or take a carryforward credit without regard to whether the strategic investment area in which it created the qualifying jobs subsequently loses its designation as a strategic investment area, if applicable.

Sec. 171.753. CALCULATION OF CREDIT. A corporation may establish a credit equal to 25 percent of the total wages and salaries paid by the corporation for qualifying jobs during the period upon which the tax is based.

Sec. 171.754. LENGTH OF CREDIT. The credit established shall be claimed in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based upon the period during which the qualifying jobs were created.

Sec. 171.755. LIMITATIONS. (a) The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.756, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(b) The total credit claimed under this subchapter and Subchapters O and Q for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report after any other applicable credits.

(c) A corporation that establishes its eligibility for a credit under this subchapter is not eligible to establish a credit under Subchapter O.

Sec. 171.756. CARRYFORWARD. (a) If a corporation is eligible for a credit from an installment that exceeds the limitations under Section 171.755(a) or (b), the corporation may carry the unused credit forward for not more than five consecutive reports.

(b) A carryforward is considered the remaining portion of an installment that cannot be claimed in the current year because of the tax limitation under Section 171.755. A carryforward is added to the next year's installment of the credit in determining the tax limitation for that year. A credit carryforward from a previous report is considered to be utilized before the current year installment.

Sec. 171.757. CERTIFICATION OF ELIGIBILITY. (a) For the initial and each succeeding report in which a credit is claimed under this subchapter, the corporation shall file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the corporation is eligible for the credit and is in compliance with Section 171.752.

(b) The burden of establishing entitlement to and the value of the credit is on the corporation.

(c) If, in one of the five years in which the installment of a credit accrues, the number of the corporation's full-time employees falls below the number of full-time employees the corporation had in the year in which the corporation qualified for the credit, the credit expires and the corporation may not take any remaining installment of the credit.

(d) Notwithstanding Subsection (c), the corporation may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under Section 171.756.

Sec. 171.758. ASSIGNMENT PROHIBITED. A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Sec. 171.759. BIENNIAL REPORT BY COMPTROLLER. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the total number of jobs created by corporations that claim a credit under this subchapter and the average and median annual wage of those jobs;

(2) the total amount of credits applied against the tax under this chapter and the amount of unused credits including:

(A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter; and

(C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees;

(3) a breakdown of the two-digit standard industrial classification of businesses claiming a credit under this subchapter;



(4) the geographical distribution of the credits claimed under this subchapter; and

(5) the impact of the credit provided under this subchapter on employment, personal income, and capital investment in this state and on state tax revenues.

(b) The final report issued prior to the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.

(c) The comptroller may not include in the report information that is confidential by law.

(d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the corporation's job creation in this state and any other information necessary to complete the report required under this section.

(e) The comptroller shall provide notice to the members of the legislature that the report required under this section is available on request.

Sec. 171.760. COMPTROLLER POWERS AND DUTIES. The comptroller shall adopt rules and forms necessary to implement this subchapter.

Sec. 171.761. EXPIRATION. (a) This subchapter expires December 31, 2009.

(b) The expiration of this subchapter does not affect the carryforward of a credit under Section 171.756 or those credits for which a corporation is eligible before the date this subchapter expires.

Explanation: This change is necessary to provide a franchise tax credit for certain job creation activities.

(7) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section 16 of the bill, adding Subchapter Q, Chapter 171, Tax Code, to read as follows:

SECTION 16. Chapter 171, Tax Code, is amended by adding Subchapter Q to read as follows:

#### SUBCHAPTER Q. TAX CREDITS FOR CERTAIN CAPITAL INVESTMENTS

Sec. 171.801. DEFINITIONS. In this subchapter:

(1) "Agricultural processing," "central administrative offices," "county average weekly wage," "data processing," "distribution," "manufacturing," "qualified business," "research and development," and "warehousing" have the meanings assigned those terms by Section 171.751.

(2) "Qualified capital investment" means tangible personal property first placed in service in a strategic investment area, or first placed in service in a county with a population of less than 50,000 by a corporation primarily engaged in agricultural processing, and that is described in Section 1245(a), Internal Revenue Code, such as engines, machinery, tools, and implements used in a trade or business or held for investment and subject to an allowance for depreciation, cost recovery under the accelerated cost recovery system, or amortization. The term does not include real property or buildings and their structural components. Property that is leased under a capitalized lease is considered a "qualified capital investment," but property that is leased under an operating lease is not considered a "qualified capital investment." Property expensed under Section 179, Internal Revenue Code, is not considered a "qualified capital investment."

(3) "Strategic investment area" has the meaning assigned that term by Section 171.721.

Sec. 171.802. ELIGIBILITY. (a) A qualified business is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter.

(b) To qualify for the credit authorized under this subchapter, a qualified business must:

(1) pay an average weekly wage, at the location with respect to which the credit is claimed, that is at least 110 percent of the county average weekly wage;

(2) offer coverage to all full-time employees at the location with respect to which the credit is claimed by a group health benefit plan, as defined by Section 171.751, for which the business pays at least 80 percent of the premiums or other charges assessed under the plan for the employees; and

(3) make a minimum \$500,000 qualified capital investment.

(c) A corporation may claim a credit or take a carryforward credit without regard to whether the strategic investment area in which it made the qualified capital investment subsequently loses its designation as a strategic investment area, if applicable.

Sec. 171.803. CALCULATION OF CREDIT. A corporation may establish a credit equal to 7.5 percent of the qualified capital investment during the period upon which the tax is based.

Sec. 171.804. LENGTH OF CREDIT. The credit established shall be claimed in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based upon the period during which the qualified capital investment was made.

Sec. 171.805. LIMITATIONS. (a) The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.806, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(b) The total credit claimed under this subchapter and Subchapters O and P for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report after any other applicable tax credits.

(c) A corporation that establishes its eligibility for a credit under this subchapter is not eligible to claim a franchise tax reduction authorized under Section 171.1015.

Sec. 171.806. CARRYFORWARD. (a) If a corporation is eligible for a credit from an installment that exceeds the limitation under Section 171.805(a) or (b), the corporation may carry the unused credit forward for not more than five consecutive reports.

(b) A carryforward is considered the remaining portion of an installment that cannot be claimed in the current year because of the tax limitation under Section 171.805. A carryforward is added to the next year's installment of the credit in determining the tax limitation for that year. A credit carryforward from a previous report is considered to be utilized before the current year installment.

Sec. 171.807. CERTIFICATION OF ELIGIBILITY. (a) For the initial and each succeeding report in which a credit is claimed under this subchapter, the corporation shall file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the corporation is eligible for the credit and is in compliance with Section 171.802.

(b) The burden of establishing entitlement to and the value of the credit is on the qualified business.

(c) A credit expires under this subchapter and the corporation may not take any remaining installment of the credit if in one of the five years in which the installment of a credit accrues, the qualified business:

- (1) disposes of the qualified capital investment;
- (2) takes the qualified capital investment out of service;
- (3) moves the qualified capital investment out of this state; or
- (4) fails to pay an average weekly wage as required by Section 171.802.

(d) Notwithstanding Subsection (c), the corporation may take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under Section 171.806.

Sec. 171.808. ASSIGNMENT PROHIBITED. A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Sec. 171.809. BIENNIAL REPORT BY COMPTROLLER. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the total amount of qualified capital investments made by corporations that claim a credit under this subchapter and the average and median wages paid by those corporations;

(2) the total amount of credits applied against the tax under this chapter and the amount of unused credits, including:

(A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter;

(C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees; and

(D) the two-digit standard industrial classification of corporations claiming a credit under this subchapter;

(3) the geographical distribution of the qualified capital investments on which tax credit claims are made under this subchapter; and

(4) the impact of the credit provided under this subchapter on employment, capital investment, personal income, and state tax revenues.

(b) The final report issued before the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.

(c) The comptroller may not include in the report information that is confidential by law.

(d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the corporation's capital investment in this state and any other information necessary to complete the report required under this section.

(e) The comptroller shall provide notice to the members of the legislature that the report required under this section is available on request.

Sec. 171.810. COMPTROLLER POWERS AND DUTIES. The comptroller shall adopt rules and forms necessary to implement this subchapter.

Sec. 171.811. EXPIRATION. (a) This subchapter expires December 31, 2009.

(b) The expiration of this subchapter does not affect the carryforward of a credit under Section 171.806 or those credits for which a corporation is eligible before the date this subchapter expires.

Explanation: This change is necessary to provide a franchise tax credit for certain capital investments.

(8) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section 17 of the bill, adding Subchapter R, Chapter 171, Tax Code, to read as follows:

SECTION 17. Chapter 171, Tax Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. TAX CREDIT FOR CONTRIBUTIONS TO  
BEFORE AND AFTER SCHOOL PROGRAMS

Sec. 171.831. DEFINITION. In this subchapter, "school-age child care" means care provided before and after school and during the summer and holidays for children who are at least five years of age but younger than 14 years of age.

Sec. 171.832. CREDIT. A corporation that meets the eligibility requirements under this subchapter is entitled to a credit in the amount allowed by this subchapter against the tax imposed under this chapter.

Sec. 171.833. EXPENDITURES ELIGIBLE FOR CREDIT. (a) A corporation may claim a credit under this subchapter only for a qualifying expenditure relating to the operation of a school-age child care program that is operated by:

(1) a nonprofit organization licensed under Chapter 42, Human Resources Code;

(2) a nonprofit, accredited educational facility or by another nonprofit entity under contract with the educational facility, if the Texas Education Agency or Southern Association of Colleges and Schools has approved the curriculum content of the program operated under the contract; or

(3) a county or municipality, if the governing body of the county or municipality annually adopts standards of care by order or ordinance that include minimum child-to-staff ratios, staff qualifications, facility, health, and safety standards, and mechanisms for monitoring and enforcing the standards.

(b) A qualifying expenditure includes an expenditure for:

(1) constructing, renovating, or remodeling a facility or structure to be used by the program;

(2) purchasing necessary equipment, supplies, or food to be used in the program; or

(3) operating the program, including administrative and staff costs.

Sec. 171.834. AMOUNT; LIMITATIONS. (a) The amount of the credit is equal to 30 percent of a corporation's qualifying expenditures.

(b) A corporation may claim a credit under this subchapter for a qualifying expenditure during an accounting period only against the tax owed for the corresponding reporting period.

(c) A corporation may not claim a credit in an amount that exceeds 50 percent of the amount of net franchise tax due, after applying any other credits, for the reporting period.

Sec. 171.835. APPLICATION FOR CREDIT. (a) A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

(b) The comptroller shall adopt a form for the application for the credit. A corporation must use this form in applying for the credit.

Sec. 171.836. ASSIGNMENT PROHIBITED. A corporation may not convey, assign, or transfer a credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Explanation: This change is necessary to provide a franchise tax credit for contributions to before and after school programs.

(9) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section 18 of the bill to read as follows:

SECTION 18. The comptroller may combine the reports required under Subchapters N, O, P, and Q, Chapter 171, Tax Code, as added by this Act, into a single report.

Explanation: This change is necessary to allow the comptroller to combine certain required franchise tax reports into a single report.

(10) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section 19 of the bill to read as follows:

SECTION 19. (a) Before the beginning of the 79th Legislature, Regular Session, the comptroller of public accounts shall report to the legislature and the governor on the effect that exempting small corporations from the franchise tax under Section 171.002, Tax Code, as amended by this Act, has had on the economy of this state, including on the creation of new jobs in this state.

(b) The report must include:

(1) an assessment of the intended purposes of the exemptions and whether the exemptions are achieving those objectives;

(2) an assessment of whether the exemptions have created any problems in the administration of the franchise tax; and

(3) a recommendation for retaining, eliminating, or amending the exemptions.

(c) The comptroller of public accounts may include the report in any other report made to the legislature.

Explanation: This change is necessary to require the comptroller to prepare a report on the effect of the change in the exemption for small corporations from the franchise tax.

(11) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add text incorporating a new Section 20 of the bill, providing effective date and transitional provisions, to read as follows:

SECTION 20. (a) Except as otherwise provided by this section, this Act takes effect October 1, 1999.

(b) The changes in law made by this Act by amending Section 151.311(b), Tax Code, and adding Section 151.326, Tax Code, take effect on the earliest day that they may take effect under Section 39, Article III, Texas Constitution. The comptroller of public accounts may adopt emergency rules for the implementation of those provisions.

(c) The changes in law made by this Act by amending Section 151.313(a), Tax Code, take effect April 1, 2000.

(d) The changes in law made by this Act by amending Sections 171.002(d), 171.203(a), and 171.204, Tax Code, and adding Subchapters N, O, P, Q, and R, Chapter 171, Tax Code, take effect January 1, 2000, and apply only to a report originally due on or after that date.

(e) A corporation may claim a credit under Subchapters N, O, P, Q, and R, Chapter 171, Tax Code, as added by this Act, only for expenses and payments incurred, qualified investments or expenditures made, or new jobs created on or after January 1, 2000.

(f) The changes in law made by this Act do not affect taxes imposed before the effective date of those changes, and the law in effect before the effective date of those changes is continued in effect for purposes of the liability for and collection of those taxes.

Explanation: This change is necessary to provide for the effective date of certain changes to law made by the bill and to provide transition provisions for certain changes to law made by the bill.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 819 ADOPTED**

Senator Moncrief called from the President's table the Conference Committee Report on **HB 819**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Moncrief, the Conference Committee Report was adopted by a viva voce vote.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 153 ADOPTED**

Senator Moncrief called from the President's table the Conference Committee Report on **HB 153**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Moncrief, the Conference Committee Report was adopted by a viva voce vote.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2611 ADOPTED**

Senator Moncrief called from the President's table the Conference Committee Report on **HB 2611**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Moncrief, the Conference Committee Report was adopted by a viva voce vote.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 577 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **HB 577**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Nelson, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 713 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **HB 713**. The Conference Committee Report was again filed with the Senate on Friday, May 28, 1999.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**(Senator Truan in Chair)**

**REMARKS ORDERED PRINTED**

Senator Lucio submitted the following remarks regarding **HB 713** to be printed in the *Senate Journal*:

Members, I want to thank my good friend, Senator Ellis, for agreeing to recommit the conference committee on his Texas Hope Scholarship and to amend the Conference Committee Report to include our **SB 1902**, the Steven Gonzales-Prisoner of War Higher Education Act.

Senator Ellis has reaffirmed the state's commitment to a true Texas hero who unfortunately experienced the horrors of being a prisoner of war.

I am sure the Gonzales family thanks Senator Ellis and Representative Henry Cuellar for this admirable gesture. Thank you.

LUCIO

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 358 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **SB 358**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

**GUEST PRESENTED**

The Presiding Officer acknowledged the presence of Governor George W. Bush in the Senate Chamber.

The Senate welcomed Governor Bush.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 597 ADOPTED**

Senator Lucio called from the President's table the Conference Committee Report on **HB 597**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Lucio, the Conference Committee Report was adopted by a viva voce vote.

(President in Chair)

**SENATE RULE 12.09(b) SUSPENDED  
(Printing and Notice of Conference Committee Reports)**

On motion of Senator Brown and by unanimous consent, Senate Rule 12.09(b) was suspended for **SB 766** in order to consider the Conference Committee Report at this time.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 766 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **SB 766**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by the following vote: Yeas 21, Nays 8.

Yeas: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Harris, Haywood, Jackson, Lucio, Madla, Moncrief, Nelson, Nixon, Ogden, Ratliff, Shapiro, Shapleigh, Sibley.

Nays: Barrientos, Bernsen, Gallegos, Lindsay, Truan, Wentworth, West, Zaffirini.

Absent: Whitmire.

Absent-excused: Luna.

(Senator Truan in Chair)

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1603 ADOPTED**

Senator Harris called from the President's table the Conference Committee Report on **HB 1603**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Harris, the Conference Committee Report was adopted by a viva voce vote.

**SENATE RESOLUTION 1193**

Senator Barrientos offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences on **HB 1059**, relating to the regulation of amusement rides, to consider and take action on the following matters:

(1) Senate Rules 12.03(1), (2), (3), and (4) are suspended to permit the committee to modify the existing text and add additional text, in Section 3 of the bill, to added Section 4(d), Article 21.60, Insurance Code, to read as follows:

(d) A person who operates an amusement ride in this state shall maintain accurate records of any governmental action taken in any state relating to that particular amusement ride, including an inspection resulting in the repair or replacement of equipment used in the operation of the amusement ride. The operator shall file with the



commissioner on a quarterly basis a report on a form designed by the commissioner describing each governmental action taken in the quarter covered by the report for which the operator is required by this subsection to maintain records. A report is not required under this section in any quarter in which no reportable governmental action was taken in any state in which the person operated the amusement ride.

Explanation: This change is necessary to clarify that records of governmental actions are required to be maintained only for the specific amusement ride against which the actions are taken rather than for all amusement rides of a particular classification.

(2) Senate Rules 12.03(1), (3), and (4) are suspended to permit the committee to modify the existing text and add additional text, in Section 6 of the bill, to amended Section 9(a), Article 21.60, Insurance Code, to read as follows:

(a) A person commits an offense if the person [he] fails to comply with any requirement under Section 4, ~~[or]~~ 5, 10(e), 10(f), 10(g), or 10(k) of this article or under any rule adopted by the commissioner under Section 4 of this article.

Explanation: This change is necessary to create a criminal offense for operating an amusement ride after a death has occurred on the ride.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1622 ADOPTED**

Senator Harris called from the President's table the Conference Committee Report on **HB 1622**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Harris, the Conference Committee Report was adopted by a viva voce vote.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 869 ADOPTED**

Senator Harris called from the President's table the Conference Committee Report on **HB 869**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Harris, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1884 ADOPTED**

Senator Harris called from the President's table the Conference Committee Report on **HB 1884**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Harris, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1140 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 1140**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Armbrister, the Conference Committee Report was adopted by a viva voce vote.

**SENATE RESOLUTION 1191**

Senator Duncan offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, That Senate Rule 12.03 be suspended in part, as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences on **HB 3211**, relating to state fiscal matters, to consider and take action on the following specific matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add additional text not included in either the house or senate version of the bill, consisting of a new article of the bill, to read as follows:

**ARTICLE 2. TECHNICAL CHANGES  
REGARDING TAXES AND FEES**

SECTION 2.01. Subsection (g), Article 102.075, Code of Criminal Procedure, is amended to read as follows:

(g) A municipality or county may retain 10 percent of the money collected under this article as a service fee for the collection if the municipality or county remits the funds to the comptroller within the period prescribed in Subsection (f). The municipality or county may retain any interest accrued on the money if the custodian of the money deposited in the treasury keeps records of the amount of money collected under this article that is on deposit in the treasury and remits the funds to the comptroller within the period prescribed in Subsection (f).

SECTION 2.02. Section 403.014(b), Government Code, is amended to read as follows:

(b) The report must include:

(1) an analysis of each special provision that reduces the amount of tax payable, to include an estimate of the loss of revenue for a six-year period including the current fiscal biennium and a citation of the statutory or legal authority for the provision; and

(2) for provisions reducing revenue by more than one percent of total revenue for a tax covered by this section:

(A) ~~[-]~~ the effect of each provision on the distribution of the tax burden by income class and industry or business class, as appropriate; and

(B) the effect of each provision on total income by income class.

SECTION 2.03. Section 403.0141(c), Government Code, is amended to read as follows:

(c) To the extent data is available, the incidence impact analysis under Subsections (a) and (b):

(1) shall evaluate the tax burden:

(A) on the overall income distribution, using a systemwide incidence measure or other appropriate measures of equality and inequality; and

(B) on income classes, including, at a minimum, quintiles of the income distribution, on renters and homeowners, on industry or business classes, as appropriate, and on various types of business organizations;

(2) may evaluate the tax burden:

(A) by other appropriate taxpayer characteristics, such as whether the taxpayer is a farmer, rancher, retired elderly, or resident or nonresident of the state; and

(B) by distribution of impact on consumers, labor, capital, and out-of-state persons and entities; ~~and~~

(3) shall evaluate the effect of each tax on total income by income group; and

(4) shall:

(A) use the broadest measure of economic income for which reliable data is available; and

(B) include a statement of the incidence assumptions that were used in making the analysis.

SECTION 2.04. Section 12(b), Article 1.14-1, Insurance Code, is amended to read as follows:

(b) The report shall be filed and any tax due shall be paid by the insured or by any other person designated by the insured. The report and tax are due on or before May 15 ~~March 1~~ of the calendar year after the calendar year in which the insurance was procured, continued, or renewed or on another date prescribed by the comptroller.

SECTION 2.05. Sections 12(a) and (b), Article 1.14-2, Insurance Code, are amended to read as follows:

(a) The premiums charged for surplus lines insurance are subject to a premium receipts tax of 4.85 percent of gross premiums charged for such insurance. The term premium includes all premiums, membership fees, assessments, dues or any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. The surplus lines agent shall collect from the insured the amount of the tax at the time of delivery of the cover note, certificate of insurance, policy or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. No agent shall absorb such tax nor shall any agent, as an inducement for insurance or for any other reason, rebate all or any part of such tax or his commission. The surplus lines agent shall file a report and pay taxes to the comptroller on or before March 1 of each year on forms prescribed by the comptroller. The [the] amount of taxes shall be based on gross premiums written or received for such insurance placed through an eligible surplus lines insurer during the calendar year ending on the preceding December 31. A tax prepayment shall be required any time accrued taxes due equal or exceed \$70,000. The prepayment of the accrued taxes, with a form prescribed by the comptroller, shall be due by the 15th day of the month following the month in which accrued taxes total \$70,000 [and shall pay to the comptroller the tax as provided for by this Article]. If a surplus lines policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocated to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as premiums which may be subject to taxation by any other state or states. Premiums that are properly allocated to any other state or states that are specifically exempt from taxation under the regulations of that state or states are not taxable in this state.

Premiums on risks or exposures which are properly allocated to federal waters, international waters or under the jurisdiction of a foreign government shall not be taxable by this state. In event of cancellation and rewriting of any surplus lines insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(b) All surplus lines premium receipt taxes collected by a surplus lines agent are trust funds in his hands ~~[and the property of this state. Such funds shall be maintained by the surplus lines agent in a separate account and shall not be mingled with any other funds, either business or private].~~ Any surplus lines agent who fails or refuses to pay over to the state the surplus lines premium receipts tax at the time required by ~~[in]~~ this section, or who fraudulently withholds or appropriates or otherwise uses such money or any portions thereof belonging to the state is guilty of theft and shall be punished as provided by law for the crime of theft, irrespective of whether any such surplus lines agent has or claims to have any interest in such money so received by him.

SECTION 2.06. Section 9(b), Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), is amended to read as follows:

(b) Premiums on policies, insurance contracts, or agreements with health maintenance organizations established under this Act are not subject to any state tax, regulatory fee, or surcharge, including premium or maintenance taxes or fees.

SECTION 2.07. Section 11(b), Texas Public School Employees Group Insurance Act (Article 3.50-4, Insurance Code), is amended to read as follows:

(b) A premium or contribution on a policy, insurance contract, or agreement authorized as provided by this article is not subject to any state tax, regulatory fee, or surcharge, including premium or maintenance taxes or fees.

SECTION 2.08. Section 326.029(a), Local Government Code, is amended to read as follows:

(a) If a majority of the votes received in the election favor the creation of the district and the adoption of the sales and use tax, the commissioners court shall by resolution or order declare that the district is created and shall declare the amount of the local sales and use tax adopted and enter the result in its minutes.

SECTION 2.09. Section 326.092(a), Local Government Code, is amended to read as follows:

(a) Chapter 323, Tax Code, to the extent not inconsistent with this chapter, governs the imposition, computation, administration, and governance of the tax under this subchapter, except that Sections 323.101, 323.105, ~~[and] 323.404, and 323.406~~ through 323.408, Tax Code, do not apply.

SECTION 2.10. Section 101.003, Tax Code, is amended by adding Subdivision (13) to read as follows:

(13) "Tax" means a tax, fee, assessment, charge, or other amount that the comptroller is authorized to administer.

SECTION 2.11. Section 111.0041(b), Tax Code, is amended to read as follows:

(b) This section prevails over any other conflicting provision of this title ~~[except Section 191.024(b) of this code].~~

SECTION 2.12. Section 111.023, Tax Code, is amended to read as follows:

Sec. 111.023. WRITTEN AUTHORIZATION. (a) The comptroller may require that a report, return, declaration, claim for refund, or other document that is required or permitted to be filed with the comptroller and that is submitted by an attorney, accountant, or other representative of a taxpayer ~~[person]~~ on behalf of the

taxpayer [~~person~~] be accompanied by express written authorization of the taxpayer [~~person~~] in whose name or on whose behalf it is purportedly submitted.

(b) An officer, director, or employee of the taxpayer whose duties include administering the taxpayer's rights and responsibilities with the comptroller may sign the written authorization. The authorization must include the title and telephone number of the officer, director, or employee who signs the authorization for verification by the comptroller.

(c) The comptroller may impose a requirement of Subsection (b) on a taxpayer's assignment of a claim for refund.

SECTION 2.13. Section 111.104(e), Tax Code, is amended to read as follows:

(e) This section applies to all taxes and license fees collected or administered by the comptroller, except the state property tax [~~and those taxes that qualify for refund allowed under Section 151.318(g) or (n)~~].

SECTION 2.14. Section 111.107, Tax Code, is amended to read as follows:

Sec. 111.107. WHEN REFUND OR CREDIT IS PERMITTED. Except as otherwise expressly provided, a person may request a refund or a credit or the comptroller may make a refund or issue a credit for the overpayment of a tax imposed by this title at any time before the expiration of the period during which the comptroller may assess a deficiency for the tax and not thereafter unless the refund or credit is requested:

(1) under Subchapter B of Chapter 112 and the refund is made or the credit is issued under a court order;

(2) under the provision of Section 111.104(c)(3) applicable to a refund claim filed after a jeopardy or deficiency determination becomes final; or

(3) under Chapter 153, except Section 153.1195(e), 153.121(d), 153.2225(e), or 153.224(d); ~~or~~

~~[(4) under Section 151.318(g) or (n)].~~

SECTION 2.15. Sections 151.310(c) and (e), Tax Code, are amended to read as follows:

(c) An organization that qualifies for an exemption under Subsection (a)(1) or (a)(2) of this section, and each bona fide chapter of the organization, may hold two tax-free sales or auctions under this subsection during a calendar year and each tax-free sale or auction may continue for one day only. The sale of a taxable item the sales price of which is \$5,000 or less by a qualified organization or chapter of the organization at a tax-free sale or auction is exempted from the sales tax imposed by Subchapter C of this chapter, except that a taxable item manufactured by or donated to the qualified organization or chapter of the organization may be sold tax free regardless of the sales price to any purchaser other than the donor. The storage, use, or consumption of a taxable item that is acquired from a qualified organization or chapter of the organization at a tax-free sale or auction and that is exempted under this subsection from the taxes imposed by Subchapter C of this chapter is exempted from the use tax imposed by Subchapter D of this chapter until the item is resold or subsequently transferred.

(e) A nonprofit hospital or hospital system that qualifies for an exemption under Subsection (a)(2) shall provide community benefits that include charity care and government-sponsored indigent health care [~~community benefits~~] as set forth in Subchapter D, Chapter 311, Health and Safety Code. [~~Subdivision (1), (2), (3), (4), (5), (6), (7), or (8) below:~~

~~[(1) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system;~~

~~[(2) charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of the hospital's or hospital system's net patient revenue;~~

~~[(3) charity care and government-sponsored indigent health care are provided in an amount equal to at least 100 percent of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax;~~

~~[(4) for tax periods beginning before January 1, 1996, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least three percent of net patient revenue;~~

~~[(5) for tax periods beginning after December 31, 1995, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue;~~

~~[(6) a nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current year or in either of the previous two fiscal years is considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and is considered in compliance with the standards provided by this subsection;~~

~~[(7) a hospital operated on a nonprofit basis that is located in a county with a population of less than 50,000 and in which the entire county or the population of the entire county has been designated as a health professionals shortage area is considered to be in compliance with the standards provided by this subsection; or~~

~~[(8) a hospital providing health care services to inpatients or outpatients without receiving any payment for providing those services from any source, including the patient or person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other state or local indigent care program but excluding charitable donations, legacies, bequests, or grants or payments for research, is considered to be in compliance with the standards provided by this subsection.~~

~~[For purposes of satisfying Subdivision (5), a hospital or hospital system may not change its existing fiscal year unless the hospital or hospital system changes its ownership or corporate structure as a result of a sale or merger.~~

~~[For purposes of this subsection, a hospital that satisfies Subdivision (1), (6), (7), or (8) shall be excluded in determining a hospital system's compliance with the standards provided by Subdivision (2), (3), (4), or (5).~~

~~[For purposes of this subsection, the terms "charity care," "government-sponsored indigent health care," "health care organization," "hospital system," "net patient revenue," "nonprofit hospital," and "tax-exempt benefits" have the meanings set forth in Sections 311.031 and 311.042, Health and Safety Code. A determination of the amount of community benefits and charity care and government-sponsored indigent health care provided by a hospital or hospital system and the hospital's or hospital system's compliance with the requirements of this subsection and Section 311.045;~~

Health and Safety Code, shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system:

~~[The providing of charity care and government-sponsored indigent health care in accordance with Subdivision (1) shall be guided by the prudent business judgment of the hospital which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital, such as the hospital's volume of Medicare and Medicaid patients. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's decision along with other factors which may be unique to the hospital. The formulas contained in Subdivisions (2), (3), (4), and (5) shall also not be considered determinative of a reasonable amount of charity care and government-sponsored indigent health care.~~

~~[The requirements of this subsection shall not apply to the extent a hospital or hospital system demonstrates that reductions in the amount of community benefits, charity care, and government-sponsored indigent health care are necessary to maintain financial reserves at a level required by a bond covenant, are necessary to prevent the hospital or hospital system from endangering its ability to continue operations, or if the hospital or hospital system, as a result of a natural or other disaster, is required substantially to curtail its operations:~~

~~[In any fiscal year that a hospital or hospital system, through unintended miscalculation, fails to meet any of the standards in this subsection, the hospital or hospital system shall not lose its tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall from the previous fiscal year. A hospital or hospital system may apply this provision only once every five years.]~~

SECTION 2.16. Section 151.3101, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) In this section, "educational organization" includes an entity described by Section 61.003(8) or (15), Education Code.

SECTION 2.17. Section 151.312, Tax Code, is amended to read as follows:

Sec. 151.312. PERIODICALS AND WRITINGS OF RELIGIOUS, PHILANTHROPIC, CHARITABLE, HISTORICAL, SCIENTIFIC, AND SIMILAR ORGANIZATIONS. Periodicals and writings, including those presented on audio tape, videotape, and computer disk, that are published and [or] distributed by a religious, philanthropic, charitable, historical, scientific, or other similar organization that is not operated for profit, but excluding an educational organization, are exempted from the taxes imposed by this chapter.

SECTION 2.18. Section 151.317, Tax Code, is amended to read as follows:

Sec. 151.317. GAS AND ELECTRICITY. (a) Subject to Subsection (d), gas [Gas] and electricity are exempted from the taxes imposed by this chapter [except] when sold for:

(1) residential use;

(2) use in powering equipment exempt under Section 151.318 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage of food for immediate consumption;

(3) use in lighting, cooling, and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of food for immediate consumption;

(4) use directly in exploring for, producing, or transporting, a material extracted from the earth;

(5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;

(7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;

(8) use directly in providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades; or

(9) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale [commercial use].

(b) The sale, production, distribution, lease, or rental of, and the use, storage, or other consumption in this state of, gas and electricity sold for the uses listed in Subsection (a), [except when sold for residential or commercial use,] are exempted from the taxes imposed by a municipality [city] under Chapter 321 except [the Local Sales and Use Tax Act, unless sales for residential use are further exempted by the city] as provided by Section 321.105 [the Local Sales and Use Tax Act].

(c) In this section, "residential [-

~~(1)~~ "Residential] use" means use:

(1) ~~(A)~~ in a family dwelling or in a multifamily apartment or housing complex or building or in a part of a building occupied as a home or residence when the use is by the owner of the dwelling, apartment, complex, or building or part of the building occupied; or

(2) ~~(B)~~ in a dwelling, apartment, house, or building or part of a building occupied as a home or residence when the use is by a tenant who occupies the dwelling, apartment, house, or building or part of a building under a contract for an express initial term for longer than 29 consecutive days.

(d) To qualify for the exemptions in Subsections (a)(2)-(8), the gas or electricity must be sold to the person using the gas or electricity in the exempt manner. For purposes of this subsection, the use of gas or electricity in an exempt manner by an independent contractor engaged by the purchaser of the gas or electricity to perform one or more of the exempt activities identified in Subsections (a)(2)-(8) is considered use by the purchaser of the gas or electricity.

(e) Natural gas or electricity used during a regular monthly billing period for both exempt and taxable purposes under a single meter is totally exempt or taxable based on the predominant use of the natural gas or electricity measured by that meter. The comptroller may prescribe by rule the procedures by which a purchaser must establish the predominant use of the natural gas or electricity.

~~[(2) "Commercial use" means use by a person engaged in selling, warehousing, or distributing a commodity or a professional or personal service, but does not include:~~



~~[(A) use by a person engaged in:~~

~~[(i) processing tangible personal property for sale as tangible personal property, other than preparation or storage of food for immediate consumption;~~

~~[(ii) exploring for, producing, or transporting, a material extracted from the earth;~~

~~[(iii) agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;~~

~~[(iv) electrical processes such as electroplating, electrolysis, and cathodic protection;~~

~~[(v) the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property; or~~

~~[(vi) providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades; or~~

~~[(B) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale.]~~

SECTION 2.19. Section 151.318, Tax Code, is amended by amending Subsections (a), (c), (o), (q), and (s), and adding Subsections (f) and (t) to read as follows:

(a) The following items are exempted from the taxes imposed by this chapter if sold, leased, or rented to, or stored, used, or consumed by a manufacturer:

(1) tangible personal property that will become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale;

(2) tangible personal property directly used or consumed in or during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary or essential to the manufacturing, processing, or fabrication operation and directly makes or causes a chemical or physical change to:

(A) the product being manufactured, processed, or fabricated for ultimate sale; or

(B) any intermediate or preliminary product that will become an ingredient or component part of the product being manufactured, processed, or fabricated for ultimate sale;

(3) services performed directly on the product being manufactured prior to its distribution for sale and for the purpose of making the product more marketable;

(4) actuators, steam production equipment and its fuel, in-process flow through tanks, cooling towers, generators, heat exchangers, transformers and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are related to the transformers, electronic control room equipment, computerized control units, pumps, compressors, and hydraulic units, that are used to power, supply, support, or control equipment that qualifies for exemption under Subdivision (2) or (5) or to generate electricity, chilled water, or steam for ultimate sale; transformers located at an electric generating facility that increase the voltage of electricity generated for ultimate sale, the electrical cable that carries the electricity from the electric generating equipment to the step-up transformers, and the switches, breakers, capacitor banks,

regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are related to the step-up transformers; and transformers that decrease the voltage of electricity generated for ultimate sale and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are related to the step-down transformers; [and]

(5) tangible personal property [machinery, equipment, and replacement parts or accessories] used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the [their] use or consumption of the property is necessary and essential to a pollution control process;

(6) lubricants, chemicals, chemical compounds, gases, or liquids that are used or consumed during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if their use or consumption is necessary and essential to prevent the decline, failure, lapse, or deterioration of equipment exempted by this section;

(7) gases used on the premises of a manufacturing plant to prevent contamination of raw material or product, or to prevent a fire, explosion, or other hazardous or environmentally damaging situation at any stage in the manufacturing process or in loading or storage of the product or raw material on premises;

(8) tangible personal property used or consumed during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary and essential to a quality control process;

(9) safety apparel or work clothing that is used during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if:

(A) the manufacturing process would not be possible without the use of the apparel or clothing; and

(B) the apparel or clothing is not resold to the employee;

(10) tangible personal property used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary and essential to comply with federal, state, or local laws or rules that establish requirements related to public health; and

(11) tangible personal property specifically installed to:

(A) reduce water use and wastewater flow volumes from the manufacturing, processing, fabrication, or repair operation;

(B) reuse and recycle wastewater streams generated within the manufacturing, processing, fabrication, or repair operation; or

(C) treat wastewater from another industrial or municipal source for the purpose of replacing existing freshwater sources in the manufacturing, processing, fabrication, or repair operation.

(c) The exemption does not include:

(1) intraplant transportation equipment, including intraplant transportation equipment used to move a product or raw material in connection with the manufacturing process and specifically including all piping and conveyor systems, provided that the following remain eligible for the exemption:

(A) piping or conveyor systems that are [is] a component part of a single item of manufacturing equipment or pollution control equipment eligible for the exemption under Subsection (a)(2), (a)(4), or (a)(5);

(B) piping through which the product or an intermediate or preliminary product that will become an ingredient or component part of the product is recycled or circulated in a loop between the single item of manufacturing equipment and the ancillary equipment that supports only that single item of manufacturing equipment if the single item of manufacturing equipment and the ancillary equipment operate together to perform a specific step in the manufacturing process; and

(C) piping through which the product or an intermediate or preliminary product that will become an ingredient or component part of the product is recycled back to another single item of manufacturing equipment and its ancillary equipment in the same manufacturing process [remains eligible for the exemption];

~~(2) [maintenance or janitorial supplies or equipment or other machinery, equipment, materials, or supplies that are used incidentally in a manufacturing, processing, or fabrication operation;~~

~~[(3)] hand tools;~~

(3) maintenance supplies not otherwise exempted under this section, maintenance equipment, janitorial supplies or equipment, [(4)] office equipment or supplies, equipment or supplies used in sales or distribution activities, research or development of new products, or transportation activities[; or other tangible personal property not used in an actual manufacturing, processing, or fabrication operation]; [or]

(4) [(5)] machinery and equipment or supplies to the extent not otherwise exempted under this section used to maintain or store tangible personal property; or

(5) tangible personal property used in the transmission or distribution of electricity, including transformers, cable, switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units not otherwise exempted under this section, and lines, conduit, towers, and poles.

(f) For purposes of Subsection (c)(1), piping through which material is transported forward from one single item of manufacturing equipment and its ancillary support equipment to another single item of manufacturing equipment and its ancillary support equipment is not considered a component part of a single item of manufacturing equipment and is not exempt. An integrated group of manufacturing and processing machines and ancillary equipment that operate together to create or produce the product or an intermediate or preliminary product that will become an ingredient or component part of the product is not a single item of manufacturing equipment.

(o) The production of a publication for the dissemination of news of a general character and of a general interest that is printed on newsprint and distributed to the general public free of charge at a daily, weekly, or other short interval is considered "manufacturing" for purposes of ~~[Subsections (d)-(m) of]~~ this section.

(q) For purposes of Subsection (b), "semiconductor fabrication cleanrooms and equipment" means all tangible personal property, without regard to whether the property is affixed to or incorporated into realty, used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually contained in the cleanroom environment. The term includes integrated systems, fixtures, and piping, all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances, and production equipment and machinery. The term does

not include the building or a permanent, nonremovable component of the building, that houses the cleanroom environment. The term includes moveable cleanroom partitions and cleanroom lighting. "Semiconductor fabrication cleanrooms and equipment" are not "intraplant [~~interplant~~] transportation equipment" [or "~~used incidentally in a manufacturing, processing, or fabrication operation~~"] as that term is [those terms are] used in Subsection [Subsections] (c)(1) [~~and (c)(2)~~].

(s) The following do not apply to the semiconductor fabrication cleanrooms and equipment in Subsection (q):

(1) limitations in Subsection (a)(2) that refer to tangible personal property directly causing chemical and physical changes to the product being manufactured, processed, or fabricated for ultimate sale;

(2) Subsection (c)(1); and

(3) Subsection (c)(4)[~~(5)~~].

(t) In addition to the other items exempted under this section, pre-press machinery, equipment, and supplies, including computers, cameras, film, film developing chemicals, veloxes, plate-making machinery, plate metal, litho negatives, color separation negatives, proofs of color negatives, production art work, and typesetting or composition proofs, that are necessary and essential to and used in connection with the printing process are exempted from the tax imposed by this chapter if they are purchased by a person engaged in:

(1) printing or imprinting tangible personal property for sale; or

(2) producing a publication for the dissemination of news of a general character and of a general interest that is printed on newsprint and distributed to the general public free of charge at a daily, weekly, or other short interval.

SECTION 2.20. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3185 to read as follows:

Sec. 151.3185. PROPERTY USED IN THE PRODUCTION OF MOTION PICTURES OR VIDEO OR AUDIO RECORDINGS AND BROADCASTS. (a) The sale, lease, or rental or storage, use, or other consumption of the following items are exempted from the taxes imposed by this chapter:

(1) tangible personal property that will become an ingredient or component part of:

(A) a motion picture or video or audio recording, a copy of which is sold or offered for ultimate sale, licensed, distributed, broadcast, or otherwise exhibited; or

(B) a broadcast by a producer of cable programs or by a radio or television station licensed by the Federal Communications Commission;

(2) tangible personal property that is necessary or essential to and used or consumed in or during:

(A) the production of a motion picture or video or audio recording, a copy of which is sold or offered for ultimate sale, licensed, distributed, broadcast, or otherwise exhibited; or

(B) the production of a broadcast by or for a cable program producer or by or for a radio or television station licensed by the Federal Communications Commission; and

(3) except as provided by Subsection (c), services that are necessary and essential to and used directly in a production described by Subdivision (2)(A) or (B).

(b) The exemption includes:

(1) cameras, film, and film developing chemicals that are necessary and essential to and used or consumed in a production described by Subsection (a)(2)(A) or (B);

(2) lights, props, sets, teleprompters, microphones, digital equipment, special effects equipment and supplies, and other equipment that is necessary and essential to and used or consumed directly in a production described by Subsection (a)(2)(A) or (B); and

(3) audio or video routing switchers located in a studio that are necessary and essential to and used or consumed directly in a production described by Subsection (a)(2)(A) or (B).

(c) The exemption does not include:

(1) office equipment or supplies;

(2) maintenance or janitorial equipment or supplies;

(3) machinery, equipment, or supplies used in sales, transmission, or transportation activities;

(4) machinery, equipment, or supplies used in distribution activities, unless otherwise exempted by this section;

(5) taxable items that are used incidentally in a production described by Subsection (a)(2)(A) or (B); or

(6) the following taxable items, regardless of whether they are used incidentally in a production described by Subsection (a)(2)(A) or (B):

(A) telecommunications equipment and services;

(B) transmission equipment;

(C) security services;

(D) motor vehicle parking services; and

(E) food ready for immediate consumption.

(d) A production described by Subsection (a)(2)(A) or (B) does not include a production for broadcast that is not intended to be broadcast to either the general public or to cable television service subscribers or paying customers.

SECTION 2.21. Section 151.321(a), Tax Code, is amended to read as follows:

(a) A taxable item sold by a qualified student organization and for which the sales price is \$5,000 or less, is exempted from the taxes imposed by Subchapter C, except that a taxable item manufactured by or donated to the organization is exempt from the taxes imposed by Subchapter C regardless of sales price unless sold to the donor, if the student organization:

(1) sells the item at a sale that may last for one day only and the primary purpose of which is to raise funds for the organization; and

(2) holds not more than one sale described by Subdivision (1) each month for which an exemption is claimed for an item sold.

SECTION 2.22. Section 151.350(d), Tax Code, is amended to read as follows:

(d) In this section, "restore" means:

(1) launder, [or] clean, repair, treat, or apply protective chemicals to an item, to the extent the service is a personal service as defined in Section 151.0045; and

(2) repair, restore, or remodel, to the extent the service is:

(A) a real property repair or remodeling service as defined in Section 151.0047; or

(B) defined as a taxable service in Section 151.0101(a)(5) [151.0101(5)].

SECTION 2.23. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.354 to read as follows:

Sec. 151.354. SERVICES BY EMPLOYEES OF PROPERTY MANAGEMENT COMPANIES. (a) There are exempted from the taxes imposed by this chapter services performed by an employee of a property management company if:

(1) the employee is permanently assigned to one rental property by the property management company;

(2) the property management company is reimbursed on a dollar-for-dollar basis for the services provided; and

(3) the employee remains assigned to that property while employed by successive owners or management companies.

(b) This exemption does not apply to services performed by an employee for properties other than the one to which the employee is permanently assigned.

(c) For purposes of this section, a person is an employee of a property management company if either the property management company or an affiliate of the property management company employs the person.

(d) The property management company must:

(1) be contractually obligated to the property owner to exercise control over the activities of the employee providing the service; and

(2) manage and direct the employee's day-to-day activities.

(e) The property management company or the affiliate must pay tax on the taxable items purchased and provided to employees providing services on managed property.

(f) In this section, "property management company" means a person:

(1) who, for consideration, operates and manages all the activities at a property held by the owner for purposes of rental, including an office building, mall, or other retail or office complex, an apartment complex, a duplex, or a home; and

(2) whose responsibilities include securing tenants, hiring, and supervising employees for operation or upkeep of the property, receiving and applying revenues, and incurring and paying expenses derived from the operation of the property as directed by the owner.

(g) In this section, a corporation, limited liability company, partnership, trust, or estate is an affiliate of the property management company if an 80 percent ownership interest in the property management company or the corporation, limited liability company, partnership, trust, or estate is held by the other, or if a third person has an 80 percent ownership interest either directly or indirectly in both the property management company and the corporation, limited liability company, partnership, trust, or estate.

SECTION 2.24. Section 151.426, Tax Code, is amended by amending Subsection (c) and adding Subsections (e), (f), (g), (h), (i), and (j) to read as follows:

(c) Subject to Subsection (e), a [A] retailer or any person who extends credit to a purchaser under a retailer's private label credit agreement, or an assignee or affiliate of either, is entitled to credit or reimbursement for taxes paid on the portion of:

(1) an account determined to be worthless and actually charged off for federal income tax purposes; or

(2) the remaining unpaid sales price of a taxable item when the item is repossessed under a conditional sales contract.

(e) A person is entitled to a credit or reimbursement provided by Subsection (c) only if:

(1) the retailer:

(A) has a valid sales or use tax permit; and

(B) remits the tax for which the credit or reimbursement is sought;

(2) all payments on an account are prorated between taxable and nontaxable charges; and

(3) the retailer or person claiming the credit or reimbursement provides detailed records outlining:

(A) the amount the purchaser contracted to pay;

(B) taxable and nontaxable charges;

(C) the tax collected and remitted;

(D) the unpaid portion of the sales price assigned; and

(E) the taxpayer number of the seller who collected and remitted the tax.

(f) A person whose volume and character of uncollectible accounts warrants an alternative method of substantiating the reimbursement or credit may:

(1) maintain records other than the records specified in Subsection (e) if:

(A) the records fairly and equitably apportion taxable and nontaxable elements of a bad debt and compute the amount of sales tax imposed and remitted with respect to the taxable charges remaining unpaid on the debt; and

(B) the comptroller approves the procedures used; or

(2) implement a system to report its future tax responsibilities based on a historical percentage calculated from a sample of transactions if:

(A) the system utilizes records provided by the person claiming the credit or reimbursement; and

(B) the comptroller approves the procedures used.

(g) The comptroller may revoke the authorization to report under Subsection (f)(2) if the comptroller determines that the percentage being used is no longer representative because of:

(1) a change in law, including a change in the interpretation of an existing law or rule; or

(2) a change in the taxpayer's business operations.

(h) A person claiming a credit or reimbursement under this section shall remit tax on any payments received on an account that has been written off and claimed as a bad debt.

(i) A person who is not a retailer may claim a credit or reimbursement authorized by Subsection (c) only for taxes imposed by Section 151.051 or 151.101.

(j) For purposes of this section, "affiliate" means any entity or entities that would be classified as a member of an affiliated group under 26 U.S.C. Section 1504.

SECTION 2.25. Sections 151.429(d) and (g), Tax Code, are amended to read as follows:

(d) To receive a refund under this section, an enterprise project must apply to the comptroller for the refund. The Texas Department of Economic Development [~~department of commerce~~] shall provide the comptroller with the assistance that the comptroller requires in administering this section.

(g) The refund provided by this section is conditioned on the enterprise project maintaining at least the same level of employment of qualified employees as existed at the time it qualified for a refund for a period of three years from that date. The Texas Department of Economic Development [~~Commerce~~] shall annually certify to the comptroller and the Legislative Budget Board whether that level of employment of qualified employees has been maintained. On the Texas Department of Economic Development [~~Commerce~~] certifying that such a level has not been maintained, the comptroller shall assess that portion of the refund attributable to any such decrease in employment, including penalty and interest from the date of the refund.

SECTION 2.26. Section 151.429(e)(1), Tax Code, is amended to read as follows:

(1) "Enterprise project" means a person designated by the Texas Department of Economic Development [~~Commerce~~] as an enterprise project under Chapter 2303, Government Code.

SECTION 2.27. Sections 151.4291(d) and (g), Tax Code, are amended to read as follows:

(d) To receive a refund under this section, a defense readjustment project must apply to the comptroller for the refund. The Texas Department of Economic Development [~~Commerce~~] shall provide the comptroller with the assistance that the comptroller requires in administering this section.

(g) The refund provided by this section is conditioned on the defense readjustment project maintaining at least the same level of employment of qualified employees as existed at the time it qualified for a refund for a period of three years from that date. The Texas Department of Economic Development [~~Commerce~~] shall annually certify to the comptroller and the Legislative Budget Board whether that level of employment of qualified employees has been maintained. On the Texas Department of Economic Development [~~Commerce~~] certifying that such a level has not been maintained, the comptroller shall assess that portion of the refund attributable to any such decrease in employment, including penalty and interest from the date of the refund.

SECTION 2.28. Section 151.4291(e)(1), Tax Code, is amended to read as follows:

(1) "Defense readjustment project" means a person designated by the Texas Department of Economic Development [~~Commerce~~] as a defense readjustment project under Chapter 2310, Government Code.

SECTION 2.29. Section 151.431(a), Tax Code, is amended to read as follows:

(a) A qualified business operating in the enterprise zone's jurisdiction for at least three consecutive years may apply for and be granted a onetime refund of sales and use tax paid by the qualified business after certification of the qualified business as provided by Subsection (b) of this section to a vendor or directly to the state for the purchase of equipment or machinery sold to the business for use in an enterprise zone if the governing body or bodies certify to the Texas Department of Economic Development [~~Commerce~~] that the business is retaining 10 or more jobs held by qualified employees during the year. For the purposes of this subsection "job" means an existing employment position of a qualified business that has provided employment to a qualified employee of at least 1,820 hours annually.

SECTION 2.30. Section 152.002, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) A person who holds a lessor license under the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes) or is specifically not required to obtain a lessor license under Section 4.01(a) of that Act may deduct the fair market value of a replaced motor vehicle that has been leased for longer than 180 days and is titled to another person if:

(1) either person:

(A) holds a beneficial ownership interest in the other person of at least 80 percent; or

(B) acquires all of its vehicles exclusively from franchised dealers whose franchisor shares common ownership with the other person; and

(2) the replaced motor vehicle is offered for sale.

SECTION 2.31. Section 152.041, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) If a motor vehicle title applicant has paid the tax to the seller who is required by this chapter to collect the tax and the seller has failed to remit the tax to the county



tax assessor-collector, the tax assessor-collector may accept application for title to the motor vehicle without the payment of additional tax by the applicant. Before title to the motor vehicle may be issued under these circumstances, the motor vehicle title applicant must present satisfactory documentation to the tax assessor-collector that the tax was paid. The county tax assessor-collector shall notify the comptroller in writing of the seller's failure to remit the tax. The notice must:

(1) be made before the 31st day after the date the application for title is accepted;

(2) contain the name and address of the seller; and

(3) include any documentation of the payment of the tax provided to the county tax assessor-collector by the motor vehicle title applicant.

SECTION 2.32. Sections 153.117(a), (b), (d), and (h), Tax Code, are amended to read as follows:

- (a) A distributor shall keep a record showing the number of gallons of:
- (1) all gasoline inventories on hand at the first of each month;
  - (2) all gasoline refined, compounded, or blended;
  - (3) all gasoline purchased or received, showing the name of the seller and date of each purchase or receipt;
  - (4) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and
  - (5) all gasoline lost by fire, theft, or [other] accident.
- (b) A dealer shall keep a record showing the number of gallons of:
- (1) gasoline inventories on hand at the first of each month;
  - (2) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;
  - (3) all gasoline sold or used, showing the date of the sale or use; and
  - (4) all gasoline lost by fire, theft, or [other] accident.
- (d) An aviation fuel dealer shall keep a record showing the number of gallons of:
- (1) all gasoline inventories on hand at the first of each month;
  - (2) all gasoline purchased or received, showing the name of the seller and date of each purchase or receipt;
  - (3) all gasoline sold or used in aircraft or aircraft servicing equipment; and
  - (4) all gasoline lost by fire, theft, or [other] accident.
- (h) A gasoline jobber shall keep a record showing the number of gallons of:
- (1) all gasoline inventories on hand at the first of each month;
  - (2) all gasoline purchased or received, showing the name of the seller and date of each purchase or receipt;
  - (3) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and
  - (4) all gasoline lost by fire, theft, or [other] accident.

SECTION 2.33. Sections 153.119(a) and (e), Tax Code, are amended to read as follows:

- (a) A person who exports, sells to the federal government, to a public school district in this state, or to a commercial transportation company for exclusive use in providing public school transportation services to a school district under Section 34.008, Education Code, without having added the amount of the tax imposed by this chapter to his selling price, loses by fire, theft, or [other] accident, or uses gasoline for the purpose of operating or propelling a motorboat, tractor used for agricultural purposes, or stationary engine, or for another purpose except in a vehicle operated or intended to be operated on the public highways of this state, and who has

paid the tax imposed on gasoline by this chapter either directly or indirectly is, when the person has complied with the invoice and filing provisions of this section and the rules of the comptroller, entitled to reimbursement of the tax paid by him, less a filing fee and any amount allowed distributors~~[-, wholesalers or jobbers, dealers, or others]~~ under Section 153.105(e) [~~153.105(e)~~] of this code. A public school district that has paid the tax imposed under this chapter on gasoline used by the district or a commercial transportation company that has paid the tax imposed under this chapter on gasoline used by the company exclusively to provide public school transportation services to a school district under Section 34.008, Education Code, is entitled to reimbursement of the amount of the tax paid in the same manner and subject to the same procedures as other exempted users.

(e) A person who exports or loses by fire, theft, or [~~other~~] accident 100 or more gallons of gasoline on which the tax has been paid, or sells gasoline in any quantity to the United States government for the exclusive use of that government on which the tax has been paid, may file a claim for a refund of the net tax paid to the state in the manner provided by this chapter or as the comptroller may direct.

SECTION 2.34. Section 153.121(a), Tax Code, is amended to read as follows:

(a) Except as provided by this section, a claim for a refund must be filed with the comptroller within one year after the first day of the calendar month following the purchase, use, delivery, export, or loss by fire, theft, or [~~other~~] accident of gasoline, whichever period expires latest.

SECTION 2.35. Section 153.206, Tax Code, is amended by adding Subsection (j) to read as follows:

(j) In each subsequent sale of diesel fuel on which the tax has been collected, the amount of the tax shall be added to the selling price so that the tax is paid ultimately by the person using or consuming the diesel fuel for the purpose of propelling a vehicle on the public highways of this state.

SECTION 2.36. Sections 153.219(a), (b), (c), (d), and (i), Tax Code, are amended to read as follows:

- (a) A supplier shall keep a record showing the number of gallons of:
- (1) all diesel fuel inventories on hand at the first of each month;
  - (2) all diesel fuel refined, compounded, or blended;
  - (3) all diesel fuel purchased or received, showing the name of the seller, and the date of each purchase or receipt;
  - (4) all diesel fuel sold, distributed, or used showing the name of the purchaser and the date of sale, distribution, or use; and
  - (5) all diesel fuel lost by fire, theft, or [~~other~~] accident.
- (b) A dealer shall keep a record showing the number of gallons of:
- (1) all diesel fuel inventories on hand at the first of each month;
  - (2) all diesel fuel purchased or received, showing the name of the seller, the date of each purchase or receipt;
  - (3) all diesel fuel sold, distributed, or used; and
  - (4) all diesel fuel lost by fire, theft, or [~~other~~] accident.
- (c) A bonded user or other user with nonhighway equipment uses who files a claim for a refund shall keep a record showing the number of gallons of:
- (1) inventories of all diesel fuel on hand at the first of each month;
  - (2) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase;
  - (3) all diesel fuel deliveries into the fuel supply tanks of motor vehicles;

(4) diesel fuel used for other purposes, showing the purpose for which used; and

(5) all diesel fuel lost by fire, theft, or [~~other~~] accident.

(d) An aviation fuel dealer shall keep a record showing the number of gallons of:

(1) all diesel fuel inventories on hand at the first of each month;

(2) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(3) all diesel fuel sold, distributed, or used in aircraft or aircraft servicing equipment; and

(4) diesel fuel lost by fire, theft, or [~~other~~] accident.

(i) A diesel fuel jobber shall keep a record showing the number of gallons of:

(1) all diesel fuel inventories on hand at the first of each month;

(2) all diesel fuel purchased or received, showing the name of the seller and date of each purchase or receipt;

(3) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(4) all diesel fuel lost by fire, theft, or [~~other~~] accident.

SECTION 2.37. Section 153.222(e), Tax Code, is amended to read as follows:

(e) A person who exports or loses by fire, theft, or [~~other~~] accident 100 or more gallons of diesel fuel on which the tax has been paid, or who sells diesel fuel in any quantity to the United States for its exclusive use on which the tax has been paid, may file a claim for a refund of the net tax paid to the state as the comptroller may direct.

SECTION 2.38. Section 153.224(a), Tax Code, is amended to read as follows:

(a) Except as provided by this section, a claim for a refund must be filed with the comptroller within one year after the first day of the calendar month following the purchase, use, delivery, export, or loss by fire, theft, or [~~other~~] accident of diesel fuel, whichever period expires latest.

SECTION 2.39. Sections 154.114(c) and (g), Tax Code, are amended to read as follows:

(c) The comptroller shall deliver [~~mail~~] the written notice by personal service or by [~~certified~~] mail [~~return receipt requested~~], to the permit holder's mailing address as it appears on the comptroller's records. Service by mail is complete when the notice is deposited with [~~received, as evidenced by return receipt from~~] the U.S. Postal Service.

(g) If the comptroller suspends or revokes a permit, the comptroller shall provide written notice of the suspension or revocation, within a reasonable time, to each distributor and wholesaler permit holder in the state. A distributor or wholesaler permit holder violates Section 154.1015(a) by selling or distributing cigarettes to a person whose permit has been suspended or revoked only after the distributor or wholesaler permit holder receives written notice of the suspension or revocation from the comptroller.

SECTION 2.40. Section 154.210(a), Tax Code, is amended to read as follows:

(a) A distributor shall deliver to the comptroller, on or before the last [~~15th~~] day of each month, a report for the preceding month.

SECTION 2.41. Section 154.308(b), Tax Code, is amended to read as follows:

(b) On making a deficiency determination, the comptroller shall notify the person by [~~certified~~] mail or personal service [~~return receipt requested~~]. Service by mail is complete when the notice is deposited with [~~received, as evidenced by return receipt from~~] the U.S. Postal Service.

SECTION 2.42. Sections 154.309(b) and (d), Tax Code, are amended to read as follows:

(b) A written request for redetermination must be filed at the office of the comptroller not later than the 30th [~~15th working~~] day after the date notice of deficiency is issued [~~received~~]. If a written request for redetermination is not filed as required by this subsection, the determination is final.

(d) The comptroller shall give notice of a redetermination hearing by personal service or by [certified] mail [~~return receipt requested~~]. Service by mail is complete when the notice is deposited with [~~received, as evidenced by return receipt from~~] the U.S. Postal Service.

SECTION 2.43. Section 155.059(c), Tax Code, is amended to read as follows:

(c) The comptroller shall deliver [~~mail~~] the written notice by personal service or by [certified] mail [~~return receipt requested~~], to the permit holder's mailing address as it appears in the comptroller's records. Service by mail is complete when the notice is deposited with [~~received, as evidenced by the return receipt from~~] the United States Postal Service.

SECTION 2.44. Section 155.103(b), Tax Code, is amended to read as follows:

(b) A manufacturer who sells tobacco products to a permit holder in this state shall file with the comptroller, on or before the last [~~15th~~] day of each month, a report showing the information listed in Subsection (a) for the previous month.

SECTION 2.45. Section 155.111(a), Tax Code, is amended to read as follows:

(a) A distributor shall file with the comptroller on or before the last [~~30th~~] day of each month, a report for the preceding month.

SECTION 2.46. Section 155.185(b), Tax Code, is amended to read as follows:

(b) On making a deficiency determination, the comptroller shall notify the person by personal service or by [certified] mail [~~return receipt requested~~]. Service by mail is complete when the notice is deposited with [~~received, as evidenced by return receipt from~~] the U.S. Postal Service.

SECTION 2.47. Sections 155.186(b) and (d), Tax Code, are amended to read as follows:

(b) A written request for redetermination must be filed at the office of the comptroller not later than the 30th [~~15th working~~] day after the date notice of deficiency is issued [~~received~~]. If a written request for redetermination is not filed as required by this subsection, the determination is final.

(d) The comptroller shall give notice of a redetermination hearing by personal service or by [certified] mail [~~return receipt requested~~]. Service by mail is complete when the notice is deposited with [~~received, as evidenced by return receipt from~~] the U.S. Postal Service.

SECTION 2.48. Section 156.102, Tax Code, is amended to read as follows:

Sec. 156.102. EXCEPTION—RELIGIOUS, CHARITABLE, OR EDUCATIONAL ORGANIZATION. (a) This chapter does not impose a tax on a corporation or association that is organized and operated exclusively for a religious, charitable, or educational purpose if no part of the net earnings of the corporation or association inure to the benefit of a private shareholder or individual.

(b) For purposes of this section, an institution of higher education is organized and operated exclusively for an educational purpose only if the institution is defined as an institution of higher education under any subdivision of Section 61.003, Education Code.

SECTION 2.49. Sections 156.103(a), (b), (c), and (d), Tax Code, are amended to read as follows:

(a) ~~This [Subject to this section, this]~~ chapter does not impose a tax on:

- (1) the United States;
- (2) a governmental entity of the United States~~[, this state, or an agency, institution, board, or commission of this state other than an institution of higher education];~~

~~[(2) an officer or employee of a state governmental entity described by Subdivision (1) when traveling on or otherwise engaged in the course of official duties for the governmental entity]; or~~

- (3) an officer or employee of a governmental entity of the United States when traveling on or otherwise engaged in the course of official duties for the governmental entity ~~[if the governmental entity directly pays to the hotel the price for the room].~~

(b) This state, or an agency, institution, board, or commission of this state other than an institution of higher education ~~[A governmental entity otherwise excepted under this section]~~ shall pay the tax imposed by this chapter and is entitled to a refund of the amount of tax paid in accordance with Section 156.154.

(c) A state officer or employee of a state governmental entity described by Subsection (b) ~~[(a)(2)]~~ who is entitled to reimbursement for the cost of lodging and for whom a special provision or exception to the general rate of reimbursement under the General Appropriations Act is not applicable shall pay the tax imposed by ~~[under]~~ this chapter ~~[as if it were imposed by this chapter]~~. The state governmental entity with whom the person is associated is entitled under Section 156.154 to a refund of the tax paid.

(d) A state officer or employee of a state governmental entity described by Subsection (b) ~~[(a)(2)]~~ for whom a special provision or exception to the general rate of reimbursement under the General Appropriations Act applies and who is provided with photo identification verifying the identity and exempt status of the person is not required to pay the tax and is not entitled to a refund. The photo identification of a state officer or employee described by this section may be modified for the purposes of this section.

SECTION 2.50. Section 171.063, Tax Code, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) The following corporations are exempt from the franchise tax:

- (1) a nonprofit corporation exempted from the federal income tax under Section 501(c)(3), (4), (5), (6), (7), (8), (10), or (19), Internal Revenue Code which in the case of a nonprofit hospital means a hospital providing community benefits that include charity care and government-sponsored indigent health care ~~[community benefits]~~ as set forth in Subchapter D, Chapter 311, Health and Safety Code; ~~[Paragraph (A), (B), (C), (D), (E), (F), or (G):~~

~~[(A) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system;~~

~~[(B) charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of the hospital's or hospital system's net patient revenue;~~

~~[(C) charity care and government-sponsored indigent health care are provided in an amount equal to at least 100 percent of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax;~~

~~[(D) for tax periods beginning before January 1, 1996, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least three percent of net patient revenue;~~

~~[(E) for tax periods beginning after December 31, 1995, charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue;~~

~~[(F) a nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current year or in either of the previous two fiscal years is considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and is considered in compliance with the standards provided by this subsection; or~~

~~[(G) a hospital operated on a nonprofit basis that is located in a county with a population of less than 50,000 and in which the entire county or the population of the entire county has been designated as a health professionals shortage area is considered in compliance with the standards provided by this subsection;]~~

~~(2) a corporation exempted under Section 501(c)(2) or (25), Internal Revenue Code, if the corporation or corporations for which it holds title to property is either exempt from or not subject to the franchise tax; and~~

~~(3) a corporation exempted from federal income tax under Section 501(c)(16), Internal Revenue Code[; and~~

~~[(4) a nonprofit corporation exempted from the federal income tax under Section 501(c)(3), Internal Revenue Code, that does not receive any payment for providing health care services to inpatients or outpatients from any source including but not limited to the patient or person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other state or local indigent care program. Payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research.~~

~~[For purposes of satisfying Paragraph (E) of Subdivision (1), a hospital or hospital system may not change its existing fiscal year unless the hospital or hospital system changes its ownership or corporate structure as a result of a sale or merger.~~

~~[For purposes of this subsection, a hospital that satisfies Paragraph (A), (F), or (G) of Subdivision (1) shall be excluded in determining a hospital system's compliance with the standards provided by Paragraph (B), (C), (D), or (E) of Subdivision (1).~~

~~[For purposes of this subsection, the terms "charity care," "government-sponsored indigent health care," "health care organization," "hospital system," "net patient revenue," "nonprofit hospital," and "tax-exempt benefits" have the meanings set forth in Sections 311.031 and 311.042, Health and Safety Code. A determination of the amount of community benefits and charity care and government-sponsored indigent health care provided by a hospital or hospital system and the hospital's or hospital system's compliance with the requirements of Section 311.045, Health and Safety Code, shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system.~~

[A requirement that a nonprofit hospital provide charity care and community benefits under this subsection may be satisfied by a donation of money to the Texas Healthy Kids Corporation established by Chapter 109, Health and Safety Code, provided that:

~~[(1) the money is donated to be used for a purpose described by Section 109.033(c), Health and Safety Code; and~~

~~[(2) not more than 10 percent of the charity care required under any provision of this subsection may be satisfied by the donation.~~

~~[The providing of charity care and government-sponsored indigent health care in accordance with Paragraph (A) of Subdivision (1) shall be guided by the prudent business judgment of the hospital which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital, such as the hospital's volume of Medicare and Medicaid patients. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's decision along with other factors which may be unique to the hospital. The formulas contained in Paragraphs (B), (C), (D), and (E) of Subdivision (1) shall also not be considered determinative of a reasonable amount of charity care and government-sponsored indigent health care.~~

~~[The requirements of this subsection shall not apply to the extent a hospital or hospital system demonstrates that reductions in the amount of community benefits, charity care, and government-sponsored indigent health care are necessary to maintain financial reserves at a level required by a bond covenant, are necessary to prevent the hospital or hospital system from endangering its ability to continue operations, or if the hospital, as a result of a natural or other disaster, is required substantially to curtail its operations:~~

~~[In any fiscal year that a hospital or hospital system, through unintended miscalculation, fails to meet any of the standards in Subdivision (1), the hospital or hospital system shall not lose its tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall from the previous fiscal year. A hospital or hospital system may apply this provision only once every five years].~~

(h) A requirement that a nonprofit hospital provide charity care and community benefits under Subsection (a)(1) may be satisfied by a donation of money to the Texas Healthy Kids Corporation established by Chapter 109, Health and Safety Code, if:

(1) the money is donated to be used for a purpose described by Section 109.033(c), Health and Safety Code; and

(2) not more than 10 percent of the charity care required under any provision of Section 311.045, Health and Safety Code, may be satisfied by the donation.

SECTION 2.51. Sections 171.063(c) and (d), Tax Code, are amended to read as follows:

(c) A corporation's exemption under Subsection (b) of this section is established by furnishing the comptroller with a copy of the Internal Revenue Service's letter of exemption issued to the corporation. [The copy of the letter must be filed with the comptroller within 15 months after the day that is the last day of a calendar month and that is nearest to the date of the corporation's charter or certificate of authority.]

(d) If the Internal Revenue Service has not timely issued to a corporation a letter of exemption, evidence establishing the corporation's provisional exemption under this section is sufficient if the corporation timely files with the comptroller [~~within the 15-month period established by Subsection (c) of this section~~] evidence that the corporation has applied in good faith for the federal tax exemption. The evidence must be filed not later than the 15th month after the day that is the last day of a calendar month and that is nearest to the date of the corporation's charter or certificate of authority.

SECTION 2.52. The heading of Subchapter C, Chapter 171, Tax Code, is amended to read as follows:

SUBCHAPTER C. DETERMINATION OF  
TAXABLE CAPITAL AND TAXABLE EARNED  
SURPLUS; ALLOCATION AND APPORTIONMENT

SECTION 2.53. The heading of Section 171.1015, Tax Code, is amended to read as follows:

Sec. 171.1015. REDUCTION OF TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS FOR INVESTMENT IN AN ENTERPRISE ZONE.

SECTION 2.54. Section 171.1015(f)(1), Tax Code, is amended to read as follows:

(1) "Enterprise project" means a person designated by the Texas Department of Economic Development [~~Commerce~~] as an enterprise project under Chapter 2303, Government Code.

SECTION 2.55. Section 171.1015(g), Tax Code, is amended to read as follows:

(g) Only qualified businesses that have been certified as eligible for a tax deduction under this section by the Texas Department of Economic Development [~~Commerce~~] to the comptroller and the Legislative Budget Board are entitled to the tax deduction.

SECTION 2.56. The heading of Section 171.1016, Tax Code, is amended to read as follows:

Sec. 171.1016. REDUCTION OF TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS FOR INVESTMENT IN A READJUSTMENT ZONE.

SECTION 2.57. Section 171.1016(f)(1), Tax Code, is amended to read as follows:

(1) "Defense readjustment project" means a person designated by the Texas Department of Economic Development [~~Commerce~~] as a defense readjustment project under Chapter 2310, Government Code.

SECTION 2.58. Section 171.1016(g), Tax Code, is amended to read as follows:

(g) Only qualified businesses that have been certified as eligible for a tax deduction under this section by the Texas Department of Economic Development [~~Commerce~~] to the comptroller and the Legislative Budget Board are entitled to the tax deduction.

SECTION 2.59. The heading of Section 171.107, Tax Code, is amended to read as follows:

Sec. 171.107. DEDUCTION OF COST OF SOLAR ENERGY DEVICE FROM TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS APPORTIONED TO THIS STATE.

SECTION 2.60. Section 171.110, Tax Code, is amended by adding Subsections (i) and (j) to read as follows:

(i) For purposes of this section, any person designated as an officer is presumed to be an officer if that person:



(1) holds an office created by the board of directors or under the corporate charter or bylaws; and

(2) has legal authority to bind the corporation with third parties by executing contracts or other legal documents.

(j) A corporation may rebut the presumption described in Subsection (i) that a person is an officer if it conclusively shows, through the person's job description or other documentation, that the person does not participate or have authority to participate in significant policy making aspects of the corporate operations.

SECTION 2.61. Section 171.501(a), Tax Code, is amended to read as follows:

(a) A corporation that has been certified a qualified business as provided by Chapter 2303, Government Code may apply for and be granted a refund of franchise tax paid with an initial or annual report if the governing body or bodies certify to the Texas Department of Economic Development [~~Commerce~~] that the business has created 10 or more new jobs in its enterprise zone held by qualified employees during the calendar year that contains the end of the accounting period on which the report is based. The Texas Department of Economic Development [~~Commerce~~] shall certify eligibility for any refund to the comptroller.

SECTION 2.62. The heading of Subchapter C, Chapter 183, Tax Code, is amended to read as follows:

SUBCHAPTER C. MIXED BEVERAGE TAX CLEARANCE [~~FUND~~]

SECTION 2.63. The heading of Section 183.051, Tax Code, is amended to read as follows:

Sec. 183.051. MIXED BEVERAGE TAX CLEARANCE [~~FUND~~].

SECTION 2.64. Section 183.051(b), Tax Code, is amended to read as follows:

(b) The comptroller shall issue to each county described in Subsection (a) a warrant drawn on the general revenue [~~mixed beverage tax clearance~~] fund in an [~~the~~] amount appropriated by the legislature that may not be greater than [~~of~~] 10.7143 percent of receipts from permittees within the county during the quarter and shall issue to each incorporated municipality described in Subsection (a) a warrant drawn on that fund in an [~~the~~] amount appropriated by the legislature that may not be greater than [~~of~~] 10.7143 percent of receipts from permittees within the incorporated municipality during the quarter. [~~The remainder of the receipts for the quarter and all interest earned on that fund shall be transferred to the general revenue fund.~~]

SECTION 2.65. Section 191.085(b), Tax Code, is amended to read as follows:

(b) The person shall keep the record open for four [~~two~~] years for inspection by the comptroller or the attorney general.

SECTION 2.66. Section 203.051(a), Tax Code, is amended to read as follows:

(a) A producer shall keep a complete record of all sulphur he produces in this state. A producer may destroy a record required by this section four [~~three~~] years after the last entry in the record.

SECTION 2.67. Section 321.102, Tax Code, is amended by adding Subsections (e), (f), and (g) to read as follows:

(e) If as a result of the imposition or increase in a sales and use tax by a municipality in which there is located all or part of a local governmental entity that has adopted a sales and use tax or as a result of the annexation by a municipality of all or part of the territory in a local governmental entity that has adopted a sales and use tax the overlapping local sales and use taxes in the area will exceed two percent, the entity's sales and use tax is automatically reduced in that area to a rate that when added to the combined rate of local sales and use taxes will equal two percent.

(f) If an entity's rate is reduced in accordance with Subsection (e), the comptroller shall withhold from the municipality's monthly sales and use tax allocation an amount equal to the amount that would have been collected by the entity had the municipality not imposed or increased its sales and use tax or annexed the area in the entity less amounts that the entity collects following the municipality's levy of or increase in its sales and use tax or annexation of the area in the entity. The comptroller shall withhold and pay the amount withheld to the entity under policies or procedures that the comptroller considers reasonable.

(g) A transit authority is not a local governmental entity for the purposes of Subsections (e) and (f).

SECTION 2.68. Section 322.302, Tax Code, is amended to read as follows:

Sec. 322.302. DISTRIBUTION OF TRUST FUNDS. At ~~[(a) Except as provided by Subsection (b) of this section, at]~~ least quarterly ~~[twice]~~ during each state fiscal year and as often as feasible, the comptroller shall send to the person at each taxing entity who performs the function of entity treasurer, payable to the taxing entity, the entity's share of the taxes collected by the comptroller under this chapter.

~~[(b) The comptroller shall make payments required by Subsection (a) of this section to entities created under Chapter 451 or 452, Transportation Code, quarterly each fiscal year as soon as practicable after the end of each quarter.]~~

SECTION 2.69. Section 323.102(c), Tax Code, is amended to read as follows:

(c) A tax imposed under Section 323.105 of this code or Chapter 326, Local Government Code, takes effect on the first day of the first calendar quarter after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the action as required by Section 323.405(b).

SECTION 2.70. Section 323.105(e), Tax Code, is amended to read as follows:

(e) The comptroller shall remit to the county amounts collected at the rate imposed under this section as part of the regular allocation of county tax revenue collected by the comptroller if the district is composed of the entire county. The comptroller ~~[county]~~ shall, if the district is composed of an area less than the entire county, remit that amount to the district. Retailers may not be required to use the allocation and reporting procedures in the collection of taxes under this section different from the procedures that retailers use in the collection of other sales and use taxes under this chapter. An item, transaction, or service that is taxable in a county under a sales or use tax authorized by another section of this chapter is taxable under this section. An item, transaction, or service that is not taxable in a county under a sales or use tax authorized by another section of this chapter is not taxable under this section.

SECTION 2.71. Section 351.001, Tax Code, is amended by adding Subdivision (10) to read as follows:

(10) "Revenue" includes any interest derived from the revenue.

SECTION 2.72. Section 351.006, Tax Code, is amended to read as follows:

Sec. 351.006. EXEMPTION. (a) A United States governmental entity described in Section 156.103(a) is exempt from the payment of tax authorized by this chapter [excepted from the tax imposed by Chapter 156 under Section 156.103(a)(1) or (a)(3) shall pay the tax imposed by this chapter but is entitled to a refund of the tax paid].

(b) A state governmental entity described in Section 156.103(b) shall pay the tax imposed by this chapter but is entitled to a refund of the tax paid.

(c) A person who is described by Section 156.103(d) is exempt from the payment of the tax authorized by this chapter.

(d) [(e)] A person who is described by Section 156.103(c) shall pay the tax imposed by this chapter but the state governmental entity with whom the person is associated is entitled to a refund of the tax paid.

(e) [(d)] To receive a refund of tax paid under this chapter, the governmental entity entitled to the refund must file a refund claim on a form provided by the municipality and containing the information required by the municipality. The comptroller by rule shall prescribe the form that must be used and the information that must be provided.

(f) [(e)] A governmental entity may file a refund claim with the municipality under this chapter only for each calendar quarter for all reimbursements accrued during that quarter. The municipality may adopt an ordinance to enforce this section.

SECTION 2.73. Subchapter B, Chapter 351, Tax Code, is amended by adding Section 351.107 to read as follows:

Sec. 351.107. RECORDS. A municipality shall maintain a record that accurately identifies the receipt and expenditure of all revenue derived from the tax imposed under this chapter.

SECTION 2.74. Section 352.007, Tax Code, is amended to read as follows:

Sec. 352.007. EXEMPTION. (a) A United States governmental entity described in Section 156.103(a) is exempt from the payment of tax authorized by this chapter [excepted from the tax imposed by Chapter 156 under Section 156.103(a)(1) or (a)(3) shall pay the tax imposed by this chapter but is entitled to a refund of the tax paid].

(b) A state governmental entity subject to the tax imposed by Chapter 156 under Section 156.103(b) shall pay the tax imposed by this chapter but is entitled to a refund of the tax paid.

(c) A person who is described by Section 156.103(d) is exempt from the payment of the tax authorized by this chapter.

(d) [(e)] A person who is described by Section 156.103(c) shall pay the tax imposed by this chapter but the state governmental entity with whom the person is associated is entitled to a refund of the tax paid.

(e) [(d)] To receive a refund of a tax paid under this chapter, the governmental entity entitled to the refund must file a refund claim on a form provided by the county and containing the information required by the county. The comptroller by rule shall prescribe the form that must be used and the information that must be provided.

(f) [(e)] A governmental entity may file a refund claim with the county under this chapter only for each calendar quarter for all reimbursements accrued during that quarter. The county may adopt a resolution to enforce this section.

SECTION 2.75. Section 4B(e), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), as amended by Section 3, Chapter 1022, and Section 12, Chapter 1031, Acts of the 73rd Legislature, Regular Session, 1993, is reenacted to read as follows:

(e) The rate of a tax adopted under this section must be one-eighth, one-fourth, three-eighths, or one-half of one percent. The ballot proposition at the election held to adopt the tax must specify the rate of the tax to be adopted. A corporation that holds an election to reduce a tax imposed under Section 4A of this Act may in a separate proposition on the same ballot adopt a tax under this section. If an eligible city adopts the tax, a tax is imposed on the receipts from the sale at retail of taxable items within the eligible city at the rate approved at the election. There is also imposed an excise tax on the use, storage, or other consumption within the eligible city of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is

effective within the eligible city. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sale price of the tangible personal property.

Explanation: This change is needed to allow the legislature to make certain technical changes to statutes involving taxes or fees administered by the comptroller of public accounts.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add additional text not included in either the house or senate version of the bill, consisting of a new article of the bill, to read as follows:

ARTICLE 3. APPROPRIATIONS AND  
PROVISIONS RELATED TO APPROPRIATIONS

SECTION 3.01. (a) In addition to other amounts appropriated by the 76th Legislature, Regular Session, 1999, for the biennium beginning September 1, 1999, and subject to the restrictions provided under Articles II and IX, House Bill No. 1, Acts of the 76th Legislature, Regular Session, 1999 (the General Appropriations Act), specifically including Rider 38, page II-66, House Bill No. 1, the Texas Department of Human Services is appropriated \$12 million from the general revenue fund for fiscal year 2000 for reimbursement expenses related to increases in reimbursement rates for nursing homes under the medical assistance program and \$12 million from the general revenue fund for fiscal year 2001 for the same purpose. Any unexpended balance of the appropriation made by this section for fiscal year 2000 is reappropriated to the department for fiscal year 2001 for the same purpose.

(b) The Texas Department of Human Services is authorized to transfer the appropriations made by this section to the appropriate agency or the appropriate strategy item.

(c) The appropriations made by this section are contingent on the comptroller's providing of notice to the governor and the Legislative Budget Board that the comptroller has made a finding, based on a revenue estimate made before or after the adjournment sine die of the 76th Legislature, Regular Session, that sufficient revenue is estimated to be available from the general revenue fund to provide for the appropriations made by this section.

SECTION 3.02. (a) In addition to other amounts appropriated by the 76th Legislature, Regular Session, 1999, for the biennium beginning September 1, 1999, and subject to the restrictions provided under Articles II and IX, House Bill No. 1, Acts of the 76th Legislature, Regular Session, 1999 (the General Appropriations Act), the Texas Department of Human Services is appropriated \$6.6 million from the general revenue fund for fiscal year 2000 for expenses related to increases in the personal needs allowance provided under Section 32.024, Human Resources Code, for a person who receives medical assistance and is a resident of a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code, a personal care facility, an ICF-MR facility, or another similar long-term care facility and \$6.6 million from the general revenue fund for fiscal year 2001 for the same purpose. Any unexpended balance of the appropriation made by this section for fiscal year 2000 is reappropriated to the department for fiscal year 2001 for the same purpose.

(b) The Texas Department of Human Services is authorized to transfer the appropriations made by this section to the appropriate agency or the appropriate strategy item.

(c) The appropriations made by this section are contingent on the comptroller's providing of notice to the governor and the Legislative Budget Board that the comptroller has made a finding, based on a revenue estimate made before or after the adjournment sine die of the 76th Legislature, Regular Session, that sufficient revenue is estimated to be available from the general revenue fund to provide for the appropriations made by this section.

SECTION 3.03. (a) This section applies only to an Act of the 76th Legislature, Regular Session, that contains a provision stating that the Act, or a provision of the Act, takes effect only if a specific appropriation for the implementation of the Act is provided in House Bill No. 1, Acts of the 76th Legislature, Regular Session, 1999 (the General Appropriations Act).

(b) In accordance with the terms of the provision described by Subsection (a) of this section, the following Acts take effect:

(1) House Bill Nos. 424, 713, 714, 820, 1172, 1188, 1341, 1652, 1833, 1939, 2085, 2145, 2202, 2307, 2573, 2641, 2719, 2992, 3174, 3504, 3517, and 3778; and

(2) Senate Bill Nos. 526, 565, 666, 708, 1287, 1423, 1651, and 1690.

(c) In accordance with the terms of the provision described by Subsection (a) of this section, the following Acts do not take effect:

(1) House Bill Nos. 1933 and 2148; and

(2) Senate Bill Nos. 313, 840, and 1650.

(d) The following Acts take effect notwithstanding the provision described by Subsection (a) of this section:

(1) House Bill Nos. 64, 153, 628, 676, 1018, 1140, 1223, 1444, 1860, 2631, 2815, 2896, 2978, 3050, 3079, 3304, and 3757; and

(2) Senate Bill Nos. 229, 913 and 1613.

(e) The Acts identified in this section take effect, or do not take effect, as provided by this section, notwithstanding the provision described by Subsection (a) of this section.

(f) If a provision described by Subsection (a) of this section is contained in a bill that is not listed in Subsection (b), (c), or (d) of this section, the provision is ineffective, and the bill takes effect in accordance with its terms notwithstanding that provision, regardless of the relative dates of enactment.

Explanation: This change is needed to allow the legislature to appropriate additional money to the Texas Department of Human Services and to address the issue of whether certain bills are funded by an appropriation in the General Appropriations Act.

(3) Senate Rule 12.03(4) is suspended to permit the committee to add additional text not included in either the house or senate version of the bill, relating to the implementation of the new articles added to the bill, to read as follows:

SECTION 4.01. The following are repealed: . . .

(3) Sections 151.318(g) and (p) and 152.062(d), Tax Code.

SECTION 4.07. A tax to which Section 2.69 of this Act applies that is not being collected on the effective date of this Act and that was adopted at an election held before January 1, 1999, takes effect on the first day of the first calendar quarter that begins after the effective date of this Act.

SECTION 4.08. Each change in law made to the following provisions by this Act is a clarification of existing law and does not imply that existing law may be construed as inconsistent with the law as amended by this Act:

- (1) Section 102.075, Code of Criminal Procedure;
- (2) Section 9, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code);
- (3) Section 11, Texas Public School Employees Group Insurance Act (Article 3.50-4, Insurance Code);
- (4) Section 326.029, Local Government Code;
- (5) Section 326.092, Local Government Code;
- (6) Section 151.317, Tax Code;
- (7) Section 151.318, Tax Code;
- (8) Section 151.3185, Tax Code;
- (9) Section 151.350(d), Tax Code;
- (10) Section 152.002, Tax Code;
- (11) Section 152.041, Tax Code;
- (12) Section 153.117, Tax Code;
- (13) Section 153.119, Tax Code;
- (14) Section 153.206, Tax Code;
- (15) Section 153.219, Tax Code;
- (16) Section 171.063, Tax Code;
- (17) the heading of Subchapter C, Chapter 171, Tax Code;
- (18) the headings of Sections 171.1015, 171.1016, and 171.107, Tax Code;
- (19) Section 171.110, Tax Code;
- (20) Section 191.085, Tax Code; and
- (21) Section 203.051, Tax Code.

SECTION 4.09. The comptroller of public accounts may adopt rules and take other actions before October 1, 1999, as the comptroller deems necessary or advisable to prepare for the taking effect of Article 2 of this Act.

SECTION 4.10. (a) Except as provided by Subsections (b), (c), and (d) of this section, Article 2 of this Act takes effect October 1, 1999.

(b) Section 2.05 of this Act takes effect January 1, 2000, and applies to reporting periods beginning on or after that date.

(c) Sections 2.50 through 2.61 of this Act take effect January 1, 2000, and apply to a report originally due on or after that date.

SECTION 4.12. (a) This Act takes effect immediately except that: . . .

(4) Article 2 of this Act takes effect as provided by Section 4.10 of this Act.

Explanation: This addition is necessary to provide for the orderly implementation of the changes made by adding new articles to the bill.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2031 ADOPTED

Senator Armbrister called from the President's table the Conference Committee Report on **HB 2031**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Armbrister, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 560 ADOPTED**

Senator Sibley called from the President's table the Conference Committee Report on **SB 560**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Sibley, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 104 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **SB 104**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Duncan, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 542 ADOPTED**

Senator Fraser called from the President's table the Conference Committee Report on **HB 542**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Fraser, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 826 ADOPTED**

Senator Wentworth called from the President's table the Conference Committee Report on **HB 826**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Wentworth, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**SENATE RULE 12.09(b) SUSPENDED  
(Printing and Notice of Conference Committee Reports)**

On motion of Senator Madla and by unanimous consent, Senate Rule 12.09(b) was suspended for **SB 89** in order to consider the Conference Committee Report at this time.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 89 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **SB 89**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

**STATEMENT OF LEGISLATIVE INTENT**

Senator Madla submitted the following statement of legislative intent for **SB 89**:

The Act does not abrogate or modify any contract to which a municipality is a party which was in effect on the effective date of this Act, including but not limited to, contracts for limited annexation, contracts for payment in lieu of annexation, and contracts with utility districts located within municipal boundaries.

MADLA

**SENATE CONCURRENT RESOLUTION 79  
WITH HOUSE AMENDMENT**

Senator Ratliff called **SCR 79** from the President's table for consideration of the House amendment to the resolution.

The Presiding Officer, Senator Truan in Chair, laid the resolution and the House amendment before the Senate.

**Floor Amendment No. 1**

Amend **SCR 79** as follows:

(1) On page 2, line 19, add "the Texas Youth Commission," prior to "and the office of the attorney general".

(2) On page 3, line 12, add "the executive director of the Texas Youth Commission," prior to "and the attorney general".

The amendment was read.

On motion of Senator Ratliff, the Senate concurred in the House amendment to **SCR 79** by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1444 ADOPTED**

Senator Moncrief called from the President's table the Conference Committee Report on **HB 1444**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Moncrief, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.



**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1799 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 1799**. The Conference Committee Report was again filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Armbrister, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 558 ADOPTED**

Senator Lucio called from the President's table the Conference Committee Report on **SB 558**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Lucio, the Conference Committee Report was adopted by a viva voce vote.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 30, 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 120**, Granting Larry P. Shepherd permission to sue the State of Texas and the Texas Natural Resource Conservation Commission.

**HCR 248**, Granting J. Keith Rose permission to sue the state and The University of Texas Southwestern Medical Center at Dallas.

**HCR 314**, Instructing the enrolling clerk of the house to make corrections in **HB 1193**.

**HCR 315**, Instructing the enrolling clerk of the house to make technical corrections in **HB 153**.

**SCR 89**, Instructing the enrolling clerk of the senate to make corrections in **SB 560**.

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 352** (Viva-voce vote)

**HB 542** (142 ayes, 0 nays, 1 present, not voting)

**HB 564** (137 ayes, 1 nay, 1 present, not voting)

**HB 577** (Viva-voce vote)  
**HB 744** (Viva-voce vote)  
**HB 746** (Viva-voce vote)  
**HB 826** (Viva-voce vote)  
**HB 1123** (Viva-voce vote)  
**HB 1140** (Viva-voce vote)  
**HB 1188** (Viva-voce vote)  
**HB 1275** (144 ayes, 1 nay, 1 present, not voting)  
**HB 1283** (Viva-voce vote)  
**HB 1376** (Viva-voce vote)  
**HB 1453** (Viva-voce vote)  
**HB 1498** (Viva-voce vote)  
**HB 1622** (Viva-voce vote)  
**HB 1703** (Viva-voce vote)  
**HB 1861** (Viva-voce vote)  
**HB 1884** (Viva-voce vote)  
**HB 1961** (Viva-voce vote)  
**HB 1997** (145 ayes, 0 nays, 1 present, not voting)  
**HB 2031** (Viva-voce vote)  
**HB 2434** (Viva-voce vote)  
**HB 2748** (Viva-voce vote)  
**HB 2815** (Viva-voce vote)  
**HB 2825** (Viva-voce vote)  
**HB 2896** (144 ayes, 0 nays, 1 present, not voting)  
**HB 2947** (Viva-voce vote)  
**HB 3016** (Viva-voce vote)  
**HB 3029** (Viva-voce vote)  
**HB 3255** (144 ayes, 0 nays, 1 present, not voting)  
**HB 3304** (Viva-voce vote)  
**HB 3582** (Viva-voce vote)  
**HB 3620** (Viva-voce vote)  
**HB 3793** (Viva-voce vote)  
**SB 104** (145 ayes, 0 nays, 1 present, not voting)  
**SB 560** (Viva-voce vote)  
**SB 709** (146 ayes, 0 nays, 1 present, not voting)  
**SB 913** (Viva-voce vote)  
**SB 947** (141 ayes, 4 nays, 1 present, not voting)  
**SB 982** (Viva-voce vote)  
**SB 1128** (Viva-voce vote)  
**SB 1230** (Viva-voce vote)  
**SB 1520** (Viva-voce vote)  
**SB 1703** (Viva-voce vote)

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 143** (Viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3582 ADOPTED**

Senator Haywood called from the President's table the Conference Committee Report on **HB 3582**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Haywood, the Conference Committee Report was adopted by the following vote: Yeas 27, Nays 0, 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, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Present-not voting: Bivins, Moncrief, Ogden.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3693 ADOPTED**

Senator Fraser called from the President's table the Conference Committee Report on **HB 3693**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Fraser, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1615 ADOPTED**

Senator Lucio called from the President's table the Conference Committee Report on **SB 1615**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Lucio, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1498 ADOPTED**

Senator Sibley called from the President's table the Conference Committee Report on **HB 1498**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Sibley, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1104 ADOPTED**

Senator Cain called from the President's table the Conference Committee Report on **HB 1104**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Cain, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 352 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **HB 352**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 694 ADOPTED**

Senator Cain called from the President's table the Conference Committee Report on **SB 694**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Cain, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1703 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **SB 1703**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Ellis, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 913 ADOPTED**

Senator Shapleigh called from the President's table the Conference Committee Report on **SB 913**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Shapleigh, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 86 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **SB 86**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 564 ADOPTED**

Senator Shapleigh called from the President's table the Conference Committee Report on **HB 564**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Shapleigh, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 1230 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **SB 1230**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Ellis, the Conference Committee Report was adopted by a viva voce vote.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 1525 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **SB 1525**. The Conference Committee Report was filed with the Senate on Thursday, May 27, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

### **RECORD OF VOTES**

Senators Carona, Moncrief, and Wentworth asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report on **SB 1525**.

### **STATEMENT OF LEGISLATIVE INTENT**

Senator Moncrief submitted the following questions and answers to establish legislative intent for the Conference Committee Report on **SB 1525**:

**Senator Moncrief:** Let's say that I go to a health food store and I need advice on what I need to purchase. Whether I am getting a vitamin regime, supplements for muscular development for my physical fitness routine, or if I want ginseng for my allergies, can I still get that advice from a nutritionist?

**Senator Madla:** Absolutely, Senator Moncrief, not only can you get it from a nutritionist, you can get that advice from any person who works in the store regardless of their training.

What I believe the House Members were trying to address in their amendments are individuals, who may or may not be educated, the State of Texas does not certify or register or license nutritionists, a person for a consultation, a diagnosis, and a recommendation for the supplements, when that consultation is conducted in a manner which is similar to a doctor's visit.

We were contacted by a woman who has epilepsy, who was charged for advice on a vitamin supplement which had an adverse reaction to her prescribed medications. Because this person held themselves out as qualified, this woman trusted their advice and was made sick by it.

**Senator Moncrief:** If I go into a health food store and the employee is paid by the store, does that mean under this same section (a person may not for compensation provide . . .) that person cannot give advice on vitamin therapies or regimes of naturopathic medicine?

**Senator Madla:** No, that section of the bill is intended to prohibit "direct compensation" or the exchange of cash for nutrition advice between an individual providing nutrition advice and a patient seeking advice. The employees of health food stores would not be in that type of financial arrangement and therefore will not be covered under this bill.

**Senator Moncrief:** If I am a nutrition retailer, would profits be considered compensation under this same language?

**Senator Madla:** Absolutely not. In fact, Senator, I have had both H-E-B and Sun Harvest Farms companies review the legislation and they do not expect it to affect their businesses in any way, and I do not intend for the bill to affect their businesses.

Our intention here, Senators, is to protect individuals. Members, the vitamin industry is experiencing extraordinary growth, and I might remind you that the federal Food and Drug Administration does not, I repeat, does not regulate the content of "natural" chemicals. Vitamins are not regulated by the FDA for purity, for dosage control, or for any other public safety concerns.

I believe that it is in the best interest of the public to ensure that when an individual sits down and pays for a nutritional consultation that the consultation is conducted by someone who is properly educated and trained.

MONCRIEF

(Senator Moncrief in Chair)

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 844 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 844**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1223 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 1223**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1237 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **SB 1237**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Nelson, the Conference Committee Report was adopted by a viva voce vote.

**SENATE BILL 956 WITH HOUSE AMENDMENTS**

Senator Madla called **SB 956** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 956** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of certain insurance agents and to the consolidation of insurance agent licenses; providing penalties.

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

ARTICLE 1. GENERAL PROVISIONS

APPLICABLE TO ALL INSURANCE AGENTS

SECTION 1.01. Article 21.01, Insurance Code, is amended to read as follows:

Art. 21.01. PURPOSE; CONSOLIDATION OF LICENSES; APPLICATION; CERTIFICATE OF AUTHORITY OR LICENSE REQUIRED; RULEMAKING AUTHORITY

Sec. 1. PURPOSE. It is the intent of the legislature to simplify and reform the regulation of insurance agents in this state by consolidating the types of licenses issued to insurance agents under this subchapter. This subchapter is also intended to promote uniformity in the licensing, examination, continuing education, and disciplinary requirements for agents.

Sec. 2. CERTIFICATE OF AUTHORITY OR LICENSE REQUIRED. It shall not be lawful for any person to act [~~within this State~~], as an agent or otherwise, in soliciting or receiving applications for insurance of any kind whatever in this state, or in any manner to aid in the transaction of the business of any insurance company incorporated in this state [~~State~~], or out of it, without first procuring a license or certificate of authority from the department [~~Board~~].

Sec. 3. APPLICATION. (a) Except as otherwise provided by this code, this subchapter applies to each person licensed in accordance with:

- (1) Section 4, Article 1.14-2, of this code;
- (2) Section 7, Article 3.75, of this code;
- (3) Subsection (c), Article 5.13-1, of this code;
- (4) Article 10.37-3 of this code;
- (5) Article 16.24A of this code;
- (6) Section 9, Article 17.25, of this code;
- (7) Article 21.07 of this code;
- (8) Article 21.07-1 of this code;
- (9) Chapter 29, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-2, Vernon's Texas Insurance Code);
- (10) the Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code);
- (11) Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code);
- (12) Article 21.07-6 of this code;
- (13) Article 21.07-7 of this code;

- (14) Article 21.11 of this code;
- (15) Article 21.14 of this code;
- (16) Article 21.14-1 of this code;
- (17) Article 21.14-2 of this code;
- (18) Article 23.23A of this code; or
- (19) a specialty license program established by the department.

(b) Except as otherwise provided by law, each reference in this code and other laws of this state to a particular type of license authorizing an agent to engage in the business of insurance in this state means a license designation as made by amendment, enactment, or reenactment of or to Subchapter A, Chapter 21, of this code by the 76th Legislature, Regular Session, 1999, or subsequent amendments to that subchapter. A reference in this subchapter to a statutory provision applies to all reenactments, revisions, or amendments of that provision.

Sec. 4. RULES. The commissioner may adopt rules as necessary to implement this subchapter and to meet the minimum requirements of federal law and regulations.

SECTION 1.02. Article 21.01-1, Insurance Code, is amended to read as follows:

Art. 21.01-1. AGENTS' QUALIFYING EXAMINATION; CONTINUING EDUCATION REQUIREMENTS FOR AGENTS

Sec. 1. EXAMINATION ADMINISTRATION. (a) The commissioner [State Board of Insurance] may~~[-at its discretion,]~~ accept examinations administered by a testing service as satisfying the examination requirements of persons seeking license as agents, ~~[solicitors,]~~ counselors, or adjusters under this code. The commissioner [State Board of Insurance] may negotiate agreements with such testing services to include performance of examination development, test scheduling, examination site arrangements, and test administration, grading, reporting and analysis. The commissioner [State Board of Insurance] may require such testing services to correspond directly with the applicants with regard to the administration of such examinations and that such testing services collect fees for administering such examinations directly from the applicants. The commissioner [State Board of Insurance] may stipulate that any agreements with such testing services provide for the administration of examinations in specific locales and at specified frequencies. The commissioner [State Board of Insurance] shall retain the authority to establish the scope and type of all examinations. Prior to negotiating and making any agreement with any testing service as authorized hereby, the commissioner [State Board of Insurance] shall hold a public hearing ~~[thereon]~~ in accordance with Chapter 2001, Government Code ~~[the provisions of Section 5 of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)]~~, and shall adopt such rules~~[-regulations,]~~ and standards as may be deemed appropriate by the commissioner [Board] to implement the authority granted in this article [Article].

(b) The commissioner may appoint advisory boards consisting of any of the following persons: persons holding a license for which the respective examinations are intended, persons who are employed by insurance companies appointing such licensees, persons acting as general agents or managers, persons teaching insurance at an accredited college or university in Texas, persons who are citizens of the State of Texas but who are not of any of the preceding descriptions, or any combination of such persons. The function of such advisory boards will be to make recommendations to the commissioner [State Board of Insurance] or the testing service with respect to the scope, type, and conduct of such examinations and the times and places within the state where they shall be held. The members of such advisory boards shall serve without



pay but shall be reimbursed for their reasonable expenses in attending meetings of their respective advisory boards.

(c) In the absence of an agreement with a testing service, the department [State Board of Insurance] shall administer any required qualifying examination in accordance with this article [the provisions of the respective statutes governing the issuance of the license sought by the applicant]. The commissioner may adopt rules relating to the scope, type, and conduct of the written examinations and the times and places in this state at which the examinations will be conducted. The commissioner's rules may designate textbooks, manuals, and other materials to be studied by applicants in preparation for examinations conducted under this subsection. Those textbooks, manuals, or other materials may consist of material available to an applicant by purchase from the publisher or of material prepared at the direction of the commissioner and distributed to an applicant on request and on payment of the reasonable cost of the material. All examination questions shall be prepared from the contents of the textbooks, manuals, and other materials designated or prepared by the commissioner under this subsection.

(d) Not later than the 30th day after the date on which a licensing examination is administered under this code, the department shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a testing service, the department shall notify each examinee [examinees] of the results of the examination not later than the 14th day after the date on which the department receives the results from the testing service. If the notice of examination results graded or reviewed by a testing service will be delayed for longer than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day. The department may require a testing service to notify examinees of the results of an examination.

(e) If requested in writing by a person who fails a licensing examination administered under this code, the department shall furnish the person with an analysis of the person's performance on the examination.

Sec. 2. EXAMINATION OF LICENSE APPLICANT. (a) Except as provided by Subsections (c) and (d) of this section, each applicant for a license to act as an insurance agent in this state must submit to a personal written examination that is prescribed by the department and must pass the examination to the satisfaction of the department. The examination shall determine the applicant's competence with respect to:

- (1) the type of insurance contracts for which the applicant seeks a license;
- (2) the laws of this state regulating the business of insurance; and
- (3) the ethical obligations and duties of an insurance agent.

(b) The department shall charge each applicant an examination fee in an amount determined by the department as necessary for administration of the examination. The fee must accompany each application to take the examination. The fee is nonrefundable other than for failure of the applicant to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the department and received the department's approval of refund of the fee.

(c) The commissioner shall prescribe a limited written licensing examination for applicants for a limited license under Article 21.07-1 or Article 21.14 of this code. A limited examination shall be administered according to the provisions of this article and shall determine the applicant's competence and understanding of:

- (1) the basic principles of insurance contracts;
- (2) the basic laws of this state regulating the business of insurance; and
- (3) the ethical obligations and duties of an insurance agent.

(d) The department may not require a person to take an examination under this article if the person is:

(1) an applicant for the renewal of an unexpired license issued by the department;

(2) an applicant whose Texas insurance license expired less than one year before the date of the application, if the previous license was not denied, revoked, or suspended by the commissioner;

(3) a partnership, corporation, or bank;

(4) an applicant for a life, accident, and health license who has attained the designation of chartered life underwriter (CLU);

(5) an applicant for a life and health insurance counselor license who has attained the designation of chartered life underwriter (CLU), chartered financial consultant (ChFC), or certified financial planner (CFP);

(6) an applicant for a property and casualty license who has attained the designation of chartered property and casualty underwriter (CPCU);

(7) an applicant for a specialty license issued by the department;

(8) a nonresident individual who is exempt from the examination requirement under Article 21.11 of this code; or

(9) an applicant for a general life, accident, and health license who was authorized to solicit insurance on behalf of a fraternal benefit society on September 1, 1999, if the applicant:

(A) had actually solicited insurance on behalf of the fraternal benefit society for at least 24 months preceding September 1, 1999;

(B) does not solicit 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 has obtained the designation of "Fraternal Insurance Counselor" at the time the contract is solicited or procured.

(e) A license to which the exemption authorized under Subsection (d)(9) of this section applies must be held by the applicant in an individual capacity and is not transferable.

(f) Each examination administered under this article shall be offered in English and Spanish.

Sec. 3. CONTINUING EDUCATION REQUIREMENTS. (a) The department has exclusive jurisdiction for all matters relating to the continuing education of insurance agents who are licensed under this code.

(b) Except as provided by Subsection (d) of this section, each individual who holds a license issued by the department shall complete continuing education. All required continuing education hours must be completed before the expiration date of the individual's license. An individual who holds a life, accident, and health license, a life and health insurance counselor license, or a property and casualty license shall complete 15 hours of continuing education annually. The agent may not be required to complete more than 15 continuing education hours annually as a result of holding

more than one license for which continuing education is required. An individual who holds a limited life, accident, and health license or a limited property and casualty license shall complete five hours of continuing education annually. Each individual who holds a license issued by the department shall complete four hours of continuing education in ethics during each license renewal period. At least 50 percent of all required continuing education hours must be completed in a classroom setting or a classroom equivalent setting approved by the department. The department may grant reciprocity to license holders who complete continuing education requirements in other professions or in association with professional designations in an insurance-related field.

(c) On a timely written request of an agent, the department may extend the time for the agent to comply with the continuing education requirements of this section or may exempt the agent from some or all of the requirements for a licensing period if the department finds that the agent is unable to comply with the requirements because of illness, medical disability, or another extenuating circumstance beyond the control of the agent. The commissioner by rule shall prescribe the criteria for an exemption or extension under this subsection.

(d) An individual who has continuously held a license issued under this code to operate as an insurance agent for the 20 years preceding September 1, 1999, is exempt from the continuing education requirements of this section. The commissioner by rule may provide for other reasonable exemptions.

(e) The department shall certify continuing education programs for agents. Only a program that satisfies the criteria established by rule by the commissioner may receive certification. The certification criteria shall be designed to ensure that continuing education programs enhance the knowledge, understanding, and professional competence of the license holder. A nonrefundable certification fee, in an amount set by the commissioner as necessary for administering the program, must accompany each application for certification of a continuing education program. The fee shall be established by rule and based on a graduated scale according to the number of hours required to complete the program.

(f) Each continuing education course provider shall register with the department as a course provider. The department shall assess a registration fee for each application for registration as a provider, set by the commissioner in an amount necessary for the proper administration of this section. The commissioner may adopt rules establishing the requirements for continuing education course providers. The department may negotiate agreements with independent contractors under which the independent contractor certifies and registers continuing education courses and providers. The department may require those independent contractors to correspond directly with providers with regard to the administration of continuing education courses, and the contractors may collect fees from the providers for administration of the courses. The department retains the authority to establish the scope and type of continuing education requirements for each type of license.

(g) The commissioner may appoint an advisory council to furnish the commissioner with information and assistance in the conduct of the continuing education program for agents licensed under this subchapter. If an advisory council is appointed, it must be composed of nine members, four of whom must be public members. The public members are entitled to reimbursement for their reasonable travel expenses in attending meetings of the advisory council, subject to any applicable limit in the General Appropriations Act. A public member may not:

(1) be an officer, director, or employee of an insurance company, insurance agency, agent, broker, adjuster, or any other business entity regulated by the department;

(2) be a person required to register with the Texas Ethics Commission under Chapter 305, Government Code; or

(3) be related to a person described by Subdivision (1) or (2) of this subsection within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code.

SECTION 1.03. Section 2, Article 21.01-2, Insurance Code, is redesignated as Section 1A, Article 21.01-2, Insurance Code, and amended to read as follows:

Sec. 1A [2]. EXPIRATION AND RENEWAL OF LICENSES. (a) Except as provided by a staggered renewal system adopted under Subsection (h) of this section, each agent license issued by the department expires on the fifth anniversary of the date of issuance unless suspended or revoked by the commissioner. A person may renew a [an-unexpired] license that has not expired or has not been suspended or revoked by filing a properly completed renewal application with the department in the form prescribed by the department and paying to the department before the expiration date of the license the required renewal fee. A renewal fee paid under this section is nonrefundable.

(b) On the filing of a completed renewal application not later than the expiration date of the license accompanied by the renewal fee set by the commissioner, the original license continues in force until:

(1) the department issues the renewal license; or

(2) the commissioner issues an order revoking the license.

(c) If a person's license has been expired for 90 days or less, the person may renew the license by filing a renewal application with the department in the form prescribed by the department and paying to the department the required renewal fee and an additional [a] fee that is equal to one-half of the renewal [license] fee[~~, if any.~~]; for the license.

(d) If a person's license has been expired for more than 90 days but less than one year, the person may not renew the license, but is entitled to a new license without taking the applicable examination if the person submits to the department a new application, the license fee, and an additional fee equal to one-half of the license fee.

(e) [~~(c)~~] If a person's license has been expired for one year or more [~~longer than 90 days~~], the person may not renew the license. The person may obtain a new license by submitting to reexamination, if examination is required for original issuance of the license, and complying with the requirements and procedures for obtaining an original license.

(f) The [~~However, the~~] department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in continual practice in the other state for the period [~~two years~~] preceding application. The person must pay to the department a fee that is equal to the license fee.

(g) [~~(d)~~] At least 30 days before the expiration of a person's license, the department shall send written notice of the impending license expiration to the person at the person's last known mailing address according to the records of the department.

(h) [~~(e)~~] The commissioner by rule may adopt a system under which licenses expire on various dates during a licensing period. For the licensing period in which the license expiration is changed, license fees shall be prorated [~~on a monthly basis~~] so that each license holder shall pay only that portion of the license fee that is allocable to the

period [~~number of months~~] during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable. The commissioner shall adopt a system under which a person who holds more than one license may renew all the licenses held in a single process.

(i) [~~(f)~~] This section is not applicable to a license issued under Article 21.07-6 or 21.07-7 of this code.

SECTION 1.04. Article 21.01-2, Insurance Code, is amended by adding Section 2A to read as follows:

Sec. 2A. PROHIBITED ACTIVITIES. (a) A person licensed under this code who receives a commission or other consideration for services as an insurance agent may not receive an additional fee for those services provided to the same client except for a fee described by Article 21.35A or 21.35B of this code.

(b) An insurer or licensed insurance agent engaged in the business of insurance in this state may not pay, directly or indirectly, and may not accept, any commission or other valuable consideration to or from any person for services performed by that person as an insurance agent in this state unless the person holds a license to act as an insurance agent as required by the laws of this state. This subsection does not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because the person has ceased to hold a license to act as an insurance agent.

(c) An insurance agent licensed under this code may not pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, to any person who is not a licensed insurance agent, any rebate of premiums payable, commission, paid employment, or contract for service, or any other valuable consideration or inducement, that is not specified in the policy or contract of insurance for or on account of the solicitation or negotiation of contracts of insurance.

(d) In addition to any other penalty imposed under this code, a person who is determined by the department to have committed conduct described by this subsection is barred from receiving a license as an insurance agent before the fifth anniversary of the date of the determination. This subsection applies to a person who:

(1) acts as an insurance agent without holding a license under this code;

(2) solicits a contract of insurance or acts as an insurance agent without having been appointed or designated by an authorized insurance company, association, or organization to do so as provided by this code;

(3) solicits any contract of insurance or acts as an agent for a person, including an insurance company, association, or organization, not authorized to engage in the business of insurance in this state without holding a license issued under Article 1.14-2 of this code; or

(4) as an officer or representative of an insurance company, knowingly contracts with or appoints as an agent a person who does not hold a valid and outstanding license.

(e) A person who has had an insurance license revoked in this state or any other state may not solicit or otherwise transact business under Chapter 10 of this code unless it is determined by the department to be in the public interest, for good cause shown, to allow the person to act in that capacity.

(f) A person who has had an insurance license revoked in this state or any other state may not act as an officer, director, member, manager, or partner, or as a shareholder with a controlling interest, of an entity licensed under this subchapter unless it is determined by the department to be in the public interest, for good cause shown, to allow the person to act in that capacity.

(g) A property and casualty agent may not knowingly grant, write, or permit a greater amount of insurance against loss by fire than the reasonable value of the subject of the insurance.

(h) This section does not apply to a person who is licensed under, or holds a certificate of authority issued under, Chapter 9 of this code.

SECTION 1.05. Section 5, Article 21.01-2, Insurance Code, is redesignated as Section 3A, Article 21.01-2, Insurance Code, and amended to read as follows:

Sec. 3A [5]. DENIAL OR REFUSAL OF LICENSE APPLICATION; SUSPENSION OR REVOCATION OF LICENSES; DISCIPLINE OF LICENSE HOLDERS. (a) In addition to any other remedy available under Section 7, Article 1.10, of this code, the [The] department may [shall] refuse to issue an original license, revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, assess an administrative penalty, or reprimand a license holder for a violation of this code, another insurance law of this state, or a rule of the commissioner [or the board]. If a license suspension is probated, the commissioner may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit the person's practice to the areas prescribed by the department; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the commissioner in those areas that are the basis of the probation.

(b) If the department proposes to refuse to issue an original license, or to suspend, revoke, or refuse to renew a license, the person affected is entitled to a hearing conducted by the State Office of Administrative Hearings in accordance with Article 1.33B of this code. Notice of the hearing shall be provided to the person and to any insurance carrier appearing on the application as desiring that the license be issued.

(c) The department may discipline a license holder or deny a license application under this article if the department determines that the applicant or license holder, individually or through any officer, director, or shareholder:

(1) has wilfully violated any provision of the insurance laws of this state;

(2) has intentionally made a material misstatement in the license application;

(3) has obtained, or attempted to obtain, a license by fraud or misrepresentation;

(4) has misappropriated, converted to the applicant's or holder's own use, or illegally withheld money belonging to:

(A) an insurer;

(B) a health maintenance organization; or

(C) an insured, enrollee, or beneficiary;

(5) has engaged in fraudulent or dishonest acts or practices;

(6) has materially misrepresented the terms and conditions of an insurance policy or contract, including a contract relating to membership in a health maintenance organization;

(7) has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of an insurance or annuity contract legally issued by an insurer or a membership issued by a health maintenance organization to induce the owner of the contract or membership to forfeit or surrender the contract or membership or allow it to lapse for the purpose of replacing the contract or membership with another;

(8) is convicted of a felony;

(9) has offered or given a rebate of an insurance premium or commission to an insured or enrollee;

(10) is not actively engaged in the soliciting or writing of insurance for the public generally as required by Section 2(c), Article 21.07, of this code; or

(11) has obtained or attempted to obtain a license, not for the purpose of holding the license holder or applicant out to the general public as an agent, but primarily for the purpose of soliciting, negotiating, or procuring insurance or annuity contracts or memberships covering:

(A) the applicant or license holder;

(B) a member of the applicant's or license holder's family; or

(C) a business associate of the applicant or license holder.

(d) An individual whose license application is denied or whose license has been revoked under this article may not apply for any license as an insurance agent before the fifth anniversary of:

(1) the effective date of the denial or revocation; or

(2) if the applicant or license holder seeks judicial review of the department's action, the date of the final court order or decree affirming that action.

(e) The commissioner may deny a timely application filed under Subsection (d) of this section if the applicant does not show good cause why the denial or revocation of the previous license application or license should not be considered a bar to the issuance of a new license. This subsection does not apply to an applicant whose license application was denied for failure to:

(1) pass a required written examination; or

(2) submit a properly completed license application.

(f) Instead of or in addition to taking disciplinary action under this section, the department may order that a license holder who is currently afflicted with a disability be placed on disability probation under the terms and conditions specified under Article 21.15-6 of this code and department rules.

(g) Subsections (c)-(f) of this section do not apply to a person who is licensed under, or holds a certificate of authority issued under, Chapter 9 of this code. [The commissioner shall prescribe procedures by which all decisions to deny, suspend, or revoke a license, or to refuse to renew a license, are made by or are appealable to the commissioner.]

SECTION 1.06. Article 21.01-2, Insurance Code, is amended by adding Sections 4A, 5A, and 6A to read as follows:

Sec. 4A. JUDICIAL REVIEW. A license applicant or license holder may appeal as provided by Article 1.04 of this code if:

(1) the commissioner:

(A) refuses an application for a license as provided by this article; or

(B) suspends, revokes, or refuses to renew a license at a hearing as provided by this article; or

(2) the applicant or license holder is dissatisfied with another action of the commissioner.

Sec. 5A. AUTOMATIC FINES. (a) To expedite the department's processing of certain violations of this code, the commissioner may establish by rule monetary fines for certain violations. Violations for which the fines may be assessed include a failure to:

(1) obtain the total number of continuing education hours before the renewal date of the license;

(2) timely report a change of address to the department; or

(3) notify the department of an administrative action taken against the agent by another state's insurance regulator.

(b) This section may not be construed to limit the department's authority to take any other disciplinary action against a license holder as provided under another provision of this code.

(c) If a person disputes the assessment of a fine under this section, the matter is a contested case subject to Chapter 2001, Government Code.

Sec. 6A. ENFORCEMENT OF SUBCHAPTER. The attorney general, a district or county attorney, or the department acting through the commissioner may institute an injunction proceeding or any other proceeding to enforce this subchapter and to enjoin any person, firm, corporation, or bank from engaging or attempting to engage in the business of insurance in violation of this code or any other insurance law of this state. The provisions of this section are cumulative of the other penalties or remedies provided by this article.

SECTION 1.07. Article 21.04, Insurance Code, is amended to read as follows:

Art. 21.04. LICENSE HOLDER [SOLICITOR] DEEMED COMPANY'S AGENT. Any person who solicits an application for life, accident, or health insurance, or property or casualty insurance, shall, in any controversy between the insured or the insured's beneficiary and the company issuing any policy upon such application or between the insured or the insured's dependents and that company, be regarded as the agent of the company, and not the agent of the insured, but such agent shall not have the power to waive, change or alter any of the terms or conditions of the application or policy.

SECTION 1.08. Article 21.06, Insurance Code, is amended to read as follows:

Art. 21.06. AUTHORITY TO APPOINT [CERTIFICATES FOR] AGENTS. Each ~~such~~ foreign or domestic insurance company shall, by resolution of its board of directors, designate an [some] officer or agent who is empowered to appoint or employ its agents ~~[or solicitors]~~ in this State, and such officer or agent shall promptly notify the department [Board] in writing of the name, title, and address of each person so appointed or employed. The authority of that designee to act on behalf of the insurance company continues in force [Upon receipt of this notice, the Board shall issue to him a certificate which shall include a copy of the certificate of authority authorizing the company requesting it to do business in this State, and the name and title of the person to whom the certificate is issued. Such certificate], unless sooner revoked by the commissioner [Board] for cause or cancelled at the request of the insurance company [employing the holder thereof, shall continue in force until the first day of March next after its issuance, and must be renewed annually].

SECTION 1.09. Section 1, Article 21.07, Insurance Code, is amended to read as follows:

Sec. 1. APPLICABILITY OF ARTICLE [ACT]. (a) No person ~~[, corporation, or bank]~~ shall act as an agent of any insurance company, health maintenance organization, or [(i) local mutual aid association, (ii) local mutual burial association, (iii) statewide mutual assessment corporation, (iv) stipulated premium company, (v) county mutual insurance company, (vi) casualty company writing accident and health insurance, or (vii) any] other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of this subchapter [Article, on the date that this Act shall become effective,] unless that person [individual or entity] shall have first procured a license from the department as [in this Article is] provided by this subchapter, and no such



insurance carrier shall appoint any person[~~, corporation, or bank~~] to act as its agent unless such person[~~, corporation, or bank~~] shall have obtained a license under the provisions of this subchapter [~~Article~~], and no such person[~~, corporation, or bank~~] who obtains a license shall engage in business as an agent until that person [~~individual or entity~~] shall have been appointed to act as an agent by some duly authorized insurance carrier designated by the provisions of this code [~~Article~~] and authorized to do business in the State of Texas. [~~Any person, corporation, or bank desiring to act as an agent of any insurance carrier licensed to do business in the State of Texas and writing health and accident insurance may obtain a separate license as an agent to write health and accident insurance provided such person, corporation, or bank complies with the provisions of this Article and has been appointed to act as an agent by some duly authorized insurance carrier authorized to do health and accident insurance business in the State of Texas.~~]

(b) The provisions of this subchapter do not apply to:

(1) an actual full-time home office salaried employee of an insurance carrier licensed to do business in this state, other than an employee who solicits or receives an application for the sale of insurance through an oral, written, or electronic communication in accordance with Article 21.14 of this code;

(2) an actual attorney in fact or the actual traveling salaried representative of a reciprocal exchange or interinsurance exchange admitted to do business in this state as to business transacted through the attorney in fact or salaried representative;

(3) the actual attorney in fact for a Lloyd's association;

(4) the group motor vehicle insurance business or the group motor vehicle department of companies engaged in that business; or

(5) a salaried employee who is not involved in the solicitation or negotiation of insurance in the office of a licensed agent who devotes the employee's full time to clerical and administrative services, including the incidental taking of information from customers and receipt of premiums in the office of a licensed agent, if the employee does not receive any commissions and the employee's compensation is not varied by the volume of premiums taken and received. [No insurer or licensed insurance agent doing business in this State shall pay directly or indirectly any commission, or other valuable consideration, to any person, corporation, or bank for services as an insurance agent within this State, unless such person, corporation, or bank shall hold a currently valid license to act as an insurance agent as required by the laws of this State; nor shall any person, corporation, or bank other than a duly licensed insurance agent, accept any such commission or other valuable consideration; provided, however, that the provisions of this Section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because such person, corporation, or bank has ceased to hold a license to act as an insurance agent.

[(c) A person who has had a license revoked under Section 10 of this Article may not solicit or otherwise transact business under Chapter 10 of this code.]

SECTION 1.10. Section 1A, Article 21.07, Insurance Code, is amended to read as follows:

Sec. 1A. DEFINITIONS. Unless the context clearly indicates otherwise, in [It] this subchapter:

(1) "Agent" means a person who is an authorized agent of an insurance company or health maintenance organization, any person who is a sub-agent of an agent, and any other person who performs the acts of an agent, whether through an oral, written, or electronic communication or otherwise, in the solicitation of,

negotiation for, procurement of, or collection of premiums on an insurance or annuity contract, or who represents or purports to represent a health maintenance organization, including a health maintenance organization offering only a single health care service plan, in the solicitation of, negotiation for, procurement of, or effectuation of membership in the health maintenance organization. The term does not include:

(A) a regular salaried officer or employee of an insurance company, health maintenance organization, or insurance agent who:

(i) devotes substantially all of the officer's or employee's time to activities other than the solicitation of applications for insurance, annuity contracts, or memberships;

(ii) does not receive a commission or other compensation directly dependent on the business obtained; and

(iii) does not solicit or accept from the public applications for insurance, annuity contracts, or memberships;

(B) an employer or an employer's officers or employees or the trustees of an employee benefit plan, to the extent that those 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 an insurance company or memberships issued by a health maintenance organization, if those employers, officers, employees, or trustees are not compensated, directly or indirectly, by the insurance company or health maintenance organization issuing the insurance or annuity contracts or memberships;

(C) except as otherwise provided by this code, a bank, a savings and loan association, or a credit union, or the officers and employees of banks, savings and loan associations, or credit unions, to the extent that those banks, savings and loan associations, credit unions, or officers and employees collect and remit premiums or charges by charging those premiums or charges against accounts of depositors on the orders of those depositors; or

(D) 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 computed 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 article.

(2) "Bank" means:

(A) a national banking association organized and existing under the National Bank Act (12 U.S.C. Section 21 et seq.), as amended;

(B) a state bank organized and existing under Subtitle A, Title 3, Finance Code;

(C) a state savings bank organized and existing under Subtitle C, Title 3, Finance Code;

(D) a bank branch; or

(E) a bank operating subsidiary, as defined by state or federal law.

(3) "Control" means the power to direct or cause the direction of the management and policies of a license holder, whether directly or indirectly. For the purposes of this subchapter, a person is considered to control:

(A) a corporate license holder if the person, individually or acting with others, directly or indirectly, holds with the power to vote, owns, or controls, or holds proxies representing, at least 10 percent of the voting stock or voting rights of the corporate license holder; or

(B) a partnership if the person through a right to vote or through any other right or power exercises rights in the management, direction, or conduct of the business of the partnership.

(4) "Corporation" means a legal entity that is organized under the business corporations laws or limited liability company laws of this state, another state, or a territory of the United States and that has as one of its purposes the authority to act as an insurance agent. The licensing and regulation of a limited liability company is subject to all provisions of this subchapter that apply to a corporation licensed under this subchapter.

(5) "Individual" means a natural person. The term includes a resident or a nonresident of this state.

(6) "Insurance company," "insurance carrier," or "insurer" means an insurance company regulated by the department. The term includes:

(A) any domestic or foreign, stock and mutual, life, health, or accident insurance company;

(B) any domestic or foreign, stock and mutual, fire and casualty insurance company;

(C) a Mexican casualty company;

(D) a domestic or foreign Lloyd's plan insurer;

(E) a domestic or foreign reciprocal or interinsurance exchange;

(F) a domestic or foreign fraternal benefit society;

(G) a stipulated premium insurance company;

(H) a nonprofit or for-profit legal service corporation;

(I) a statewide mutual assessment company;

(J) a local mutual aid association;

(K) a local mutual burial association;

(L) an exempt association under Article 14.17 of this code;

(M) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 20 of this code;

(N) a health maintenance organization;

(O) a county mutual insurance company; or

(P) a farm mutual insurance company.

(7) "Partnership" means an association of two or more persons organized under the partnership laws or limited liability partnership laws of this state, another state, or a territory of the United States. The term includes a general partnership, limited partnership, limited liability partnership, and limited liability limited partnership.

(8) "Person" means an individual, partnership, corporation, or bank.

(9) "Sub-agent" means any person, other than a regular salaried officer or employee of an insurance company, insurance carrier, or health maintenance organization, or of an agent, engaging in activities described under Subdivision (1) of this section who acts for or on behalf of an agent, whether through an oral, written, or electronic communication or otherwise, in the solicitation of, negotiation for, or procurement of an insurance or annuity contract or health maintenance organization membership, or the collection of premiums or charges on an insurance or annuity contract or health maintenance organization membership, whether or not the sub-agent is designated by the agent as a sub-agent or by any other title. A sub-agent is an agent, for all purposes of this subchapter, and wherever the term "agent" is used in this chapter, it includes sub-agents whether or not a sub-agent is specifically mentioned. A sub-agent must hold at least one of the licenses issued to the agent for

whom the sub-agent acts, but is not required to hold each of those licenses. However, the sub-agent must be properly licensed to write each type of insurance that the sub-agent is employed to write [Article, "person" means an individual or a general partnership composed of two or more individuals or a limited liability partnership registered with the Secretary of State under Section 3.08, Texas Revised Partnership Act (Article 6132b-3.08, Vernon's Texas Civil Statutes). The term "partnership" or "agency partnership" as used in this Article means a general partnership or a registered limited liability partnership].

SECTION 1.11. Section 2, Article 21.07, Insurance Code, is amended to read as follows:

Sec. 2. APPLICATION FOR LICENSE; TO WHOM LICENSE MAY BE ISSUED. (a) Any person~~[-corporation, or bank]~~ that desires to become an agent for an an [a local mutual aid association, a local mutual burial association, a statewide mutual assessment corporation, a stipulated premium company, a county mutual] insurance company or health maintenance organization~~[-a casualty company writing accident and health insurance, or any other type of insurance carrier licensed to do business in the State of Texas]~~, the agents of which are required to be licensed under this subchapter ~~[Article]~~, shall submit to the department an application for a license in the form required by the department.

(b) Each applicant for a license to act as an insurance agent in this state shall file with the commissioner a completed application on forms developed by the department. The commissioner shall establish by rule the requirements for a properly completed application.

(c) The commissioner may not grant a license as an insurance agent to write any form of insurance unless the department finds that:

(1) the applicant is or intends to be actively engaged in the soliciting or writing of insurance for the public generally and is to be actively engaged in the business of insurance; and

(2) the application is not made to evade the laws against rebating and discrimination, either for the applicant or for some other person.

(d) This section does not prohibit an applicant insuring property that the applicant owns or in which the applicant has an interest, but it is the intent of this section to prohibit coercion of insurance and to preserve to each individual the right to choose that individual's own agent or insurance company, and to prohibit the licensing of a person to engage in the insurance business principally to handle business that the applicant controls only through ownership, mortgage or sale, family relationship, or employment. An applicant for an original license must have a bona fide intention to engage in business in which, in any calendar year, at least 25 percent of the total volume of premiums is derived from persons other than the applicant and from property other than that on which the applicant controls the placing of insurance through ownership, mortgage, sale, family relationship, or employment.

(e) The department may not deny a license application solely on the ground that the applicant will act only part-time as an agent.

(f) The [application must bear a signed endorsement by an officer or properly authorized representative of the insurance carrier that the individual applicant or each member of the partnership or each officer, director, and shareholder of the corporation or the responsible officer and employee of the bank is qualified to hold that individual or the partnership, the corporation, or the bank out in good faith to the general public as an insurance agent, and that the insurance carrier desires that the applicant act as an insurance agent to represent it in this State.

~~[(c) The]~~ department shall issue a license to an individual to engage ~~[or to a general partnership engaging]~~ in the business of insurance if the department finds that the individual:

(1) is at least 18 years of age;

(2) has passed the applicable licensing examination required under Article 21.01-1 of this code within the past 12 months;

(3) has not committed an act for which a license may be denied under Article 21.01-2 of this code; and

(4) has submitted the application, appropriate fees, and any other information required by the department.

(g) An individual agent licensed under Section 2, Article 21.07-1, of this code or Section 2, Article 21.14, of this code who is operating as an individual agent and who is not covered by an errors and omissions insurance policy of a general agency or corporation shall certify to the department that the agent will maintain the ability to pay any amount that the individual agent might become legally obligated to pay due to any claim made against the agent by a customer and caused by a negligent act, error, or omission of the individual agent or any person for whose acts the individual agent is legally liable in the conduct of business under this code. The insurance or bond requirement adopted under this subsection does not apply to an employee of a licensed insurer, but does apply to a person who operates as an independent contractor. For purposes of this subsection, the term "customer" means a person, including a firm or corporation, to whom the individual agent sells or attempts to sell a policy of insurance, or from whom the individual agent accepts an application for insurance. The individual agent shall maintain proof of the ability to pay the amount through:

(1) an errors and omissions policy insuring the individual agent against errors and omissions in at least the sum of \$250,000 with a deductible of not more than 10 percent of the face amount of the policy issued by an insurance company licensed to do business in this state, or, if a policy cannot be obtained from a company licensed to do business in this state, through a properly obtained surplus lines policy; or

(2) a bond executed by the individual agent as principal and a surety company authorized to do business in this state, as surety, in the principal sum of \$25,000, payable to the department for the use and benefit of customers of the individual agent, and conditioned that the individual agent shall pay any final judgment recovered against the agent by a customer.

(h) A binding commitment to issue a policy or bond described by Subsection (g) of this section is sufficient in connection with an application for a license. An individual agent licensed under both Articles 21.07-1 and 21.14 of this code is only required to maintain one errors and omissions policy or bond to comply with Subsection (g) of this section.

(i) An individual engaging in the business of insurance as a sole proprietorship under the authority of a license issued under this subchapter may incorporate, but the corporation does not have greater license authority than that granted to the license holder in the holder's individual capacity.

(j) Each individual license holder shall notify the department on a monthly basis of:

(1) a change of the license holder's mailing address;

(2) a conviction of the license holder of a felony; or

(3) an administrative action taken against the license holder by the insurance regulator of another state [partner in the partnership must be licensed individually as an agent under this Article].

(k) ~~(d)~~ The department shall issue a license to a corporation or partnership if the department finds that:

(1) ~~That~~ the corporation or partnership is:

(A) organized under the laws of this state or any other state or territory of the United States;

(B) admitted to conduct business in this state by the secretary of state, if so required; and

(C) authorized by its articles of incorporation or its partnership agreement to act as an insurance agent [a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act (Article 1528c, Vernon's Texas Civil Statutes) having its principal place of business in the State of Texas and having as one of its purposes the authority to act as an agent covered by this Article];

(2) the corporation or partnership meets the definition of that entity adopted under Section 1A of this article; [That every officer, director, and shareholder of the corporation is individually licensed under the provisions of this Article, or that every officer and director of the corporation is individually licensed under this Article, that the corporation is a wholly owned subsidiary of a parent corporation that is licensed under this Article, and that every shareholder of the parent corporation is individually licensed under this Article; and]

(3) at least one officer of the corporation or one active partner of the partnership and all other persons performing any acts of an agent on behalf of the corporation or partnership in this state are individually licensed by the department separately from the corporation or partnership;

(4) the [That such] corporation or partnership will have the ability to pay any sums up to \$25,000 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or partnership or any person for whose acts the corporation or partnership is legally liable in the conduct of its business under this code [Article]. The term "customer" means any person, firm, or corporation to whom such corporation or partnership sells or attempts to sell a policy of insurance, or from whom such corporation or partnership accepts an application for insurance. Such ability shall be maintained [proven] in one of the following ways:

(A) an errors and omissions policy insuring such corporation or partnership against errors and omissions in at least the sum of \$250,000 [~~\$100,000~~] with [no more than] a [~~\$10,000~~] deductible of not more than 10 percent of the face amount of the policy [feature] issued by an insurance company licensed to do business in this state [the State of Texas] or, if a policy cannot be obtained from a company licensed to do business in this state [~~Texas~~], through a properly obtained surplus lines policy [issued by a company not licensed to do business in Texas on filing an affidavit with the department stating the inability to obtain coverage and receiving the commissioner's approval]; or

(B) a bond executed by such corporation or partnership as principal and a surety company authorized to do business in this state [~~State~~], as surety, in the principal sum of \$25,000, payable to the department for the use and benefit of customers of such corporation or partnership, conditioned that such corporation or partnership shall pay any final judgment recovered against it by any customer[; or

[(C) a deposit of cash or securities of the class authorized by Articles 2.08 and 2.10, Insurance Code, as amended, having a fair market value of

\$25,000 with the comptroller. The comptroller is directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the department evidence satisfactory to it that the corporation has withdrawn from business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as provided. Securities so deposited may be exchanged from time to time for other qualified securities]. A binding commitment to issue such a policy or bond[, or the tender of such securities,] shall be sufficient in connection with any application for license;

(5) the corporation or partnership intends to be actively engaged in the business of insurance as required under Subsection (c) of this section;

(6) each location from which the corporation or partnership will conduct its Texas business under authority of an insurance license is separately registered with the department;

(7) the corporation or partnership has submitted the application, appropriate fees, and any other information required by the department; and

(8) an officer, director, member, manager, partner, or any other person who has the right or ability to control the license holder has not:

(A) had a license suspended or revoked or been the subject of any other disciplinary action by the insurance regulator of this or any other state; or

(B) committed an act for which a license may be denied under Article 21.01-2 of this code.

(l) Nothing contained in this section [herein] shall be construed to permit any unlicensed employee or agent of any corporation or partnership to perform any act of an agent under this subchapter [Article] without obtaining a license.

(m) [If at any time, any corporation holding an agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as an agent shall be cancelled or denied in accordance with the provisions of Sections 10 and 11 of this Article; provided, however, that should any person who is not a licensed agent under this Article acquire shares in such a corporation by devise or descent, that person shall have a period of 90 days from date of acquisition within which to obtain a license or to dispose of the shares to a person licensed under this Article:

[Should such an unlicensed person acquire shares in a corporation and not dispose of them within a period of 90 days to a licensed agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled:

[Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the board of directors and such shareholder or such shareholder's personal representative, or at a price and upon such terms as may be provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.]

Each corporation or partnership licensed as an agent under this subchapter [Article] shall file, under oath, on a form developed by the department, biographical information for each [a list of the names and addresses of all] of its executive officers

and[;] directors or unlicensed partners who administer the entity's operations in this state, and shareholders who are in control of the corporation, or any other partners who have the right or ability to control the partnership. If any corporation or partnership is owned, in whole or in part, by another entity, a biographical form is required for each individual who is in control of the parent entity[; and shareholders with its application for renewal license].

(n) Each corporation or partnership shall notify the department on a monthly basis of:

(1) the addition or removal of licensed agents employed by the corporation or partnership to perform any act of an agent in this state;

(2) a felony conviction of a licensed agent of the entity or any individual associated with the corporation or partnership who is required to file biographical information with the department;

(3) an event that would require notification under Article 1.30 of this code; and

(4) the addition or removal of an officer, director, partner, member, or manager.

(o) The department shall issue a license to a bank in the manner provided for the licensing of a corporation under this section.

(p) A person may not acquire in any manner any ownership interest in an entity licensed as an agent under this subchapter if the person is, or after the acquisition would be, directly or indirectly, in control of the license holder, or otherwise acquire control of or exercise any control over the license holder, unless the person has filed the following information with the department under oath:

(1) a biographical form for each person by whom or on whose behalf the acquisition of control is to be effected;

(2) a statement certifying that no person who is acquiring an ownership interest in or control of the license holder has been the subject of a disciplinary action taken by any state insurance regulator;

(3) a statement certifying that, immediately on the change of control, the license holder will be able to satisfy the requirements for the issuance of the license to solicit the line or lines of insurance for which it is licensed; and

(4) any additional information that the commissioner may by rule prescribe as necessary or appropriate to the protection of the insurance consumers of this state or as in the public interest.

(q) If a person required to file a statement under Subsection (p) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information required by Subdivisions (1)-(4) of that subsection for an individual be provided regarding each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If the partner, member, or person is a corporation or the person required to file the statement under Subsection (p) of this section is a corporation, the commissioner may require that the information required by Subdivisions (1)-(4) of that subsection be provided regarding:

(1) the corporation;

(2) each individual who is an executive officer or director of the corporation; and

(3) each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation.



(r) The department may disapprove an acquisition of control if, after notice and opportunity for hearing, the commissioner determines that:

(1) immediately on the change of control the license holder would not be able to satisfy the requirements for the issuance of the license to solicit the line or lines of insurance for which it is presently licensed;

(2) the competence, trustworthiness, experience, and integrity of the persons who would control the operation of the license holder are such that it would not be in the interest of the insurance consumers of this state to permit the acquisition of control; or

(3) the acquisition of control would violate this code or another law of this state, another state, or the United States.

(s) Notwithstanding Subsection (q) of this section, a change in control is considered approved if the department has not proposed to deny the requested change before the 91st day after the date of receipt by the department of all information required by this section.

(t) The commissioner shall be the corporation's or partnership's attorney for service of process on whom all lawful process, notice, or demand may be served in any legal proceeding against the corporation or partnership if:

(1) the corporation or partnership licensed to transact business in this state fails to appoint or maintain an attorney for service in this state;

(2) an attorney for service cannot with reasonable diligence be found; or

(3) the license of a corporation or partnership is revoked.

(u) If a corporation or partnership that holds an agent's license does not maintain the qualifications necessary for issuance of the license, the department shall deny, revoke, or suspend the license of the corporation or partnership to act as an agent as provided by Article 21.01-2 of this code.

(v) A person licensed under this subchapter shall maintain all insurance records, including all records relating to customer complaints, separate from the records of any other business in which the person may be engaged.

~~[Each corporation shall notify the department upon any change in its officers, directors, or shareholders not later than the 30th day after the date on which the change becomes effective.~~

~~[Except as provided by Subdivision (2) of this subsection, a corporation may not own any interest in another corporation licensed under this Article, and each owner of an interest in a corporation licensed under this Article shall be a natural person who holds a valid license issued under this Article.~~

~~[(e) The department shall issue a license to a bank if the department finds that:~~

~~[(1) the bank satisfies the definition of Section 1C of this Article;~~

~~[(2) at least one officer of the bank and each individual who will be performing any acts as an agent for the bank are individually licensed under this Article; and~~

~~[(3) the bank will have the ability to pay any sums up to \$25,000 that it might become legally obligated to pay on account of any claim made against it by a customer and caused by a negligent act, error, or omission of the bank or any person for whose acts the bank is legally liable in the conduct of its business under this Article. The term "customer" means any person, firm, or corporation to whom the bank sells or attempts to sell a policy of insurance or from whom the bank accepts an application for insurance. That ability shall be proven through:~~

~~[(A) an errors and omissions policy insuring the bank against errors and omissions in at least the sum of \$100,000 with not more than a \$10,000 deductible feature, issued by an insurance company licensed to do business in this state or, if a policy cannot be obtained from a company licensed to do business in this state, a policy issued by a company not licensed to do business in this state on filing an affidavit with the department stating the inability to obtain coverage and receiving the department's approval;~~

~~[(B) a bond executed by the bank as principal and a surety company authorized to do business in this state, as surety, in the principal sum of \$25,000, payable to the department for the use and benefit of customers of the bank, conditioned that the bank shall pay any final judgment recovered against it by a customer; or~~

~~[(C) a deposit with the comptroller of cash or securities of the class authorized by Articles 2.08 and 2.10 of this code, with a fair market value of \$25,000. The comptroller shall accept and receive the deposit and hold it exclusively for the protection of a customer of the bank who recovers a final judgment against the bank. The deposit may be withdrawn only on filing with the department satisfactory evidence that the bank has withdrawn from the business of insurance and has no unsecured liabilities outstanding or that the bank has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as provided by this subdivision. Securities so deposited may be exchanged from time to time for other qualified securities.~~

~~[A binding commitment to issue such a policy or bond, or the tender of applicable securities, is sufficient in connection with an application for license.~~

~~[Nothing in this subsection permits an unlicensed employee or agent of a bank to perform any act of an agent under this Article without obtaining a license.~~

~~[A bank licensed as an agent under this Article may have additional offices from which the business of insurance is conducted only in a place with a population of 5,000 or less and must comply with the department's regulations regarding additional offices.~~

~~[A bank licensed as an agent under this Article must maintain the insurance records of the bank, including all files relating to customer complaints, separate from records relating to the banking transactions of the bank.~~

~~[If at any time, a bank that holds an agent's license does not maintain the qualifications necessary to obtain a license, the license of that bank to act as an agent shall be canceled or denied in accordance with Sections 10 and 11 of this Article.~~

~~[Each bank licensed as an agent under this Article shall file under oath with its application for license renewal a list of the name and address of each individual who will be acting as an agent on behalf of the bank and of each officer and director of the bank, as defined by Article 21.02 of this code, and other biographical information as required by the department.~~

~~[Each bank shall notify the department of any change in its officers and directors, and any change in other persons who will be acting as agents, as defined by Article 21.02 of this code, and submit biographical information on those officers, directors, and persons as required by the department not later than the 30th day after the date on which the change takes effect.]~~

SECTION 1.12. Article 21.07, Insurance Code, is amended by adding Section 3A to read as follows:

Sec. 3A. TEMPORARY LICENSE. (a) The department may issue a temporary agent's license to an applicant for a license under Section 2 of this article who is being considered for appointment as an agent by another license holder, an insurer, or a

health maintenance organization. An applicant for a temporary license is not required to pass a written examination. A temporary license is valid for the 90 days after the date of issuance. The department shall issue a temporary license immediately on receipt by the department of a properly completed application executed by the person in the form required by Section 2 of this article, accompanied by the nonrefundable filing fee set by the department and a certificate signed by an officer or properly authorized representative of the agent, insurer, or health maintenance organization stating that:

(1) the applicant is being considered for appointment by the agent, insurer, or health maintenance organization as its full-time agent;

(2) the agent, insurer, or health maintenance organization desires that the applicant be issued a temporary license; and

(3) the applicant will complete, under the agent's, insurer's, or health maintenance organization's supervision, at least 40 hours of training as prescribed by Subsection (h) of this section not later than the 14th day after the date on which the application, certificate, and nonrefundable fee are delivered or mailed to the department.

(b) If the temporary license is not received from the department before the eighth day after the date on which the application, certificate, and nonrefundable fee are delivered or mailed to the department and the agent, insurer, or health maintenance organization has not been notified that the application is denied, the agent, insurer, or health maintenance organization may assume that the temporary license will be issued in due course and the applicant may proceed to act as an agent.

(c) A temporary license may not be renewed or issued more than once in a consecutive six-month period to the same applicant.

(d) A temporary license may not be granted to a person who does not intend to apply for a license to sell insurance or memberships to the public generally.

(e) A temporary license may not be used to obtain commissions from sales made to persons who have family, employment, or business relationships with the temporary license holder. An agent, insurer, or health maintenance organization may not knowingly pay, directly or indirectly, to the holder of a temporary license under this section, and a temporary license holder may not receive or accept, a commission on the sale of a contract of insurance or membership covering:

(1) the temporary license holder;

(2) a person related to the temporary license holder by consanguinity or affinity;

(3) a person who is or has been during the past six months the temporary license holder's employer, either as an individual or as a member of a partnership, association, firm, or corporation; or

(4) a person who is or who has been during the past six months the employee of the temporary license holder.

(f) A person who has been issued a temporary license under this section and is acting under the authority of the temporary license may not engage in any insurance solicitation, sale, or other agency transaction that results in or is intended to result in the replacement of any existing individual life insurance policy form or annuity contract that is in force, or receive, directly or indirectly, any commission or other compensation that may or does result from such a solicitation, sale, or other agency transaction. A person who holds a permanent license may not circumvent or attempt to circumvent the intent of this subsection by acting for or with a person holding a temporary license. As used in this subsection, "replacement" means a transaction in

which a new life insurance or annuity contract is to be purchased, and it is known or should be known to the temporary agent that by reason of the solicitation, sale, or other transaction the existing life insurance or annuity contract has been or is to be:

(1) lapsed, forfeited, surrendered, or otherwise terminated;

(2) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) reissued with any reduction in cash value; or

(5) pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time, for amounts in the aggregate exceeding 25 percent of the loan value set forth in the policy.

(g) The department may cancel, suspend, or revoke the temporary appointment powers of an agent, insurer, or health maintenance organization if, after notice and opportunity for hearing, the commissioner finds that that agent, insurer, or health maintenance organization has abused the temporary appointment powers. An appeal from the department's decision is subject to Article 1.04 of this code. In considering whether abuse has occurred, the department may consider:

(1) the number of temporary appointments made;

(2) the percentage of appointees sitting for examination as agents under this article, as provided by Subsection (j) of this section; and

(3) the number of appointees who pass the examination.

(h) The agent, insurer, or health maintenance organization shall administer at least 40 hours of training to each applicant for a temporary license not later than the 14th day after the date on which the application, certificate, and nonrefundable fee are delivered or mailed to the department. At least 10 hours must be taught in a classroom setting, including an accredited college, university, junior college, or community college, a business school, or a private institute or classes sponsored by the agent, insurer, or health maintenance organization and especially established for this purpose. The training program must be designed to provide an applicant with basic knowledge of:

(1) the broad principles of insurance, including the licensing and regulatory laws of this state;

(2) the broad principles of health maintenance organizations, including membership requirements and related licensing and regulatory laws of this state; and

(3) the ethical obligations and duties of an agent.

(i) If the commissioner finds under Subsection (g) of this section that an abuse of temporary appointment powers has occurred, the commissioner may require the affected agent, insurer, or health maintenance organization to file with the department a description of the agent's, insurer's, or health maintenance organization's training program and may require the agent, insurer, or health maintenance organization to obtain the approval of the department before continuing to use the training program.

(j) Each agent, insurer, or health maintenance organization shall ensure that, during any two consecutive calendar quarters, at least 70 percent of the agent's, insurer's, or health maintenance organization's applicants for temporary licenses sit for the required licensing examination. At least 50 percent of the applicants taking the examination must pass during that period.

(k) An agent, insurer, or health maintenance organization may not make more than 250 appointments of temporary license holders during a calendar year.

SECTION 1.13. Section 6, Article 21.07, Insurance Code, is amended to read as follows:

Sec. 6. FILING OF [AGENT MAY BE LICENSED TO REPRESENT] ADDITIONAL APPOINTMENTS [INSURERS]. (a) Except as specifically prohibited by another provision of this code, an [Any] agent licensed under this subchapter [Article] may represent and act as an agent for more than one insurance carrier at any time while the agent's license is in force, if the agent so desires. Any such agent and the insurance carrier involved shall file with the department [must give notice to the State Board of Insurance of] any additional appointment [or appointments] authorizing the agent to act as agent for an additional insurance carrier or carriers not later than the 30th day after the effective date of the appointment. The filing [Such notice] must include:

(1) [be accompanied by] a certificate from the [each] insurance carrier to be named in the [each] additional appointment that states[, and must state] that the [said] insurance company desires to appoint the applicant as its agent;

(2) [. This notice shall also contain such] other information as the commissioner [State Board of Insurance] may require; and

(3) [. The agent shall be required to pay] a nonrefundable fee in an amount [not to exceed \$16 as] determined by the commissioner [State Board of Insurance] for each additional appointment for which the insurance carrier applies [applied for; which fee shall accompany the notice. If approval of the additional appointment is not received from the State Board of Insurance before the eighth day after the date on which the completed application and fee were received by the Board, the agent and the insurance carrier, in the absence of notice of disapproval, may assume that the Board approves the application, and the agent may act for the insurance carrier].

(b) An appointment made under this Article to authorize an agent to act as an agent for an insurance carrier continues in effect without the necessity of renewal until it is terminated or [and] withdrawn by the insurance carrier or agent. If the agent is terminated for cause, the insurance carrier shall follow the procedures established under Section 6B of [as provided by this section or is otherwise terminated in accordance with] this Article. Each renewal license issued to the agent authorizes the agent to represent and act for the insurance carriers for which the agent holds an appointment until the appointment is terminated or withdrawn, and that agent is considered to be the agent of the appointing insurance carriers for the purposes of this code [Article].

(c) An agent appointed under this section may act on behalf of the appointing carrier before the department receives the filing made under this section.

(d) A person acting as a sub-agent is not required to be separately appointed by each insurance carrier that has appointed the licensed person who has designated the sub-agent in writing to the department. Termination of the sub-agent by the licensed person shall be reported promptly to the department and terminates the sub-agent's authority to act for the licensed person and that person's insurance carriers.

SECTION 1.14. Article 21.07, Insurance Code, is amended by adding Sections 6B, 6C, 6D, and 6E to read as follows:

Sec. 6B. INSURANCE CARRIER TO NOTIFY DEPARTMENT OF TERMINATION OF CONTRACT; COMMUNICATION PRIVILEGED. (a) Each insurance carrier shall, on termination of the appointment of an agent for cause, immediately file with the department a statement of the facts relating to the termination of the appointment and the date and cause of the termination. On receipt of the statement the department shall record the termination of the appointment of that agent to represent the insurance carrier in this state.

(b) A document, record, statement, or other information required to be made or disclosed to the department under this section is a privileged and confidential communication and is not admissible in evidence in any court action or proceeding except under a subpoena issued by a court of record.

(c) An insurance carrier, an employee or agent of the carrier, or any other person, acting without malice, is not liable for providing the information required to be disclosed under this section.

Sec. 6C. FEES; USE OF FUNDS. (a) The department shall collect from each agent of an insurance carrier writing insurance in this state under this code a nonrefundable license fee and a nonrefundable appointment fee for each appointment by an insurance carrier. These fees, together with examination fees, license fees, and license renewal fees, shall be deposited to the credit of the Texas Department of Insurance operating fund.

(b) The department may use any portion of the fees collected to enforce this subchapter, may employ persons as it considers necessary to investigate and make reports regarding alleged violations of this code and misconduct on the part of agents, and may pay the salaries and expenses of those persons and office employees and other expenses necessary to enforce this subchapter from the fees collected. A person employed by the department under this section may administer the oath and examine under oath any person considered necessary in gathering information and evidence and may have that information and evidence reduced to writing if considered necessary, and all such expenses shall be paid from the fees.

(c) The department shall set the fees in amounts reasonable and necessary to implement this subchapter.

Sec. 6D. DUPLICATE LICENSE FEE. The department shall collect in advance from an agent requesting a duplicate license a fee in an amount set by the department. The fee collected under this section shall be deposited to the credit of the Texas Department of Insurance operating fund.

Sec. 6E. REQUIREMENT TO APPOINT SUB-AGENT. If a general life, accident, and health agent or general property and casualty agent who has been appointed by an insurance carrier that has a permit to do business in this state desires to appoint a sub-agent in the operation of an insurance business, the general agent shall submit to the department in writing, in the form prescribed by the department, notice of the sub-agent's appointment. The notice must be accompanied by a nonrefundable fee in an amount determined by the commissioner.

## ARTICLE 2. LIFE, ACCIDENT, AND HEALTH LICENSES

SECTION 2.01. Subchapter A, Chapter 21, Insurance Code, is amended by adding Article 21.07-1 to read as follows:

### Art. 21.07-1. TEXAS LIFE, ACCIDENT, AND HEALTH AGENTS LICENSE ACT

Sec. 1. SHORT TITLE; APPLICATION. (a) This article may be cited as the Texas Life, Accident, and Health Agents License Act.

(b) Each agent of an insurance company authorized to provide life, accident, and health insurance coverage in this state is subject to this article. This article applies to each person who:

(1) performs the acts of an agent, as defined by Article 21.02 of this code, whether through oral, written, or electronic communications or otherwise, by the solicitation of, negotiation for, procurement of, or collection of premiums on an insurance or annuity contract offered by any type of insurance carrier authorized to sell life, accident, and health insurance products in this state; or

(2) represents or purports to represent a health maintenance organization in the solicitation, negotiation, procurement, or effectuation of membership in the health maintenance organization.

Sec. 2. GENERAL LIFE, ACCIDENT, AND HEALTH LICENSE: LICENSE REQUIRED. (a) A general life, accident, and health license is required for each person who acts as:

(1) an agent writing life, accident, and health insurance for a life insurance company;

(2) an agent writing only accident and health insurance;

(3) an agent representing a health maintenance organization;

(4) an agent writing fixed or variable annuity contracts or variable life contracts;

(5) an industrial life insurance agent for an industrial company that writes only weekly premium life insurance on a debit basis under Article 3.52 of this code;

(6) an agent writing:

(A) only life insurance in excess of \$15,000 on any one life for a stipulated premium insurance company;

(B) only accident and health insurance for a stipulated premium insurance company; or

(C) both types of insurance described by Paragraphs (A) and (B) of this subdivision;

(7) an agent writing life, accident, and health insurance for any type of authorized life insurance company, including a legal reserve life insurance company, domiciled in this state, representing the insurer in a foreign country or territory and either on a United States military installation or with United States military personnel; or

(8) an agent writing any other type of insurance as required by the commissioner for the protection of the insurance consumers of this state.

(b) For the purposes of this subsection, a "combination company" is an insurer that writes weekly premium life insurance or monthly ordinary life insurance on a debit basis. A general life, accident, and health license is required for each person who acts as a combination life insurance agent for a combination company. A combination company and a combination life insurance agent may also write ordinary contracts of life insurance.

(c) Except as otherwise provided by this subsection, a general life, accident, and health license is required for an agent writing life, accident, and health insurance for a fraternal benefit society under Chapter 10 of this code. A license is not required for an agent, regularly salaried officer, employee, representative, or member of a fraternal benefit society who devotes less than 50 percent of the person's time to the solicitation or procurement of insurance contracts for the society. A person who, in the preceding calendar year, has solicited or procured the following amounts on any of the following contracts of insurance on behalf of a fraternal benefit society is presumed to have devoted 50 percent or more of the person's time to the solicitation or procurement of insurance contracts:

(1) life insurance contracts that generate, in the aggregate, more than \$20,000 of direct premium for all lives insured for the preceding calendar year, if no interest-sensitive life insurance certificate is solicited or procured with a face amount of insurance that exceeds \$35,000 unless the person has obtained the designation of "Fraternal Insurance Counselor";

(2) an insurance contract, other than a life insurance contract, that the fraternal benefit society may write that insures the individual lives of more than 25 persons; or

(3) a variable life insurance or variable annuity contract.

Sec. 3. AUTHORITY TO WRITE ADDITIONAL PRODUCT LINES. A person who holds a general life, accident, and health license issued under the requirements of this subchapter may write additional types of insurance contracts as provided under Section 4 of this article or under a specialty license program established by the department without obtaining an additional license.

Sec. 4. LIMITED LIFE, ACCIDENT, AND HEALTH LICENSE. (a) In this section, "job protection insurance" has the meaning assigned by Article 25.01 of this code.

(b) This section applies to:

(1) an agent for an insurance company that writes only job protection insurance;

(2) an agent for a local mutual aid association, a local mutual burial association, or a statewide mutual aid association;

(3) an agent writing policies or riders to policies that provide only:

(A) lump-sum cash benefits in the event of accidental death, death by accidental means, or dismemberment; or

(B) ambulance expense benefits in the event of accident or sickness;

(4) an agent writing prepaid legal services contracts under Article 5.13-1 or Chapter 23 of this code;

(5) an agent writing credit insurance except as otherwise provided under a specialty license program established by the department;

(6) the marketing, offering for sale, or delivery of credit insurance products for use by a person, regardless of whether the person holds a specialty license issued by the department under this code, who is:

(A) a retail distributor of goods;

(B) an automobile dealer;

(C) a bank, state or federal savings and loan, or state or federal credit union;

(D) a finance company;

(E) a production credit association; or

(F) a retailer of manufactured housing, including mobile homes; and

(7) an agent writing any other type of insurance required by the commissioner to be licensed for the protection of the insurance consumers of this state.

(c) A person to whom this section applies must hold a limited life, health, and accident license under this section. The commissioner may adopt rules as necessary to implement this section.

(d) Notwithstanding this section or any other law, a funeral prearrangement life insurance agent may not:

(1) act as an agent for an insurance company unless the agent acts under the supervision of a person, including a corporation, who:

(A) holds a general life, accident, and health license; and

(B) holds or is an authorized representative of a holder of a permit issued by the Texas Department of Banking to sell prepaid funeral benefits under Chapter 154, Finance Code;



(2) write any coverage or combination of coverages with an initial guaranteed death benefit in excess of \$15,000 on any life; or

(3) act as an agent for more than one insurance company.

(e) A person who holds a limited life, accident, and health license issued under this section may write only the types of insurance products described by this section.

(f) An applicant for a limited life, accident, and health license is eligible for a temporary license under Section 3A, Article 21.07, of this code.

Sec. 5. FUNERAL PREARRANGEMENT LIFE INSURANCE AGENT. (a) In this section, "funeral prearrangement life insurance agent" means a life insurance agent who, subject to the limitations of this section, writes only life insurance policies and fixed annuity contracts to secure the delivery of funeral services and merchandise under prepaid funeral contracts regulated by the Texas Department of Banking under Chapter 154, Finance Code.

(b) The commissioner shall issue a license to act as a funeral prearrangement life insurance agent to an individual after receiving certification from an insurance company authorized to write life insurance and annuities in this state that the applicant has completed a course of study and instruction on life insurance and fixed annuities for applicants offered by the insurance company and passed without aid a written examination administered by the insurance company. The course of study and instruction must be at least a five-hour course and must include instruction on:

(1) the policies to be sold; and

(2) the laws relating to funeral prearrangement.

(c) The commissioner shall authorize an insurance company to administer a funeral prearrangement life insurance agent examination as provided by Subsection (b) of this section after approval by the commissioner of a complete outline and explanation of the course of study and instruction and the nature and manner of conducting the examination for applicants. The commissioner shall prescribe a uniform examination for applicants that fairly addresses the information contained in the approved course of study and instruction.

(d) The commissioner may investigate as necessary the manner of instruction and the examination administered by an insurance company under this section. The commissioner may withdraw from an insurance company the authority under this section to offer instruction and administer an examination.

(e) A funeral prearrangement life insurance agent licensed under this section may not:

(1) write any coverage or combination of coverages with an initial guaranteed death benefit that exceeds \$15,000 on any life; or

(2) act as an agent for more than one insurance company.

(f) A license issued under this section to act as an agent for an insurance company is canceled when the license holder ceases to act as an agent for an insurance company. Not later than the 15th day after the date on which the license holder ceases to act as an agent for an insurance company, the insurance company or agent shall send written notification to the department.

(g) Except as specifically provided by this section, the provisions of Subchapter A of this chapter that apply to a limited license apply to a license issued under this section.

Sec. 6. LIFE INSURANCE NOT EXCEEDING \$15,000. (a) The commission shall issue a license to act as an agent to an individual who writes only life insurance not to exceed \$15,000 on any one life after receiving certification from a stipulated

premium insurance company, a statewide mutual assessment company, a local mutual aid association, or a local mutual burial association, that the applicant has completed a course of study and instruction on life insurance and fixed annuities for applicants offered by the insurer and passed without aid a written examination administered by the insurer. The course of study and instruction must be at least a five-hour course and must include instruction on:

(1) the policies to be sold; and

(2) the laws relating to the regulation of insurance in this state.

(b) The commissioner shall authorize an insurer described by Subsection (a) of this section to administer an agent examination as provided by Subsection (a) of this section after approval by the commissioner of a complete outline and explanation of the course of study and instruction and the nature and manner of conducting the examination for applicants. The commissioner shall prescribe a uniform examination for applicants that fairly addresses the information contained in the approved course of study and instruction.

(c) The commissioner may investigate as necessary the manner of instruction and the examination administered by an insurer under this section. The commissioner may withdraw from an insurer the authority under this section to offer instruction and administer an examination.

(d) An insurance agent licensed under this section may not write any coverage or combination of coverages with an initial guaranteed death benefit that exceeds \$15,000 on any life.

(e) Except as specifically provided by this section, the provisions of Subchapter A of this chapter that apply to a limited license apply to a license issued under this section.

### ARTICLE 3. PROPERTY AND CASUALTY LICENSES

SECTION 3.01. Article 21.14, Insurance Code, is amended to read as follows:

Art. 21.14. TEXAS PROPERTY AND CASUALTY AGENTS LICENSE ACT

Sec. 1. SHORT TITLE; APPLICATION. (a) This article may be cited as the Texas Property and Casualty Agents License Act.

(b) Each agent of an insurance company authorized to provide property and casualty insurance coverage in this state is subject to this article. This article applies to each person who performs the acts of an agent, as defined by Article 21.02 of this code, whether through oral, written, or electronic communications or otherwise, by the solicitation of, negotiation for, procurement of, or collection of premiums on an insurance contract offered by any type of insurance carrier authorized to sell property and casualty insurance products in this state, including:

(1) a fidelity or surety company;

(2) an interinsurance exchange;

(3) a mutual company, including a farm mutual or a county mutual;

(4) a reciprocal exchange; or

(5) a Lloyd's plan.

Sec. 2. GENERAL PROPERTY AND CASUALTY LICENSE; LICENSE REQUIRED. A general property and casualty license is required for each person who acts as:

(1) an agent writing property and casualty insurance for an insurance carrier authorized to provide property and casualty insurance coverage in this state;

(2) a sub-agent of a person licensed as an agent under this article who solicits and binds insurance risks on behalf of that agent; or

(3) an agent writing any other type of insurance as required by the commissioner for the protection of the insurance consumers of this state.

Sec. 3. AUTHORITY TO WRITE ADDITIONAL PRODUCT LINES. A person who holds a general property and casualty license issued under this subchapter may write additional types of insurance contracts as provided under Section 6 of this article or under a specialty license program established by the department.

Sec. 4. AUTHORITY TO WRITE ACCIDENT AND HEALTH INSURANCE. A person who holds a general property and casualty license issued under this subchapter may write health and accident insurance for a property and casualty insurer authorized to sell those insurance products in this state without holding a license issued under Article 21.07-1 of this code.

Sec. 5. EMERGENCY LICENSE WITHOUT EXAMINATION. In the event of the death or disability of a property and casualty agent or if a property and casualty agent is found to be insolvent and unable to pay for premiums as they become due to an insurer, the department may issue to an applicant for a property and casualty license an emergency property and casualty license without examination if it is established to the satisfaction of the department that the emergency license is necessary for the preservation of the agency assets of a deceased, disabled, or insolvent property and casualty agent. An emergency license is valid for 90 days in any 12 consecutive months and may be renewed by the department for an additional 90 days during the 12-month period if the other requirements of this subchapter are met.

Sec. 6. LIMITED PROPERTY AND CASUALTY LICENSE. (a) Notwithstanding any other law, a limited property and casualty license is required for each person who desires to act as an agent writing:

(1) insurance only on growing crops under Article 21.14-2 of this code;

(2) any form of insurance authorized under Chapter 16 of this code for a farm mutual insurance company, except that a license is not required under this subsection for a person who wrote policies that generated, in the aggregate, less than \$50,000 in direct premium for the preceding calendar year;

(3) exclusively all forms of insurance authorized to be solicited and written in this state that cover the ownership, operation, maintenance, or use of a motor vehicle that is designed for use on the public highways, including a trailer or semitrailer, and the motor vehicle's accessories or equipment;

(4) prepaid legal services contracts under Article 5.13-1 or Chapter 23 of this code;

(5) only industrial fire insurance policies covering dwellings, household goods, and wearing apparel on a weekly, monthly, or quarterly basis on a continuous premium payment plan written for an insurance company whose business is devoted exclusively to that business as described by Article 17.02 of this code, except that a license is not required under this subsection for a person who wrote industrial fire insurance policies that generated, in the aggregate, less than \$20,000 in direct premium for the preceding calendar year;

(6) an agent writing credit insurance, except as otherwise provided by a specialty license program established by the department; and

(7) any other type of insurance as required by the commissioner for the protection of the insurance consumers of this state.

(b) Subsection (a)(1) of this section applies to a production credit association or bank for a cooperative, as provided under the farm credit system under 12 U.S.C. 2001 et seq., as amended.

(c) A person who holds a limited property and casualty license issued under this subchapter may write only the types of insurance products designated on the license by the department.

Sec. 7. FULL-TIME HOME OFFICE EMPLOYEES: MANDATORY REGISTRATION, CONTINUING EDUCATION REQUIREMENTS, AND NOTIFICATION TO CONSUMERS: DISCIPLINARY ACTIONS. (a) Each actual full-time home office salaried employee of an insurance carrier licensed to do business in this state who solicits or receives an application for the sale of insurance through an oral, written, or electronic communication shall register with the commissioner.

(b) An insurance carrier licensed to do business in this state whose general plan of operation includes the use of employees described by Subsection (a) of this section shall certify to the commissioner that each of those employees receives at least 15 hours of continuing education annually. Each continuing education course provided by the insurance carrier shall be submitted to the department for approval as provided by Section 3, Article 21.01-1, of this code. A person registered under this section shall comply with the continuing education requirements adopted under Section 3, Article 21.01-1, of this code, as if the person were a licensed agent. The continuing education must be designed to give the employee:

(1) reasonable familiarity with:

(A) the broad principles of insurance;

(B) insurance licensing and regulatory laws; and

(C) the terms and conditions of the insurance that the registrant transacts; and

(2) a fair and general understanding of the duties of an insurer to an insured, including training in ethical considerations.

(c) The registration of an actual full-time home office salaried employee shall be suspended and the employer insurance carrier may be disciplined for any act for which an agent may be disciplined under Article 21.01-2 of this code.

(d) Each registrant under this section shall disclose the fact of the registration when making an oral, written, or electronic communication to solicit or receive an application for the sale of insurance.

(e) Each person who registers under this section shall submit a nonrefundable registration fee in an amount determined by the department.

Sec. 8. INSURANCE SERVICE REPRESENTATIVE LICENSE. (a) An insurance service representative license is required for each person who is employed on a salaried basis to perform assigned duties only within the office of a property and casualty agent. Those duties may include the issuance of insurance binders only with the express approval of the property and casualty agent who supervises the insurance service representative.

(b) The provisions of Subchapter A of this chapter that apply to a general license apply to a license issued under this section, except that proof of financial responsibility is not required of a person licensed only as an insurance service representative.

Sec. 9. COUNTY MUTUAL AGENT LICENSE. (a) The commission shall issue a license to act as an agent for a county mutual insurance company under Chapter 17 of this code to an individual after receiving certification from the insurance company that the applicant has completed a course of study and instruction on motor vehicle insurance and insurance covering dwellings for applicants offered by the insurance company and passed without aid a written examination administered by the insurance company. The course of study and instruction must be at least a five-hour course and must include instruction on:

(1) the policies to be sold; and

(2) the laws relating to the regulation of insurance in this state.

(b) The commissioner shall authorize a county mutual insurance company to administer an agent examination as provided by Subsection (a) of this section after approval by the commissioner of a complete outline and explanation of the course of study and instruction and the nature and manner of conducting the examination for applicants. The commissioner shall prescribe a uniform examination for applicants that fairly addresses the information contained in the approved course of study and instruction.

(c) The commissioner may investigate as necessary the manner of instruction and the examination administered by an insurance company under this section. The commissioner may withdraw from an insurance company the authority under this section to offer instruction and administer an examination.

(d) Except as specifically provided by this section, the provisions of Subchapter A of this chapter that apply to a limited license apply to a license issued under this section. [LICENSING OF LOCAL RECORDING AGENTS AND SOLICITORS; LIFE, HEALTH AND ACCIDENT INSURANCE EXCEPTED; OTHER EXCEPTIONS

[Sec. 1. CLASSES OF AGENTS. Insurance agents, as that term is defined in the laws of this State, shall for the purpose of this article be divided into two classes: Local Recording Agents and Solicitors.

[Sec. 2. DEFINITIONS; CERTAIN ORDERS, SOCIETIES OR ASSOCIATIONS NOT AFFECTED. (a) In this article:

[(1) "Local Recording Agent" means a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier, including fidelity and surety companies, to solicit business and to write, sign, execute, and deliver policies of insurance, and to bind companies on insurance risks, and who maintain an office and a record of such business and the transactions which are involved, who collect premiums on such business and otherwise perform the customary duties of a local recording agent representing an insurance carrier in its relation with the public; or a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier, including fidelity and surety companies, to solicit business, and to forward applications for insurance to the home office of the insurance companies and insurance carriers, where the insurance company's and insurance carrier's general plan of operation in this State provides for the appointment and compensation of agents for insurance and for the execution of policies of insurance by the home office of the insurance company or insurance carrier, or by a supervisory office of such insurance company or insurance carrier, and who maintain an office and a record of such business and the transactions which are involved, and who collect premiums on such business and otherwise qualify and perform the customary duties of a local recording agent representing an insurance carrier in its relation with the public.

[(2) "Solicitor" means a person who is a bona fide solicitor and engaged in the business of soliciting and binding insurance risks on behalf of a local recording agent, and who offices with such local recording agent, and who does not sign and execute policies of insurance, and who does not maintain company records of such transactions. This shall not be construed to make a solicitor of a local recording agent, who places business of a class which the rules of the company or carrier require to be placed on application or to be written in a supervisory office. A solicitor may bind insurance risks only with the express prior approval of the local recording agent for whom the solicitor works.

~~[(3) "Board" means the State Board of Insurance.~~

~~[(4) "Company" or "Carrier" means any insurance company, corporation, inter-insurance exchange, mutual, reciprocal, association, Lloyds or other insurance carrier licensed to transact business in the State of Texas other than as excepted herein.~~

~~[(5) "Insurance service representative" means a solicitor employed on a salaried basis who performs assigned duties only within the office of a local recording agent, which may include binding insurance risks, but only with the express prior approval of the local recording agent for whom the representative works.~~

~~[(b) Nothing contained in this article shall be so construed as to affect or apply to orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business, and the ladies' societies, or ladies' auxiliary to such orders, societies or associations, or any secretary of a Labor Union or organization, or any secretary or agent of any fraternal benefit society, which does not operate at a profit, except that a person who has had a license revoked under Section 16 of this article may not solicit or otherwise transact business under Chapter 10 of this code.~~

~~[Sec. 3. APPLICATION FOR LICENSE; TO WHOM LICENSE MAY BE ISSUED. (a) When any person, partnership, registered limited liability partnership, limited liability company, corporation, or bank shall desire to engage in business as a local recording agent for an insurance company, or insurance carrier, that person or entity shall make application for a license to the Texas Department of Insurance, in such form as the Department may require. Such application shall bear a signed endorsement by a general, state or special agent of a qualified insurance company, or insurance carrier that applicant or each member of the partnership or each stockholder of the corporation or each member of the limited liability company is a resident of this state.~~

~~[(b) The Department shall issue a license to an individual or a general partnership or a limited liability partnership registered with the Secretary of State under Section 3.08, Texas Revised Partnership Act (Article 6132b-3.08, Vernon's Texas Civil Statutes), engaging in the business of insurance. The Department may not issue a license to a partnership if an inactive partner who is not subject to Section 3a of this article has an interest in the partnership principally to have written and be compensated therefor for insurance on property controlled through ownership, mortgage or sale, family relationship, or employment; and provided further, that all licensed agents must be residents of Texas. Provided, that a person who resides in a town through which the state line runs and whose residence is in the town in the adjoining state may be licensed, if the person's business office is being maintained in this state. All persons acting as agent or solicitor for health and accident insurance within the provisions hereof, and who represent only fire and casualty companies, and not life insurance companies, shall be required to procure only one license, and such license as is required under the provisions of this article.~~

~~[(c) The Department shall issue a license to a corporation if the Department finds:~~

~~[(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as a local recording agent; and~~

~~[(2) That every officer, director and shareholder of the corporation is individually licensed as a local recording agent under the provisions of this Insurance Code, except as may be otherwise permitted by this Section or Section 3a of this article; or that every officer and director of the corporation is individually licensed as a local~~

recording agent under this Insurance Code, that the corporation is a wholly owned subsidiary of a parent corporation that is licensed as a local recording agent under this Insurance Code, and that every shareholder of the parent corporation is individually licensed as a local recording agent under this Insurance Code, and except as specifically provided by this article, that no shareholder of the corporation is a corporate entity; and

~~[(3) That such corporation will have the ability to pay any sums up to \$25,000 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as a local recording agent. The term "customer" as used herein shall mean any person, firm or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:~~

~~[(A) An errors and omissions policy insuring such corporation against errors and omissions, in at least the sum of \$100,000 with no more than a \$10,000 deductible feature or the sum of at least \$300,000 with no more than a \$25,000 deductible feature, issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas, on filing an affidavit with the Texas Department of Insurance stating the inability to obtain coverage and receiving the Department's approval; or~~

~~[(B) A bond executed by such corporation as principal and a surety company authorized to do business in this state, as surety, in the principal sum of \$25,000, payable to the Texas Department of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or~~

~~[(C) A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of this Code, having a fair market value of \$25,000 with the comptroller. The comptroller is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Department evidence satisfactory to it that the corporation has withdrawn from business, and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.~~

~~[A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.~~

~~[Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of a local recording agent without obtaining a local recording agent's license. The Department shall not require a corporation to take the examination provided in Section 6 of this Article 21.14.~~

~~[If at any time, any corporation holding a local recording agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as a local recording agent shall be cancelled or denied in accordance with the provisions of Sections 16, 17 and 18 of this Article 21.14; provided, however, that should any person who is not a licensed local recording agent acquire shares in such a corporation by devise or descent, they shall have a period of 90 days from date~~

of acquisition within which to obtain a license as a local recording agent or to dispose of the shares to a licensed local recording agent except as may be permitted by Section 3a of this article:

~~[Should such an unlicensed person, except as may be permitted by Section 3a of this article, acquire shares in such a corporation and not dispose of them within said period of 90 days to a licensed local recording agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.~~

~~[Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the Board of Directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the Articles of Incorporation, the Bylaws, or an existing contract entered into between the shareholders of the corporation.~~

~~[Each corporation licensed as a local recording agent shall file, under oath, a list of the names and addresses of all of its officers, directors and shareholders with its application for renewal license.~~

~~[Each corporation licensed as a local recording agent shall notify the Texas Department of Insurance upon any change in its officers, directors or shareholders not later than the 30th day after the date on which the change became effective.~~

~~[The term "firm" as it applies to local recording agents in Sections 2, 12 and 16 of this Article 21.14 shall be construed to include corporations.~~

~~[(d) The department shall issue a license to a bank if the department finds that:~~

~~[(1) the bank is a national banking association organized and existing under the National Bank Acts (12 U.S.C. Section 21 et seq.), a state bank organized and existing under the Texas Banking Act (Article 342-1.001 et seq., Vernon's Texas Civil Statutes), a state savings bank organized and existing under the Texas Savings Bank Act (Article 489c, Vernon's Texas Civil Statutes), or a bank operating subsidiary, as defined by state or federal law, that is located and doing business in this state in a place with a population of 5,000 or less;~~

~~[(2) at least one officer of the bank and each individual who will be performing any acts of an agent for the bank are individually licensed under this Article; and~~

~~[(3) the bank will have the ability to pay any sums up to \$25,000 that it might become legally obligated to pay on account of any claim made against it by a customer and caused by a negligent act, error, or omission of the bank or any person for whose acts the bank is legally liable in the conduct of its business as a local recording agent. The term "customer" means any person, firm, or corporation to whom the bank sells or attempts to sell a policy of insurance or from whom the bank accepts an application for insurance. That ability shall be proven through:~~

~~[(A) an errors and omissions policy insuring the bank against errors and omissions, in at least the sum of \$100,000 with not more than a \$10,000 deductible feature, or the sum of at least \$300,000 with not more than a \$25,000 deductible feature, issued by an insurance company licensed to do business in this state or, if a policy cannot be obtained from a company licensed to do business in this state, a policy issued by a company not licensed to do business in this state, on filing an affidavit with the department stating the inability to obtain coverage and receiving the department's approval;~~



~~[(B) a bond executed by the bank as principal and a surety company authorized to do business in this state, as surety, in the principal sum of \$25,000; payable to the department for the use and benefit of customers of the bank, conditioned that the bank shall pay any final judgment recovered against it by a customer; or~~

~~[(C) a deposit with the comptroller of cash or securities of the class authorized by Articles 2.08 and 2.10 of this code, with a fair market value of \$25,000. The comptroller shall accept and receive the deposit and hold it exclusively for the protection of a customer of the bank who recovers a final judgment against the bank. The deposit may be withdrawn only on filing with the department satisfactory evidence that the bank has withdrawn from the business of insurance and has no unsecured liabilities outstanding or that the bank has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as provided by this subsection. Securities so deposited may be exchanged from time to time for other qualified securities.~~

~~[A binding commitment to issue such a policy or bond, or the tender of applicable securities, is sufficient in connection with an application for license.~~

~~[Nothing in this subsection shall be construed to permit an unlicensed employee or agent of a bank to perform any act of a local recording agent without obtaining a local recording agent's license. The department may not require a bank to take the examination provided by Section 6 of this Article.~~

~~[A bank licensed as an agent under this Article may have additional offices from which the business of insurance is conducted only in a place with a population of 5,000 or less and must comply with the department's regulations regarding additional offices.~~

~~[A bank licensed as an agent under this article must maintain its insurance records, including all files relating to and reflecting customer complaints, separate from records relating to banking transactions of the bank.~~

~~[If a bank that holds a local recording agent's license does not maintain the qualifications necessary to obtain a license, the license of that bank to act as a local recording agent shall be canceled or denied in accordance with Sections 16 and 18 of this article.~~

~~[Each bank licensed as a local recording agent shall file under oath with its application for license renewal a list of the name and address of each individual who will be acting as an agent on behalf of the bank and of each officer and director of the bank, as defined by Article 21.02 of this code, and other biographical information as required by the department.~~

~~[Each bank licensed as a local recording agent shall notify the department of any change in its officers and directors and any change in other persons who will be performing any acts of an agent, as defined by Article 21.02 of this code, and submit biographical information on those officers, directors, and persons as required by the department not later than the 30th day after the date on which the change takes effect.~~

~~[The term "firm," as that term applies to local recording agents in Sections 2, 12, and 16 of this article, includes corporations and banks.~~

~~[(e) The term "partnership" or "agency partnership" as used in this Article means a general partnership or a registered limited liability partnership domiciled in Texas.~~

~~[(f) In this Article, the term "corporation" or "corporations" shall mean a corporation organized under the Texas Business Corporation Act, The Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes), or a Texas domiciled limited liability company organized or existing under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) having its principal place of business in this state and having as one of its purposes the~~

authority to act as an insurance agent. Each officer, manager, and member of a limited liability company must be licensed under this Article. The licensing and regulation of a limited liability company shall be subject to the same provisions and requirements of this Article that are applicable to corporations licensed under this Article.

[(g) In this article, the term "bank" means a national banking association organized and existing under the National Bank Acts (12 U.S.C. Section 21 et seq.); a state bank organized and existing under the Texas Banking Act (Article 342-1.001 et seq., Vernon's Texas Civil Statutes), a state savings bank organized and existing under the Texas Savings Bank Act (Article 489e, Vernon's Texas Civil Statutes), a bank branch, or a bank operating subsidiary, as defined by state or federal law, that is located and doing business in this state in a place with a population of 5,000 or less. A bank operating subsidiary, as defined by state or federal law, located and doing business in a place in this state with a population of 5,000 or less may own a licensed corporate agent that is also located and doing business in a place with a population of 5,000 or less, and is subject to Section 3a(5) of this Article.

~~[Sec. 3a. PERSONS OTHER THAN LICENSED LOCAL RECORDING AGENTS WHO MAY SHARE IN PROFITS OF LOCAL RECORDING AGENT.~~

~~(1) Upon the death of a duly licensed local recording agent who is a member of an agency partnership, the surviving spouse and children, if any, of such deceased partner, or a trust for such surviving spouse and children, may share in the profits of such agency partnership during the lifetime of such surviving spouse or such children, as the case may be, if and as provided by a written partnership agreement, or in the absence of any written agreement, if and as agreed by the surviving partner or partners and the surviving spouse, the trustee, and the legal representative of the surviving child or children. Such surviving spouse and any such surviving children or trusts shall not be required to qualify as local recording agents to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such partnership without having qualified as a local recording agent; provided, however, that a duly licensed local recording agent who is a member of an agency partnership may, with the approval of the other members of the partnership, transfer an interest in the agency partnership to his children or a trust for same, and may operate such interest for their use and benefit; and such children or trusts may share in the profits of such agency partnership. Such child or children or trusts shall not be required to qualify as a local recording agent to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such partnership without having qualified as a local recording agent.~~

~~[(2) Upon the death of a duly licensed local recording agent, who is a sole proprietorship, unless otherwise provided by the last will of such deceased agent, the surviving spouse and children, if any, of such deceased agent, or a trust for such spouse or children, may share in the profits of the continuance of the agency business of said deceased agent, provided such agency business is continued by a duly licensed local recording agent. Said surviving spouse, trusts or children, may participate in such profits during the lifetime of such surviving spouse and said children. Said surviving spouse, trusts or children shall not be required to qualify as local recording agents in order to participate in the profits of such agency, but shall not do or perform any act of a local recording agent in connection with the continuance of such agency business without first having been duly licensed as a local recording agent; provided, however, that a duly licensed local recording agent who is a sole proprietorship may transfer an interest in his agency to his children, or a trust for same, and may operate such interest for their use and benefit; and such children may share in the profits of such local~~

recording agency during their lifetime, and during such time shall not be required to qualify as a local recording agent in order to participate in such profits, but shall not do or perform any act of a local recording agent in connection with such agency business without first having been duly licensed as a local recording agent.

[(3) Upon the death of a shareholder in a corporate licensed local recording agency, the surviving spouse and children, if any, of such deceased shareholder, or a trust for such surviving spouse and children, may share in the profits of such corporate agency during the lifetime of such surviving spouse or children, as the case may be, if and as provided by a contract entered into by and between all of the shareholders and the corporation. Any such surviving spouse, surviving children, or trusts shall not be required to individually qualify as a local recording agent in order to participate in such profits, but shall not do or perform any act of a local recording agency on behalf of such corporation without having qualified as a local recording agent; provided, however, that a shareholder in a corporate licensed local recording agent, may, if provided by a contract entered into by and between all of the shareholders and the corporation, transfer an interest in the agency to his children or a trust for same, and such children or trusts may share in the profits of such agency to the extent of such interest during their lifetime. Such children or trusts shall not be required to qualify as a local recording agent to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such corporation without having qualified as a local recording agent.]

[(4) Except as provided in Subsections (1), (2), and (3) above, and as may be provided in Section 6a, Article 21.14 of the Insurance Code, no person shall be entitled to perform any act of a local recording agent nor in any way participate as a partner or corporate shareholder in the profits of any local recording agent, without first having qualified as a duly licensed local recording agent and having successfully passed the examination required by the Insurance Code; provided, however, that all persons, or trusts for any person, that received licenses before March 1, 1963, as silent, inactive, or non-active partners, or who are silent, inactive, or non-active partners in an agency which was so qualified before such date, shall continue to receive licenses, or renewals thereof, as partners in such agency or in any successor agency, providing: (a) that such persons are members of an agency in which there is at least one partner who has qualified as a duly licensed local recording agent; (b) that such non-active partner or partners do not actively solicit insurance; and (c) that such agency is not a limited partnership.]

[(5) Notwithstanding any provision of this article or this code to the contrary, a bank located and doing business in a place with a population of 5,000 or less that owns a licensed bank operating subsidiary, as defined by state or federal law, that is also located and doing business in a place with a population of 5,000 or less may receive profits from the licensed bank operating subsidiary. To advertise under the bank name or participate in the insurance operation other than by receiving profits from the insurance business, the bank must hold an agent license. Nothing in this section permits a bank or any affiliate to pay commissions or other valuable consideration to any nonlicensed employees, and a bank may not pay, credit, or otherwise reward particular nonlicensed units or geographic locations of the bank or any of its affiliates with a portion of the commission.]

[Sec. 4. **ACTING WITHOUT LICENSE FORBIDDEN.** (a) It shall be unlawful for any person, firm, partnership, corporation or bank, or any partner, officer, director, employee, or shareholder of a corporation, or any officer, director, or employee of a bank to act as a local recording agent or solicitor in procuring business for any

insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyds or other insurance carrier, until that person or entity shall have in force the license provided for herein.

~~[(b) No insurer doing business in this state shall pay directly or indirectly any commission, or other valuable consideration, to any person, firm, partnership, corporation, or bank for services as a local recording agent within this state, unless such person, firm, partnership, corporation, or bank shall hold a currently valid license and appointment to act as a local recording agent as required by the laws of this state; nor shall any person, firm, partnership, corporation, or bank other than a duly licensed and appointed local recording agent accept any such commission or other valuable consideration; provided, however, that nothing contained in this subsection shall prohibit an assigned risk pool or assigned risk plan, duly authorized to operate by the laws of this state, from paying commissions, or other valuable consideration, to a duly licensed person, firm, partnership, corporation, or bank for services as a local recording agent.~~

~~[(c) No licensed local recording agent, managing general agent, or surplus lines agent doing business in this state shall pay directly or indirectly any commission, or other valuable consideration, to any person, firm, partnership, corporation, or bank for services as a local recording agent within this state, unless such person, firm, partnership, corporation, or bank shall hold a currently valid license to act as a local recording agent as required by the laws of this state; nor shall any person, firm, partnership, corporation, or bank other than a duly licensed local recording agent accept any such commission or other valuable consideration.~~

~~[(d) No local recording agent doing business in this state shall pay directly or indirectly any commission, or other valuable consideration, to any person for services as a solicitor within this state, unless such person shall hold a currently valid license and appointment to act as a solicitor for such local recording agent as required by the laws of this state; nor shall any person other than a duly licensed and appointed solicitor accept any such commission or other valuable consideration.~~

~~[Sec. 5. ACTIVE AGENTS OR SOLICITORS ONLY TO BE LICENSED. No license shall be granted to any person, firm, partnership, corporation, or bank as a local recording agent or to a person as a solicitor, for the purpose of writing any form of insurance, unless it is found by the department that such person, firm, partnership, corporation, or bank is or intends to be, actively engaged in the soliciting or writing of insurance for the public generally; that each person or individual of a firm is a resident of Texas and is to be actively engaged in good faith in the business of insurance, and that the application is not being made in order to evade the laws against rebating and discrimination either for the applicant or for some other person, firm, partnership, corporation, or bank. Nothing herein contained shall prohibit an applicant insuring property which the applicant owns or in which the applicant has an interest; but it is the intent of this Section to prohibit coercion of insurance and to preserve to each citizen the right to choose that individual's own agent or insurance carrier, and to prohibit the licensing of an individual, firm, partnership, corporation, or bank to engage in the insurance business principally to handle business which the applicant controls only through ownership, mortgage or sale, family relationship or employment, which shall be taken to mean that an applicant who is making an original application for license shall show the department that the applicant has a bona fide intention to engage in business in which, in any calendar year, at least twenty-five per cent (25%) of the total volume of premiums shall be derived from persons or organizations other than applicant and from property other than that on which the applicant shall control the~~

placing of insurance through ownership, mortgage, sale, family relationship or employment. Nothing herein contained shall be construed to authorize a partnership, corporation, or bank to receive a license as a solicitor.

~~[Sec. 5a. REQUIREMENTS AS TO KNOWLEDGE OR INSTRUCTION FOR LOCAL RECORDING AGENT'S LICENSE. (a) Every applicant for local recording agent's license from and after October 1, 1971, shall upon the successful passage of the examination for local recording agent's license as promulgated by the State Board of Insurance pursuant to the provisions of this Article 21.14 be issued a temporary local recording agent's license. The holder of a temporary local recording agent's license shall have the same authority and be subject to the same provisions of the law as local recording agents until such temporary license shall expire. Each such temporary license so issued shall expire upon the happening of any one of the following, whichever shall first occur, to wit:~~

~~[(i) The issuance of a local recording agent's license to such person;~~

~~[(ii) One year from date of issuance of the temporary local recording agent's license.~~

~~[Each such person receiving a temporary license as set out above shall within one (1) year from the issue date of such temporary license complete to the satisfaction of the State Board of Insurance one of the following courses of study:~~

~~[(i) Classroom courses in insurance satisfactory to the State Board of Insurance at a school, college, junior college or extension thereof; or~~

~~[(ii) An insurance company or agents' association school approved by the State Board of Insurance; or~~

~~[(iii) A correspondence course in insurance approved by the State Board of Insurance.~~

~~[Upon the successful completion of any one of the above courses of study within the one year period, the temporary agent shall then be entitled to receive from the State Board of Insurance his local recording agent's license.~~

~~[(b) Provided, however, none of the provisions of this section shall apply to the following:~~

~~[(1) To any person holding a license as a local recording agent upon the effective date of this Act.~~

~~[(2) To any person applying for an emergency local recording agent's license under the provisions of Section 6a of Article 21.14 of the Insurance Code of Texas.~~

~~[(3) To any person who holds the designation Chartered Property and Casualty Underwriter (C.P.C.U.) from the American Institute for C.P.C.U., the designation Certified Insurance Counselor (C.I.C.) from the national Society of Certified Insurance Counselors, or the designation Accredited Adviser in Insurance (A.A.I.) from the Insurance Institute of America.~~

~~[(4) To any person who has a bachelor's degree from a four-year accredited college or university with a major in insurance.~~

~~[(5) To any person who within two (2) years immediately preceding the filing of an application was a licensed agent in good standing in the state from which the person moved to Texas, provided such state makes similar provision for those agents who may move from Texas to such state.~~

~~[(6) To any person desiring to apply for a license to solicit and write exclusively all forms of insurance authorized to be solicited and written in Texas covering the ownership, operation, maintenance or use of any motor vehicle, its accessories and equipment, designed for use upon the public highways, including trailers and semitrailers. Such person shall continue to apply for and qualify to be~~

licensed under the other provisions of Article 21.14 of the Insurance Code of Texas. Provided, such applicant shall be required to take and pass, to the satisfaction of the Texas Department of Insurance, an examination, promulgated by said department, covering only those forms of insurance referred to in this paragraph. Provided, when such a person so applies and qualifies, the person shall be issued a license which shall contain on the face of said license the following language: "Motor vehicle insurance only." An agent holding such a limited license hereby created shall solicit only those forms of insurance hereinabove provided, but shall be subject to all other laws relating to local recording agents.

~~[(c) There is hereby created an Agents' Education Advisory Board whose duties shall be to advise with and make recommendations to the State Board of Insurance concerning the curriculum, course content and schools to be approved under Subsection (a) above. The members of said Advisory Board shall be appointed by the chairman of the State Board of Insurance and shall serve for one year, from September 1 to August 31, or until their successors are appointed. Said Advisory Board shall be composed of the following persons: Two (2) members, each of whom shall be a resident of Texas and have a minimum of ten (10) years' experience as an executive of a fire and casualty company doing business in Texas and whose company operates an agents' school; two (2) members, each of whom shall be a licensed local recording agent in Texas with a minimum of ten (10) years' experience as an agent; and one (1) member who shall be a teacher of insurance at a four-year accredited college or university in Texas. Said Advisory Board shall meet at the offices of the State Board of Insurance upon call of the chairman of the State Board of Insurance and the members of said Advisory Board shall be paid out of the Recording Agents License Fund for their actual and necessary expenses incurred in connection with their attendance at said meetings.]~~

~~[Sec. 5b. CONTINUING EDUCATION. (a) The State Board of Insurance shall adopt a procedure for certifying and shall certify continuing education programs for agents. Participation in the programs is mandatory for all agents licensed under this article. The State Board of Insurance shall exempt agents who have been licensed for 20 years or more on or after September 1, 1992, and shall have the rulemaking authority to provide for other reasonable exemptions. No agent shall be required to complete more than 15 hours of continuing education per year. An agent licensed under both Articles 21.07-1 and 21.14 of this code and any subsequent amendments may elect to satisfy the continuing education requirements of either article and shall not be required to complete a total of more than 15 hours of continuing education per year.]~~

~~[(b) On written request of the agent, the State Board of Insurance may extend the time for the agent to comply with the continuing education requirements of this section or may exempt the agent from some or all of the requirements for a licensing period if the board finds that the agent is unable to comply with the requirements because of illness, medical disability, or another extenuating circumstance beyond the control of the agent. The criteria for such exemptions and extensions shall be established by rule.]~~

~~[Sec. 5c. ADVISORY COUNCIL. (a) An advisory council of nine members shall be appointed by the State Board of Insurance to furnish the Board with information and assistance in the conduct of the continuing education program for agents licensed under Articles 21.07-1 and 21.14.]~~

~~[(b) Four of the members of the advisory council must be representatives of the general public. A public representative may not be:]~~

~~[(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the State Board of Insurance;~~

~~[(2) a person required to register with the secretary of state under Chapter 305, Government Code; or~~

~~[(3) related to a person described by Subdivision (1) or (2) of this subsection within the second degree of affinity or consanguinity.~~

~~[Sec. 5d. JURISDICTION FOR CONTINUING EDUCATION. Notwithstanding the rules or regulations of any other state agency, the board has sole jurisdiction for all matters relating to the continuing education of insurance agents who are licensed under this Article.~~

~~[Sec. 6. EXAMINATION REQUIRED; EXCEPTIONS. (a) If applicant for a local recording agent's license has not prior to date of such application, been licensed as a local recording agent, or if the applicant for a solicitor's license has not been licensed as a local recording agent or as a solicitor prior to date of such application, the Board shall require such applicant to submit to a written examination covering all kinds of insurance or contracts, which license if granted, will permit the applicant to solicit.~~

~~[(b) Any applicant for local recording agent's license who has prior to the date of such application been licensed as a local recording agent, shall be entitled to a local recording agent's license without examination, provided the other requirements of this article are met. Any applicant for solicitor's license who has been licensed as a local recording agent or as a solicitor prior to date of such application, shall be entitled to a solicitor's license without an examination, provided the other requirements of this article are met.~~

~~[(c) The Board by rule shall apply different examination standards to a solicitor employed as an insurance service representative than those applied to other solicitors.~~

~~[Sec. 6a. DEATH, DISABILITY OR INSOLVENCY; EMERGENCY LICENSE WITHOUT EXAMINATION. In event of death or disability of a local recording agent or in event a local recording agent is found to be insolvent and unable to pay for premiums coming to his hands as such local recording agent, the Board may issue to an applicant for local recording agent's license an emergency local recording agent's license for a period of ninety (90) days in any twelve (12) consecutive months and at the Board's option, an additional period up to ninety (90) days without an examination provided the other requirements of this article are met and if it is established to the satisfaction of the Board that such emergency license is necessary for the preservation of the agency assets of a deceased or disabled local recording agent or of an insolvent local recording agent.~~

~~[Sec. 7. CONDUCT OF EXAMINATIONS; NOTICE; MANUAL OF QUESTIONS AND ANSWERS. Unless the State Board of Insurance accepts a qualifying examination administered by a testing service, as provided under Article 21.01-1, Insurance Code, as amended, all examinations provided by this article shall be conducted by the State Board of Insurance, and shall be held not less frequently than one each sixty (60) days every year at times and places prescribed by the State Board of Insurance, of which applicants shall be notified by the State Board of Insurance in writing ten (10) days prior to the date of such examinations, and shall be conducted in writing in either the English or Spanish language. Provided, further, that printed copies of a manual of questions and answers thereto pertaining to the examination published under the direction of the State Board of Insurance shall be made available to all companies, general agents, and managers for the use of their~~

prospective agents, to all agents for the use of their prospective solicitors in preparing for such examination. The questions to be asked on such examination shall be based upon the questions and answers contained in the manual.

[Sec. 8. EXPIRATION OF LICENSE; RENEWAL. Except as may be provided by a staggered renewal system adopted under Article 21.01-2 of this code, every license issued to a local recording agent or a solicitor shall expire two years from the date of its issue, unless a completed application to qualify for the renewal of any such license shall be filed with the State Board of Insurance and a nonrefundable fee paid on or before such date, in which event the license sought to be renewed shall continue in full force and effect until renewed or renewal is denied.

[Sec. 9. FEES PAYABLE BEFORE EXAMINATION. Unless the State Board of Insurance accepts a qualifying examination administered by a testing service, as provided under Article 21.01-1, Insurance Code, as amended, applicants required to be examined shall, at time and place of examination, pay prior to being examined the following fees: For a local recording agent's license a fee in an amount not to exceed \$50 as determined by the State Board of Insurance and for a solicitor's license a fee in an amount not to exceed \$20 as determined by the State Board of Insurance. The fees paid under this section shall not be returned for any reason other than failure to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the State Board of Insurance and received board approval. A new fee shall be paid before each and every examination.

[Sec. 10. RENEWAL FEES. (a) An applicant for the renewal of a local recording agent's license shall pay, at the time the renewal application is filed, a fee in an amount not to exceed \$50 as determined by the State Board of Insurance. An applicant for the renewal of a solicitor's license shall pay, at the time the renewal application is filed, a fee in an amount not to exceed \$20 as determined by the State Board of Insurance.

[Sec. 11. ISSUANCE OF LICENSE. (a) Whenever the provisions of this article have been complied with, the Board shall issue to any applicant the license applied for where such applicant shall have satisfactorily passed the examination prescribed by the State Board of Insurance, and who shall possess the other qualifications required by this article.

(b) The Commissioner of Insurance shall collect in advance from agents requesting duplicate licenses a fee not to exceed \$20. The State Board of Insurance shall determine the amount of the fee.

[Sec. 12. NOTICE TO COMMISSIONER OF INSURANCE OF APPOINTMENT OF LOCAL RECORDING AGENT BY INSURANCE COMPANY. (a) After a person or firm shall be granted a license as a local recording agent in this state, that person or firm shall be authorized to act as such local recording agent in this state, only after and during the time such person or firm has been authorized so to do, by an insurance company having a permit to do business in this state; and when so authorized each company or carrier or its general or state or special agent making the appointment shall immediately notify the Commissioner of Insurance, on such form as the Commissioner may require, of the appointment. If approval of an additional appointment is not received from the Commissioner before the eighth day after the date on which the completed application and fee were received by the Commissioner, the agent and the insurance company may assume that the Commissioner approves the application, and the agent may act for the insurance company. The agent shall be required to pay a nonrefundable fee of \$16.00 for each appointment applied for, which fee shall accompany the notice, and such person or firm shall be presumed to be the



agent for such company in this state until such company or its general or state or special agent shall have delivered written notice to the Commissioner of Insurance that such appointment has been withdrawn.

~~[(b) Every insurance carrier shall, upon termination for cause of the appointment of any agent, immediately file with the State Board of Insurance a statement of the facts relative to the termination of the appointment and the date and cause thereof. The Board shall thereupon record the termination of the appointment of such agent to represent such insurance carrier in this state. The agent terminated for cause shall receive from the insurance carrier a copy of the notice sent to the State Board of Insurance.~~

~~[(c) Any information, document, record or statement required to be made or disclosed to the Board pursuant to this Article shall be deemed confidential and privileged unless or until introduced as evidence in an administrative hearing.~~

~~[(d) No liability may be imposed on any insurance carrier, its employees or agents, or any other person, acting without malice, providing the information required to be disclosed pursuant to this section.~~

~~[Sec. 13. APPLICATION FOR SOLICITOR'S LICENSE. When any local recording agent who has been appointed by an insurance carrier having a permit to do business in this State shall desire to appoint a solicitor in the operation of his business, he and a company jointly shall make application for a license for such solicitor to the Board of Insurance Commissioners, in such form as the Board may require.~~

~~[Sec. 14. NOTICE TO INSURANCE COMMISSIONERS OF SOLICITOR'S APPOINTMENT; AUTHORITY TO SOLICIT. (a) No solicitor shall be authorized to solicit insurance until after the State Board of Insurance shall have been notified by a local recording agent of his appointment, and no local recording agent shall accept business tendered by a solicitor until such local recording agent has given notice to the State Board of Insurance of such solicitor's appointment as such, and until such solicitor has been licensed by the State Board of Insurance. No solicitor shall have outstanding at any time a notification of appointment from more than one local recording agent, and a solicitor shall solicit insurance only in the name of and for the account of the local recording agent by whom he has been appointed.~~

~~[(b) If approval of an appointment of a currently licensed solicitor is not received from the Commissioner before the eighth day after the date on which the completed application and nonrefundable fee were received by the Commissioner, the solicitor and local recording agent may assume that the Commissioner approves the application, and the solicitor may act for the local recording agent.~~

~~[(c) A licensed solicitor's appointment may be terminated either by the local recording agent who appointed the solicitor or by the solicitor on the filing of notice with the Board of the termination.~~

~~[(d) Upon termination for cause of the appointment of any solicitor, the local recording agent shall immediately file with the State Board of Insurance a statement of the facts relative to the termination of the appointment and the date and cause thereof. The Board shall thereupon record the termination of the appointment of such solicitor to represent such local recording agent. The solicitor terminated for cause shall receive from the local recording agent a copy of the notice sent to the State Board of Insurance.~~

~~[(e) Any information, document, record or statement required to be made or disclosed to the Board pursuant to this Article shall be deemed privileged and confidential unless or until introduced into evidence in an administrative hearing.~~

~~[(f) No liability may be imposed on any insurance carrier, its employees or agents, or any other person, acting without malice, providing the information required to be disclosed pursuant to this section.~~

~~[Sec. 15. FIRE INSURANCE IN EXCESS OF VALUE, WRITING OF FORBIDDEN. It shall be unlawful for any local recording agent or solicitor for an insurance company or insurance carrier knowingly to grant, write or permit a greater amount of insurance against loss by fire than the reasonable value of the subject of insurance.~~

~~[Sec. 16. SUSPENSION OR REVOCATION OF LICENSE. (a) The license of any local recording agent shall be suspended during a period in which the agent does not have outstanding a valid appointment to act as an agent for an insurance company. The Board shall end the suspension on receipt of evidence satisfactory to the board that the agent has a valid appointment. The Board shall cancel the license of a solicitor if the solicitor does not have outstanding a valid appointment to act as a solicitor for a local recording agent, and shall suspend the license during a period that the solicitor's local recording agent does not have outstanding a valid appointment to act as an agent under this Article.~~

~~[(b) The department may discipline any local recording agent or solicitor or deny an application under Section 5, Article 21.01-2, of this code if it finds that the applicant, individually or through any officer, director, or shareholder, for or holder of such license:~~

~~[(1) Has wilfully violated any provision of the insurance laws of this state;~~

~~[(2) Has intentionally made a material misstatement in the application for such license;~~

~~[(3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation;~~

~~[(4) Has misappropriated or converted to the applicant's or licensee's own use or illegally withheld money belonging to an insurer or an insured or beneficiary;~~

~~[(5) Has been guilty of fraudulent or dishonest acts;~~

~~[(6) Has materially misrepresented the terms and conditions of any insurance policies or contracts;~~

~~[(7) Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance contract legally issued by an insurance carrier for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to expire for the purpose of replacing such contract with another;~~

~~[(8) Is convicted of a felony;~~

~~[(9) Is guilty of rebating any insurance premium or discriminating as between insureds;~~

~~[(10) Is not engaged in the soliciting or writing of insurance for the public generally as required by Section 5 of this Article; or~~

~~[(11) Is afflicted with a disability as that term is defined by Subsection (a) of Article 21.15-6 of this code.~~

~~[(c) The State Board of Insurance may order that a local recording agent or solicitor who is afflicted with a disability be placed on disability probation under the terms and conditions specified under Article 21.15-6 of this code instead of taking disciplinary action under Subsection (b) of this section.~~

~~[(d) A license applicant or licensee whose license application or license has been denied, refused, or revoked under this section may not apply for any license as an~~

insurance agent before the first anniversary of the effective date of the denial, refusal, or revocation, or, if the applicant or licensee seeks judicial review of the denial, refusal, or revocation before the first anniversary of the date of the final court order or decree affirming that action. The Commissioner may deny an application timely filed if the applicant does not show good cause why the denial, refusal, or revocation of the previous license application or license should not be considered a bar to the issuance of a new license. This subsection does not apply to an applicant whose license application was denied for failure to pass a required written examination.

~~[Sec. 18. APPEAL. If the Commissioner refuses an application for license as provided by this article, or suspends, revokes, or refuses to renew any license at a hearing as provided by this article, and if the applicant or accused is dissatisfied with the action of the Commissioner, the applicant or accused may appeal from the action in accordance with Article 1.04 of this Code.~~

~~[Sec. 19. NOTICE TO LAST ADDRESS. Where notice to the applicant or accused is provided for in any part of this article, notice by registered mail to his last known address shall be sufficient.~~

~~[Sec. 20. LIFE, HEALTH AND ACCIDENT INSURANCE, INAPPLICABLE TO; OTHER EXCEPTIONS. The provisions of this article do not apply to the Life, Health and Accident Insurance business or the Life, Health and Accident Department of the companies engaged therein, nor shall it apply to any of the following, namely:~~

~~(a) Any actual full-time home office salaried employee of any insurance carrier licensed to do business in Texas, other than an employee who solicits or receives an application for the sale of insurance through an oral, written, or electronic communication in accordance with Section 20A of this article.~~

~~(b) Any actual attorney in fact and its actual traveling salaried representative as to business transacted through such attorney in fact or salaried representative of any reciprocal exchange or interinsurance exchange admitted to do business in Texas.~~

~~(c) Any adjuster of losses, and/or inspector of risks, for an insurance carrier licensed to do business in Texas.~~

~~(d) Any General Agent or State Agent or Branch Manager representing an admitted and licensed insurance company or carrier, or insurance companies or carriers, in a supervisory capacity.~~

~~(e) The actual attorney in fact for any Lloyds.~~

~~(f) All incorporated or unincorporated mutual insurance companies, their agents and representatives, organized and/or operating under and by authority of Chapters 16 and 17 of this code.~~

~~(g) Nothing in this entire article shall ever be construed to apply to any member, agent, employee, or representative of any county or farm mutual insurance company as exempted under Chapters 16 and 17 of this code.~~

~~(h) Nothing in this article shall apply to the group motor vehicle insurance business or the group motor vehicle department of the companies engaged in that business.~~

~~(i) Salaried employees not involved in solicitation or negotiation of insurance in the office of a local recording agent who devote their full time to clerical and administrative services, including the incidental taking of information from customers and receipt of premiums in the office of a local recording agent, provided the employees do not receive any commissions and their compensation is not varied by the volume of premiums taken and received.~~

~~[Sec. 20A. FULL-TIME HOME OFFICE SOLICITORS: MANDATORY REGISTRATION, CONTINUING EDUCATION, AND NOTIFICATION TO~~

~~CONSUMERS; DISCIPLINARY ACTIONS.~~ (a) Any actual full-time home office salaried employee of any insurance carrier licensed to do business in Texas who solicits or receives an application for the sale of insurance through an oral, written, or electronic communication shall register with the commissioner.

~~[(b) Any insurance carrier licensed to do business in Texas whose general plan of operation includes the use of employees described in Subsection (a) of this section shall certify to the commissioner that such employees receive continuing education of not less than 15 hours per year designed to give such employees:~~

~~[(1) reasonable familiarity with the broad principles of insurance, with licensing and regulatory laws, and with provisions, terms, and conditions of the insurance which the registrant transacts; and~~

~~[(2) a fair and general understanding of the obligations and duties of an insurer to an insured, including training in ethical considerations.~~

~~[(c) The registration of any actual full-time home office salaried employee shall be suspended and the employer insurance carrier may be disciplined in accordance with the insurance laws of this state, if the commissioner finds that the registrant:~~

~~[(1) has wilfully violated any provision of this code, the laws of this state, or a rule of the commissioner;~~

~~[(2) has been guilty of fraudulent or dishonest acts;~~

~~[(3) has materially misrepresented the terms and conditions of any insurance policies or contracts;~~

~~[(4) has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance contract legally issued by an insurance carrier for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to expire for the purpose of replacing such contract with another;~~

~~[(5) is guilty of rebating any insurance premium or discriminating as between insureds; or~~

~~[(6) has been convicted of a felony involving fraud or breach of fiduciary duty.~~

~~[(d) Registrants under this section shall disclose such registration when making an oral, written, or electronic communication to solicit or receive an application for the sale of insurance.~~

~~[(e) The commissioner shall adopt rules to implement the provisions of this section.~~

~~[Sec. 21. FEES, DISPOSITION OF; APPROPRIATIONS.—The fees herein provided for, when collected, shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund; provided that no expenditures shall be made from said fund except under authority of the Legislature as set forth in the General Appropriation Bill; provided further that no appropriation shall ever be made out of the General Revenue Fund for the purpose of administering this article or any provision thereof.~~

~~[Sec. 22. REBATES OR INDUCEMENTS FORBIDDEN.—It shall be unlawful for any local recording agent to pay, allow, give or offer to pay, allow or give, directly or indirectly, any rebate of premiums payable, any commission, or any paid employment or contract for service of any kind or anything of value whatsoever, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance for or on account of the solicitation or negotiation of contracts of insurance on property or risks in this State to any person, firm or corporation, other~~

than a duly licensed solicitor appointed by such local recording agent, or to another local recording agent:

[It shall be unlawful for any solicitor to pay, allow or give or offer to pay, allow or give, directly or indirectly, any rebate of premiums payable, any commission, or any paid employment or contract for service of any kind, or anything of value whatsoever, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance, for or on account of the solicitation or negotiation of contracts of insurance on property or risks in this State to any person, firm or corporation:

[Sec. 23. REPEAL, LAWS NOT IN CONFLICT NOT AFFECTED, ACT CUMULATIVE. All laws or parts of laws pertaining to any phase of the insurance business, which are in conflict with this article, shall be and the same are hereby repealed; but all laws, Civil and Criminal, affecting insurance agents, and/or insurance companies or insurance carriers or the insurance business, which are not in conflict herewith, shall not be affected by the provisions of this article; but this article shall be deemed cumulative of such laws:

[Sec. 24. VIOLATION OF ACT. Any person or any member of any firm, or any corporation or bank, or any officer, director, shareholder or employee of any corporation or bank who violates any of the provisions of Sections 4, 15 and 22 of this Article shall be guilty of a misdemeanor, and on conviction in a court of competent jurisdiction, shall be punished by a fine of not less than One Dollar (\$1.00) nor more than One Hundred Dollars (\$100.00):

[Sec. 25. ENFORCEMENT OF ARTICLE. The Attorney General, or any District or County Attorney, or the Board of Insurance Commissioners, may institute any injunction proceeding or such other proceeding to enforce the provisions of this article, and to enjoin any person, firm or corporation from engaging or attempting to engage in any of the business in violation of this article or any of the provisions thereof. The provisions of this section are cumulative of the other penalties or remedies provided for in this article:

[Sec. 26. ADMINISTRATION OF ARTICLE. The administration of the provision of this article shall be vested in the Board of Insurance Commissioners, and of the administrative officer of the various counties in which the violation of any provision of this article may occur; and the personnel charged with the direct supervision of the article, except the regularly elected law enforcement officers and their appointees, shall be responsible to and serve at the will of the Board of Insurance Commissioners. It shall be the duty of the Board of Insurance Commissioners and the Attorney General, and of the District and County Attorneys in counties where violations of this article may occur, to see that its provisions are at all times obeyed, and to make such investigations as will prevent or detect the violation of any provision thereof. The Board of Insurance Commissioners shall at once lay before the District or County Attorney of the proper county, any evidence which shall come to its knowledge, of criminality or threatened criminality under this article. In the event of the neglect or refusal of such Attorney to institute and prosecute such violation, or to enforce the other remedies provided by this article, the Board shall submit such evidence to the Attorney General, who is hereby authorized to proceed therein with all the rights, privileges and powers conferred by law upon District or County Attorneys: Provided, any person having knowledge of the violation of the provisions of this article may file a complaint for such violation with the proper officers as in other misdemeanor cases. The Board of Insurance Commissioners is given the power and authority, as a requisite for granting or renewing a license to insurance companies or insurance carriers, their local recording agents or solicitors, to require answers under

~~oath to any questions propounded by the said Board or under its authority, and touching any phase of insurance business in the State of Texas in which said insurance company or insurance carrier, or such person or firm, shall be engaged, and to require such person or firm seeking appointment as local recording agent to submit his books, records, and accounts, insofar as they may be material to any phase of insurance business, to examination and inspection by the Board or any person acting under its authority.~~

~~[Sec. 27. RULES. In addition to other rules required or authorized by this article, the commissioner may adopt rules in accordance with federal law applicable to the regulation of the sale of insurance that are necessary and proper to carry out the provisions of this article.]~~

#### ARTICLE 4. NONRESIDENT AGENT LICENSE

SECTION 4.01. Section 1, Article 21.11, Insurance Code, is amended to read as follows:

Sec. 1. NONRESIDENT AGENT LICENSE. (a) ~~The [Notwithstanding Sections 3(a) and (b), Article 21.14, of this code, the]~~ department shall license a person who is not a resident of this state to act as a nonresident agent if the department finds that:

(1) the state in which the person resides accords the same privilege to a person who is a resident of this state;

(2) the applicant for the nonresident license:

(A) if an individual:

(i) holds a license as an agent in the state of residence and either obtained the license by passing a written examination or held the license before the time a written examination was required to obtain the license; or

(ii) subject to Subsection (b) of this section, has passed the examination for an agent's license required under Article 21.01-1 of this code and satisfies the requirements adopted under Section 2, Article 21.07, of this code for licensing of an individual; or

(B) if a corporation or partnership:

(i) has provided evidence of the authority or ability to act as an agent in the entity's state of domicile;

(ii) has satisfied the requirements adopted under Section 2, Article 21.07, of this code for licensing of a corporation or partnership; and

(iii) is domiciled in a state that has entered into a reciprocal agreement with the commissioner as provided by Subsection (b) of this section; and

(3) the applicant or any officer, director, shareholder, member, or partner of an applicant that is a business entity, required to file biographical information with the department under Article 21.07 of this code, has not:

(A) committed an act that constitutes grounds for denial, suspension, or revocation of a license under Article 21.01-2 of this code; or

(B) had an insurance license suspended or revoked by the department or the insurance regulator of another state.

(b) The commissioner may enter into a reciprocal agreement with the appropriate official of another state waiving the written examination requirement for an applicant who is a resident of that state if:

(1) a written examination is required of applicants for an agent's license in the other state;

(2) the appropriate official of the other state certifies that the applicant holds a license as an agent in the other state and either passed a written examination to obtain the license or was the holder of an agent's license before the time a written examination was required; and

(3) in the other state, a resident of this state is entitled to obtain an agent's license under the same conditions and without discrimination as to fees or otherwise in favor of the residents of the other state.

(c) A person who resides in a town through which the state line runs and whose residence is located in the town in the adjoining state may be licensed as a resident agent if the person maintains the person's business office in this state [in accordance with Article 21.14 of this code, subject to the limitations of this article].

(d) The [ (b) An applicant for issuance of a license under this section must meet the requirements for issuance of a license under Article 21.14 of this code, except that the] department may [shall] waive any [of those] license requirements for an applicant with a valid license from another state or jurisdiction that has license requirements substantially equivalent to those of this state.

(e) The commissioner shall be the attorney for service of process on whom all lawful process, notice, or demand may be served in any legal proceeding against a nonresident agent licensed to transact business in this state if:

(1) the nonresident agent fails to appoint or maintain an attorney for service in this state;

(2) an attorney for service is appointed but cannot with reasonable diligence be found; or

(3) the license of the nonresident agent is revoked.

SECTION 4.02. Subsections (a) and (b), Section 2, Article 21.11, Insurance Code, are amended to read as follows:

(a) Except as otherwise specifically provided by this code [section], a license issued under this article to an individual who is not a resident of this state grants the same rights and privileges afforded to a resident license holder [under a license issued under Article 21.14 of this code].

(b) A person who holds a license issued under this article and who is in compliance with the continuing education requirements of the person's state of residence is exempt from the continuing education requirements imposed under Article 21.01-1 of this code [may not:

(1) maintain an office in this state;

(2) solicit insurance business in this state by any method, including an oral, written, or electronic communication; or

(3) employ solicitors or others to directly or indirectly solicit insurance in this state].

SECTION 4.03. Section 3, Article 21.11, Insurance Code, is amended to read as follows:

Sec. 3. LIMITATIONS. (a) This article does not permit:

(1) any person or firm licensed solely as a broker in the person's or firm's state of residence to be granted a license under this article; or

(2) a holder of a license issued under this article to act as a surplus lines agent under Article 1.14-2 of this code or to perform any of the acts permitted under Article 1.14-2 of this code, except as provided under Section 10, Article 21.54, of this code[; or

(3) any person or firm who holds a license issued under this article to engage in any form of direct solicitation of insurance within this state].

(b) ~~This subchapter [The commissioner shall revoke a nonresident agent's license issued under this article if the commissioner finds that the license was obtained or is being used for the purpose of transacting insurance through a local recording agent in a manner that permits the individual licensed under this article, by subterfuge, to transact insurance as a local recording agent.~~

~~[(c) In the circumstances described by Subsection (b) of this section, the commissioner shall also revoke the license of the affected local recording agent.~~

~~[(d) A license revoked under Subsection (b) or (c) of this section is not subject to reissuance before the fifth anniversary of the date the revocation is effective.~~

~~[(e) The commissioner shall order that any insurance transacted under an arrangement described by Subsection (b) of this section be cancelled.~~

~~[(f) Article 21.01-2 of this code] applies to licensing of a nonresident agent under this article.~~

SECTION 4.04. Sections 4 and 5, Article 21.11, Insurance Code, are amended to read as follows:

Sec. 4. HOME OFFICE EMPLOYEE. This article does not affect the authority established under Section 7 [20], Article 21.14, of this code of an actual full-time home office salaried employee of an insurance carrier licensed to do business in this state.

Sec. 5. RULES. The commissioner may adopt rules as necessary to implement this article and to meet the minimum requirements of federal law and regulations.

#### ARTICLE 5. CONFORMING AMENDMENTS

SECTION 5.01. Section 1, Article 3.71, Insurance Code, is amended to read as follows:

Sec. 1. Notwithstanding any contrary or inconsistent provision of any law, two or more insurance companies authorized to separately do such an insurance business in this state, including stock companies, reciprocals, or inter-insurance exchanges, Lloyds' associations, fraternal benefit societies and mutual companies of all kinds, including state-wide mutual assessment corporations and local mutual aid associations, and stipulated premium companies, may join together to offer, sell and administer hospital, surgical and medical expense insurance plans under a group policy covering residents of this state who are sixty-five (65) years of age and older and their spouses on which policy each insurance carrier shall be severally liable, and such companies may agree with respect to premium rates, policy provisions, sales, administrative, technical and accounting procedures and other matters within the scope of this Article. Such companies may issue such insurance policies in their own names or in the name of an unincorporated association, trust, or other organization formed for the sole purposes of this Article and evidenced by a contract in writing executed by the participating insurance companies, and any unincorporated associations, trusts, or other organizations heretofore formed for the sole purpose of this Article and evidenced by a contract in writing executed by the participating insurance companies is hereby ratified, confirmed and approved and validated from the date of its formation. Any such policy may be executed on behalf of the insurance companies by a duly authorized person and need not be countersigned on behalf of any such company by a resident agent. Any person who is licensed as a general life, accident, and health [insurance] agent or as a general property and casualty [local recording] agent [or as a solicitor] under Article [the provisions of Articles 21.07,] 21.07-1[;] or [Article] 21.14 of this code [the Insurance Code of the State of Texas,] may act as such agent in connection with policies of insurance or certificates of insurance issued by any unincorporated association, trust or other organization formed for the sole purposes of this Article without the necessity of



notifying the department [State Board of Insurance] that such person is appointed to so act.

SECTION 5.02. Section 7, Article 3.75, Insurance Code, is amended to read as follows:

Sec. 7. VARIABLE CONTRACT AGENTS LICENSE. (a) Notwithstanding any other law of this state, no person shall sell or offer for sale within this state a variable contract or do or perform any act or thing in the sale, negotiation, making, or consummating of any variable contract other than for himself, unless such person shall have a valid and current license issued under Article 21.07-1 of this code [~~certificate from the State Board of Insurance~~] authorizing such person to act within this state as a general life, accident, and health [variable] agent. [~~No such certificate shall be issued unless and until said board is satisfied, after examination, that such person is by training, knowledge, ability, and character qualified to act as such agent. Any such certificate may be withdrawn and cancelled by said board, after notice and hearing, if it shall find that the holder thereof does not then have the qualifications required for issue of such certificate.~~]

(b) The licensing and regulation of a person acting as a variable agent is subject to the same provisions applicable to the licensing and regulation of other agents under Subchapter A, Chapter 21, of this code. [~~The Commissioner of Insurance shall collect in advance from variable agent applicants a nonrefundable license fee in an amount not to exceed \$50. Unless the State Board of Insurance accepts a qualifying examination administered by a testing service, as provided under Article 21.01-1, Insurance Code, as amended, the Commissioner of Insurance shall collect in advance from variable agent applicants an examination fee in an amount not to exceed \$20. The State Board of Insurance shall determine the amount of the fees. A new examination fee shall be paid for each and every examination. The examination fee shall not be returned under any circumstance other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the Commissioner of Insurance and received the Commissioner's approval. All fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund to be used to administer the provisions of this section and Article 21.07-1, Insurance Code, as amended.~~]

(c) Each license issued to a variable contract agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Commissioner of Insurance.

(d) The Commissioner of Insurance shall suspend the license of a variable agent during any period in which the agent does not have an outstanding valid appointment. The Commissioner of Insurance shall lift the suspension on receipt by the State Board of Insurance of acceptable notice of a valid appointment.

(e) A license applicant or licensee whose license application or license has been denied, refused, or revoked under this section may not apply for any license as an insurance agent before the first anniversary of the effective date of the denial, refusal, or revocation, or, if the applicant or licensee seeks judicial review of the denial, refusal, or revocation, before the first anniversary of the date of the final court order or decree affirming that action. The Commissioner of Insurance may deny an application timely filed if the applicant does not show good cause why the denial, refusal, or revocation of the previous license application or license should not be considered a bar to the issuance of a new license.

(f) Licenses which have not expired or which have not been suspended or revoked may be renewed by filing with the State Board of Insurance a completed

renewal application and paying the nonrefundable renewal fee set by the board in an amount not to exceed \$50 on or before the expiration date of the license in accordance with Article 21.01-2 of this code.

~~[(g) Any agent licensed under this article may represent and act as an agent for more than one insurance carrier any time while the license is in force, if the agent so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing the agent to act as agent for an additional insurance carrier or carriers. Such notice shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment that said insurance carrier desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The agent or company shall be required to pay a nonrefundable fee in an amount not to exceed \$16 as determined by the State Board of Insurance for each additional appointment applied for, which fee shall accompany the notice. If approval of the additional appointment is not received from the board before the eighth day after the date on which the completed application and fee were received by the board, the agent and the insurance carrier, in the absence of notice of disapproval, may assume that the board approves the application, and the agent may act for the insurance carrier. All fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund to be used to administer the provisions of this article and Article 21.07-1, Insurance Code, as amended.]~~

~~[(h) Duplicate License; Fee. The Commissioner of Insurance shall collect in advance from agents requesting duplicate licenses a fee not to exceed \$20. The State Board of Insurance shall determine the amount of the fee.]~~

SECTION 5.03. Subsection (c), Article 5.13-1, Insurance Code, is amended to read as follows:

(c) The right of such insurers to issue prepaid legal services contracts on individual, group, or franchise bases is hereby recognized, and qualified agents of such insurers who are licensed under Article 21.07-1 or [Articles 21.07 and] 21.14 of this code [the Insurance Code, as amended, and Chapter 213, Acts of the 54th Legislature, 1955, as amended (Article 21.07-1, Vernon's Texas Insurance Code);] shall be authorized to write such coverages under such rules [and regulations] as the commissioner [State Board of Insurance] may prescribe.

SECTION 5.04. Chapter 10, Insurance Code, is amended by adding Article 10.37-3 to read as follows:

Art. 10.37-3. AGENT'S LICENSE REQUIRED. (a) A person may not solicit or procure insurance contracts on behalf of a fraternal benefit society unless the person holds a license issued by the department under this code or is specifically exempted from the license requirement as provided by Section 2, Article 21.07-1, of this code.

(b) The licensing and regulation of agents for fraternal benefit societies under this chapter is subject to the requirements adopted under Subchapter A, Chapter 21, of this code and other existing or subsequent applicable laws governing the licensing of those agents. A provision of such a law is applicable to a license applicant and license holder under this chapter.

SECTION 5.05. Article 16.24A, Insurance Code, is amended to read as follows:

Art. 16.24A. LICENSING OF AGENTS ~~[FOR CROP INSURANCE]~~. (a) No person or firm shall solicit, write, sign, execute or deliver insurance policies, bind insurance risks, collect premiums, or otherwise act in the capacity of an insurance agent [a local recording agent] in the solicitation or sale of ~~[crop]~~ insurance for a farm

mutual insurance company unless the person or firm holds a license issued [is licensed] under Subchapter A, Chapter 21, [~~Article 21.14~~] of this code.

(b) A farm mutual insurance company may not appoint and act through an agent [who qualifies for a license as an agricultural insurance agent] under Article 21.14-2 of this code.

SECTION 5.06. Section 9, Article 17.25, Insurance Code, is amended to read as follows:

Sec. 9. AGENTS' LICENSE. Agents [~~or solicitors~~] for such companies shall be licensed and appointed as provided by Subchapter A, Chapter 21, [~~in Article 21.07 or 21.14~~] of this Code.

SECTION 5.07. Sections 4, 19, and 21, Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code), are amended to read as follows:

Sec. 4. REDEMPTION OF SHARES [~~APPLICATION FOR LICENSE; TO WHOM LICENSE MAY BE ISSUED~~]. (a) Each applicant for license shall be a resident of Texas and file a written sworn application on forms furnished by the Commissioner. The applicant shall include in the application the names and addresses of the applicant's officers, directors, shareholders, or partners, if applicable, and affiliates.

~~[(b) The Commissioner shall issue a license to an individual applicant upon successful completion of the examination and compliance with the other requirements of this Act.~~

~~[(c) The Commissioner shall issue a license to a general partnership, or to a limited liability partnership registered with the Secretary of State under Section 3.08, Texas Revised Partnership Act (Article 6132b-3.08, Vernon's Texas Civil Statutes), engaging in the business of insurance if each of the partners is licensed as an agent under this Act. The term "partnership" or "agency partnership" as used in this Act means a general partnership or a registered limited liability partnership.~~

~~[(d) The Commissioner shall issue a license to a corporation on finding:~~

~~[(1) that the corporation is a Texas corporation having its principal place of business in the State of Texas and having as one of its purposes the authority to act as a managing general agent; and~~

~~[(2) that every officer, director, and shareholder of the corporation is individually licensed as a managing general agent under the provisions of this Insurance Code; provided, however, that in the event ownership of the shares of such corporation is acquired through devise or descent by an unlicensed shareholder, the corporation shall still be entitled to a license if such unlicensed shareholder qualifies as a licensed managing general agent or disposes of the shares to a licensed managing general agent within 90 days after the date of such stock acquisition. If an unlicensed person acquires shares in such a corporation and does not qualify to be licensed as a managing general agent and the person does not dispose of the shares within the 90-day period to a licensed managing general agent, the shares must be purchased by the corporation for the value of the shares of stock as reflected by the regular books and records of the corporation on the date of the acquisition of the shares by the unlicensed person. If the corporation fails or refuses to purchase the shares, the corporation's license shall be cancelled.~~

~~[(e)] A corporation may redeem the shares of any shareholder or the shares of a deceased shareholder, on terms agreed on by the board of directors and the shareholder or the shareholder's personal representative or at a price and on terms provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.~~

~~[(f) Nothing contained herein shall be construed to permit any unlicensed shareholder or any employee or agent of any corporation licensed as a managing general agent to perform any act of a managing general agent without obtaining a managing general agent's license.~~

~~[(g) If at any time, any person holding a managing general agent's license does not maintain the qualifications necessary to obtain a license, the license of such person to act as a managing general agent shall be cancelled or denied in accordance with the other provisions of this Act.~~

~~[(h) Nothing in this section shall prevent any shareholder from selling or otherwise transferring stock in any corporation to a company or managing general agent licensed to do business in Texas, nor prevent any such company or managing general agent from owning all or any portion of the stock of such corporation.~~

~~[(i) Each corporation licensed as a managing general agent shall notify the Commissioner of any change in its officers, directors, or shareholders not later than the 30th day after the date on which the change takes effect.~~

~~[(j) In this Act the term "corporation" shall mean a corporation organized under the Texas Business Corporation Act or a Texas domiciled limited liability company organized or existing under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) having its principal place of business in this state and having as one of its purposes the authority to act as a managing general insurance agent. Each officer, manager, and member of a limited liability company must be licensed under this Act. The licensing and regulation of a limited liability company shall be subject to the same provisions and requirements of this Act that are applicable to corporations licensed under this Act.]~~

Sec. 19. ADMINISTRATION AND REGULATION OF MANAGING GENERAL AGENTS; VIOLATIONS OF ACT. (a) The licensing and regulation of a person acting as a managing general agent is subject to the laws and requirements applicable to the licensing and regulation of other agents under Subchapter A, Chapter 21, Insurance Code.

(b) Any person, firm, or corporation who violates any of the provisions of this Act or any rule, regulation, or order adopted under this Act or Subchapter A, Chapter 21, Insurance Code, shall be subject to:

(1) Sections 2A, 3A, 4A, 5A, and 6A, Article 21.01-2, Insurance Code; and

(2) [sanctions under] Section 7, Article 1.10, Insurance Code.

Sec. 21. ADMINISTRATION OF ACT. The administration of this Act shall be vested in the commissioner. [State Board of Insurance] who may establish, and from time to time amend, reasonable rules [and regulations] for the administration of this Act.

SECTION 5.08. Article 22.14, Insurance Code, is amended to read as follows:

Art. 22.14. LICENSING OF AGENTS. All agents of stipulated premium companies shall be licensed in accordance with the provisions of Subchapter A [Art. 21.07] of Chapter 21 of this Code.

SECTION 5.09. Chapter 23, Insurance Code, is amended by adding Article 23.23A to read as follows:

Art. 23.23A. REGULATION OF AGENTS. The licensing and regulation of an agent authorized to solicit prepaid legal services contracts for corporations complying with this chapter is subject to Subchapter A, Chapter 21, of this code.

## ARTICLE 6. SURPLUS LINES

SECTION 6.01. Subdivision (1), Subsection (a), Section 2, Article 1.14-2, Insurance Code, is amended to read as follows:

(1) "Surplus lines agent" means:

(A) ~~[(i) is]~~ an agent authorized under Article 21.14 who is granted a surplus lines license in accordance with this Article; or

(B) ~~[-(ii) is]~~ a managing general agent ~~who is [authorized to be licensed and] licensed under the Managing General Agents' Licensing Act[; Acts, 1967, 60th Legislature, Chapter 727, codified by Vernon as] (Article 21.07-3, Vernon's Texas Insurance Code) who is granted a surplus lines license in accordance with this Article and who complies with the provisions of this Article, except it is not necessary that the managing general agent be licensed as a general property and casualty [recording] agent[-or (iii) is a nonresident insurance agent authorized under Article 21.11 and who is granted a surplus lines license for the limited purpose of acting on behalf of a purchasing group operating in this state in the placement of liability insurance for risks located in this state].~~

SECTION 6.02. Subdivision (2), Subsection (a), Section 2, Article 1.14-2, Insurance Code, is amended to read as follows:

(2) A [Each "]surplus lines agent,<sup>[u]</sup> as a condition of being licensed as a surplus lines agent and as a condition of continuing to be licensed as a surplus lines agent, shall offer the proof of financial responsibility [solvency and demonstrate capacity in respect of responsibility to insureds under policies of surplus lines insurance, or in the alternative show proof of adequate bond and surety] in respect of [his] transactions with insureds under policies of surplus lines insurance [and] as required by [the] reasonable rules [and regulations] of the department [State Board of Insurance shall provide].

SECTION 6.03. Subdivision (3), Subsection (a), Section 2, Article 1.14-2, Insurance Code, is amended to read as follows:

(3) Any surplus lines license granted to an agency authorized under the Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code), ~~but[; Acts, 1967, 60th Legislature, Chapter 727, that is] not [also] licensed under Article 21.14 of this code, [the Insurance Code] shall be limited to the acceptance of business originating through a regularly licensed general property and casualty [recording] agent and does [shall] not authorize the [such] surplus lines agency to transact business directly with the applicant for insurance.~~

SECTION 6.04. Subsection (b), Section 4, Article 1.14-2, Insurance Code, is amended to read as follows:

(b) The ~~department [Texas Department of Insurance]~~ may issue a surplus lines license to an applicant if the applicant submits a properly completed license application and an application fee as determined by the department and the department determines that the applicant [an agent as defined by Subdivision (1) of Subsection (a) of Section 2 of this article after the agent has]:

(1) is an individual who:

(A) is a resident of this state;

(B) is currently licensed as a general property and casualty agent under Article 21.14 of this code or as a managing general agent under the Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code);

(C) has passed the surplus lines license examination administered under Article 21.01-1 of this code and department rules; and

(D) provides proof of financial responsibility as required under Section 2 of this article [remitted the application fee set by the Texas Department of Insurance in an amount not to exceed \$50];

(2) is a corporation or partnership that:

(A) has at least one officer or director or at least one active partner who:

(i) is a resident of this state; and

(ii) has passed the surplus lines license examination required under

this article;

(B) is currently licensed as a general property and casualty agent under Article 21.14 of this code or as a managing general agent under the Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code); and

(C) provides proof of financial responsibility as required under Section 2 of this article [submitted a completed license application on a form approved by the Texas Department of Insurance]; or [and]

(3) is a nonresident insurance agent authorized under Article 21.11 of this code who holds a general property and casualty license from the department and whose authority as a surplus lines agent is limited to acting on behalf of a purchasing group operating in this state in the placement of liability insurance for risks located in this state [passed a qualifying examination approved by the Texas Department of Insurance. If the agent is a general partnership or a registered limited liability partnership, this examination must be met by each natural person acting as a partner in that partnership. If the agent is a corporation, this examination requirement must be met by each natural person acting as an officer, director, or shareholder of that corporation. If the agent is a limited liability company, this examination requirement must be met by each natural person acting as an officer, manager, and member of that limited liability company].

SECTION 6.05. Subsection (c), Section 4, Article 1.14-2, Insurance Code, is amended to read as follows:

(c) In addition to the requirements of this article, the administration and regulation of a surplus lines agent's license is governed by Subchapter A, Chapter 21, of this code, except that Article 21.07 of this code does not apply to a license issued under this article. [Unless the State Board of Insurance adopts a system for staggered renewal of licenses, as provided by Article 21.01-2 of this code, each license issued under this section is for a two-year term that expires on December 31; however, the term of the initial licensing period shall expire on December 31 of the year following the year in which the license is issued. A license may be renewed for periods of two years:]

SECTION 6.06. Subsection (d), Section 4, Article 1.14-2, Insurance Code, is amended to read as follows:

(d) If a license holder does not maintain the qualifications necessary to obtain the license, the department may revoke or suspend the license or deny the renewal of that license in accordance with Article 21.01-2 of this code. [By filing a completed written application in the form prescribed by the State Board of Insurance and paying the nonrefundable renewal fee set by the board in an amount not to exceed \$50, an unexpired license may be renewed on or before the expiration date of the license.]

#### ARTICLE 7. REPEALER

SECTION 7.01. The following laws are repealed:

- (1) Subsections (f), (g), and (h), Section 4, Article 1.14-2, Insurance Code;
- (2) Section 15, Article 17.25, Insurance Code;

- (3) Sections 15 and 15A, Texas Health Maintenance Organization Act (Sections 20A.15 and 20A.15A, Vernon's Texas Insurance Code);
- (4) Sections 1, 3, 4, and 6, Article 21.01-2, Insurance Code;
- (5) Article 21.02-1, Insurance Code;
- (6) Article 21.05, Insurance Code;
- (7) the following sections of Article 21.07, Insurance Code:
  - (A) Sections 1B and 1C;
  - (B) Section 3, as amended by Chapters 596 and 972, Acts of the 75th Legislature, Regular Session, 1997;
  - (C) Sections 3B, 4, 4A, 5, 7, 8, 9, 10, 10A, 11, 12, 13, 14, 15, 15A, 16, 17, 18, 19, and 20;
  - (D) Section 21, as added by Chapter 820, Acts of the 75th Legislature, Regular Session, 1997; and
  - (E) Section 21, as added by Chapter 1196, Acts of the 75th Legislature, Regular Session, 1997;
- (8) Article 21.07A, Insurance Code;
- (9) Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code);
- (10) the following sections of the Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code):
  - (A) Sections 4A, 4B, and 4C;
  - (B) Subsection (h), Section 5;
  - (C) Sections 6 and 6A;
  - (D) Sections 8, 9, and 10;
  - (E) Sections 12, 13, 14, and 15;
  - (F) Section 17; and
  - (G) Section 20;
- (11) Section 14, Article 21.14-1, Insurance Code;
- (12) Article 21.15, Insurance Code;
- (13) Article 21.15-2, Insurance Code;
- (14) Article 21.15-3, Insurance Code;
- (15) Article 21.15-4, Insurance Code;
- (16) Article 21.15-7, Insurance Code;
- (17) Section 10, Article 21.58A, Insurance Code; and
- (18) Article 23.23, Insurance Code.

#### ARTICLE 8. GRANDFATHER CLAUSE; TRANSITION

SECTION 8.01. On the effective date of this Act, a person who holds a license issued by the Texas Department of Insurance that is in good standing is:

- (1) considered licensed under the applicable licensing law as amended by this Act;
- (2) entitled to act as an agent under the new license type, subject to this article; and
- (3) subject to the provisions of the Insurance Code as amended by this Act.

SECTION 8.02. (a) A person who, immediately before the effective date of this Act, holds an agent license issued by the Texas Department of Insurance and who obtained that license by passing a written examination, whether administered by the insurance carrier, company, or state testing contractor, is entitled to the appropriate license as provided by Subchapter A, Chapter 21, Insurance Code, as amended by this Act, without further examination.

(b) A person who, immediately before the effective date of this Act, holds an agent license issued by the Texas Department of Insurance before January 1, 1999, and who obtained that license without taking a written examination or who actually solicited insurance on behalf of a stipulated premium company, farm mutual company, or county mutual insurance company before January 1, 1999, is entitled to the appropriate license as provided by Subchapter A, Chapter 21, Insurance Code, as amended by this Act, but must pass the appropriate license examination not later than the second anniversary of the date of issuance, to retain the license. The license of a person who does not pass the license examination as required by this subsection expires on the second anniversary of the date of issuance and may not be renewed.

(c) A person who, immediately before the effective date of this Act, holds an agent license issued by the Texas Department of Insurance on or after January 1, 1999, and who obtained that license without taking a written examination or who actually solicited insurance on behalf of a stipulated premium company, farm mutual company, or county mutual insurance company on or after January 1, 1999, but before the effective date of this Act, is entitled to the appropriate license as provided by Subchapter A, Chapter 21, Insurance Code, as amended by this Act, but must pass the appropriate license examination not later than May 31, 2000, to retain the license. The license of a person who does not pass the license examination as required by this subsection expires on May 31, 2000.

(d) A person who has actually solicited insurance on behalf of a stipulated premium company, farm mutual company, or county mutual insurance company for at least 24 months preceding the effective date of this Act is entitled to the appropriate license and any renewal license as provided by Subchapter A, Chapter 21, Insurance Code, as amended by this Act, without further examination.

SECTION 8.03. (a) The Texas Department of Insurance may issue a life, accident, and health license to a person who solicited insurance on behalf of a fraternal benefit society immediately before the effective date of this Act on submission to the department by the person of the following:

(1) a certified statement from the fraternal benefit society indicating the period of time the person has solicited insurance on behalf of the fraternal benefit society;

(2) a completed license application form; and

(3) a nonrefundable application fee in an amount determined by the department.

(b) To retain the license issued under Subsection (a) of this section, a person who has solicited insurance on behalf of a fraternal benefit society for less than two years as of the effective date of this Act must pass the license examination required under Subchapter A, Chapter 21, Insurance Code, not later than the 180th day after the date of issuance of the license. The license of a person who does not pass the license examination as required by this subsection expires on the 180th day after the date of issuance of the license and may not be renewed.

SECTION 8.04. Notwithstanding any other law, the contract of a surety who guarantees the promise of a bonded principal to appear in court as directed by the court must provide that:

(1) the surety is not liable based on a default by the principal until the first anniversary of the date on which the court declares that the principal is in default; and



(2) the liability of the surety is fully discharged if:

(A) it is shown that, before the first anniversary of the date on which the court declares that the principal is in default, the principal is placed in custody in any jurisdiction; or

(B) the surety presents evidence satisfactory to the court of any other good cause for the principal not being present in court as directed.

#### ARTICLE 9. EFFECTIVE DATE; TRANSITION; EMERGENCY

SECTION 9.01. (a) This Act takes effect September 1, 1999.

(b) Section 3, Article 21.01-1, Insurance Code, as amended by this Act, applies to continuing education requirements for insurance agents for a renewal of a license that occurs on or after January 1, 2001.

SECTION 9.02. 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 956** as follows:

(1) In SECTION 1.01 of the bill, strike Section 3(a)(19) of amended Article 21.01, Insurance Code (page 2, lines 26-27, House committee report printing), and substitute the following:

(19) a specialty license program established under state law.

(2) In SECTION 1.10 of the bill, in Section 1A of amended Article 21.07, Insurance Code, strike Subdivision (2) of that section (page 27, lines 22-27, and page 28, lines 1-5, House committee report printing) and substitute the following:

(2) "Bank" means:

(A) a national banking association organized and existing under the National Bank Acts (12 U.S.C. Section 21 et seq.);

(B) a state bank organized and existing under Subtitle A, Title 3, Finance Code;

(C) a state savings bank organized under or subject to Subtitle C, Title 3, Finance Code;

(D) a bank branch;

(E) a bank operating subsidiary, as defined by state or federal law;

(F) a savings and loan association organized and existing under Subtitle B, Title 3, Finance Code; or

(G) a federal savings and loan association or federal savings bank.

(3) In SECTION 1.11 of the bill, strike Section 2(u) of amended Article 21.07, Insurance Code (page 43, lines 18-22, House committee report printing), and substitute the following:

(u) If a license holder does not maintain the qualifications necessary to obtain the license, the department shall revoke or suspend the license or deny the renewal of the license in accordance with Article 21.01-2 of this code.

(4) In SECTION 2.01 of the bill, strike Section 3 of added Article 21.07-1, Insurance Code (page 59, lines 3-8, House committee report printing), and substitute the following:

Sec. 3. AUTHORITY TO WRITE ADDITIONAL PRODUCT LINES. A person who holds a general life, accident, and health license issued under the requirements of this subchapter may, without obtaining an additional license, write additional types of insurance contracts as provided under:

- (1) Sections 4, 5, and 6 of this article; or  
(2) a specialty license program established under state law.
- (5) In SECTION 2.01 of the bill, strike Section 4(b) of added Article 21.07-1, Insurance Code (page 59, lines 12-27, and page 60, lines 1-16, House committee report printing), and substitute the following:
- (b) This section applies to:
- (1) an agent for an insurance company that writes only job protection insurance;  
(2) an agent writing policies or riders to policies that provide only:  
(A) lump-sum cash benefits in the event of accidental death, death by accidental means, or dismemberment; or  
(B) ambulance expense benefits in the event of accident or sickness;  
(3) an agent writing prepaid legal services contracts under Article 5.13-1 or Chapter 23 of this code;  
(4) an agent writing credit insurance except as otherwise provided under a specialty license program established under state law; and  
(5) an agent writing any other type of insurance required by the commissioner to be licensed for the protection of the insurance consumers of this state.
- (6) In SECTION 2.01 of the bill, strike Section 4(d) of added Article 21.07-1, Insurance Code (page 60, lines 21-27, and page 61, lines 1-8, House committee report printing), and reletter the subsequent subsections of that section accordingly.
- (7) In SECTION 2.01 of the bill, in Section 6(a) of added Article 21.07-1, Insurance Code (page 63, line 10, House committee report printing), strike "commission shall issue a license" and substitute "commissioner shall issue a license".
- (8) In SECTION 2.01 of the bill, add a new Subsection (e) to Section 6, Article 21.07-1, Insurance Code (page 64, between lines 12 and 13, House committee report printing), as follows:
- (e) A license is not required under this section for an agent who wrote policies that generated, in the aggregate, less than \$20,000 in direct premium for the preceding calendar year.
- (9) In SECTION 2.01 of the bill, redesignate Subsection (e), Section 6, Article 21.07-1, Insurance Code (page 64, line 13, House committee report printing), as Subsection (f).
- (10) In SECTION 3.01 of the bill, strike Section 3 of amended Article 21.14, Insurance Code (page 65, lines 22-26, House committee report printing), and substitute the following:
- Sec. 3. AUTHORITY TO WRITE ADDITIONAL PRODUCT LINES. A person who holds a general property and casualty license issued under this subchapter may write additional types of insurance contracts as provided under:
- (1) Sections 6 and 9 of this article; or  
(2) a specialty license program established under state law.
- (11) In SECTION 3.01 of the bill, strike Section 6(a)(6) of amended Article 21.14, Insurance Code (page 67, lines 19-21, House committee report printing), and substitute the following:
- (6) an agent writing credit insurance, except as otherwise provided by a specialty license program established under state law.

(12) In SECTION 4.01 of the bill, strike Section 1(d) of amended Article 21.11, Insurance Code (page 113, lines 6-12, House committee report printing), and substitute the following:

(d) The [(b) An applicant for issuance of a license under this section must meet the requirements for issuance of a license under Article 21.14 of this code, except that the] department may [shall] waive any [of those] license requirements for an applicant with a valid license from another state or jurisdiction if:

(1) that state or jurisdiction has license requirements substantially equivalent to those of this state; or

(2) the waiver is necessary to promote uniformity among the various states in regard to insurance agent licensing requirements.

### **Floor Amendment No. 2**

Amend paragraph (8) of the pending Floor Amendment No. 1 to **CSSB 956**, House committee printing, to read as follows:

"(8) In SECTION 2.01 of the bill, insert a new Section 6(e) of added Article 21.07-1, Insurance Code (page 64, lines 13-15, House committee report printing), and renumber the remaining subsections accordingly, to read as follows:

(e) A license is not required under this section for an agent who, in the preceding calendar year, wrote policies that generated, in the aggregate, less than \$20,000 in direct premium."

### **Floor Amendment No. 3**

Amend **CSSB 956**, in SECTION 1.02 of the bill, by striking added Section 3(d), Article 21.01-1, Insurance Code (page 10, lines 18-22, house committee report printing), and substituting the following:

(d) An individual who has continuously held a license issued under this code to operate as an insurance agent for 20 years is exempt from the continuing education requirements of this section. The commissioner by rule may provide for other reasonable exemptions.

### **Floor Amendment No. 4**

Amend **CSSB 956** by adding a new subsection (4) after line 7 on page 67; renumber subsequent sections appropriately; said new subsection to read as follows:

"(4) exclusively all forms of insurance authorized to be solicited and written in this state that relate to the ownership, occupancy, maintenance or use of a manufactured home that is classified as personal property under Section 2.001, Property Code."

### **Floor Amendment No. 5**

Amend **CSSB 956**, SECTION 1.11, page 33, line 20, by deleting entirely all of Subsections (g) and (h) therefrom, and renumbering the remaining subsections.

The amendments were read.

On motion of Senator Madla, the Senate concurred in the House amendments to **SB 956** by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 957 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **SB 957**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 947 ADOPTED**

Senator Barrientos called from the President's table the Conference Committee Report on **SB 947**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Barrientos, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3778 ADOPTED**

Senator Gallegos called from the President's table the Conference Committee Report on **HB 3778**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Gallegos, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 982 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **SB 982**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1520 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **SB 1520**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1128 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **SB 1128**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3457 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 3457**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Armbrister, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 996 ADOPTED**

Senator Lindsay called from the President's table the Conference Committee Report on **SB 996**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Lindsay, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3470 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **HB 3470**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 50 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **SB 50**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Nelson, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 709 ADOPTED**

Senator Sibley called from the President's table the Conference Committee Report on **SB 709**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Sibley, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 371 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **SB 371**. The Conference Committee Report was again filed with the Senate on Friday, May 28, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 365 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **SB 365**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 8 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **SB 8**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator West, the Conference Committee Report was adopted by a viva voce vote.

**STATEMENT OF LEGISLATIVE INTENT**

Senator West submitted the following statement of legislative intent for **SB 8**:

The Conference Committee Report on **SB 8** represents a balanced approach to establishing a statewide gang intelligence database in Texas.

Members, let me say that no one involved in this issue got everything they wanted, and that's the way it should be in order to achieve balance in this issue.

Law enforcement personnel have asked that we give them the authority to track citizens who they suspect of being involved in criminal activity for the purpose of investigating and prosecuting crime. Others continue to raise grave concerns about the potential threat to our civil liberties and constitutional rights to privacy if we allow law enforcement to expand this tool to a statewide level.

I strongly believe it is our duty to ensure that if we allow law enforcement to have this tool, a person is never placed in the database based on their physical characteristics, but rather the basis is always a reasonable suspicion that the individual is involved in criminal activity.

The Conference Committee Report on **SB 8** establishes a statewide criminal street gang database at the Department of Public Safety effective September 1, 2000, and requires local law enforcement agencies to submit all criminal street gang intelligence files that they compile to this database beginning September 1, 2000. **SB 8** also statutorily establishes certain standards that local law enforcement must meet in order to compile and maintain a gang intelligence database within their own agency. These standards include a specific criteria that must be met before a person can be entered in a database, as well as the requirement that the database adhere to certain federal regulations. These same standards apply to the newly established statewide database

as well. For the purpose of legislative intent, I would like to state that adherence to the federal standards should still allow the sharing of files with the courts under Article 61.03 Code of Criminal Procedure. All of these standards require that a criminal predicate must be established before a person may be entered in the database. In other words, just because a kid may wear baggy pants and live in a certain area is not enough to place them in the database.

The bill also allows an individual the right to request the review of information contained in the database under certain limited circumstances, but precludes anyone confined at the Texas Department of Criminal Justice or the Texas Youth Commission from making this request.

The bill also allows the governing body of a municipality or county to adopt a policy to notify the parent or guardian of a child of the local law enforcement agency's observations that the child may be associating with a criminal street gang.

**SB 8** also allows local enforcement to grandfather their existing gang intelligence as long as the files meet the new standards as established by this Act. At the request of law enforcement, we did exempt certain files (self-admission as a stand-alone criteria) from meeting this new standard.

WEST

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2224 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **HB 2224**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Shapiro, the Conference Committee Report was adopted by a viva voce vote.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2175 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 2175**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Armbrister, the Conference Committee Report was adopted by a viva voce vote.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 746 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **HB 746**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator West, the Conference Committee Report was adopted by a viva voce vote.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2825 ADOPTED**

Senator Bernsen called from the President's table the Conference Committee Report on **HB 2825**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Bernsen, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 673 ADOPTED**

Senator Lindsay called from the President's table the Conference Committee Report on **HB 673**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Lindsay, the Conference Committee Report was adopted by the following vote: Yeas 16, Nays 13.

Yeas: Armbrister, Bernsen, Brown, Cain, Duncan, Ellis, Fraser, Harris, Haywood, Lindsay, Madla, Moncrief, Shapleigh, West, Whitmire, Zaffirini.

Nays: Barrientos, Bivins, Carona, Gallegos, Jackson, Nelson, Nixon, Ogden, Ratliff, Shapiro, Sibley, Truan, Wentworth.

Absent: Lucio.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1275 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **HB 1275**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**VOTE RECONSIDERED ON  
CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 673**

Senator Haywood moved to reconsider the vote by which the Conference Committee Report on **HB 673** was adopted.

The motion prevailed by the following vote: Yeas 20, Nays 10.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Cain, Fraser, Gallegos, Harris, Haywood, Jackson, Lucio, Nelson, Nixon, Ogden, Ratliff, Sibley, Truan, Wentworth, West, Whitmire.

Nays: Brown, Carona, Duncan, Ellis, Lindsay, Madla, Moncrief, Shapiro, Shapleigh, Zaffirini.

Absent-excused: Luna.

Question—Shall the Conference Committee Report on **HB 673** be adopted?

The Conference Committee Report on **HB 673** failed of adoption by the following vote: Yeas 14, Nays 16.

Yeas: Armbrister, Bernsen, Brown, Cain, Duncan, Ellis, Harris, Lindsay, Lucio, Madla, Moncrief, Shapleigh, Wentworth, Zaffirini.



Nays: Barrientos, Bivins, Carona, Fraser, Gallegos, Haywood, Jackson, Nelson, Nixon, Ogden, Ratliff, Shapiro, Sibley, Truan, West, Whitmire.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 571 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **HB 571**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Nelson, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 628 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **HB 628**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Shapiro, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2821 ADOPTED**

Senator Cain called from the President's table the Conference Committee Report on **HB 2821**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Cain, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1188 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **HB 1188**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Shapiro, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1983 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **HB 1983**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 846 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **HB 846**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1123 ADOPTED**

Senator Cain called from the President's table the Conference Committee Report on **HB 1123**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Cain, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2147 ADOPTED**

Senator Shapleigh called from the President's table the Conference Committee Report on **HB 2147**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Shapleigh, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2748 ADOPTED**

Senator Sibley called from the President's table the Conference Committee Report on **HB 2748**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Sibley, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2510 ADOPTED**

Senator Shapleigh called from the President's table the Conference Committee Report on **HB 2510**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Shapleigh, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE ON  
HOUSE BILL 143 DISCHARGED**

On motion of Senator West and by unanimous consent, the Senate conferees on **HB 143** were discharged.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1423 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **SB 1423**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator West, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1939 ADOPTED**

Senator Harris called from the President's table the Conference Committee Report on **HB 1939**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Harris, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2947 ADOPTED**

Senator Harris called from the President's table the Conference Committee Report on **HB 2947**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Harris, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1291 ADOPTED**

Senator Harris called from the President's table the Conference Committee Report on **HB 1291**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Harris, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**MESSAGE FROM THE HOUSE****HOUSE CHAMBER**

Austin, Texas

May 30, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:**

**HB 153** (Viva-voce vote)  
**HB 400** (Viva-voce vote)  
**HB 485** (137 ayes, 4 nays, 1 present, not voting)  
**HB 571** (Viva-voce vote)  
**HB 628** (Viva-voce vote)  
**HB 662** (Viva-voce vote)  
**HB 673** (Viva-voce vote)  
**HB 801** (Viva-voce vote)  
**HB 844** (139 ayes, 2 nays, 2 present, not voting)  
**HB 846** (Viva-voce vote)  
**HB 918** (Viva-voce vote)  
**HB 932** (Viva-voce vote)  
**HB 1059** (Viva-voce vote)  
**HB 1799** (Viva-voce vote)  
**HB 1933** (144 ayes, 0 nays, 1 present, not voting)  
**HB 1983** (Viva-voce vote)  
**HB 2190** (Viva-voce vote)  
**HB 2409** (Viva-voce vote)  
**HB 2510** (Viva-voce vote)  
**HB 2553** (Viva-voce vote)  
**HB 2641** (Viva-voce vote)  
**HB 2821** (Viva-voce vote)  
**HB 2954** (Viva-voce vote)  
**HB 3014** (Viva-voce vote)  
**HB 3061** (Viva-voce vote)  
**HB 3211** (145 ayes, 0 nays, 2 present, not voting)  
**HB 3457** (Viva-voce vote)  
**HB 3549** (Viva-voce vote)  
**SB 8** (Viva-voce vote)  
**SB 50** (Viva-voce vote)  
**SB 86** (Viva-voce vote)  
**SB 89** (Viva-voce vote)  
**SB 103** (Viva-voce vote)

**SB 138** (Viva-voce vote)  
**SB 178** (Viva-voce vote)  
**SB 358** (Viva-voce vote)  
**SB 365** (Viva-voce vote)  
**SB 370** (Viva-voce vote)  
**SB 528** (Viva-voce vote)  
**SB 558** (Viva-voce vote)  
**SB 655** (Viva-voce vote)  
**SB 694** (Viva-voce vote)  
**SB 840** (Viva-voce vote)  
**SB 957** (Viva-voce vote)  
**SB 996** (Viva-voce vote)  
**SB 1438** (Viva-voce vote)  
**SB 1615** (Viva-voce vote)

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 2824** (Viva-voce vote)

Respectfully,

/s/Sharon Carter, Chief Clerk  
House of Representatives

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1997 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **HB 1997**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1453 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **HB 1453**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 918 ADOPTED**

Senator Wentworth called from the President's table the Conference Committee Report on **HB 918**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Wentworth, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3304 ADOPTED**

Senator Sibley called from the President's table the Conference Committee Report on **HB 3304**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Sibley, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2409 ADOPTED**

Senator Bernsen called from the President's table the Conference Committee Report on **HB 2409**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Bernsen, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3182 ADOPTED**

Senator Harris called from the President's table the Conference Committee Report on **HB 3182**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Harris, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 138 ADOPTED**

Senator Sibley called from the President's table the Conference Committee Report on **SB 138**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Sibley, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2815 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **HB 2815**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3793 ADOPTED**

Senator Sibley called from the President's table the Conference Committee Report on **HB 3793**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Sibley, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1861 ADOPTED**

Senator Shapleigh called from the President's table the Conference Committee Report on **HB 1861**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Shapleigh, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1961 ADOPTED**

Senator Barrientos called from the President's table the Conference Committee Report on **HB 1961**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Barrientos, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3016 ADOPTED**

Senator Sibley called from the President's table the Conference Committee Report on **HB 3016**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Sibley, the Conference Committee Report was adopted by a viva voce vote.

**(President in Chair)**

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2434 ADOPTED**

Senator Moncrief called from the President's table the Conference Committee Report on **HB 2434**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Moncrief, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2896 ADOPTED**

Senator Moncrief called from the President's table the Conference Committee Report on **HB 2896**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Moncrief, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2954 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **HB 2954**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 103 ADOPTED**

Senator Bivins called from the President's table the Conference Committee Report on **SB 103**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Bivins, the Conference Committee Report was adopted by the following vote: Yeas 21, Nays 9.

Yeas: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Ellis, Harris, Haywood, Jackson, Lindsay, Lucio, Madla, Moncrief, Nixon, Ratliff, Shapiro, Shapleigh, Sibley, Wentworth, West.

Nays: Barrientos, Bernsen, Fraser, Gallegos, Nelson, Ogden, Truan, Whitmire, Zaffirini.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 441 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **SB 441**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**STATEMENTS OF LEGISLATIVE INTENT**

Senator Ellis submitted the following statements of legislative intent for **SB 441**:

Our intent is to permit tax credits for qualifying expenditures as defined in Section 171.833(b) made by the entities enumerated in Section 171.833(a)(1)-(3) to the extent those expenditures relate to "school-age child care" programs as those are defined in Section 171.831.

ELLIS

**SB 441** contains a franchise tax credit for expenditures relating to before and after school programs for children who are at least five years of age but younger than 14 years of age.



The franchise tax provision allows a corporation to claim an expenditure only for constructing, renovating, or remodeling a facility for the before and after school program, for purchasing necessary equipment, supplies, or food only to be used in a before and after school program, and for operating the program, including administrative and staff costs.

It is our express intent, that:

(1) the provision is not a voucher program and does not provide any tax assistance for private school tuition of any kind, including tuition for a before or after school program;

(2) the provision does not support programs conducted during regular school hours; and

(3) the comptroller shall interpret and enforce the provision strictly and narrowly to ensure that a corporation receive a tax credit under the provision only if the recipient uses the facilities, equipment, supplies, food, administrative services, staff services, and other permitted expenditures for the primary purpose of supporting the before and after school program and that the corporation is not eligible for the credit if the corporation cannot establish that the facilities, equipment, supplies, food, administrative services, staff services, and other permitted expenditures are primarily used for the before and after school program.

ELLIS  
DUNCAN

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3211 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **HB 3211**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Duncan, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 528 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **SB 528**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator West, the Conference Committee Report was adopted by a viva voce vote.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 655 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **SB 655**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

### STATEMENT OF LEGISLATIVE INTENT

Senator Madla submitted the following statement of legislative intent for **SB 655**:

In the tax exemption section under **SB 655**, Section 378.011, an "authority" has the same exemption as that of a 4B Corporation. The word authority in the bill is intended to mean the authority created under the new act, and is also intended to include the predecessor agency of the authority. For example, this exemption and the grandfathering language would apply to the Greater Kelly Development Corporation from the time it was created under the Development Corporation's statute and would also apply to the actions taken by the Greater Kelly Development Corporation as it is recreated under this enabling legislation as the new authority.

MADLA

### SENATE RESOLUTION 1195

Senator Ellis offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences between the house and senate versions of **HB 400**, relating to the creation of certain district courts, to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add the following SECTION to read as follows:

SECTION 26. (a) Except as provided by Subsection (b) of this section, for purposes of Section 201.027, Election Code, the effective date of the Act creating the office is the effective date of the Government Code section establishing the court under this Act.

(b) This section does not apply to the creation of the office of judge for a judicial district created by Section 15 of this Act.

Explanation: This change is necessary to clarify that, for purposes of Section 201.027, Election Code, the effective date of the Act creating the offices of judge of the 379th, 386th, 387th, 388th, 389th, 390th, 391st, 393rd, 395th, 396th, 398th, 399th, 400th, 401st, 402nd, 403rd, 407th, 408th, and 409th judicial districts is the effective date of each Government Code section establishing each of those districts under **HB 400**.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 400 ADOPTED

Senator Ellis called from the President's table the Conference Committee Report on **HB 400**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Ellis, the Conference Committee Report was adopted by a viva voce vote.

**RECORD OF VOTES**

Senators Jackson and Lindsay asked to be recorded as voting "Nay" on the adoption of the Conference Committee Report on **HB 400**.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3549 ADOPTED**

Senator Wentworth called from the President's table the Conference Committee Report on **HB 3549**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Wentworth, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 840 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **SB 840**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator West, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 662 ADOPTED**

Senator Wentworth called from the President's table the Conference Committee Report on **HB 662**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Wentworth, the Conference Committee Report was adopted by a viva voce vote.

**HOUSE CONCURRENT RESOLUTION 314**

The President laid before the Senate the following resolution:

**HCR 314**, Instructing the enrolling clerk of the house to make corrections in **HB 1193**.

HARRIS

The resolution was read.

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

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 744 ADOPTED**

Senator Bernsen called from the President's table the Conference Committee Report on **HB 744**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Bernsen, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3697 ADOPTED**

Senator Sibley called from the President's table the Conference Committee Report on **HB 3697**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Sibley, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3255 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **HB 3255**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Carona, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3014 ADOPTED**

Senator Bernsen called from the President's table the Conference Committee Report on **HB 3014**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Bernsen, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1438 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **SB 1438**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Duncan, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1703 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **HB 1703**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 932 ADOPTED**

Senator Shapleigh called from the President's table the Conference Committee Report on **HB 932**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Shapleigh, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2553 ADOPTED**

Senator Bivins called from the President's table the Conference Committee Report on **HB 2553**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Bivins, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 211 ADOPTED**

Senator Sibley called from the President's table the Conference Committee Report on **HB 211**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Sibley, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3757 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **HB 3757**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Carona, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3620 ADOPTED**

Senator Bernsen called from the President's table the Conference Committee Report on **HB 3620**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Bernsen, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1376 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **HB 1376**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Carona, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 178 ADOPTED**

Senator Ratliff called from the President's table the Conference Committee Report on **SB 178**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Ratliff, the Conference Committee Report was adopted by a viva voce vote.

**HOUSE CONCURRENT RESOLUTION 315**

The President laid before the Senate the following resolution:

**HCR 315**, Instructing the enrolling clerk of the house to make technical corrections in **HB 153**.

MONCRIEF

The resolution was read.

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

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1059 ADOPTED**

Senator Barrientos called from the President's table the Conference Committee Report on **HB 1059**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Barrientos, the Conference Committee Report was adopted by a viva voce vote.

**RECORD OF VOTE**

Senator Wentworth asked to be recorded as "Present-not voting" on the adoption of the Conference Committee Report on **HB 1059**.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3079 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **HB 3079**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1283 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **HB 1283**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2641 ADOPTED

Senator Brown called from the President's table the Conference Committee Report on **HB 2641**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3029 ADOPTED

Senator Brown called from the President's table the Conference Committee Report on **HB 3029**. The Conference Committee Report was filed with the Senate on Friday, May 28, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

### STATEMENT OF LEGISLATIVE INTENT

Senator Brown submitted the following statement of legislative intent for **HB 3029**:

**Senator Fraser:** Senator Brown, this bill requires that an agreement creating an ownership, leasehold, or other possessory interest of a person other than the corporation must be entered into by a development corporation before September 1, 1999, in order to be covered by the ad valorem taxation provisions of Section 4B(k), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) that were in effect prior to September 1, 1999.

The enactment of **HB 3029** will make significant changes in some industrial development corporation financing projects. Senator Brown, are you aware that proposed financing agreements of this type are likely to be the subject of serious negotiations at this time, but due to the substantial financial commitments involved by the eligible cities and the industrial development corporations, a final and binding agreement may not practicably be finalized by September 1, 1999, even though negotiations have been underway and are continuing as the legislature passes **HB 3029**?

**Senator Brown:** Yes.

**Senator Fraser:** Senator Brown, if an eligible city had entered into a fully executed letter of intent or term sheet with a private entity prior to the enactment of **HB 3029** representing the parties' good faith intentions to negotiate and enter into an agreement of the type described by **HB 3029**, is it the intent of **HB 3029** that such a letter would satisfy the "agreement" requirement of the legislation?

**Senator Brown:** Yes. The referenced provision of **HB 3029** regarding "an agreement entered into by September 1, 1999," is intended to allow a period of grace for industrial development corporation financing currently being negotiated under the existing ad valorem tax provisions of Section 4B(k), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes). An executed letter of intent or term sheet representing the parties' good faith intentions to work toward specific provisions of an agreement under the ad valorem tax

provisions in effect at the time the letter of intent or term sheet was executed would satisfy the requirement of an "agreement" described in **HB 3029**, even if the final agreement itself may not be fully executed until after September 1, 1999.

**Senator Fraser:** Thank you Senator Brown.

BROWN

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 370 ADOPTED**

Senator Brown called from the President's table the Conference Committee Report on **SB 370**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Brown, the Conference Committee Report was adopted by a viva voce vote.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 801 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 801**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Armbrister, the Conference Committee Report was adopted by a viva voce vote.

### **SENATE RESOLUTION 1197**

Senator Bivins offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 76th Legislature, Regular Session, 1999, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **SB 4**, relating to public school finance, property tax relief, and public education, and making an appropriation, to consider and take action on the following matters:

(1) Senate Rule 12.03(2) is suspended to permit the committee to omit language making Section 42.158, Education Code, as added by the Act, take effect September 1, 2000.

Explanation: This change is necessary to provide for the instructional facilities allotment under Section 42.158, Education Code, as added by the Act, to take effect September 1, 1999, rather than September 1, 2000.

(2) Senate Rule 12.03(1) is suspended to permit the committee to change text in added Section 42.158, Education Code, to read as follows:

Sec. 42.158. NEW INSTRUCTIONAL FACILITY ALLOTMENT. (a) A school district is entitled to an additional allotment as provided by this section for operational expenses associated with opening a new instructional facility.

(b) For the first school year in which students attend a new instructional facility, a school district is entitled to an allotment of \$250 for each student in average daily attendance at the facility. For the second school year in which students attend that instructional facility, a school district is entitled to an allotment of \$250 for each additional student in average daily attendance at the facility.



(c) For purposes of this section, the number of additional students in average daily attendance at a facility is the difference between the number of students in average daily attendance in the current year at that facility and the number of students in average daily attendance at that facility in the preceding year.

(d) The amount appropriated for allotments under this section may not exceed \$25 million in a school year. If the total amount of allotments to which districts are entitled under this section for a school year exceeds the amount appropriated for allotments under this section, the commissioner shall reduce each district's allotment under this section in the manner provided by Section 42.253(h).

(e) A school district that is required to take action under Chapter 41 to reduce its wealth per student to the equalized wealth level is entitled to a credit, in the amount of the allotments to which the district is entitled under this section, against the total amount required under Section 41.093 for the district to purchase attendance credits. A school district that is otherwise ineligible for state aid under this chapter is entitled to receive allotments under this section.

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

(g) In this section, "instructional facility" has the meaning assigned by Section 46.001.

Explanation: This change is necessary to provide for an instructional facilities allotment under Section 42.158, Education Code, at an amount lower than the amount in either the senate or house version of the bill.

(3) Senate Rule 12.03(1) is suspended to permit the committee to amend the definition of "GL" under Section 42.302(a), Education Code, to read as follows:

"GL" is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is \$24.99 [~~\$21~~] or a greater amount for any year provided by appropriation;

Explanation: This change is necessary to provide for a guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302, Education Code, at an amount higher than the amount in either the senate or house version of the bill.

(4) Senate Rule 12.03(1) is suspended to permit the committee to amend Section 21.402(c), Education Code, to read as follows:

(c) The salary factors per step are as follows:

Years Experience	0	1	2	3	4
Salary Factor	<u>.5596</u>	<u>.5728</u>	<u>.5861</u>	<u>.5993</u>	<u>.6272</u>
	[ <del>.8470</del> ]	[ <del>.8699</del> ]	[ <del>.8928</del> ]	[ <del>.9156</del> ]	[ <del>.9639</del> ]
Years Experience	5	6	7	8	9
Salary Factor	<u>.6552</u>	<u>.6831</u>	<u>.7091</u>	<u>.7336</u>	<u>.7569</u>
	[ <del>1.0122</del> ]	[ <del>1.0605</del> ]	[ <del>1.1054</del> ]	[ <del>1.1477</del> ]	[ <del>1.1879</del> ]
Years Experience	10	11	12	13	4
Salary Factor	<u>.7787</u>	<u>.7996</u>	<u>.8192</u>	<u>.8376</u>	<u>.8552</u>
	[ <del>1.2256</del> ]	[ <del>1.2616</del> ]	[ <del>1.2955</del> ]	[ <del>1.3273</del> ]	[ <del>1.3578</del> ]
Years Experience	15	16	17	18	19
Salary Factor	<u>.8717</u>	<u>.8874</u>	<u>.9021</u>	<u>.9160</u>	<u>.9293</u>
	[ <del>1.3862</del> ]	[ <del>1.4133</del> ]	[ <del>1.4387</del> ]	[ <del>1.4628</del> ]	[ <del>1.4857</del> ]
Years Experience	20 and over				
Salary Factor	<u>.9418</u>				
	[ <del>1.5073</del> ]				

Explanation: This change is necessary to permit setting the salary factors for the minimum salary schedule for teachers, librarians, counselors, and nurses at a lower level than the level in either the senate or house version of the bill to reflect the higher guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302, Education Code.

(5) Senate Rule 12.03(4) is suspended to permit the committee to add SECTION 1.44 to read as follows:

SECTION 1.44. In addition to other amounts appropriated for the fiscal biennium ending August 31, 2001, the sum of \$60 million is appropriated, for the fiscal year ending August 31, 2000, from the general revenue fund to the Texas Education Agency for purposes of the foundation school program, and the unexpended balance of that appropriation is appropriated, for the fiscal year ending August 31, 2000, from the general revenue fund to the Texas Education Agency for the same purposes.

Explanation: This change is necessary to appropriate additional money for purposes of the foundation school program to cover the increased allotments under Chapters 42 and 46, Education Code.

The resolution was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 485 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **HB 485**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Madla, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 4 ADOPTED**

Senator Bivins called from the President's table the Conference Committee Report on **SB 4**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Bivins, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

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 177, SB 216, SB 287, SB 525, SB 623, SB 624, SB 666, SB 844, SB 873, SB 995, SB 1441, SB 1789, SB 1840, SB 1855, HB 247, HB 424, HB 772, HB 1032, HB 1161, HB 1504, HB 1607, HB 1851, HB 1878, HB 2045, HB 2075, HB 2124, HB 2125, HB 2148, HB 2155, HB 2186, HB 2620, HB 2735, HB 2794,**

**HB 2835, HB 2891, HB 2992, HB 2997, HB 3050, HB 3120, HB 3173, HB 3174, HB 3209, HB 3216, HB 3229, HB 3431, HB 3479, HB 3517, HB 3521, HB 3543, HB 3544, HB 3554, HB 3573, HB 3657, HB 3682, HB 3846, HCR 310, HJR 4, HJR 62, HB 610, HB 676, HB 731, HB 1172, HB 1248, HB 1342, HB 1362, HB 1398, HB 1592, HB 1620, HB 1676, HB 1865, HB 1945, HB 1975, HB 1984, HB 2145, HB 2599, HB 2684, HB 2816, HB 2960, HB 3009, HB 3021, HB 3189, HB 3799, HCR 37, HCR 159, HCR 257.**

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1933 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **HB 1933**. The Conference Committee Report was filed with the Senate on Saturday, May 29, 1999.

On motion of Senator Shapiro, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Luna.

**MEMORIAL RESOLUTIONS**

**SR 1194** - by Zaffirini: In memory of Jose A. Montemayor, Jr., of Laredo.

**HCR 105** - (Madla): In memory of Dr. Saul Severino Trevino.

**CONGRATULATORY RESOLUTIONS**

**SR 1187** - by Barrientos: Congratulating the Entrepreneurs' Association in Austin.

**SR 1188** - by West: Congratulating Shantelle Smith of Dallas.

**SR 1192** - by Armbrister: Congratulating the City of Goliad.

**SR 1196** - by Madla: Congratulating Dale Garcia of San Antonio.

**HCR 158** - (Wentworth): Commending the Gillespie County Fair and Festivals Association.

**HCR 311** - (Brown): Commending Oklahoma State Senator Larry Dickerson and wishing him well.

**ADJOURNMENT**

On motion of Senator Truan, the Senate at 9:15 p.m. adjourned, in memory of James Eugene Schwertner, Sr., and Micheal Ray Eakin of Harris County, until 2:00 p.m. tomorrow.

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**APPENDIX**

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**SENT TO GOVERNOR**

May 30, 1999

**SB 7, SB 61, SB 153, SB 155, SB 230, SB 261, SB 338, SB 339, SB 368, SB 376, SB 383, SB 562, SB 607, SB 760, SB 779, SB 830, SB 874, SB 881, SB 964, SB 967,**

**SB 1085, SB 1129, SB 1150, SB 1183, SB 1185, SB 1192, SB 1209, SB 1220, SB 1224, SB 1233, SB 1239, SB 1257, SB 1261, SB 1320, SB 1426, SB 1427, SB 1464, SB 1477, SB 1507, SB 1553, SB 1577, SB 1578, SB 1580, SB 1588, SB 1623, SB 1670, SB 1677, SB 1678, SB 1726, SB 1731, SB 1741, SB 1751, SB 1763, SB 1766, SB 1816, SB 1824, SB 1841, SCR 26, SCR 66, SCR 71, SCR 74, SCR 86**

**In Memory**  
**of**  
**James Eugene Schwertner, Sr.**

Senator Ogden offered the following resolution:

**(Senate Resolution 1090)**

WHEREAS, The passing of James Eugene Schwertner, Sr., on July 27, 1998, at the age of 77, brought a great loss to the family and many friends of this distinguished gentleman; and

WHEREAS, Born August 23, 1920, in Schwertner, this native Texan was raised on the family farm in the close-knit community founded by and named after his grandfather, Adolph Schwertner; and

WHEREAS, In 1938 Mr. Schwertner enrolled at Texas A&M University and studied civil engineering before enlisting in the United States Navy in 1941; a proud member of the 4th Special Battalion of the Navy Seabees, he served with the utmost distinction during World War II in the Pacific Theater, fighting in both Guadalcanal and Okinawa; and

WHEREAS, After returning to Central Texas, he married the former Gloria Sexton in 1946 and they shared a lengthy and loving union that was blessed with two children; that same year he built his first livestock auction in Austin and soon had six more throughout Central and South Texas, establishing a reputation as an honest and reliable cattle distributor; and

WHEREAS, This highly successful enterprise became Capitol Land & Livestock, which today farms approximately 20,000 acres of land in Central Texas and annually ships more than 400,000 head of livestock to customers worldwide; under his direction for more than 51 years, the company became one of the largest livestock dealers in the United States and continually met the needs of an ever-changing industry; and

WHEREAS, Although James Eugene Schwertner, Sr., has been deeply missed, his spirit lives on in the hearts and minds of all those who were fortunate enough to have known him, and it is indeed appropriate to honor his memory at this time; now, therefore, be it

RESOLVED, That the Senate of the 76th Texas Legislature hereby pay tribute to the life of James Eugene Schwertner, Sr., and extend sincere sympathy to the members of his family: to his wife, Gloria; to his two children, Jim and Sherri; to his five grandchildren; and to his many other relatives and friends; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the members of his family and that when the Texas Senate adjourns this day, it do so in memory of James Eugene Schwertner, Sr.

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 Tuesday, May 25, 1999.

**In Memory**  
**of**  
**Micheal Ray Eakin**

Senator Armbrister offered the following resolution:

**(Senate Resolution 1072)**

WHEREAS, The tragic death of Deputy Constable Micheal Ray Eakin on September 29, 1998, at the age of 25, has left a void in the lives of the many individuals who knew and loved this noteworthy young man, and it is indeed appropriate to remember him at this time; and

WHEREAS, Deputy Eakin was a graduate of Conroe High School and attended the University of Houston's Criminal Justice Academy, graduating in 1994 and receiving the Athletic Honors award; he later became an active member of Peace Officers for Christ International; and

WHEREAS, This commendable individual served as a Harris County deputy constable in Precinct 1 from 1995 until the time of his passing, and he had previously dedicated two years of his life to serving as a Montgomery County deputy constable in Precinct 1; his performance in those important law enforcement roles was marked by his trademark diligence and commitment to excellence; and

WHEREAS, An outstanding athlete, Deputy Eakin excelled on the football field and as a track star during his school years, winning numerous honors for his efforts and participating in the state football playoffs during his sophomore and junior years at Aldine High School; he also devoted much time and energy to FFA, holding leadership positions on the local, district, and state levels, and was a lifetime member of the Houston Livestock Show and Rodeo Association and the Montgomery County Fair Association; and

WHEREAS, Micheal Ray Eakin was a man of honor, courage, and integrity, whose gregarious nature, sweet disposition, and sense of humor have been missed by all who knew him, and although he has left this world for the next, his spirit will remain in our hearts and minds for years to come; now, therefore, be it

RESOLVED, That the Senate of the 76th Texas Legislature hereby pay special tribute to the life of Deputy Constable Micheal Ray Eakin and extend sincere sympathy to the members of his family: to his parents, Bill and Janet Green; to his sisters, Michelle and Kristie Green; and to the many other relatives and friends of this dedicated public servant; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the members of his family and that when the Texas Senate adjourns this day, it do so in memory of Micheal Ray Eakin.

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 Friday, May 21, 1999.

Senator Armbrister was recognized and introduced to the Senate family members of Micheal Ray Eakin: his parents, Bill and Janet Green; his sisters, Kristie and Michelle; and his friend, Kim Lumen.

The Senate welcomed its guests and extended its condolences.