

THIRTY-THIRD DAY

TUESDAY, MARCH 15, 2005

PROCEEDINGS

The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Absent-excused: Duncan, Seliger.

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

The Reverend Chris Workman, Lake Jackson Church of Christ, Lake Jackson, offered the invocation as follows:

Great God our father, enthroned in highest majesty, our creator, only king, and dearest friend, we call upon Your name today, for we are but clay vessels who have been given a sacred trust. I pray Your blessings and Your guidance for these men and women who represent the people of the State of Texas. They carry a heavy load and a great responsibility to keep us true to the ideals and values upon which our state and our country were founded. By Your grace and empowerment, Lord, we will be champions of what is honorable and just and compassionate. By listening not just with our ears but also with our hearts, we will seek to understand before we seek to be understood. We will work through our differences to find common ground for the common good. God, keep us true to the vision of our founding fathers, may we study it and preserve the foundation on which they built. Yet may we also be given the wisdom, insight, and courage to build on that foundation and forge a new vision for the future. Lord, we know that we cannot legislate true community, in which people care for each other and serve each other and work together toward common goals. But may the legislation passed by this body be in keeping with those principles of true community and help rather than hurt its formation. With integrity and honesty, may this legislative body model for the rest of us how diverse people with different perspectives can find solutions that benefit all. Bring over us now a sense of Your presence and pour out Your peace into our hearts. In all things, may what is right be upheld, may freedom be defended, and may the future of the State of Texas be shaped by choices guided by Your good purposes. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

LEAVES OF ABSENCE

On motion of Senator Whitmire, Senator Duncan was granted leave of absence for today on account of important business.

On motion of Senator Whitmire, Senator Seliger was granted leave of absence for today on account of important business.

CO-AUTHOR OF SENATE BILL 90

On motion of Senator Hinojosa, Senator Ellis will be shown as Co-author of **SB 90**.

CO-AUTHOR OF SENATE BILL 91

On motion of Senator Hinojosa, Senator Ellis will be shown as Co-author of **SB 91**.

CO-AUTHOR OF SENATE BILL 227

On motion of Senator Ellis, Senator Hinojosa will be shown as Co-author of **SB 227**.

CO-AUTHOR OF SENATE BILL 252

On motion of Senator Estes, Senator Hinojosa will be shown as Co-author of **SB 252**.

CO-AUTHOR OF SENATE BILL 302

On motion of Senator Ellis, Senator Hinojosa will be shown as Co-author of **SB 302**.

CO-AUTHOR OF SENATE BILL 525

On motion of Senator Hinojosa, Senator Ellis will be shown as Co-author of **SB 525**.

CO-AUTHOR OF SENATE BILL 603

On motion of Senator Ellis, Senator Hinojosa will be shown as Co-author of **SB 603**.

CO-AUTHOR OF SENATE BILL 659

On motion of Senator Ellis, Senator Hinojosa will be shown as Co-author of **SB 659**.

CO-AUTHOR OF SENATE BILL 692

On motion of Senator Madla, Senator Wentworth will be shown as Co-author of **SB 692**.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
March 15, 2005

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 106, Commending former Mayor G. Thane Akins of Midland for his many contributions to his community.

HCR 109, Granting permission to adjourn for more than three days during the period beginning on Wednesday, March 23, 2005, and ending on Tuesday, March 29, 2005.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

PHYSICIAN OF THE DAY

Senator Janek was recognized and presented Dr. Nick Frank Giannone of Lake Jackson as the Physician of the Day.

The Senate welcomed Dr. Giannone and thanked him for his participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on Nominations:

Austin, Texas
March 15, 2005

TO THE SENATE OF THE SEVENTY-NINTH LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointment:

To be a Justice on the Supreme Court of Texas, Place 8, for a term until the next General Election and until his successor shall be duly elected and qualified:

Philip W. Johnson
Amarillo, Texas

(Justice Johnson is replacing Justice Michael Schneider who has been appointed and confirmed to be a Federal Judge)

Respectfully submitted,

/s/Rick Perry
Governor

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate a delegation of members of the Texas Public Employees Association.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Deuell was recognized and introduced to the Senate Saree Smith, Miss Garland, and Mackenzie Oden, Teen Garland 2005.

The Senate welcomed its guests.

SENATE RESOLUTION 374

Senator Jackson offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to join the residents of Brazoria County in declaring Tuesday, March 15, 2005, Brazoria County Day; and

WHEREAS, Brazoria County's roots can be traced to 1821 when that area of the Brazos River Valley was settled by Stephen F. Austin's colonists; and

WHEREAS, Rich in history, Brazoria County was created in 1836, and the area was the site of numerous events preceding and following the Texas Revolution; it was in Brazoria County that Santa Anna signed the Treaties of Velasco, effectively granting Texas its independence and leading to the consolidation of the continental empire of the United States; the first permanent capital of the Republic of Texas was established at Columbia in October of 1836; and

WHEREAS, Oil production began in Brazoria County in 1902, and Stratton Ridge Dome caused the county to rank first in the United States in the production of sulphur; the county became an extensive petroleum producer and a leader in the chemical industry, and today, the county is home to the largest chemical complex in the world; and

WHEREAS, The county is blessed with a wealth of natural resources, a deepwater seaport, and a bountiful harvest of crops and fish; it is comprised of coastal soils, rivers and inland marshes, and 20 miles of natural beach; throughout the county, there are giant groves of oak, elm, cottonwood, and pecan trees; and

WHEREAS, Brazoria County is host to the annual Brazoria County Fair, the largest county fair in the state; it is the location of Sea Center Texas and the Brazoria County Historical Museum, which contains the national award-winning Austin Colony exhibit; and

WHEREAS, Brazoria County Day brings together old friends and families who gather in celebration of Brazoria County's past and in appreciation for the county's many assets, which are enjoyed today by residents and vacationers of all ages; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend the people of Brazoria County for their preservation of the county's natural amenities and for their many contributions to our state and extend best wishes to them for a joyous Brazoria County Day; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the residents of Brazoria County as a memento of this occasion.

JACKSON
JANEK

SR 374 was read and was adopted without objection.

GUESTS PRESENTED

Senator Jackson, joined by Senator Janek, was recognized and introduced to the Senate Pearland Mayor Tom Reid; Co-chairs of Brazoria County Day, Butch Murrell and Woody Owens; and Corky and Carol Melass, Co-chairs of the Brazoria County Day shrimp boil; accompanied by a delegation of citizens from Brazoria County.

The Senate welcomed its guests.

SENATE RESOLUTION 369

Senator Hinojosa offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Command Master Chief Thomas H. Sheppard, who is retiring after 30 years of outstanding service with the United States Navy; and

WHEREAS, Thomas Sheppard will be honored for his military service at a retirement ceremony on March 18, 2005; and

WHEREAS, Throughout his long naval career, Master Chief Thomas Sheppard has been noted for his expertise and his skillful leadership; and

WHEREAS, A talented and resourceful individual, he has handled his many responsibilities with exceptional efficiency and dedication; and

WHEREAS, Master Chief Sheppard is admired and respected by all those with whom he has served, and his presence in the United States Navy will be greatly missed; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend Command Master Chief Thomas H. Sheppard on his outstanding military service in the United States Navy and his many contributions to our nation and extend to him best wishes for the retirement years ahead; and, be it further

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

SR 369 was read and was adopted without objection.

GUESTS PRESENTED

Senator Hinojosa was recognized and introduced to the Senate Thomas Sheppard of Corpus Christi, his wife, Fe Sheppard, and his son, H. R. Sheppard.

The Senate welcomed its guests.

SENATE RESOLUTION 381

Senator West offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the minority business leaders who are visiting the Capitol today and to designate March 15, 2005, Minority Business Enterprise Public Policy Day at the Capitol; and

WHEREAS, Representatives of the Minority Business Enterprise Institute for Public Policy, ethnic chambers of commerce, minority councils, and contractor's associations have traveled to the Capitol to meet with legislators and to share knowledge about the process of public policy formulation; and

WHEREAS, Minority Business Enterprise Institute for Public Policy is a nonprofit, nonpartisan organization whose mission is to promote, increase, and sustain the inclusion of minority business enterprises in the public policy process; and

WHEREAS, Minority Business Enterprise Public Policy Day at the Capitol is an educational event for minority business owners, leaders, and advocates to learn about the governmental process and how they can work effectively with lawmakers on issues that would affect minority business owners; and

WHEREAS, Members of the Minority Business Enterprise Institute for Public Policy and its partners contribute greatly to the cultural and economic vitality of this state, and they are to be commended for their work and their accomplishments; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby pay tribute to the Minority Business Enterprise Institute for Public Policy and to the minority business leaders and extend to them best wishes for a productive day at the Capitol; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of Minority Business Enterprise Public Policy Day at the Capitol.

SR 381 was read and was adopted without objection.

GUESTS PRESENTED

Senator West was recognized and introduced to the Senate representatives of the Minority Business Enterprise Institute for Public Policy: Ed Ryland, Chair, Houston Minority Business Council; Terri Quinton, Chair, Dallas/Fort Worth Minority Business Development Council; Carlos Mendoza, President and Chief Executive Officer, Texas Association of Mexican-American Chambers of Commerce; Marvin Gooch, Executive Director, Black Contractors Association; and Carmen Garcia, President; accompanied by a delegation from the Minority Business Enterprise Institute for Public Policy.

The Senate welcomed its guests.

REPORT OF COMMITTEE ON NOMINATIONS

Senator Lindsay submitted the following report from the Committee on Nominations:

We, your Committee on Nominations, to which were referred the following appointments, have had same under consideration and report them back to the Senate with a recommendation that they be confirmed:

Members, The University of Texas System Board of Regents: John W. Barnhill, Jr., Washington County; Robert B. Rowling, Dallas County.

Members, Angelina and Neches River Authority Board of Directors: Karen E. Barber, Jasper County; Dominick B. "Nick" Bruno, Cherokee County; Kenneth R. Darden, Polk County.

Commissioners, Texas Animal Health Commission: Coleman Hudgins Locke, Wharton County; Ralph Simmons, Shelby County.

Members, Texas Economic Development Corporation Board of Directors: George S. Bayoud, Jr., Dallas County; Sada Cumber, Travis County; Jane F. Juett, Potter County; Macedonio "Massey" Villarreal, Fort Bend County; Robert Vernon Wingo, El Paso County.

Members, State Board for Educator Certification: Bonny L. Cain, Brazoria County; Patti Lynn Johnson, Comal County; Cynthia M. Saenz, Travis County; John Cleveland Shirley, Dallas County; Judie Zinsser, Harris County.

Members, Lavaca-Navidad River Authority Board of Directors: John Alcus Cotten, Jr., Jackson County; Jackie Ann Fowler, Jackson County; Sherry Kay Frels, Jackson County; Ronald Edwin Kubecka, Jackson County.

Members, San Jacinto River Authority Board of Directors: Marisa L. "Mary" Rummell, Montgomery County; John H. "Jack" Stibbs, Jr., Montgomery County.

Members, State Securities Board: Beth Ann Blackwood, Dallas County; Bryan K. Brown, Brazoria County; William R. Smith, Hunt County.

Chair, State Board of Education: Geraldine "Tincy" Miller, Dallas County.

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Lindsay gave notice that he would tomorrow at the conclusion of morning call submit to the Senate for consideration nominations to agencies, boards, and commissions of the state.

RECESS

On motion of Senator Whitmire, the Senate at 11:40 a.m. recessed until 3:00 p.m. today.

AFTER RECESS

The Senate met at 3:00 p.m. and was called to order by the President.

LEAVE OF ABSENCE

On motion of Senator Whitmire, Senator Averitt was granted leave of absence for the remainder of the day on account of important business.

SENATORS ANNOUNCED PRESENT

Senators Duncan and Seliger, who had previously been recorded as "Absent-excused," were announced "Present."

SENATE RULE 2.02 SUSPENDED (Restrictions on Admission)

On motion of Senator Nelson and by unanimous consent, Senate Rule 2.02 was suspended to grant floor privileges to a member of Senator Staples' staff during the deliberation of **CSSB 5**.

**COMMITTEE SUBSTITUTE
SENATE BILL 5 ON SECOND READING**

Senator Staples moved to suspend the regular order of business to take up for consideration **CSSB 5** at this time on its second reading:

CSSB 5, Relating to the continuation and operation of the workers' compensation system of this state, including changing the name of the Texas Workers' Compensation Commission to the Texas Department of Workers' Compensation, the powers and duties of the governing authority of that department, the provision of workers' compensation benefits to injured employees, and the regulation of workers' compensation insurers; providing administrative penalties.

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

Absent-excused: Averitt.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 1

Amend the committee printing of **CSSB 5** as follows:

(1) On page 3, by striking lines 46 through 48 and substituting the following:

"(b) A violation of Subsection (a) is an [a Class A] administrative violation and constitutes a ground for removal from office or termination of employment."

(2) On page 5, by striking lines 32 and 33 and substituting the following:

"(11) correct clerical errors in the entry of orders; and
(12) exercise other powers and perform other duties as necessary to implement and enforce this title."

(3) On page 7, line 8, by striking "governor's office" and substituting "Texas Workforce Commission".

(4) On page 10, line 15, by inserting a new subdivision (3) to read as follows:

"(3) identification of whether the claimant is receiving medical care through a workers' compensation health care network certified under Chapter 1305, Insurance Code:"

and renumbering the subsequent subdivisions appropriately.

(5) On page 28, by striking lines 57 through 60 and substituting the following:

"(h) A person who makes a frivolous request for a medical examination under Subsection (b), as determined by the commissioner, commits a violation."

(6) On page 30, by striking lines 11 through 15, and substituting the following:

"(i) [(h)] An employee who, without good cause as determined by the commissioner, fails or refuses to appear at the time scheduled for an examination under Subsection (a) or (f), commits a violation."

(7) On page 30, by striking lines 36 through 39, and substituting the following:

"(l) A person who makes a frivolous request for a medical examination under Subsection (a) or (f), as determined by the commissioner, commits a violation."

(8) On page 32, by striking lines 11 through 13, and substituting the following:

"(g) A person required to comply with Subsection (f) who does not comply commits a violation."

(9) On page 34, line 65, by striking "or accept" and substituting ", accept, or pay".

(10) On page 66, by striking lines 24 through 28, and substituting the following:
"(e) An employer who willfully applies for or receives reimbursement from the account under this section knowing that the employer is not an eligible employer commits a violation."

(11) On page 75, between lines 47 and 48, by adding a new SECTION 3.2751 to read as follows:

"SECTION 3.2751. Chapter 415, Labor Code, is amended by adding a new Section 415.025 to read as follows:

Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR PENALTY. A reference in this code or other law, or rules of the Texas Workers' Compensation Commission or the Department of Workers' Compensation, to a particular class of violation, administrative violation, or penalty, means that the penalty shall not exceed \$25,000 per day per occurrence, and each day of noncompliance constitutes a separate violation."

(12)(a) On page 85, by striking lines 24 through 33; (b) on page 86, between lines 46 and 47, by inserting the following:

"(5) health care facility;

(6) health care practitioner;

(7) health care provider;" and striking ll. 47-49; and

and renumbering the remaining subdivisions accordingly.

(13) On page 92, line 14, by inserting "PHYSICIAN OR" between "CARE" and "PROVIDER".

(14) On page 92, line 19, by inserting "physician or" between "care" and "provider".

(15) On page 92, line 19, by inserting ", as the terms "physician" and "provider" are defined in that chapter" between "Chapter 843" and ":""

(16) On page 94, line 36, by inserting ", to the extent covered under the employee's accident or health benefit plan," between "carrier" and "or".

(17) On page 94, line 41, by inserting "health care" before "services".

(18) On page 98, line 7, by striking "employers" and substituting "policyholders who have selected a network".

(19) On page 100, by inserting a new subsection (h) between lines 48 and 49, to read as follows:

"(h) Treatments and services for an emergency do not require preauthorization."

The amendment to **CSSB 5** was read and was adopted by the following vote: Yeas 29, Nays 1.

Nays: Shapleigh.

Absent-excused: Averitt.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 2

Amend the committee printing of **CSSB 5** as follows:

(1) On page 86, line 68, through page 87, line 3, strike the language in Section 1305.005(c) and substitute the following:

"(c) The insurance carrier shall provide to the employer, and the employer shall provide to the employer's employees, notice of network requirements, including all information required by Section 1305.451. The employer shall:"

(2) On page 87, line 10, between "The" and "employer", strike "insurance carrier shall ensure that an".

(3) On page 87, line 11, strike "provides" and substitute "shall provide".

(4) On page 87, line 18, between "The" and "employer", strike "insurance carrier shall require the", and strike "to" and substitute "shall".

(5) On page 87, line 23, at the end of Subsection (g), insert a new sentence to read as follows:

"An insurance carrier that establishes or contracts with a network is liable for the payment of medical care under the requirements of Title 5, Labor Code for an injured employee who does not receive the notice under Subsection (c) or (d) of this section until the employee receives notice of network requirements under this section."

(6) On page 103, line 1, between "and" and "the", strike "ensure that".

(7) On page 103, line 2, strike "provides" and substitute "shall provide".

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Absent-excused: Averitt.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 5** in SECTION 4.02 of the bill, subdivision (6), subsection (b), Section 1305.451, Labor Code, (committee printing page 103 line 28), by striking "or" and substituting "except".

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 except as follows:

Absent-excused: Averitt.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 4

Amend the committee printing of **CSSB 5** as follows:

On page 108, line 57 through page 109, line 4, strike SECTION 7.010 in its entirety and replace with the following:

"SECTION 7.010. STATE OFFICE OF ADMINISTRATIVE HEARINGS REVIEW. (a) This section applies to a hearing conducted by the State Office of Administrative Hearings under Subsection (k), Section 413.031, Labor Code, as that subsection existed prior to amendment by this Act.

(b) Effective September 1, 2005, the State Office of Administrative Hearings may not accept for hearing a medical dispute that remains unresolved pursuant to Section 413.031, Labor Code. A medical dispute that is not pending for a hearing by the State Office of Administrative Hearings on or before August 31, 2005, is subject to Subsection (k), Section 413.031, Labor Code, as amended by this Act, and is not subject to a hearing before the State Office of Administrative Hearings."

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4 except as follows:

Absent-excused: Averitt.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 5

(1) Amend Article 3 of the committee printing of **CSSB 5** by inserting appropriately numbered SECTIONS as follows:

SECTION 3. Subtitle A, Title 5, Labor Code, is amended by adding Chapter 404 to read as follows:

"CHAPTER 404. OFFICE OF INJURED EMPLOYEE COUNSEL
SUBCHAPTER A. OFFICE; GENERAL PROVISIONS

Sec. 404.001. DEFINITIONS. In this chapter:

(1) "Office" means the office of injured employee counsel.

(2) "Public counsel" means the injured employee public counsel.

Sec. 404.002. ESTABLISHMENT OF OFFICE; ADMINISTRATIVE ATTACHMENT TO TEXAS DEPARTMENT OF WORKERS' COMPENSATION.

(a) The office of injured employee counsel is established to represent the interests of workers' compensation claimants in this state.

(b) The office is administratively attached to the Texas Department of Workers' Compensation but is independent of direction by the commissioner of workers' compensation and the Texas Department of Workers' Compensation.

(c) The Texas Department of Workers' Compensation shall provide the staff and facilities necessary to enable the office to perform the duties of the office under this subtitle, including:

(1) administrative assistance and services to the office, including budget planning and purchasing;

(2) personnel services; and

(3) computer equipment and support.

(d) The public counsel and the commissioner of workers' compensation may enter into interagency contracts and other agreements as necessary to implement this chapter.

Sec. 404.003. SUNSET PROVISION. The office of injured employee counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2019.

Sec. 404.004. PUBLIC INTEREST INFORMATION. (a) The office shall prepare information of public interest describing the functions of the office.

(b) The office shall make the information available to the public and appropriate state agencies.

Sec. 404.005. ACCESS TO PROGRAMS AND FACILITIES. (a) The office shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the office's programs.

(b) The office shall comply with federal and state laws for program and facility accessibility.

Sec. 404.006. RULEMAKING. (a) The public counsel shall adopt rules as necessary to implement this chapter.

(b) Rulemaking under this section is subject to Chapter 2001, Government Code.

[Sections 404.007-404.050 reserved for expansion]

SUBCHAPTER B. INJURED EMPLOYEE PUBLIC COUNSEL

Sec. 404.051. APPOINTMENT; TERM. (a) The governor, with the advice and consent of the senate, shall appoint the injured employee public counsel. The public counsel serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the public counsel without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(c) If a vacancy occurs during a term, the governor shall fill the vacancy for the unexpired term.

(d) In appointing the public counsel, the governor may consider recommendations made by groups that represent wage earners.

Sec. 404.052. QUALIFICATIONS. To be eligible to serve as public counsel, a person must:

(1) be a resident of Texas;

(2) be licensed to practice law in this state;

(3) have management experience;

(4) possess knowledge and experience with the workers' compensation system; and

(5) have experience with legislative procedures and administrative law.

Sec. 404.053. BUSINESS INTEREST; SERVICE AS PUBLIC COUNSEL. (a) A person is not eligible for appointment as public counsel if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization that holds a license, certificate of authority, or other authorization from the department or that receives funds from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the department or the office; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department or the office, other than compensation or reimbursement authorized by law.

Sec. 404.054. LOBBYING ACTIVITIES. A person may not serve as public counsel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department or the office.

Sec. 404.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from office that the public counsel:

(1) does not have at the time of appointment or maintain during service as public counsel the qualifications required by Section 404.052;

(2) violates a prohibition established by Section 404.053, 404.054, 404.056, or 404.057; or

(3) cannot, because of illness or disability, discharge the public counsel's duties for a substantial part of the public counsel's term.

(b) The validity of an action of the office is not affected by the fact that the action is taken when a ground for removal of the public counsel exists.

Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT.

(a) A former public counsel may not make any communication to or appearance before the Texas Department of Workers' Compensation, Texas Department of Insurance, commissioner of workers' compensation, commissioner of insurance, or an employee of the Texas Department of Workers' Compensation, Texas Department of Insurance before the second anniversary of the date the person ceases to serve as public counsel if the communication or appearance is made:

(1) on behalf of another person in connection with any matter on which the person seeks official action; or

(2) with the intent to influence the commissioner of workers' compensation or commissioner of insurance decision or action, unless the person is acting on the person's own behalf and without remuneration.

(b) A former public counsel may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter before the Texas Department of Workers' Compensation or the Texas Department of Insurance before the second anniversary of the date the person ceases to serve as public counsel.

(c) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

(d) A former employee of the office may not:

(1) be employed by an insurance carrier regarding a matter that was in the scope of the employee's official responsibility while the employee was associated with the office; or

(2) represent a person before the Texas Department of Workers' Compensation or the Texas Department of Insurance or a court in a matter:

(A) in which the employee was personally involved while associated with the office; or

(B) that was within the employee's official responsibility while the employee was associated with the office.

(e) The prohibition of Subsection (d)(1) applies until the first anniversary of the date the employee's employment with the office ceases.

(f) The prohibition of Subsection (d)(2) applies to a current employee of the office while the employee is associated with the office and at any time after.

Sec. 404.057. TRADE ASSOCIATIONS. (a) In this section, "trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not serve as public counsel if the person has been, within the previous two years:

(1) an officer, employee, or paid consultant of a trade association in the field of workers' compensation; or

(2) the spouse of an officer, manager, or paid consultant of a trade association in the field of workers' compensation.

[Sections 404.058-404.100 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

Sec. 404.101. GENERAL DUTIES. (a) The office shall, as provided by this subtitle:

(1) provide assistance to workers' compensation claimants as provided by this subtitle; and

(2) advocate on behalf of the public regarding rulemaking by the commissioner of workers' compensation and commissioner of insurance relating to workers' compensation.

(3) assist injured employees with contacting appropriate licensing boards for complaints against a health care provider; and

(4) assist injured employees with referral to local, state, and federal financial assistance, rehabilitation, and work placement programs, as well as other social services that the office considers appropriate.

(e) The office:

(1) may assess the impact of workers' compensation laws, rules, procedures, and forms on injured employees in this state; and

(2) shall, as provided by this subtitle:

(A) monitor the performance and operation of the workers' compensation system, with a focus on the system's effect on the return to work of injured employees;

(B) assist injured employees, through the ombudsman program, with the resolution of complaints pending at the Texas Department of Workers' Compensation;

(C) assist injured workers, through the ombudsman program, in the Texas Department of Workers' Compensation's administrative dispute resolution system; and

(D) advocate in the office's own name positions determined by the public counsel to be most advantageous to a substantial number of injured workers.

(f) The office may not appear or intervene, as a party or otherwise, before the commissioner of workers' compensation, commissioner of insurance, Department of Workers' Compensation or Department of Insurance on behalf of an individual injured employee.

Sec. 404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL. The public counsel shall administer and enforce this chapter, including preparing and submitting to the legislature a budget for the office and approving expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the office.

Sec. 404.103. OPERATION OF OMBUDSMAN PROGRAM. (a) The office shall operate the ombudsman program under Subchapter D.

(b) The office shall coordinate services provided by the ombudsman program with services provided by the Department of Assistive and Rehabilitative Services.

Sec. 404.104. AUTHORITY TO APPEAR OR INTERVENE. The public counsel:

(1) may appear or intervene, as a party or otherwise, as a matter of right before the commissioner of workers' compensation, commissioner of insurance, Department of Workers' Compensation or Department of Insurance on behalf of injured employees as a class in matters involving rates, rules, and forms affecting workers' compensation insurance for which the commissioner of workers' compensation or the commissioner of insurance promulgates rates or adopts or approves rules or forms;

(2) may intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising from an action taken by an administrative agency in a proceeding in which the public counsel previously appeared under the authority granted by this chapter;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of injured employees as a class in any proceeding in which the public counsel determines that injured employees are in need of representation, except that the public counsel may not intervene in an enforcement or parens patriae proceeding brought by the attorney general; and

(4) may appear or intervene before the commissioner of workers' compensation commissioner of insurance, Texas Department of Workers' Compensation or Texas Department of Insurance as a party or otherwise, on behalf of injured employees as a class in a matter involving rates, rules, or forms affecting injured employees as a class in any proceeding in which the public counsel determines that injured employees are in need of representation.

Sec. 404.105. AUTHORITY TO REPRESENT INJURED EMPLOYEES IN ADMINISTRATIVE PROCEDURES. (a) The office, through the ombudsman program, may appear before the commissioner of workers' compensation or Texas Department of Workers' Compensation on behalf of an individual injured employee during an administrative dispute resolution process.

Sec. 404.106. LEGISLATIVE REPORT. (a) The office shall report to the governor, lieutenant governor, speaker of the house of representatives, and the chairs of the legislative committees with appropriate jurisdiction not later than December 31 of each even-numbered year. The report must include:

(1) a description of the activities of the office;

(2) identification of any problems in the workers' compensation system from the perspective of injured employees as considered by the public counsel, with recommendations for regulatory and legislative action; and

(3) an analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.

(b) The office shall coordinate with the workers' compensation research and evaluation group to obtain needed information and data to make the evaluations required for the report.

(c) The office shall publish and disseminate the legislative report to interested persons, and may charge a fee for the publication as necessary to achieve optimal dissemination.

Sec. 404.107. ACCESS TO INFORMATION BY PUBLIC COUNSEL.

(a) The public counsel:

(1) is entitled to the same access as a party, other than Texas Department of Workers' Compensation or Texas Department of Insurance staff, to Texas Department of Workers' Compensation or Texas Department of Insurance records available in a proceeding before the commissioner of workers' compensation or commissioner, insurance, Texas Department of Workers' Compensation or Texas Department of Insurance under the authority granted to the public counsel by this chapter; and

(2) is entitled to obtain discovery under Chapter 2001, Government Code, of any non-privileged matter that is relevant to the subject matter involved in a proceeding or submission before the commissioner of workers' compensation, commissioner of insurance, Texas Department of Workers' Compensation or Texas Department of Insurance as authorized by this chapter.

Sec. 404.108. LEGISLATIVE RECOMMENDATIONS. The public counsel may recommend proposed legislation to the legislature that the public counsel determines would positively affect the interests of injured employees.

Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public counsel shall submit to the Texas Department of Workers' Compensation and Texas Department of Insurance for adoption by the commissioners a notice of injured employee rights and responsibilities to be distributed as provided by commissioner of workers' compensation and commissioner of insurance rules.

Sec. 404.110. APPLICABILITY OF CONFIDENTIALITY REQUIREMENTS. Confidentiality requirements applicable to examination reports under Article 1.18, Insurance Code, and to the commissioner under Section 3A, Article 21.28-A, Insurance Code, apply to the public counsel.

Sec. 404.111. ACCESS TO INFORMATION. (a) The office is entitled to information that is otherwise confidential under a law of this state, including information made confidential under:

- (1) Section 843.006, Insurance Code;
- (2) Chapter 108, Health and Safety Code; and
- (3) Chapter 552, Government Code.

(b) On request by the public counsel, the Texas Department of Workers' Compensation or Texas Department of Insurance shall provide any information or data requested by the office in furtherance of the duties of the office under this chapter.

(c) The office may not make public any confidential information provided to the office under this chapter but may disclose a summary of the information that does not directly or indirectly identify the individual or entity that is the subject of the information. The office may not release, and an individual or entity may not gain access to, any information that:

(1) could reasonably be expected to reveal the identity of a doctor or an injured employee;

(2) reveals the zip code of an injured employee's primary residence;

(3) discloses a provider discount or a differential between a payment and a billed charge; or

(4) relates to an actual payment made by a payer to an identified provider.

(c) Information collected or used by the office under this chapter is subject to the confidentiality provisions and criminal penalties of:

(1) Section 81.103, Health and Safety Code;

(2) Section 311.037, Health and Safety Code; and

(3) Chapter 159, Occupations Code.

(d) Information on doctors and injured employees that is in the possession of the office, and any compilation, report, or analysis produced from the information that identifies doctors and injured employees is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any individual or entity; or

(2) admissible in any civil, administrative, or criminal proceeding.

(e) Notwithstanding Subsection (b)(2), the office may use zip code information to analyze information on a geographical basis.

Sec. 404.112. LITERACY AND BASIC SKILLS CURRICULUM. (a) The office shall coordinate with the Texas Workforce Commission and local workforce development boards to develop a workplace literacy and basic skills curriculum designed to eliminate the skills gap between employees and current and emerging jobs.

(b) The public counsel may enter into memoranda of understanding or other agreements with the Texas Workforce Commission and local workforce development boards as necessary to implement Subsection (a).

SECTION 5.09. Subchapter C, Chapter 409, Labor Code, is redesignated as Subchapter D, Chapter 404, Labor Code, and Sections 409.041-409.044, Labor Code, are renumbered as Sections 404.151-404.154, Labor Code, and amended to read as follows:

SUBCHAPTER D ~~[C]~~. OMBUDSMAN PROGRAM

Sec. 404.151 ~~[409.041]~~. OMBUDSMAN PROGRAM. (a) The office ~~[commission]~~ shall maintain an ombudsman program as provided by this subchapter to assist injured employees ~~[workers]~~ and persons claiming death benefits in obtaining benefits under this subtitle.

(b) An ombudsman shall:

(1) meet with or otherwise provide information to injured employees ~~[workers]~~;

(2) investigate complaints;

(3) communicate with employers, insurance carriers, and health care providers on behalf of injured employees [~~workers~~];

(4) assist unrepresented claimants, employers, and other parties to enable those persons to protect their rights in the workers' compensation system; and

(5) meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any informal or formal hearing.

Sec. 404.152 [~~409.042~~]. DESIGNATION AS OMBUDSMAN; ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION REQUIREMENTS. (a) At least one specially qualified employee in each Texas Department of Workers' Compensation [~~commission~~] office shall be an ombudsman designated by the office [~~an ombudsman~~] who shall perform the duties under this subchapter [~~section~~] as the person's primary responsibility.

(b) To be eligible for designation as an ombudsman, a person must:

(1) demonstrate satisfactory knowledge of the requirements of:

(A) this subtitle and the provisions of Subtitle C that relate to claims management;

(B) other laws relating to workers' compensation; and

(C) rules adopted under this subtitle and the laws described under Subdivision (1)(B);

(2) have demonstrated experience in handling and resolving problems for the general public;

(3) possess strong interpersonal skills; and

(4) have at least one year of demonstrated experience in the field of workers' compensation.

(c) The public counsel shall [~~commission~~] by rule [~~shall~~] adopt training guidelines and continuing education requirements for ombudsmen. Training provided under this subsection must:

(1) include education regarding this subtitle and[~~s~~] rules adopted under this subtitle, [~~and appeals panel decisions,~~] with emphasis on benefits and the dispute resolution process; and

(2) require an ombudsman undergoing training to be observed and monitored by an experienced ombudsman during daily activities conducted under this subchapter.

Sec. 404.153 [~~409.043~~]. EMPLOYER NOTIFICATION; ADMINISTRATIVE VIOLATION. (a) Each employer shall notify its employees of the ombudsman program in the [~~a~~] manner prescribed by the office [~~commission~~].

Sec. 404.154 [~~409.044~~]. PUBLIC INFORMATION. The office [~~commission~~] shall widely disseminate information about the ombudsman program."

(2) Amend Article 7 of the committee printing of C.S.S.B. 5 by inserting appropriately numbered SECTIONS as follows:

"SECTION 7. __. OFFICE OF INJURED EMPLOYEE COUNSEL. (a) The office of injured employee counsel created under Chapter 404, Labor Code, as added by this Act, is established September 1, 2005.

(b) The governor shall appoint the injured employee public counsel of the office of injured employee counsel not later than October 1, 2005.

(c) The injured employee public counsel of the office of injured employee counsel shall adopt initial rules for the office under Section 404.006, Labor Code, as added by this Act, not later than March 1, 2006.

(d) The Texas Department of Workers' Compensation shall provide, in Austin and in each regional office operated by the department to administer Subtitle A, Title 5, Labor Code, as amended by this Act, suitable office space, personnel, computer support, and other administrative support to the office of injured employee counsel as required by Chapter 404, Labor Code, as added by this Act. The department shall provide the facilities and support not later than October 1, 2005.

(e) All powers, duties, obligations, rights, contracts, funds, unspent appropriations, records, real or personal property, and personnel of the Texas Workers' Compensation Commission relating to the operation of the workers' compensation ombudsman program under Subchapter C, Chapter 409, Labor Code, as that subchapter existed before amendment by this Act, shall be transferred to the office of injured employee counsel not later than March 1, 2006. An ombudsman transferred to the office of injured employee counsel under this section shall begin providing services under Chapter 404, Labor Code, as added by this Act, not later than March 1, 2006.

SECTION 7. __. BUDGET EXECUTION AUTHORITY. Notwithstanding Section 317.005(e), Government Code, the Legislative Budget Board may adopt an order under Section 317.005, Government Code, affecting any portion of the total appropriation of the Texas Department of Workers' Compensation or Office of Injured Employee Counsel if necessary to implement the provisions of this Act. This section expires March 31, 2006.

STAPLES
ELLIS

The amendment was read.

Senator Nelson offered the following amendment to Floor Amendment No. 5:

Floor Amendment No. 5A

Amend Floor Amendment No. 5 to **CSSB 5**, page 2, line 15, by striking "September 1, 2019" and substituting "September 1, 2017".

The amendment to Floor Amendment No. 5 to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5A except as follows:

Absent-excused: Averitt.

Senator Williams offered the following amendment to Floor Amendment No. 5:

Floor Amendment No. 5B

Amend Floor Amendment No. 5 to **CSSB 5** by striking Sec. 404.112 (page 15, lines 11-19).

The amendment to Floor Amendment No. 5 to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5B except as follows:

Absent-excused: Averitt.

Question recurring on the adoption of Floor Amendment No. 5 to **CSSB 5**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5 as amended except as follows:

Absent-excused: Averitt.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 6

Amend **CSSB 5**, in Section 6.001 of the bill (committee printing page 107), by striking lines 38, 43, and 44, and renumbering the remaining subdivisions accordingly.

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 6 except as follows:

Absent-excused: Averitt.

Senator Nelson offered the following amendment to the bill:

Floor Amendment No. 7

Amend the committee printing of **CSSB 5** as follows:

On page 17, strike line 34 through line 39, and replace with the following:

(2) issue annual consumer report cards comparing workers' compensation health care networks certified by the department under Chapter 1305, Insurance Code, with each other and with care provided outside of networks. The report cards should include comparisons on costs, medical outcomes, and return to work rates.

(e) The commissioner of insurance shall adopt rules as necessary to establish data reporting requirements to support the research of duties of the department under this chapter. Nothing in this section shall be construed to require additional reporting requirements on non-subscribing companies.

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 7 except as follows:

Absent-excused: Averitt.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 8

Amend **CSSB 5**, in Article 3 of the bill, by adding the following appropriately numbered SECTION and renumbering the SECTIONS of the article appropriately:

SECTION 3.__. (a) Section 406.033, Labor Code, is amended by adding Subsection (f) to read as follows:

(f) A cause of action described in Subsection (a) may not be waived by an employee after the employee's injury or death unless the waiver:

1. is knowing and voluntary;
2. is entered into no less than ten (10) business days after the initial report of injury, provided that the employee prior to the signing of the waiver has received a medical evaluation from a non-emergency care doctor; and,
3. is in writing so that the true intent of the parties is specifically stated in the four corners of the document. The waiver provisions must be conspicuous and appear on the face of the agreement. To be conspicuous, the waiver provisions must appear in type larger than the type contained in the body of the agreement or in contrasting colors.

The amendment was read.

Senator Duncan temporarily withdrew Floor Amendment No. 8.

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 9

Amend **CSSB 5** as follows:

1. Insert the following new subsection to Chapter 408.028, Labor Code, at page 35 between lines 48 and 49, lettered appropriately to read as follows, and strike subsection 4.

Sec. 408.028(f) Fee Schedule for Pharmacy and Pharmaceutical Service.

(f) Notwithstanding any other provisions of this title, the commission by rule shall adopt a fee schedule for pharmacy and pharmaceutical services which will

(1) provide reimbursement rates that are fair and reasonable,

(2) assure adequate access to medications and services for injured workers;

and

(3) minimize costs to employees and insurance carriers; ~~and~~

(4) ~~prospectively resolve uncertainty existing upon the effective date of this amendment regarding the application of the requirements of this title to fees for medications and pharmacy services, including whether and how to apply the requirements of sections 413.011, 413.043 and 415.005.~~

2. Add a new Section to Chapter 413 to read as follows:

Sec. 413. The regulations adopted by the commission for the reimbursement of prescription medications and services shall authorize pharmacies to utilize agents or assignees to process claims and act on their behalf pursuant to terms and conditions as agreed upon by pharmacies.

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 9 except as follows:

Absent-excused: Averitt.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 10

Amend **CSSB 5** by adding the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION _____. Subchapter A, Chapter 408, Labor Code, is amended by adding Section 408.032 to read as follows:

Sec. 408.032. INTERDISCIPLINARY REHABILITATION PROGRAMS AND FACILITIES; ACCREDITATION REQUIRED. The commissioner shall adopt a rule that requires that an interdisciplinary rehabilitation program or facility that provides services to injured employees is appropriately accredited.

The amendment was read.

Senator Carona offered the following amendment to Floor Amendment No. 10:

Floor Amendment No. 10A

Amend Floor Amendment No. 10 to **CSSB 5** to read as follows:

At line 14, strike "." and following "accredited", insert the following: ", after determining that adequate access to accredited rehabilitation care is available.".

The amendment to Floor Amendment No. 10 to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 10A except as follows:

Absent-excused: Averitt.

Question recurring on the adoption of Floor Amendment No. 10 to **CSSB 5**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 10 as amended except as follows:

Absent-excused: Averitt.

Floor Amendment No. 11 was not offered.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 12

Amend **CSSB 5** as follows:

(1) On page 40, line 2, add a new Subsection 408.123(c) of SECTION 3.104 and renumber the following Subsections accordingly:

(c) The department shall adopt a rule that provides that at the conclusion of any examination in which maximum medical improvement is certified and any impairment rating is assigned by the treating doctor that written notice shall be given to the employee that the employee may dispute the certification of maximum medical improvement and assigned impairment rating. The notice to the employee must state how to dispute the certification of maximum medical improvement and impairment rating.

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 12 except as follows:

Absent-excused: Averitt.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 13

Amend **CSSB 5** by adding a new Section ____ on page ____ of the bill and renumber the remaining sections as appropriate:

Subchapter A, Chapter 410, Labor Code, is amended by adding Section 410.007 to read as follows:

Section 410.007. RECOGNITION OF ALTERNATIVE AGREEMENTS. (a) Notwithstanding any other provision of this subtitle and except as provided by Subsections (c) and (d), if an agreement entered into pursuant to 21 U.S.C. Section 151 et seq., 45 U.S.C. Section 151 et. seq. or Local Government Code Chapter 174, between a certified self insurer, an individually insured employer or an employer that is insured through an employer association engaged in construction, construction maintenance, or construction inspection, and a labor organization that is the recognized or certified exclusive representative for employees employed by any such entity who receive workers compensation coverage is filed with the commission, a mutually agreed upon provision of the agreement is valid and binding upon the parties to the agreement if it does any or all of the following:

(1) establishes an alternative dispute resolution system which may include, but is not limited to, provisions for conciliation, mediation, and arbitration that supplement, modify or replace the provisions of Subchapter c;

(2) adopts an agreed-upon list of health care providers of medical treatment as the exclusive source of all medical treatment provided under this subtitle.

(3) adopts a limited list of physicians to conduct independent medical examinations that the parties may agree is the exclusive source of independent medical examiners under this subtitle;

(4) adopts a case management, patient advocate, utilization review or similar program or combination of programs intended to improve the quality and control the cost of medical and related treatment and care;

(5) adopts a light-duty, modified-job, or return-to-work program;

(6) adopts a vocational rehabilitation or retraining program that uses an agreed-upon list of providers of rehabilitation services as the exclusive source of providers of rehabilitation services under this article.

(b) An agreement described by this section may provide that arbitration held pursuant to the agreement:

(1) is binding on the parties; or

(2) is subject to review in the same manner as a final decision issued by a hearing officer under Subchapter D.

(c) This section may not be construed to permit an agreement that:

(1) diminishes an employee's entitlement to compensation payments for total or partial disability, vocational rehabilitation, or medical treatment that are fully paid by the employee's employer or as otherwise provided by this subtitle; or

(2) denies an employee the right to legal representation at each stage of the alternative dispute resolution process under this chapter.

(d) Any portion of an agreement that violates Subsection (c) is null and void.

(e) The Commissioner shall promulgate rules necessary for the implementation of this Section.

(f) By September 1, 2006, and annually thereafter, the commissioner shall prepare and report to the Legislature that a report which is to be based upon aggregate data and shall include the following:

(1) Person hours and payroll covered by agreements filed.

(2) The number of claims filed.

(3) The average cost per claim shall be reported by cost components whenever practicable.

(4) The number of litigated claims, including the number of claims submitted to mediation, arbitration, and district court.

(5) The number of contested claims resolved prior to arbitration.

(6) The projected incurred costs and actual costs of claims.

(7) Safety history.

(8) The number of workers participating in vocational rehabilitation.

(9) The number of workers participating in light-duty programs. The commissioner shall have the authority to require those employers and groups of employers listed in subdivision (c) to provide the data listed above.

The amendment to **CSSB 5** was read and failed of adoption by the following vote: Yeas 14, Nays 16.

Yeas: Armbrister, Barrientos, Brimer, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Seliger, Shapiro, Staples, Williams.

Absent-excused: Averitt.

Senator Duncan again offered the following amendment to the bill:

Floor Amendment No. 8

Amend **CSSB 5**, in Article 3 of the bill, by adding the following appropriately numbered SECTION and renumbering the SECTIONS of the article appropriately:

SECTION 3. __. (a) Section 406.033, Labor Code, is amended by adding Subsection (f) to read as follows:

(f) A cause of action described in Subsection (a) may not be waived by an employee after the employee's injury or death unless the waiver:

1. is knowing and voluntary;

2. is entered into no less than ten (10) business days after the initial report of injury, provided that the employee prior to the signing of the waiver has received a medical evaluation from a non-emergency care doctor; and,

3. is in writing so that the true intent of the parties is specifically stated in the four corners of the document. The waiver provisions must be conspicuous and appear on the face of the agreement. To be conspicuous, the waiver provisions must appear in type larger than the type contained in the body of the agreement or in contrasting colors.

The amendment was again read.

Senator Duncan offered the following amendment to Floor Amendment No. 8:

Floor Amendment No. 8A

Amend Floor Amendment No. 8 to **CSSB 5** by deleting the words "or death" on line 7 of the amendment.

The amendment to Floor Amendment No. 8 to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 8A except as follows:

Absent-excused: Averitt.

Question recurring on the adoption of Floor Amendment No. 8 to **CSSB 5**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 8 as amended except as follows:

Absent-excused: Averitt.

(Senator Wentworth in Chair)

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 14

Amend **CSSB 5** as follows:

(1) In ARTICLE 3 (page 12, line 54, through page 84, line 10, senate committee printing), insert a new appropriately numbered SECTION to read as follows:

SECTION 3.____. Subchapter C, Chapter 410, Labor Code, is amended by adding Sections 410.122 and 410.123 to read as follows:

Sec. 410.122. REQUIRING ARBITRATION AGREEMENT. An employer who does not provide workers' compensation insurance coverage commits a Class A administrative violation if the employer fails or refuses to hire, discharges, harasses, or in any other manner discriminates against an individual in connection with compensation, terms, conditions, or privileges of employment because the individual refuses to sign an arbitration agreement.

Sec. 410.123. MANDATORY ARBITRATION PROHIBITED. (a) An employer who does not provide workers' compensation insurance coverage may not require as a condition of employment that:

- (1) an employee submit to mandatory arbitration; or
- (2) an employee or prospective employee waive any rights.

(b) An arbitration agreement or waiver described by Subsection (a) is not enforceable unless the employee or prospective employee:

- (1) knowingly and voluntarily agrees to the agreement or waiver; and
- (2) signs the agreement or waiver.

(c) An arbitration agreement or waiver described by Subsection (a) that violates this section is void and unenforceable.

(d) In any proceeding in which enforcement of an arbitration agreement or a waiver of rights described by Subsection (a) is sought, the employer has the burden of proof to show that the agreement or waiver was agreed to by the employee knowingly and voluntarily and that the agreement or waiver was not a condition of employment.

(2) Renumber the subsequent SECTIONS of ARTICLE 3 of the bill appropriately.

The amendment was read.

Senator Barrientos withdrew Floor Amendment No. 14.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 15

Amend **CSSB 5** on page 59, line 43, by striking SECTION 3.217 and inserting a new SECTION 3.217 to read as follows:

SECTION 3.217. Section 411.081, Labor Code, is amended to read as follows:

Sec. 411.081. TELEPHONE HOTLINE. (a) The division shall maintain a 24-hour toll-free telephone service in English and Spanish for reports of violations of occupational health or safety law.

(b) Each employer shall notify its employees of this service in a manner prescribed by the department [commission]. The department shall require the notice to be posted in English and Spanish.

(c) The department shall adopt rules requiring that the notice required by Subsection (b) be posted:

- (1) in a conspicuous place in the employer's place of business; and
- (2) in sufficient locations to be convenient to all employees.

The amendment was read.

Senator Gallegos temporarily withdrew Floor Amendment No. 15.

LEAVE OF ABSENCE

On motion of Senator Whitmire, Senator Williams was granted leave of absence for the remainder of the day on account of an illness in the family.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 16

Amend **CSSB 5** by adding the following appropriately numbered sections to Article 3 of the bill and renumbering subsequent sections accordingly:

SECTION _____. The heading to Subchapter F, Chapter 411, Labor Code, is amended to read as follows:

SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS;
EDUCATIONAL MATERIALS

SECTION _____. Subchapter F, Chapter 411, Labor Code, is amended by adding Section 411.084 to read as follows:

Sec. 411.084. EDUCATIONAL PUBLICATIONS. (a) The division shall provide educational material, including books, pamphlets, brochures, films, videotapes, or other informational material.

(b) Educational material shall be provided to employees in English and Spanish.

(c) The department shall adopt minimum content requirements of the educational material required under this section, including:

- (1) an employee's right to report an unsafe working environment;
- (2) instructions on how to report unsafe working conditions and safety violations; and
- (3) state laws regarding retaliation by employers.

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 16 except as follows:

Absent-excused: Averitt, Williams.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 17

Amend **CSSB 5** as follows:

(1) In ARTICLE 3 (page 12, line 54, through page 84, line 10, senate committee printing), insert a new appropriately numbered SECTION to read as follows:

SECTION 3.____. Section 451.001, Labor Code, is amended to read as follows:

Sec. 451.001. DISCRIMINATION AGAINST EMPLOYEES PROHIBITED.

A person may not discharge or in any other manner discriminate against an employee because the employee has:

- (1) filed a workers' compensation claim in good faith;
- (2) hired a lawyer to represent the employee in a workers' compensation claim;
- (3) instituted or caused to be instituted in good faith:
 - (A) a proceeding under Subtitle A; or
 - (B) if the employee's employer does not have workers' compensation insurance coverage, a proceeding under common law relating to an injury sustained by the employee in the course and scope of the employee's employment, including an action described by Section 406.033; or

(4) testified or is about to testify in a proceeding described by Subdivision (3) [under Subtitle A].

(2) Renumber the subsequent SECTIONS of ARTICLE 3 of the bill appropriately.

(3) In ARTICLE 7 (page 107, line 52, through page 109, line 64, senate committee printing), insert a new appropriately numbered SECTION to read as follows:

SECTION 7.____. The change in law made by the amendment to Section 451.001, Labor Code, in this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before that date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(4) Renumber the subsequent SECTIONS of ARTICLE 7 of the bill appropriately.

The amendment was read.

(President in Chair)

Senator Barrientos withdrew Floor Amendment No. 17.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 18

Amend **CSSB 5** on page 82, lines 6-9, by deleting subsection (b) of new Section 504.053, Labor Code, and inserting a new subsection (b) to read as follows:

(b) If the political subdivision or pool provides medical benefits in the manner authorized under subsection (a)(3), the following do not apply:

(1) Sections 408.004 and 408.0041, Labor Code, unless use of a required medical examination or designated doctor is necessary to resolve an issue relating to the entitlement to or amount of income benefits under Title 5, Labor Code;

(2) Subchapter B, Chapter 408, Labor Code, except for Section 408.021;

(3) Chapter 413, Labor Code, except Section 413.042; and

(4) Chapter 1305, Insurance Code, except for Sections 1305.501, 1305.502 and 1305.503.

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 18 except as follows:

Absent-excused: Averitt, Williams.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 19

Amend **CSSB 5**, in SECTION 4.02, by striking Sec. 1305.105 (page 92, lines 14-28), and substituting the following:

Sec. 1305.105. TREATMENT BY A PRIMARY CARE PROVIDER UNDER CHAPTERS 843 AND 1301, INSURANCE CODE. (a) Notwithstanding any other provision of this chapter, an injured employee required to receive health care services within a network may select as the employee's treating doctor a doctor who the employee selected, prior to injury, as the employee's primary care provider under Chapter 843.

(b) A doctor serving as an employee's treating doctor under Subsection (a) must agree to abide by the terms of the network's contract and comply with the provisions of this subchapter and Subchapters D and E. Services provided by such a doctor are subject to Subchapters F and G.

(c) Notwithstanding any other provision of this chapter, an injured employee required to receive health care services within a network may select as the employee's treating doctor a doctor with whom the employee has a demonstrated, pre-existing treating relationship under Chapter 1301, Insurance Code, provided;

(1) The doctor is a member of the preferred provider panel pursuant to the terms of the employee's group health insurance plan; and

(2) The doctor agrees to be bound by the contractual terms of the network governing payment schedules, treatment guidelines, quality control and dispute resolution procedures and termination of the contractual relationship.

(d) Any change of doctor requested by an employee being treated by a doctor under Subsection (a) or (b) must be to a network doctor and is subject to the requirements of this chapter.

The amendment to **CSSB 5** was read and failed of adoption by the following vote: Yeas 12, Nays 17.

Yeas: Armbrister, Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Nays: Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth.

Absent-excused: Averitt, Williams.

Senator Gallegos again offered the following amendment to the bill:

Floor Amendment No. 15

Amend **CSSB 5** on page 59, line 43, by striking SECTION 3.217 and inserting a new SECTION 3.217 to read as follows:

SECTION 3.217. Section 411.081, Labor Code, is amended to read as follows:

Sec. 411.081. TELEPHONE HOTLINE. (a) The division shall maintain a 24-hour toll-free telephone service in English and Spanish for reports of violations of occupational health or safety law.

(b) Each employer shall notify its employees of this service in a manner prescribed by the department [commission]. The department shall require the notice to be posted in English and Spanish.

(c) The department shall adopt rules requiring that the notice required by Subsection (b) be posted:

- (1) in a conspicuous place in the employer's place of business; and
- (2) in sufficient locations to be convenient to all employees.

The amendment was again read.

Senator Staples offered the following amendment to Floor Amendment No. 15:

Floor Amendment No. 15A

Amend Floor Amendment No. 15 to **CSSB 5** as follows:

1. On line 12, between "shall" and "require", insert ", by rule,".
2. On line 13, after "Spanish", insert ", as appropriate".

The amendment to Floor Amendment No. 15 to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 15A except as follows:

Absent-excused: Averitt, Williams.

Question recurring on the adoption of Floor Amendment No. 15 to **CSSB 5**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 15 as amended except as follows:

Absent-excused: Averitt, Williams.

Senator Nelson offered the following amendment to the bill:

Floor Amendment No. 20

Amend the committee printing of **CSSB 5** as follows:

(1) On page 92, line 29, through page 93, line 13, strike Section 1305.106 in its entirety and substitute the following:

"Sec. 1305.106. PAYMENT OF HEALTH CARE PROVIDER. (a) The commissioner shall adopt rules regarding the payment of claims by health care providers in workers' compensation health care networks.

(b) Rules adopted under this section shall as closely as possible follow those adopted for payment of claims by Health Maintenance Organizations pursuant to Subchapter J, Chapter 843, Insurance Code. Rules adopted under this section may vary from those adopted under Subchapter J, Chapter 843 to consider factors specific to the payment of claims in the workers' compensation system."

(2) On page 94, line 32, at the end of Subsection (e), insert the following: "Payment for medically necessary health care services provided prior to written notification of a compensability denial is not subject to denial, recoupment, or refund from a network provider based on compensability."

(3) On page 109, line 6, in SECTION 7.011, between "(a)" and "commissioner", strike "The" and substitute "Except as provided by Subsection (c), the".

(4) On page 109, between lines 16 and 17, in SECTION 7.011, insert a new Subsection (c) to read as follows:

"(c) The commissioner of insurance shall adopt rules to implement Section 1305.106, Insurance Code, as added by this Act, on or before January 1, 2007."

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 20 except as follows:

Absent-excused: Averitt, Williams.

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 21

Amend **CSSB 5**, at page 92, between lines 45 and 46, Section 1305.106 by adding the following subsets:

(b)(2)(A) A health care provider whom is denied access to a network can appeal that denial to the TDWC and is entitled to a BCCH under Sec. 410.151-410.209.

(B) The TDWC shall use the following criteria in determining whether the health care provider should be allowed into the network:

(i) geographic accessibility; is there a need for more specialists in this area;

(ii) other providers of same speciality already within the network;

(iii) providers willingness to meet outcome based and evidence based standards;

(iv) providers appropriately credentialed through verifying agencies such as CARF;

(v) providers license restricted or under probation from accrediting board of examiners;

(vi) Other criteria the commissioner feels appropriate but should ensure fairness to doctors of ALL specialties.

The amendment was read.

Senator Van de Putte withdrew Floor Amendment No. 21.

(Senator Duncan in Chair)

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 22

Amend **CSSB 5** appropriately as follows:

Add Section 1305.108, (at page 93, line 28).

"Any final decision made by a HCN may be appealed to the TDWC through the BCCH dispute process established under Sections 410.151-410.209."

The amendment was read.

Senator Van de Putte withdrew Floor Amendment No. 22.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 23

Amend **CSSB 5**, in SECTION 4.02, by striking Sec. 1305.304 (page 99, line 46-52), and substituting the following:

Sec. 1305.304. GUIDELINES AND PROTOCOLS. (a) The commissioner shall adopt rules ensuring consistent and uniform statewide treatment guidelines applying to all networks in the state to ensure consistency and equality of care throughout the state. Provided, however, that these guidelines shall not create limitations or restrictions on the quality and intensity of care required to return the injured worker to work.

(b) Each network shall adopt treatment guidelines, and return-to-work guidelines in accordance with commission rule. The treatment must be evidence-based, scientifically valid, and outcome focused and be designed to reduce inappropriate or unnecessary health care while safeguarding necessary care.

(c) Health care provider payment schedules used by networks shall acknowledge the intensity level of treatment required to rehabilitate an injured worker to meet the physical demands of the injured workers employment and shall not be directed to solely achieve activities of daily living (ADL).

The amendment was read.

(President in Chair)

Senator Lucio offered the following amendment to Floor Amendment No. 23:

Floor Amendment No. 23A

Amend **CSSB 5**, Floor Amendment No. 23 by striking Subsection (c), Sec. 1305.304.

The amendment to Floor Amendment No. 23 to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 23A except as follows:

Absent-excused: Averitt, Williams.

Question recurring on the adoption of Floor Amendment No. 23 to **CSSB 5**, the amendment as amended failed of adoption by the following vote: Yeas 13, Nays 16.

Yeas: Barrientos, Ellis, Gallegos, Harris, Hinojosa, Jackson, Lucio, Madla, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Nays: Armbrister, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Janek, Lindsay, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth.

Absent-excused: Averitt, Williams.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 24

Amend **CSSB 5**, by adding a new paragraph (c) to Chapter 401.013 of the Labor Code to read as follows:

Sec. 401.013. DEFINITION OF INTOXICATION. (a) In this subtitle, "intoxication" means the state of:

(1) having an alcohol concentration to qualify as intoxicated under Section 49.01(2), Penal Code; or

(2) not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of:

(A) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) a controlled substance or controlled substance analogue, as defined by Section 481.002, Health and Safety Code;

(C) a dangerous drug, as defined by Section 483.001, Health and Safety Code;

(D) an abusable glue or aerosol paint, as defined by Section 485.001, Health and Safety Code; or

(E) any similar substance, the use of which is regulated under state law.

(b) The term "intoxication" does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance:

(1) taken under and in accordance with a prescription written for the employee by the employee's doctor; or

(2) listed under Subsection (a) by inhalation or absorption incidental to the employee's work.

(c) It is a rebuttable presumption that a person is intoxicated, and not having the normal use of mental or physical faculties, upon the voluntary introduction into the body of any substance listed under Subsection (a)(2)(B).

The amendment was read.

Senator Gallegos moved to table Floor Amendment No. 24 to **CSSB 5**.

The motion to table failed by the following vote: Yeas 6, Nays 23.

Yeas: Barrientos, Ellis, Gallegos, Hinojosa, Shapleigh, Whitmire.

Nays: Armbrister, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Van de Putte, Wentworth, West, Zaffirini.

Absent-excused: Averitt, Williams.

Question recurring on the adoption of Floor Amendment No. 24 to **CSSB 5**, the amendment was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 24 except as follows:

Absent-excused: Averitt, Williams.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 25

Amend **CSSB 5** as follows:

(1) In SECTION 3.234 of the bill, in amended Subsection (c), Section 413.014, Labor Code (committee printing page 63, line 65), strike "and" and substitute "~~and~~".

(2) In SECTION 3.234 of the bill, in amended Subsection (c), Section 413.014, Labor Code (committee printing page 63, line 67), between "devices" and the period, insert the following:

"; and

(6) physical therapy and occupational therapy services".

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 25 except as follows:

Absent-excused: Averitt, Williams.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 26

Amend **CSSB 5**, in ARTICLE 5 of the committee substitute, by inserting new SECTION 5.055 (page 106, between lines 61 and 62, Senate committee printing), to read as follows:

SECTION 5.055. Article 5.55, Insurance Code, is amended by adding Section 8 to read as follows:

Sec. 8. EXCLUSIVE JURISDICTION. The department has exclusive jurisdiction over all rates and premiums subject to this article.

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 26 except as follows:

Absent-excused: Averitt, Williams.

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 27

Amend **CSSB 5** as follows:

Amend Article 1, of the committee report by inserting the following section appropriately numbered. Section 1 __. Subchapter A, Chapter 402 of the Labor Code is amended by adding Section 402.0125 to read as follows:

PROHIBITION ON EMPLOYMENT OR REPRESENTATION.

(a) A commissioner, or an employee of the Texas Department of Workers' Compensation involved in hearing department cases may not:

(1) be employed by an insurance carrier that was in the scope of the commissioner's or employee's official responsibility while the commissioner or employee was associated with the department; or

(2) represent a person before the department or a court in a matter:

(A) in which the commissioner or employee was personally involved while associated with the department; or

(B) that was within the commissioner's or employee's official responsibility while the commissioner or employee was associated with the department.

(b) The prohibition of Subsection (a)(1) applies until the:

(1) second anniversary of the date the commissioner ceases to serve as a commissioner; and

(2) first anniversary of the date the employee's employment with the department ceases.

(c) The prohibition of Subsection (a)(2) applies while a commissioner, or employee of the Texas Department of Workers' Compensation involved in hearing insurance cases is associated with the department and at any time thereafter.

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 27 except as follows:

Absent-excused: Averitt, Williams.

VOTE RECONSIDERED

On motion of Senator Staples and by unanimous consent, the vote by which Floor Amendment No. 1 to **CSSB 5** was adopted was reconsidered.

Question — Shall Floor Amendment No. 1 to **CSSB 5** be adopted?

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

Floor Amendment No. 1A

Amend Floor Amendment No. 1 to **CSSB 5** as follows:

1. At page 1, line 28 (page 1 of the packet), after "commits a violation.", add "An injured employee may not be fined more than \$10,000 for a violation of this subsection."

2. At page 2, line 6 (page 2 of the packet), after "commits a violation.", add "An injured employee may not be fined more than \$10,000 for a violation of this subsection."

The amendment to Floor Amendment No. 1 to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1A except as follows:

Absent-excused: Averitt, Williams.

Question recurring on the adoption of Floor Amendment No. 1 to **CSSB 5**, the amendment as amended was again adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 as amended except as follows:

Absent-excused: Averitt, Williams.

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

CSSB 5 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Absent-excused: Averitt, Williams.

COMMITTEE SUBSTITUTE SENATE BILL 5 ON THIRD READING

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 5** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Wentworth.

Absent-excused: Averitt, Williams.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 5**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 5** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed.

Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend Floor Amendment No. 24 (second reading) to **CSSB 5**, by striking paragraph (c) of Chapter 401.013 of the Labor Code, and adding a new paragraph (c) to read as follows:

(c) Upon the voluntary introduction into the body of any substance listed under subsection (a)(2)(b), based upon a blood test or urinalysis, it is a rebuttable presumption that a person is intoxicated and not having the normal use of mental or physical faculties.

The amendment to **CSSB 5** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading except as follows:

Absent-excused: Averitt, Williams.

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

CSSB 5 as amended was finally passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Averitt, Williams.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 392 by Hinojosa, In memory of Mark Anthony Zapata of Edinburg.

SR 394 by Hinojosa, In memory of Joe G. Diaz of Hidalgo County.

SR 395 by Hinojosa, In memory of Danny Anderson of Corpus Christi.

SR 399 by Wentworth, In memory of George Herman O'Brien, Jr., of Midland.

Congratulatory Resolutions

SR 391 by Hinojosa, Congratulating Jose Luis Salinas for his appointment as Superintendent of the Edinburg Consolidated Independent School District.

SR 393 by Hinojosa, Congratulating Audrey Ann Almaraz for her selection as Miss Edinburg 2005.

SR 397 by Ellis, Recognizing Anita Spivey for her accomplishments and her work in behalf of her community.

SR 398 by Seliger, Congratulating Norbert J. Dickman of Midland for being named the 2005 Person of Vision by the Permian Basin Branch of Prevent Blindness Texas.

HCR 106 (Seliger), Commending former Mayor G. Thane Akins of Midland for his many contributions to his community.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 8:40 p.m. adjourned, in memory of former Representative Leroy J. Wieting of Portland, until 11:00 a.m. tomorrow.

APPENDIX

COMMITTEE REPORTS

The following committee reports were received by the Secretary of the Senate in the order listed:

March 15, 2005

INTERGOVERNMENTAL RELATIONS — **CSSB 313**

STATE AFFAIRS — **CSSB 50, SB 53, CSSB 427, SB 486**

