

SENATE JOURNAL

EIGHTY-SEVENTH LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

SIXTEENTH DAY

(Monday, March 29, 2021)

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: Alvarado, Bettencourt, Birdwell, Blanco, Buckingham, Campbell, Creighton, Eckhardt, Gutierrez, Hall, Hancock, Hinojosa, Huffman, Hughes, Johnson, Kolkhorst, Lucio, Menéndez, Miles, Nelson, Nichols, Paxton, Perry, Powell, Schwertner, Seliger, Springer, Taylor, West, Whitmire, Zaffirini.

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

Senator Hughes offered the invocation as follows:

Heavenly Father, we come before You and we just humble ourselves. We consider who You are as the creator of everything seen and unseen, the one who has existed since eternity passed and will exist forever and ever. Even before we consider all of Your wonderful works, just because of who You are, You are worthy of our praise and our worship and everything. Then when we add to that the beautiful gifts that You give us, we see this creation around us, the precious liberties and freedoms and opportunities You've given to us, to everyone, but we cannot help but think, as Americans and as Texans, how we have been and continue to be uniquely blessed. All of these gifts from You, special gifts from You, and we thank You and we just lift You up. We praise You and we acknowledge You for who You are and for all that You've done. Father, we confess we don't acknowledge You individually or corporately and look to You as we should. We thank You for Your faithfulness to us, Your grace. And, Father, we thank You for this process where each one has a role, the Senators here who are elected, one small piece, one small piece of the process. We thank You for everyone involved in the roles that You've given each one of us. We ask You for wisdom. Your word tells us You'll give us wisdom if we ask, and we ask. Give it to us, Father, we pray. We ask, trusting You to show us the way. Give us wisdom and, Father, give us courage. Sometimes we know what to do but it's hard. It's hard to see the way to do it so give us courage. And, Father, will You give us humility? We know that You hate pride, so keep us humble as we work through these important matters. And, Father, we lift up to You our Trooper Walker, Chad Walker, who was seriously injured, and

we just pray for healing. We know You're in control. We ask You to heal. We pray You'll bless him and his family. And we're just reminded of all of our troopers and all those who serve, those law enforcement, those first responders, our women and men in uniform here and overseas. We lift them up to You. We thank You for them. And, Father, as we commence our work for the day, it's been a tough year, last year and even this one. We know You're in control. If we ever doubted Your love for us, we look only to the cross and we see the wonderful sacrifice made for us. We thank You that the cross is not the end of the story. We thank You for the resurrection, which we'll celebrate in a special way here in a few days. So, we ask all these things, and we thank You in the precious name of the Lord Jesus. Amen.

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

The motion prevailed without objection.

MESSAGES FROM THE GOVERNOR

The following Messages from the Governor were read and were referred to the Committee on Nominations:

March 26, 2021

Austin, Texas

TO THE SENATE OF THE EIGHTY-SEVENTH LEGISLATURE, REGULAR SESSION:

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

To be members of the Governing Board of the Texas School for the Blind and Visually Impaired for terms to expire January 31, 2027:

Maghan N. Gautney

Anna, Texas

(replacing Mary K. Alexander of Valley View whose term expired)

Brenda W. Lee

Brownwood, Texas

(Ms. Lee is being reappointed)

Ernest Worthington

Lancaster, Texas

(replacing Jose J. "Joseph" Muniz of Harlingen whose term expired)

Respectfully submitted,

/s/Greg Abbott

Governor

March 29, 2021

Austin, Texas

TO THE SENATE OF THE EIGHTY-SEVENTH LEGISLATURE, REGULAR SESSION:

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

To be members of the Texas Diabetes Council for terms to expire February 1, 2027:

Aida L. "Letty" Moreno-Brown
El Paso, Texas
(Ms. Moreno-Brown is being reappointed)

Ninfa Peña-Purcell, Ph.D.
College Station, Texas
(replacing William "David" Sanders of Dallas whose term expired)

Maryanne Strobel
Cypress, Texas
(replacing Joan P. Colgin of Dallas whose term expired)

Respectfully submitted,

/s/Greg Abbott
Governor

March 29, 2021
Austin, Texas

TO THE SENATE OF THE EIGHTY-SEVENTH LEGISLATURE, REGULAR SESSION:

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

To be members of the Stephen F. Austin State University Board of Regents for terms to expire January 31, 2027:

Robert A. Flores
Garrison, Texas
(Mr. Flores is being reappointed)

Laura L. Rectenwald, Ph.D.
Longview, Texas
(replacing Alton L. Frailey of Katy whose term expired)

Nancy C. Windham
Nacogdoches, Texas
(replacing Scott H. Coleman, D.D.S. of Houston whose term expired)

Respectfully submitted,

/s/Greg Abbott
Governor

**NOMINATION RETURNED
(Motion In Writing)**

Senator Buckingham submitted the following Motion In Writing:

Mr. President:

I move that the nomination of Dr. Jodie L. Elder to the Texas State Board of Examiners of Professional Counselors be withdrawn from the Committee on Nominations, and I further move that the nomination be returned to the Governor pursuant to his request.

BUCKINGHAM

The Motion In Writing was read and prevailed without objection.

SENATE RESOLUTION 197

Senator Alvarado offered the following resolution:

SR 197, Recognizing the Houston East End Chamber of Commerce for its efforts in behalf of the East End community.

The resolution was read and was adopted without objection.

SENATE RESOLUTION 200

Senator Hinojosa offered the following resolution:

SR 200, Recognizing the members of the United States armed forces for their service during the Vietnam War.

HINOJOSA
CAMPBELL

The resolution was read.

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

On motion of Senator Hinojosa, the resolution was adopted by a rising vote of the Senate.

SENATE RESOLUTION 199

Senator Lucio offered the following resolution:

WHEREAS, The Senate of the State of Texas honors and commemorates the lives of the 58 citizens who tragically died in the Lone Star State due to the devastating winter storm of 2021; and

WHEREAS, February 10, 2021, marked the beginning of a catastrophic week in Texas history; as Texans prepared for an unprecedented winter freeze, the governor declared a state of emergency for all 254 Texas counties; and

WHEREAS, Meteorologists had predicted that record snowfall and freezing temperatures would occur during and after the storm, and citizens across Texas prepared to take shelter in their homes; when the electrical power system failed, countless homes were without heat, and under the extremely frigid conditions, many citizens took desperate measures to stay warm; in addition, numerous homeless

individuals could not find refuge from the harsh elements; as a result, dozens of Texans tragically lost their lives due to the effects of hypothermia, carbon monoxide poisoning, or accidental fires; and

WHEREAS, The loss of 58 lives in 25 counties across the state has left innumerable family members and friends of victims in mourning; as Texans move forward on a difficult path to recovery, it is important that citizens of this state pay tribute to those who lost their lives and extend deep sympathy and support to their grieving loved ones; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 87th Legislature, hereby join citizens throughout the state in honoring the lives of those who died due to the 2021 Texas winter storm and extend heartfelt condolences to the victims' families and friends; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor and in memory of the 58 storm victims who passed away.

SR 199 was read.

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

On motion of Senator Lucio, **SR 199** was adopted by a rising vote of the Senate.

REMARKS ORDERED PRINTED

On motion of Senator Lucio and by unanimous consent, the remarks by Senator Lucio regarding **SR 199** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Thank you, Mr. President, Members, I ask you to join me in honoring the lives the historic winter storm of this past February took from us. This past weekend, I learned that sadly, the number of those who we can confirm lost their lives during this storm has risen to 111. This catastrophe has heaped further tragedy on our state, on top of the challenges that we have already faced over the past year with COVID-19.

To those loved ones of the victims of this storm, I hope you will see today that the Texas Senate stands with you in mourning your losses. I hope you will also see that we meet this challenge not only with words, but with actions. We have already passed legislation to help victims of the storm, and will discuss further measures to ensure this tragedy will not be repeated.

Today, I want to remind everyone in this chamber that we are one state, one country, one family under God. Together, with the leadership of the Lt. Governor Patrick will address this issue to protect life and give a better quality of life to all Texans.

To the families of those affected, I hope all my colleagues will join me in praying that God will grant you the strength you need to face this sad occasion and that He will give you comfort and healing for the loss you have experienced.

(Note: Prepared text)

SENATE RESOLUTION 196

Senator Eckhardt offered the following resolution:

SR 196, In memory of Bertha Sadler Means.

On motion of Senator Eckhardt, the resolution was read and was adopted by a rising vote of the Senate.

In honor of the memory of Bertha Sadler Means, the text of the resolution is printed at the end of today's *Senate Journal*.

CONCLUSION OF MORNING CALL

The President at 12:30 p.m. announced the conclusion of morning call.

COMMITTEE SUBSTITUTE SENATE BILL 3 ON SECOND READING

On motion of Senator Schwertner and by unanimous consent, the regular order of business and the Intent Calendar Rule were suspended to take up for consideration **CSSB 3** at this time on its second reading:

CSSB 3, Relating to preparing for, preventing, and responding to weather emergencies and power outages; increasing the amount of administrative and civil penalties.

The bill was read second time.

Senator Schwertner offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 3** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 411.301, Government Code (page 1, line 31), strike "and activation" and insert ", activation, and termination".

(2) In SECTION 1 of the bill, in added Section 411.305, Government Code (page 2, lines 3-4), strike "power supply in this state or a region of this state may be inadequate to meet demand" and insert "criteria adopted under Section 411.301(b) for the activation of the alert has been met".

(3) In SECTION 1 of the bill, strike added Section 411.307, Government Code (page 2, lines 16-20), and substitute the following:

Sec. 411.307. TERMINATION OF POWER OUTAGE ALERT. The director shall terminate any activation of the power outage alert as soon as practicable after the Public Utility Commission of Texas or the Electric Reliability Council of Texas notifies the department that the criteria adopted under Section 411.301(b) for the termination of the alert has been met.

(4) In SECTION 3 of the bill, in added Section 418.303(a)(10), Government Code (page 3, lines 17-18), strike "such as the non-dispatchable sources of energy, coal, or nuclear sectors,".

(5) In SECTION 4 of the bill, in added Section 86.044(a)(1), Natural Resources Code (page 3, lines 66-67), strike "to end consumers".

(6) In SECTION 4 of the bill, in added Section 86.044(e), Natural Resources Code (page 4, line 20), strike "the violation" and substitute "a violation that is not remedied in a reasonable amount of time".

(7) In SECTION 7 of the bill, strike added Section 17.002(3-a), Utilities Code (page 4, lines 56-59), and substitute the following:

(3-a) "Critical care residential customer" has the meaning assigned by commission rules.

(8) In SECTION 8 of the bill, in added Section 17.003(d-1), Utilities Code (page 4), strike lines 64-67 and substitute "31.002, shall provide to the retail electric provider and the retail electric provider shall periodically provide to the retail electric provider's retail customers together with bills sent to the customers:".

(9) In SECTION 8 of the bill, in added Section 17.003(e)(3), Utilities Code (page 5, line 23), strike "would" and substitute "may".

(10) In SECTION 12 of the bill, in added Section 35.0021(a), Utilities Code (page 6, line 32), strike "qualifying facility,".

(11) In SECTION 12 of the bill, in added Section 35.0021(c)(3), Utilities Code (page 6, lines 48-49), strike "that is not remedied in a reasonable period of time".

(12) In SECTION 12 of the bill, in added Section 35.0021(f), Utilities Code (page 6), strike lines 68-69 and substitute "during any season and for any period of time".

(13) In SECTION 12 of the bill, in added Section 35.0021(g), Utilities Code (page 7, lines 3-4), strike "in the manner provided by Chapter 15" and substitute "and does not remedy that violation within a reasonable period of time".

(14) In SECTION 14 of the bill, in added Section 38.074(b), Utilities Code (page 7, lines 39-40), strike "in the manner provided by Chapter 15" and substitute "and does not remedy that violation within a reasonable period of time".

(15) In SECTION 14 of the bill, strike added Section 38.075(b), Utilities Code (page 7, lines 48-53), and substitute:

(b) The system must provide for allocation of the load shedding obligation to each electric cooperative, municipally owned utility, and transmission and distribution utility in different seasons based on historical seasonal peak demand in the service territory of the electric cooperative, municipally owned utility, or transmission and distribution utility.

(16) In SECTION 14 of the bill, in added Section 38.075(d)(1), Utilities Code (page 8, line 2), strike "load shedding" and substitute "voluntary load reduction".

(17) In SECTION 14 of the bill, in added Section 38.075(d)(2), Utilities Code (page 8, line 5), strike "shedding" and substitute "reduction".

(18) In SECTION 14 of the bill, in added Section 38.076(a), Utilities Code (page 8, line 12), between "conduct" and "load" insert "simulated or tabletop".

(19) In SECTION 14 of the bill, in added Section 38.076(b), Utilities Code (page 8, line 16), immediately before each instance of "exercise" insert "simulated or tabletop".

(20) In SECTION 17 of the bill, in added Section 39.9165(a)(1), Utilities Code (page 8, line 54), strike "is" and substitute "may be".

(21) In SECTION 17 of the bill, in added Section 39.9165(a)(2), Utilities Code (page 8, line 55), strike "or equal to".

(22) In SECTION 19 of the bill, in added Section 121.2015(f), Utilities Code (page 9, line 46), between "Subsection (a)(3)" and "in" insert "if the violation is not remedied in a reasonable period of time".

(23) In SECTION 29 of the bill (page 12, line 47), between "shall" and "review" insert "annually".

The amendment to **CSSB 3** 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.

Senator Creighton offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 3** (senate committee printing) as follows:

(1) In SECTION 3 of the bill, in added Subchapter J, Chapter 418, Government Code (page 3, between lines 60 and 61), insert the following:

Sec. 418.310. CONFIDENTIALITY. The council is not subject to Chapter 551 or 552.

(2) In SECTION 14 of the bill, in added Section 38.075, Utilities Code (page 8, between lines 9 and 10), insert the following:

(f) Information and documents provided under Subsection (c)(2) by electric cooperatives, municipally owned utilities, and transmission and distribution utilities shall be confidential and shall not be made available under Chapter 552, Government Code.

The amendment to **CSSB 3** was read.

Senator Creighton withdrew Floor Amendment No. 2.

Senator Hughes offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 3** (senate committee printing) as follows:

(1) In SECTION 4 of the bill, in added Section 86.044, Natural Resources Code (page 4, between lines 7 and 8), insert the following:

(b-1) The commission shall:

(1) inspect gas supply chain facilities that are identified in the map created under Section 418.309, Government Code, as necessary to operate critical infrastructure for compliance with the reliability standards;

(2) provide the owner of a facility described by Subdivision (1) with a reasonable period of time in which to remedy any violation the commission discovers in an inspection; and

(3) report to the attorney general any violation that is not remedied in a reasonable period of time.

(b-2) The commission shall prioritize inspections conducted under Subsection (b-1)(1) based on risk level, as determined by the commission.

(2) In SECTION 12 of the bill, in added Section 35.0021, Utilities Code (page 6, between lines 49 and 50), insert the following:

(c-1) The independent organization certified under Section 39.151 for the ERCOT power region shall prioritize inspections conducted under Subsection (c)(1) based on risk level, as determined by the organization.

(3) In SECTION 14 of the bill, in added Section 38.074, Utilities Code (page 7, between lines 36 and 37), insert the following:

(b) The independent organization certified under Section 39.151 for the ERCOT power region shall:

(1) inspect the facilities of each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region for compliance with the reliability standards;

(2) provide the owner of a facility described by Subdivision (1) with a reasonable period of time in which to remedy any violation the independent organization discovers in an inspection; and

(3) report to the commission any violation that is not remedied in a reasonable period of time.

(c) The independent organization certified under Section 39.151 for the ERCOT power region shall prioritize inspections conducted under Subsection (b)(1) based on risk level, as determined by the organization.

(4) In SECTION 14 of the bill, in added Section 38.074, Utilities Code (page 7, line 37), strike "(b)" and substitute "(d)".

(5) In SECTION 19 of the bill, in the recital (page 9, line 21), between "Subsections" and "(d)," insert "(c-1), (c-2),".

(6) In SECTION 19 of the bill, in amended Section 121.2015, Utilities Code (page 9, between lines 32 and 33), insert the following:

(c-1) The railroad commission shall:

(1) inspect the gas pipeline facilities that are identified in the map created under Section 418.309, Government Code, as necessary to operate critical infrastructure for compliance with the reliability standards;

(2) provide the owner of a facility described by Subdivision (1) with a reasonable period of time in which to remedy any violation the railroad commission discovers in an inspection; and

(3) report to the attorney general any violation that is not remedied in a reasonable period of time.

(c-2) The railroad commission shall prioritize inspections conducted under Subsection (c-1)(1) based on risk level, as determined by the railroad commission.

(7) Insert the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS accordingly:

SECTION _____. Not later than six months after the date the Texas Energy Reliability Council produces the map required under Section 418.309, Government Code, as added by this Act, the Railroad Commission of Texas shall adopt rules necessary to implement:

(1) Section 86.044, Natural Resources Code, as added by this Act; and

(2) Section 121.2015, Utilities Code, as amended by this Act.

SECTION _____. Not later than six months after the effective date of this Act, the Public Utility Commission of Texas shall adopt rules necessary to implement:

(1) Section 35.0021, Utilities Code, as added by this Act; and

(2) Section 38.074, Utilities Code, as added by this Act.

HUGHES
SCHWERTNER

The amendment to **CSSB 3** 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.

Senator Hancock offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSSB 3** (senate committee printing), in SECTION 13 of the bill, in amended Section 35.004(e), Utilities Code (page 7, lines 11-17), strike "The commission shall ensure that the independent organization certified under Section 39.151 for the ERCOT power region procures ancillary services sufficient to manage any reliability impacts of intermittent generation resources, including variability across peak demand periods, and shall directly assign the costs of such services to intermittent generators consistent with cost-causation principles." and substitute "The commission shall require intermittent generation resources in the ERCOT power region to purchase ancillary services and replacement power sufficient to manage net load variability.".

The amendment to **CSSB 3** was read and was adopted by the following vote: Yeas 18, Nays 13.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Lucio, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

Senator Springer offered the following amendment to the bill:

Floor Amendment No. 5

Amend **CSSB 3** (senate committee printing), in SECTION 14 of the bill, in added Section 38.075, Utilities Code (page 8, between lines 9 and 10), by adding a new Subsection (f) to read as follows:

(f) After each load shedding event, the commission may conduct an examination of the implementation of load shedding, including whether each electric cooperative, municipally owned utility, and transmission and distribution utility complied with its plan as filed with the commission under Subsection (c)(2).

The amendment to **CSSB 3** 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. 5.

Senator Johnson offered the following amendment to the bill:

Floor Amendment No. 6

Amend **CSSB 3** (senate committee printing) as follows:

(1) In SECTION 16 of the bill, adding Section 39.159, Utilities Code (page 8), strike lines 30-48 and substitute the following:

Sec. 39.159. WHOLESALE PRICING PROCEDURES. (a) The commission by rule shall establish an emergency pricing program for the wholesale electric market.

(b) The emergency pricing program shall compensate generators based on their actual costs of generation during the time of the emergency.

(c) The emergency pricing program shall take effect if the high system-wide offer cap has been in effect for 12 hours within a 24 hour period after initially reaching the high system-wide offer cap. The commission by rule shall determine when the emergency pricing program shall cease.

(d) The emergency pricing program may not allow an emergency pricing program cap to exceed any nonemergency high system-wide offer cap.

(e) The emergency pricing program may include a true-up after the operating day.

(f) The price of ancillary services may not exceed 150 percent of any high system-wide offer cap or emergency pricing program in effect at the time.

(g) Any wholesale pricing procedure that has a low system-wide offer cap may not have the low system-wide offer cap exceed the high system-wide offer cap.

(h) The commission shall review each system-wide offer cap program adopted by the commission, including the emergency pricing program, at least once every five years to determine whether to update aspects of the program.

(2) In SECTION 30 of the bill (page 12, line 54), strike "39.159(c)" and substitute "39.159(h)".

(3) In SECTION 30 of the bill (page 12, line 55), strike "2022" and substitute "2021".

JOHNSON
SCHWERTNER

The amendment to **CSSB 3** 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.

Senator Johnson offered the following amendment to the bill:

Floor Amendment No. 7

Amend **CSSB 3** (senate committee printing), in SECTION 28 of the bill, in Subsection (b)(4) of that SECTION (page 12, line 42), between "state" and the period, by inserting ", including the ancillary services market and emergency response services".

The amendment to **CSSB 3** 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.

Senator Springer offered the following amendment to the bill:

Floor Amendment No. 8

Amend **CSSB 3** (senate committee printing) as follows:

(1) Strike SECTIONS 19 and 20, amending Sections 121.2015 and 121.206, Utilities Code (page 9, lines 20 through 57) and renumber subsequent SECTIONS of the bill accordingly.

(2) In SECTION 23 of the bill, in added Section 186.008(b), Utilities Code (page 10, lines 51 and 52), strike "and by gas pipeline facility operators regulated under Chapter 121".

The amendment to **CSSB 3** was read.

Senator Springer withdrew Floor Amendment No. 8.

CSSB 3 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 3 ON THIRD READING

Senator Schwertner moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 3** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE SENATE BILL 8 ON SECOND READING

Senator Hughes moved to suspend the regular order of business to take up for consideration **CSSB 8** at this time on its second reading:

CSSB 8, Relating to abortion, including abortions after detection of an unborn child's heartbeat; authorizing a private civil right of action.

The motion prevailed by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

The bill was read second time.

Senator Hughes offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 8** (senate committee printing) as follows:

(1) In SECTION 3 of the bill, in added Section 171.205(a), Health and Safety Code (page 2, line 55), strike "Section 171.204 does" and substitute "Sections 171.203 and 171.204 do".

(2) In SECTION 3 of the bill, in added Section 171.207(a), Health and Safety Code (page 3, line 12), strike "The" and substitute "Notwithstanding Section 171.005 or any other law, the".

(3) In SECTION 3 of the bill, in added Section 171.208(a)(1), Health and Safety Code (page 3, line 33), immediately following the underlined semicolon, strike "or".

(4) In SECTION 3 of the bill, in added Section 171.208(a)(2), Health and Safety Code (page 3, line 40), following "chapter", strike the underlined period and substitute the following:

; or

(3) intends to engage in the conduct described by Subdivision (1) or (2).

(5) In SECTION 3 of the bill, in added Section 171.208(c), Health and Safety Code (page 3, lines 53-54), strike "if the defendant demonstrates that the defendant previously paid statutory damages" and substitute the following: in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under Subsection (b)(2)

(6) In SECTION 3 of the bill, in added Section 171.208(d), Health and Safety Code (page 3, line 59), between "Code" and the underlined comma, insert ", or any other law".

(7) In SECTION 3 of the bill, strike added Section 171.208(f), Health and Safety Code (page 4, lines 12-17), and substitute the following:

(f) It is an affirmative defense if:

(1) a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this chapter; or

(2) a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion will comply with this chapter.

(f-1) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) by a preponderance of the evidence.

(8) In SECTION 3 of the bill, strike added Section 171.209(a)(2), Health and Safety Code (page 4, lines 43-45), and substitute the following:

(2) the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.

(9) In SECTION 3 of the bill, in added Section 171.209(b), Health and Safety Code (page 4, line 48), strike "only".

(10) In SECTION 3 of the bill, in added Section 171.209(b)(1), Health and Safety Code (page 4, line 50), between "of" and "women", insert "a woman or group of".

(11) In SECTION 3 of the bill, in added Section 171.209(b)(2), Health and Safety Code (page 4, line 53), between "on" and "women", insert "that woman or that group of".

(12) In SECTION 3 of the bill, in added Section 171.209(c), Health and Safety Code (page 4, lines 55-62), strike "an identifiable" each time it appears and substitute "a".

(13) In SECTION 3 of the bill, immediately following added Section 171.209(e), Health and Safety Code (page 5, between lines 7 and 8), insert the following:

(f) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 171.208, and a court may not award relief under Section 171.208 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

(14) In SECTION 3 of the bill, in added Section 171.210, Health and Safety Code (page 5, line 8), between the underlined period and "Notwithstanding", insert "(a)".

(15) In SECTION 3 of the bill, immediately after added Section 171.210, Health and Safety Code (page 5, between lines 19 and 20), insert the following:

(b) If a civil action is brought under Section 171.208 in any one of the venues described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

(16) In SECTION 3 of the bill, in added Section 171.212(b), Health and Safety Code (page 5, line 55), strike "remaining provisions" and substitute "remaining applications".

(17) In SECTION 3 of the bill, between added Sections 171.212(b) and (c), Health and Safety Code (page 5, between lines 58 and 59), insert the following:

(b-1) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and Texas Constitution.

(18) In SECTION 3 of the bill, in added Section 171.212(e), Health and Safety Code (page 6, line 2), between "(b)," and "(c)", insert "(b-1)".

(19) In SECTION 3 of the bill, in added Section 171.212, Health and Safety Code (page 6, lines 18-31), strike added subsections (f) and (g).

(20) In SECTION 4 of the bill, in added Section 30.022(a), Civil Practice and Remedies Code (page 6, lines 38-39), strike "or any governmental entity or public official in this state" and substitute "any governmental entity or public official in this state, or any person in this state".

(21) In SECTION 4 of the bill, in added Section 30.022(d)(1), Civil Practice and Remedies Code (page 6, lines 67-68), immediately following the underlined semicolon, strike "or".

(22) In SECTION 4 of the bill, in added Section 30.022(d)(2), Civil Practice and Remedies Code (page 7, line 1), between "section" and the underlined period, insert the following:

; or

(3) the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion

(23) In SECTION 5 of the bill, in added Section 311.036(c), Government Code (page 7, line 20), strike "constitutional rights of women seeking abortions" and substitute "United States Constitution and Texas Constitution".

(24) In SECTION 5 of the bill, in added Section 311.036(c), Government Code (page 7, line 22), between "law" and the underlined period, insert the following: , and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and Texas Constitution

(25) In SECTION 7 of the bill amending Section 171.012, Health and Safety Code (page 7, lines 51-53), strike the recital and substitute the following:

SECTION 7. Section 171.012(a), Health and Safety Code, is amended to read as follows:

(26) In SECTION 7 of the bill, in amended Section 171.012(a)(4)(C), Health and Safety Code (page 8, line 51), immediately following the semicolon, strike "and" and substitute "and".

(27) In SECTION 7 of the bill, in amended Section 171.012(a)(4)(D), Health and Safety Code (page 8, line 58), following the semicolon, strike "and".

(28) In SECTION 7 of the bill, strike added Section 171.012(a)(4)(E), Health and Safety Code (page 8, lines 59-65).

(29) In SECTION 7 of the bill, strike added Section 171.012(g), Health and Safety Code (page 9, lines 50-54).

(30) In SECTION 8 of the bill, in added Section 245.011(c)(10), Health and Safety Code (page 10, line 8), immediately following the underlined semicolon, insert "and".

(31) In SECTION 8 of the bill, strike added Sections 245.011(c)(11) and (12), Health and Safety Code (page 10, lines 9-13) and substitute the following:

(11) the information required under Sections 171.008(a) and (c).

(32) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 171.005, Health and Safety Code, is amended to read as follows:

Sec. 171.005. COMMISSION [~~DEPARTMENT~~] TO ENFORCE; EXCEPTION. The commission [~~department~~] shall enforce this chapter except for Subchapter H, which shall be enforced exclusively through the private civil enforcement actions described by Section 171.208 and may not be enforced by the commission.

The amendment to **CSSB 8** was read and was adopted by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

CSSB 8 as amended was passed to engrossment by the following vote: Yeas 19, Nays 12. (Same as previous roll call)

SENATE BILL 1173 ON SECOND READING

Senator Hancock moved to suspend the regular order of business to take up for consideration **SB 1173** at this time on its second reading:

SB 1173, Relating to the regulation of abortion, including information regarding perinatal palliative care and prohibiting discriminatory abortions; authorizing disciplinary action; providing a civil remedy; creating a criminal offense.

The motion prevailed by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

The bill was read second time and was passed to engrossment by the following vote: Yeas 19, Nays 12. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
SENATE BILL 64 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 64** at this time on its second reading:

CSSB 64, Relating to a peer support network for certain law enforcement personnel.

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

All members are deemed to have voted "Yea" on the passage to engrossment.

**COMMITTEE SUBSTITUTE
SENATE BILL 64 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 64** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
SENATE BILL 394 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **CSSB 394** at this time on its second reading:

CSSB 394, Relating to abortion complication reporting and the regulation of drug-induced abortion procedures, providers, and facilities; creating a criminal offense.

The motion prevailed by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 394** (senate committee printing) in SECTION 4 of the bill, in added Section 171.063(b-1), Health and Safety Code (page 3, line 7), between "provide" and "any", by inserting "to a patient".

The amendment to **CSSB 394** 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.

CSSB 394 as amended was passed to engrossment by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

COMMITTEE SUBSTITUTE SENATE BILL 9 ON SECOND READING

Senator Paxton moved to suspend the regular order of business to take up for consideration **CSSB 9** at this time on its second reading:

CSSB 9, Relating to prohibition of abortion; providing a civil penalty; creating a criminal offense.

The motion prevailed by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

The bill was read second time.

Senator Hughes offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 9** (senate committee printing) by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. The legislature finds that the State of Texas never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother's life is in danger.

The amendment to **CSSB 9** 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 except as follows:

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

CSSB 9 as amended was passed to engrossment by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

**COMMITTEE SUBSTITUTE
SENATE BILL 1647 ON SECOND READING**

Senator Perry moved to suspend the regular order of business to take up for consideration **CSSB 1647** at this time on its second reading:

CSSB 1647, Relating to information regarding perinatal palliative care, regulation of abortion, and the availability of certain defenses to prosecution for homicide and assault offenses; providing an administrative penalty; creating a criminal offense.

The motion prevailed by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

The bill was read second time.

Senator Perry offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1647** (senate committee printing) as follows:

(1) In SECTION 2.08 of the bill, strike added Section 171.012(g), Health and Safety Code (page 6, lines 56-67), and substitute the following:

(g) If the pregnant woman's preborn child has been diagnosed with a life-threatening disability, the physician who is to perform the abortion shall, at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility in which more than 50 abortions are performed in any 12-month period:

(1) orally and in person, inform the pregnant woman of the availability of perinatal palliative care, as that term is defined by Section 161.702; and

(2) provide the pregnant woman with a written copy of:

(A) the perinatal palliative care informational materials and list of the perinatal palliative care providers and programs described by Section 161.703; and

(B) the perinatal palliative care certification form described by Section 161.704.

(2) In SECTION 5.06(c) of the bill, in the effective date language (page 21, between lines 26 and 27), immediately after the colon, insert the following and renumber subsequent subdivisions accordingly:

(1) to the extent permitted, on the 30th day after:

(A) the issuance of a United States Supreme Court judgment in a decision overruling, wholly or partly, *Roe v. Wade*, 410 U.S. 113 (1973), as modified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), thereby allowing the states of the United States to prohibit abortion;

(B) the issuance of any other United States Supreme Court judgment in a decision that recognizes, wholly or partly, the authority of the states to prohibit abortion; or

(C) adoption of an amendment to the United States Constitution that, wholly or partly, restores to the states the authority to prohibit abortion;

The amendment to **CSSB 1647** 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 except as follows:

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

Senator Hughes offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 1647** (senate committee printing) as follows:

(1) In SECTION 1.01 of the bill, in Subdivision (1) of the legislative findings, following "disability;" (page 1, line 30), strike "and".

(2) In SECTION 1.01 of the bill, in Subdivision (2) of the legislative findings (page 1, line 34), between "provision" and the period, insert the following: ; and

(3) Texas never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother's life is in danger

(3) Strike ARTICLE 3 of the bill (page 10, line 5 through page 17, line 60) and substitute the following:

ARTICLE 3. PROVISIONS EFFECTIVE SEPTEMBER 1, 2023, OR EARLIER

SECTION 3.01. Chapter 171, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

Sec. 171.201. DEFINITIONS. In this subchapter:

(1) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(2) "Gestational age" means the amount of time that has elapsed from the first day of a woman's last menstrual period.

(3) "Gestational sac" means the structure comprising the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.

(4) "Physician" means an individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(5) "Pregnancy" means the human female reproductive condition that:

(A) begins with fertilization;

(B) occurs when the woman is carrying the developing human offspring; and

(C) is calculated from the first day of the woman's last menstrual period.

(6) "Standard medical practice" means the degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances.

(7) "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.

Sec. 171.202. LEGISLATIVE FINDINGS. The legislature finds, according to contemporary medical research, that:

(1) fetal heartbeat has become a key medical predictor that an unborn child will reach live birth;

(2) cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;

(3) Texas has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child; and

(4) to make an informed choice about whether to continue her pregnancy, the pregnant woman has a compelling interest in knowing the likelihood of her unborn child surviving to full-term birth based on the presence of cardiac activity.

Sec. 171.203. DETERMINATION OF PRESENCE OF FETAL HEARTBEAT REQUIRED; RECORD. (a) For the purposes of determining the presence of a fetal heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

(b) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman unless the physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.

(c) In making a determination under Subsection (b), the physician must use a test that is:

(1) consistent with the physician's good faith and reasonable understanding of standard medical practice; and

(2) appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.

(d) A physician making a determination under Subsection (b) shall record in the pregnant woman's medical record:

(1) the estimated gestational age of the unborn child;

(2) the method used to estimate the gestational age; and

(3) the test used for detecting a fetal heartbeat, including the date, time, and results of the test.

Sec. 171.204. PROHIBITED ABORTION OF UNBORN CHILD WITH DETECTABLE FETAL HEARTBEAT; EFFECT. (a) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by Section 171.203 or failed to perform a test to detect a fetal heartbeat.

(b) A physician does not violate this section if the physician performed a test for a fetal heartbeat as required by Section 171.203 and did not detect a fetal heartbeat.

(c) This section does not affect:

(1) the provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy; or

(2) any other provision of state law that regulates or prohibits abortion.

Sec. 171.205. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS. (a) Sections 171.203 and 171.204 do not apply if a physician believes a medical emergency exists that prevents compliance with this subchapter.

(b) A physician who performs or induces an abortion under circumstances described by Subsection (a) shall make written notations in the pregnant woman's medical record of:

(1) the physician's belief that a medical emergency necessitated the abortion; and

(2) the medical condition of the pregnant woman that prevented compliance with this subchapter.

(c) A physician performing or inducing an abortion under this section shall maintain in the physician's practice records a copy of the notations made under Subsection (b).

Sec. 171.206. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not create or recognize a right to abortion before a fetal heartbeat is detected.

(b) This subchapter may not be construed to:

(1) authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter;

(2) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion, including Chapter 6-1/2, Title 71, Revised Statutes; or

(3) restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT. (a) Notwithstanding Section 171.005 or any other law, the requirements of this subchapter shall be enforced exclusively through the private civil actions described in Section 171.208. No enforcement of this subchapter, and no enforcement of Chapters 19 and 22, Penal Code, in response to violations of this subchapter, may be taken or threatened by this state, a political subdivision, a district or county attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided in Section 171.208.

(b) Subsection (a) may not be construed to:

(1) legalize the conduct prohibited by this subchapter or by Chapter 6-1/2, Title 71, Revised Statutes;

(2) limit in any way or affect the availability of a remedy established by Section 171.208; or

(3) limit the enforceability of any other laws that regulate or prohibit abortion.

Sec. 171.208. CIVIL LIABILITY FOR VIOLATION OR AIDING OR ABETTING VIOLATION. (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who:

(1) performs or induces an abortion in violation of this chapter;

(2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this chapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this chapter; or

(3) intends to engage in the conduct described by Subdivision (1) or (2).

(b) If a claimant prevails in an action brought under this section, the court shall award:

(1) injunctive relief sufficient to prevent the defendant from violating this chapter or engaging in acts that aid or abet violations of this chapter;

(2) statutory damages in an amount of not less than \$10,000 for each abortion that the defendant performed or induced in violation of this chapter, and for each abortion performed or induced in violation of this chapter that the defendant aided or abetted; and

(3) costs and attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under this section in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under Subsections (b)(2) and (3) in a previous action for that particular abortion performed or induced in violation of this chapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this chapter.

(d) Notwithstanding Chapter 16, Civil Practice and Remedies Code, or any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.

(e) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1) ignorance or mistake of law;

(2) a defendant's belief that the requirements of this chapter are unconstitutional or were unconstitutional;

(3) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this chapter;

(4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5) non-mutual issue preclusion or non-mutual claim preclusion;

(6) the consent of the unborn child's mother to the abortion; or

(7) any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 171.209.

(f) It is an affirmative defense if:

(1) a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this chapter; or

(2) a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion will comply with this chapter.

(f-1) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) by a preponderance of the evidence.

(g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Section 8, Article I, Texas Constitution.

(h) Notwithstanding any other law, this state, a state official, or a district or county attorney may not intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

(i) Notwithstanding any other law, a court may not award costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the supreme court under Section 22.004, Government Code, to a defendant in an action brought under this section.

Sec. 171.209. CIVIL LIABILITY: UNDUE BURDEN DEFENSE LIMITATIONS. (a) A defendant against whom an action is brought under Section 171.208 does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

(1) the United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

(2) the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.

(b) A defendant in an action brought under Section 171.208 may assert an affirmative defense to liability under this section if:

(1) the defendant has standing to assert the third-party rights of a woman or a group of women seeking an abortion in accordance with Subsection (a); and

(2) the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or a group of women seeking an abortion.

(c) A court may not find an undue burden under Subsection (b) unless the defendant introduces evidence proving that:

(1) an award of relief will prevent a woman or a group of women from obtaining an abortion; or

(2) an award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

(d) A defendant may not establish an undue burden under this section by:

(1) merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or

(2) arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

(e) The affirmative defense under Subsection (b) is not available if the United States Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under Section 171.208 occurred before the Supreme Court overruled either of those decisions.

(f) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 171.208, and a court may not award relief under Section 171.208 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

Sec. 171.210. CIVIL LIABILITY: VENUE. (a) Notwithstanding any other law, including Section 15.002, Civil Practice and Remedies Code, a civil action brought under Section 171.208 shall be brought in:

(1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3) the county of the principal office in this state of any one of the defendants that is not a natural person; or

(4) the county of residence for the claimant if the claimant is a natural person residing in this state.

(b) If a civil action is brought under Section 171.208 in any one of the venues described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

Sec. 171.211. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED. (a) This section prevails over any conflicting law, including:

- (1) the Uniform Declaratory Judgments Act; and
- (2) Chapter 37, Civil Practice and Remedies Code.

(b) This state has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of this state or a political subdivision has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise.

(c) A provision of state law may not be construed to waive or abrogate an immunity described by Subsection (b) unless it expressly waives immunity under this section.

Sec. 171.212. SEVERABILITY. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other.

(b) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this chapter to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden.

(b-1) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and Texas Constitution.

(c) The legislature further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter, were to be declared unconstitutional or to represent an undue burden.

(d) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(e) No court may decline to enforce the severability requirements of Subsections (a), (b), (b-1), (c), and (d) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Texas Constitution or United States Constitution;

(2) is not a formal amendment of the language in a statute; and

(3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

SECTION 3.02. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.022 to read as follows:

Sec. 30.022. AWARD OF ATTORNEY'S FEES IN ACTIONS CHALLENGING ABORTION LAWS. (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, any governmental entity or public official in this state, or any person in this state, from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and attorney's fees of the prevailing party.

(b) For purposes of this section, a party is considered a prevailing party if a state or federal court:

(1) dismisses any claim or cause of action brought against the party that seeks the declaratory or injunctive relief described by Subsection (a), regardless of the reason for the dismissal; or

(2) enters judgment in the party's favor on any such claim or cause of action.

(c) Regardless of whether a prevailing party sought to recover costs or attorney's fees in the underlying action, a prevailing party under this section may bring a civil action to recover costs and attorney's fees against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by Subsection (a) not later than the third anniversary of the date on which, as applicable:

(1) the dismissal or judgment described by Subsection (b) becomes final on the conclusion of appellate review; or

(2) the time for seeking appellate review expires.

(d) It is not a defense to an action brought under Subsection (c) that:

(1) a prevailing party under this section failed to seek recovery of costs or attorney's fees in the underlying action;

(2) the court in the underlying action declined to recognize or enforce the requirements of this section; or

(3) the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

SECTION 3.03. Subchapter C, Chapter 311, Government Code, is amended by adding Section 311.036 to read as follows:

Sec. 311.036. CONSTRUCTION OF ABORTION STATUTES. (a) A statute that regulates or prohibits abortion may not be construed to repeal any other statute that regulates or prohibits abortion, either wholly or partly, unless the repealing statute explicitly states that it is repealing the other statute.

(b) A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by the statute.

(c) Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States Constitution and Texas Constitution shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and Texas Constitution.

SECTION 3.04. Section 171.005, Health and Safety Code, is amended to read as follows:

Sec. 171.005. COMMISSION [~~DEPARTMENT~~] TO ENFORCE; EXCEPTION. The commission [~~department~~] shall enforce this chapter except for Subchapter H, which shall be enforced exclusively through the private civil enforcement actions described by Section 171.208 and may not be enforced by the commission.

SECTION 3.05. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.008 to read as follows:

Sec. 171.008. REQUIRED DOCUMENTATION. (a) If an abortion is performed or induced on a pregnant woman because of a medical emergency, the physician who performs or induces the abortion shall execute a written document that certifies the abortion is necessary due to a medical emergency and specifies the woman's medical condition requiring the abortion.

(b) A physician shall:

(1) place the document described by Subsection (a) in the pregnant woman's medical record; and

(2) maintain a copy of the document described by Subsection (a) in the physician's practice records.

(c) A physician who performs or induces an abortion on a pregnant woman shall:

(1) if the abortion is performed or induced to preserve the health of the pregnant woman, execute a written document that:

(A) specifies the medical condition the abortion is asserted to address; and

(B) provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition; or

(2) for an abortion other than an abortion described by Subdivision (1), specify in a written document that maternal health is not a purpose of the abortion.

(d) The physician shall maintain a copy of a document described by Subsection (c) in the physician's practice records.

SECTION 3.06. Section 171.012(a), Health and Safety Code, is amended to read as follows:

(a) Consent to an abortion is voluntary and informed only if:

(1) the physician who is to perform or induce the abortion informs the pregnant woman on whom the abortion is to be performed or induced of:

(A) the physician's name;

(B) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate:

(i) the risks of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy and of infertility; and

(iii) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;

(C) the probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(D) the medical risks associated with carrying the child to term;

(2) the physician who is to perform or induce the abortion or the physician's agent informs the pregnant woman that:

(A) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and

(C) public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest;

(3) the physician who is to perform or induce the abortion or the physician's agent:

(A) provides the pregnant woman with the printed materials described by Section 171.014; and

(B) informs the pregnant woman that those materials:

(i) have been provided by the commission [~~Department of State Health Services~~];

(ii) are accessible on an Internet website sponsored by the commission [~~department~~];

(iii) describe the unborn child and list agencies that offer alternatives to abortion; and

(iv) include a list of agencies that offer sonogram services at no cost to the pregnant woman;

(4) before any sedative or anesthesia is administered to the pregnant woman and at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period:

(A) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers performs a sonogram on the pregnant woman on whom the abortion is to be performed or induced;

(B) the physician who is to perform or induce the abortion displays the sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them;

(C) the physician who is to perform or induce the abortion provides, in a manner understandable to a layperson, a verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and

(D) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers makes audible the heart auscultation for the pregnant woman to hear, if present, in a quality consistent with current medical practice and provides, in a manner understandable to a layperson, a simultaneous verbal explanation of the heart auscultation;

(5) before receiving a sonogram under Subdivision (4)(A) and before the abortion is performed or induced and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

"ABORTION AND SONOGRAM ELECTION

(1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO ME.

(2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.

(3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO RECEIVING AN ABORTION.

(4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM IMAGES.

(5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE HEARTBEAT.

(6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

___ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

___ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

___ MY UNBORN CHILD [~~FETUS~~] HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

(7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT COERCION.

(8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS OR INDUCES MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS OR INDUCES MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS: _____.

SIGNATURE

DATE";

(6) before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the signed, written certification required by Subdivision (5); and

(7) the pregnant woman is provided the name of each person who provides or explains the information required under this subsection.

SECTION 3.07. Section 245.011(c), Health and Safety Code, is amended to read as follows:

(c) The report must include:

(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2) the patient's year of birth, race, marital status, and state and county of residence;

(3) the type of abortion procedure;

- (4) the date the abortion was performed;
- (5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;
- (6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;
- (7) the date, if known, of the patient's last menstrual cycle;
- (8) the number of previous live births of the patient; ~~and~~
- (9) the number of previous induced abortions of the patient;
- (10) whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion; and

(11) the information required under Sections 171.008(a) and (c).

The amendment to **CSSB 1647** was read and was adopted by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

CSSB 1647 as amended was passed to engrossment by the following vote: Yeas 19, Nays 12. (Same as previous roll call)

COMMITTEE SUBSTITUTE SENATE BILL 802 ON SECOND READING

Senator Paxton moved to suspend the regular order of business to take up for consideration **CSSB 802** at this time on its second reading:

CSSB 802, Relating to a required resource access assistance offer before an abortion is performed or induced.

The motion prevailed by the following vote: Yeas 20, Nays 11.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor, Zaffirini.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire.

The bill was read second time.

Senator Paxton offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 802** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 171.01205(a), Health and Safety Code (page 1, line 32), strike the underlined colon.

(2) In SECTION 1 of the bill, strike added Sections 171.01205(a)(1) and (2), Health and Safety Code (page 1, lines 33-37), and substitute the following:

verifying the unique identifying number, devoid of the woman's personally identifiable information, as provided by the commission.

(3) In SECTION 1 of the bill, strike added Section 171.01205(b)(4), Health and Safety Code (page 2, lines 2-4) and substitute the following:

(4) may not refer a woman to an abortion provider.

(4) In SECTION 1 of the bill, strike added Sections 171.01205(d), (e), and (f), Health and Safety Code (page 2, lines 28-46), and substitute the following:

(d) A care agent shall request a unique identifying number, devoid of the pregnant woman's personally identifiable information, from the system developed by the commission to certify that the woman received the resource access assistance offer.

(e) The commission shall develop and maintain an authentication system that provides the pregnant woman a unique identifying number required under this section. The system must:

(1) allow a care agent to request a unique identifying number for the pregnant woman;

(2) allow a physician who is to perform or induce an abortion to verify the unique identifying number;

(3) ensure that the identity of an individual pregnant woman, care agent, or physician who is to perform or induce the abortion is not disclosed in the authentication system; and

(4) remove any personal information for the pregnant woman, care agent, or physician as soon as the information is not needed to verify the unique identifying number.

(5) Reletter the remaining subsections of added Section 171.01205, Health and Safety Code, and cross-references to those subsections accordingly.

The amendment to **CSSB 802** was read and was adopted by the following vote: Yeas 20, Nays 11.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor, Zaffirini.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire.

Senator Eckhardt offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 802** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 171.01205(b)(2)(A), Health and Safety Code (page 1, line 48), following "be", strike "authorized under a contract with" and substitute "employed by".

(2) In SECTION 1 of the bill, in added Section 171.01205(d), Health and Safety Code (page 2, line 29), strike "or the contracting entity that employs the care agent".

(3) In SECTION 1 of the bill, in added Section 171.01205(g), Health and Safety Code (page 2, line 51), strike "at a contracting agency".

(4) In SECTION 1 of the bill, in added Section 171.01205(h)(1)(A), Health and Safety Code (page 2, lines 55-56), strike "or contracting agency".

(5) Strike SECTION 3(c) of the bill, adding contracting agency transition language (page 3, lines 22-27).

The amendment to **CSSB 802** was read and failed of adoption by the following vote: Yeas 12, Nays 19.

Yeas: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

CSSB 802 as amended was passed to engrossment by the following vote: Yeas 20, Nays 11.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor, Zaffirini.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire.

SENATE BILL 650 ON SECOND READING

Senator Campbell moved to suspend the regular order of business to take up for consideration **SB 650** at this time on its second reading:

SB 650, Relating to prohibited logistical support by a governmental entity for procurement of an abortion or the services of an abortion provider.

The motion prevailed by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

The bill was read second time.

Senator Eckhardt offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 650** (senate committee printing) in SECTION 1 of the bill, in added Section 2272.0031(a), Government Code (page 1, lines 31 and 32), by striking "or the services of an abortion provider".

The amendment to **SB 650** was read and failed of adoption by the following vote: Yeas 12, Nays 19.

Yeas: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Senator Eckhardt offered the following amendment to the bill:

Floor Amendment No. 2

Amend **SB 650** (senate committee printing) in SECTION 1 of the bill, in added Section 2272.0031, Government Code, as follows:

(1) Immediately following added Subsection (a) (page 1, between lines 42 and 43), insert the following:

(b) This section does not apply to a governmental entity governed by an official or a body of representatives who are duly elected by the people.

(2) In added Subsection (b) (page 1, line 43), strike "(b)" and substitute "(c)".

The amendment to **SB 650** was read and failed of adoption by the following vote: Yeas 12, Nays 19.

Yeas: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Senator Eckhardt offered the following amendment to the bill:

Floor Amendment No. 3

Amend **SB 650** (senate committee printing) by striking SECTION 2 of the bill, amending Section 2272.004(a), Government Code, as added by Chapter 501 (S.B. 22), Acts of the 86th Legislature, Regular Session, 2019 (page 1, lines 49 through 55), and renumbering subsequent SECTIONS of the bill accordingly.

The amendment to **SB 650** was read and failed of adoption by the following vote: Yeas 12, Nays 19.

Yeas: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

SB 650 was passed to engrossment by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini.

SENATE BILL 383 ON SECOND READING

On motion of Senator Powell and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 383** at this time on its second reading:

SB 383, Relating to disclosure requirements of certain facilities that provide care for persons with Alzheimer's disease and related disorders.

The bill was read second time and 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:

Nays: Springer.

SENATE BILL 383 ON THIRD READING

Senator Powell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 383** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Springer.

SENATE BILL 768 ON SECOND READING

On motion of Senator Huffman and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 768** at this time on its second reading:

SB 768, Relating to increasing the criminal penalties for manufacture or delivery of fentanyl and related substances; creating a criminal offense.

The bill was read second time.

Senator Huffman offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 768** (senate committee report) as follows:

(1) On page 4, lines 47-48, strike felony of the third degree and substitute state jail felony.

(2) On page 4, line 51, strike first and substitute second.

The amendment to **SB 768** 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.

Senator Huffman offered the following amendment to the bill:

Floor Amendment No. 2

Amend **SB 768** (senate committee printing) by adding the following: SECTION 24. The Texas Criminal Justice Department is required to implement this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the department may, but is not required to, implement this Act using other appropriations available for the purpose.

The amendment to **SB 768** 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.

SB 768 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:

Nays: Eckhardt.

SENATE BILL 768 ON THIRD READING

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 768** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Eckhardt.

CO-AUTHORS OF SENATE BILL 3

On motion of Senator Schwertner, Senators Bettencourt, Kolkhorst, and Seliger will be shown as Co-authors of **SB 3**.

CO-AUTHOR OF SENATE BILL 6

On motion of Senator Hancock, Senator Buckingham will be shown as Co-author of **SB 6**.

CO-AUTHOR OF SENATE BILL 9

On motion of Senator Paxton, Senator Taylor will be shown as Co-author of **SB 9**.

CO-AUTHOR OF SENATE BILL 14

On motion of Senator Creighton, Senator Nichols will be shown as Co-author of **SB 14**.

CO-AUTHOR OF SENATE BILL 15

On motion of Senator Nichols, Senator Hancock will be shown as Co-author of **SB 15**.

CO-AUTHORS OF SENATE BILL 23

On motion of Senator Huffman, Senators Creighton and Springer will be shown as Co-authors of **SB 23**.

CO-AUTHORS OF SENATE BILL 64

On motion of Senator Nelson, Senators Creighton, Hinojosa, Huffman, Menéndez, and Taylor will be shown as Co-authors of **SB 64**.

CO-AUTHOR OF SENATE BILL 118

On motion of Senator Johnson, Senator Whitmire will be shown as Co-author of **SB 118**.

CO-AUTHOR OF SENATE BILL 130

On motion of Senator Johnson, Senator Miles will be shown as Co-author of **SB 130**.

CO-AUTHOR OF SENATE BILL 163

On motion of Senator Blanco, Senator Miles will be shown as Co-author of **SB 163**.

CO-AUTHOR OF SENATE BILL 221

On motion of Senator Zaffirini, Senator Whitmire will be shown as Co-author of **SB 221**.

CO-AUTHOR OF SENATE BILL 383

On motion of Senator Powell, Senator Blanco will be shown as Co-author of **SB 383**.

CO-AUTHORS OF SENATE BILL 394

On motion of Senator Lucio, Senators Birdwell, Hall, and Taylor will be shown as Co-authors of **SB 394**.

CO-AUTHORS OF SENATE BILL 474

On motion of Senator Lucio, Senators Alvarado and Whitmire will be shown as Co-authors of **SB 474**.

CO-AUTHOR OF SENATE BILL 528

On motion of Senator Hughes, Senator Creighton will be shown as Co-author of **SB 528**.

CO-AUTHORS OF SENATE BILL 601

On motion of Senator Perry, Senators Creighton and Springer will be shown as Co-authors of **SB 601**.

CO-AUTHORS OF SENATE BILL 650

On motion of Senator Campbell, Senators Kolkhorst and Springer will be shown as Co-authors of **SB 650**.

CO-AUTHORS OF SENATE BILL 768

On motion of Senator Huffman, Senators Hinojosa, Nelson, and Nichols will be shown as Co-authors of **SB 768**.

CO-AUTHOR OF SENATE BILL 873

On motion of Senator Hancock, Senator Bettencourt will be shown as Co-author of **SB 873**.

CO-AUTHOR OF SENATE BILL 891

On motion of Senator Eckhardt, Senator Gutierrez will be shown as Co-author of **SB 891**.

CO-AUTHOR OF SENATE BILL 938

On motion of Senator Campbell, Senator Eckhardt will be shown as Co-author of **SB 938**.

CO-AUTHOR OF SENATE BILL 941

On motion of Senator Buckingham, Senator West will be shown as Co-author of **SB 941**.

CO-AUTHOR OF SENATE BILL 945

On motion of Senator Eckhardt, Senator Nelson will be shown as Co-author of **SB 945**.

CO-AUTHOR OF SENATE BILL 952

On motion of Senator Hinojosa, Senator Alvarado will be shown as Co-author of **SB 952**.

CO-AUTHORS OF SENATE BILL 1065

On motion of Senator Alvarado, Senators Campbell, Eckhardt, Paxton, Powell, and Zaffirini will be shown as Co-authors of **SB 1065**.

CO-AUTHOR OF SENATE BILL 1094

On motion of Senator Creighton, Senator Zaffirini will be shown as Co-author of **SB 1094**.

CO-AUTHORS OF SENATE BILL 1102

On motion of Senator Creighton, Senators Blanco, West, and Zaffirini will be shown as Co-authors of **SB 1102**.

CO-AUTHORS OF SENATE BILL 1173

On motion of Senator Hancock, Senators Kolkhorst and Taylor will be shown as Co-authors of **SB 1173**.

CO-AUTHOR OF SENATE BILL 1196

On motion of Senator Whitmire, Senator Hughes will be shown as Co-author of **SB 1196**.

CO-AUTHORS OF SENATE BILL 1647

On motion of Senator Perry, Senators Bettencourt, Kolkhorst, and Taylor will be shown as Co-authors of **SB 1647**.

CO-AUTHOR OF SENATE BILL 2092

On motion of Senator Hughes, Senator Whitmire will be shown as Co-author of **SB 2092**.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolution

SR 201 by Lucio, In memory of the life of Marcus Bernard Somerstein.

Congratulatory Resolutions

SR 202 by Lucio, Recognizing Melissa T. De La Garza on the occasion of her retirement.

SR 203 by Creighton, Recognizing Craig Campobella for his accomplishments as a sculptor.

SR 207 by Lucio, Recognizing Jose Maria Gonzalez Jr. for 46 years of service to King Ranch, Incorporated.

Official Designation Resolution

SR 204 by Creighton, Recognizing March of 2021 as Theatre In Our Schools Month.

SR 208 by Lucio, Recognizing March 31, 2021, as Cesar Chavez Day.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 5:30 p.m. adjourned, in memory of Bertha Sadler Means, until 1:00 p.m. tomorrow.

APPENDIX

COMMITTEE REPORTS

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

March 29, 2021

EDUCATION — **SB 338, SB 204**

LOCAL GOVERNMENT — **CSSB 581**

HIGHER EDUCATION — **SB 447**

STATE AFFAIRS — **CSSB 7**

HIGHER EDUCATION — **CSSB 884, CSSB 788, CSSB 702**

TRANSPORTATION — **CSSB 632, CSSB 5**

HEALTH AND HUMAN SERVICES — **CSSB 73, CSSB 809, CSSB 930, CSSB 1137**

EDUCATION — **CSSB 442, CSSB 179**

WATER, AGRICULTURE AND RURAL AFFAIRS — **SB 669**

STATE AFFAIRS — **SB 4, SB 1234, SB 1116, SB 1113, SB 331**

BILLS ENGROSSED

March 29, 2021

SB 3, SB 64, SB 383, SB 768

RESOLUTIONS ENROLLED

March 29, 2021

SR 196, SR 197, SR 199, SR 200, SR 201, SR 202, SR 203, SR 204, SR 207, SR 208

In Memory
of
Bertha Sadler Means
Senate Resolution 196

WHEREAS, The Senate of the State of Texas honors and commemorates the life of Bertha Sadler Means, who died March 16, 2021, at the age of 100; and

WHEREAS, Bertha Sadler Means was a leading Austin citizen and a well-known civil rights advocate, educator, and businesswoman whose commitment to social justice had a significant impact on the Austin community; and

WHEREAS, Bertha Sadler was born on May 1, 1920, in Valley Mills, a freedom colony founded by her grandfather, the Reverend James Sadler, a former slave; she earned a degree from A. J. Moore High School in Waco before attending Huston-Tillotson University, where she met her husband, the late James H. Means Sr.; they married in 1941, and she later earned a master's degree in education from The University of Texas at Austin; and

WHEREAS, Bertha and James raised five children together and were blessed with multiple grandchildren and great-grandchildren; they operated a successful family business, Harlem Cab, which later became Austin Cab Company, and they were part of a group of people who founded Saint James Episcopal Church in East Austin; and

WHEREAS, Bertha Means served for many years as a teacher in the Austin Independent School District, where she was highly regarded and was among the first African American educators to teach in the city's white-majority schools; in recognition of her achievements, the district named the Bertha Sadler Means Young Women's Leadership Academy in her honor; she also served as a professor at Prairie View A&M University and The University of Texas at Austin, and she hosted workshops at Huston-Tillotson University; and

WHEREAS, Having endured the indignities of the Jim Crow era while growing up, she was determined that her children grow up in a better environment; she organized protests against racist policies and supported her children as they broke barriers faced by African Americans; in 2008, she took great pride in serving as a delegate to the Democratic National Convention that nominated Barack Obama for president; and

WHEREAS, She was active in a wide range of community and civil rights organizations, including the Austin Human Relations Commission, the Austin Parks Commission, the National Association for the Advancement of Colored People, the Urban League, and Alpha Kappa Alpha Sorority; she

was a cofounder of the Austin Chapter of Jack and Jill of America, and she was instrumental in bringing the Ebony Fashion Fair to Austin for the first time; and

WHEREAS, A woman of courage, tenacity, and generosity, Bertha gave unselfishly to others, and her vibrant spirit and her enthusiasm for living each day to the fullest were a source of strength and inspiration to all who were privileged to share in her life; and

WHEREAS, She was a devoted wife, mother, and grandmother, and she leaves behind memories that will be cherished forever by her family and the countless citizens whose lives she touched; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 87th Legislature, hereby extend sincere condolences to the bereaved family of Bertha Sadler Means; and, be it further

RESOLVED, That a copy of this Resolution be prepared for her family as an expression of deepest sympathy from the Texas Senate and that when the Senate adjourns this day, it do so in memory of Bertha Means.

ECKHARDT