EIGHTY-FIFTH DAY

MONDAY, MAY 26, 1997

PROCEEDINGS

The Senate met at 9:30 a.m. pursuant to adjournment and was called to order by Senator Harris.

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

The Presiding Officer announced that a quorum of the Senate was present.

The Reverend Larry Altman, Pastor, Memorial United Methodist Church, Austin, offered the invocation as follows:

> God of remembrance, ruler of nations, today we thank You for men and women in our nation's past who fought bravely for freedom and laid down their lives in the service of their country. May no forgetfulness of ours make them to have perished as though they had never been. They knew that freedom is indivisible and that freedom for some demands freedom for all. Today, we also remember and give thanks for those men and women who fought bravely and without bloodshed for many kinds of freedom. We thank You for those who fought against slavery and injustice in our nation's past and for those who fought in the courts and legislatures of our land for freedom for all. We give thanks, O God, for those who fought the good fight to ensure basic education for every child and for those who saw children not as computers to be programmed but as young persons to be helped to grow. We thank You, O God, for those who were Members of this body, the Senate of the State of Texas, who gave themselves in public service. Today, we give You thanks for all lives well lived. Thank You for the inspiration they gave us. Thank You for teaching us about the world through their eyes. Thank You for speaking Your wisdom through their words. To this day their influence lives on in the way we speak, in the traditions we continue, in the way we view the world, in the way we relate to other people. But they were not perfect people. The legacy of even those we honor most dearly has not been left unmarred by the sin which infects us all. Where they made errors that cost us health or happiness, we ask Your help in forgiving them. Grant us the grace and maturity to understand that they did the best they knew, by the lights they had. Help us remember

them gently, as one day we ourselves will want gently to be remembered and we pray that we may take our places beside their present heirs in the present struggles for freedom and justice, mercy and peace. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of Saturday, May 24, 1997, was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Monday, May 26, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 297, Instructing the enrolling clerk of the house of representatives to make corrections in H.B. 1133.

HCR 299, Instructing the enrolling clerk of the house of representatives to make a correction to H.B. 1144.

HCR 300, Recalling H.B. No. 1200 from the governor.

SB 31, Relating to the powers and duties of agencies in the executive, legislative, and judicial branches of state government, including authorizations for and restrictions on the use of state funds.
(Committee Substitute/Amended)

SB 34, Relating to the parent-child relationship, suits affecting the parent-child relationship, and the protection of children.
(Committee Substitute/Amended)

SB 55, Relating to the regulation of the sale, distribution, and use of tobacco products; providing penalties.
(Committee Substitute/Amended)

SB 78, Relating to punishment for the offense of arson.

SB 102, Relating to the creation and use of an emergency medical services and trauma care system fund.
(Amended)

SB 148, Relating to the recommendation, development, and adoption of certain curricula by certain institutions of higher education and the Texas Higher Education Coordinating Board.
(Amended)

SB 160, Relating to prosecution of the offense of tampering with or fabricating physical evidence; creating an offense.
(Amended)

SB 162, Relating to prevention and treatment of diabetes.
(Amended)

SB 188, Relating to creating an offense for possession of certain information by an inmate of the institutional division or the state jail division of the Texas Department of Criminal Justice.

SB 211, Relating to the establishment and operation of the Texas child care fund.
(Committee Substitute/Amended)

SB 220, Relating to lawsuits arising outside or brought by persons who reside outside of Texas.
(Committee Substitute/Amended)

SB 265, Relating to the linked deposit program.

SB 318, Relating to the liability of and bonds required of guardians of the person of certain wards.

SB 332, Relating to the decisions of certain administrative law judges in occupational licensing contested cases and to judicial review of those decisions.
(Amended)

SB 349, Relating to guardians ad litem, attorneys ad litem, and child volunteer advocates in certain suits affecting the parent-child relationship.
(Amended)

SB 382, Relating to the regulation of health maintenance organizations.
(Amended)

SB 383, Relating to the regulation of preferred provider benefit plans.
(Committee Substitute/Amended)

SB 384, Relating to utilization review under health benefit plans and health insurance policies.
(Committee Substitute/Amended)

SB 434, Relating to the provision and coordination of certain mental health services provided in certain facilities.
(Committee Substitute)

SB 443, Relating to a right to petition a court for an order to seal or destroy records related to certain admissions to a mental health facility; providing a criminal penalty.
(Committee Substitute/Amended)

SB 505, Relating to the characterization of a transaction as a sale of accounts or chattel paper.

SB 520, Relating to eligibility to serve as a public member of the State Board for Educator Certification.
(Amended)

SB 534, Relating to the collection of claims for recovery of money under subrogation and third-party reimbursement rights arising from medical payments by health and human services agencies.
(Committee Substitute/Amended)

SB 572, Relating to the transfer of the University of Central Texas to The Texas A&M University System.
(Amended)

SB 582, Relating to the application of the oil production tax to new or expanded enhanced recovery projects.

SB 627, Relating to certification of bail bondsmen by the Texas Department of Licensing and Regulation; providing a penalty.
(Amended)

SB 645, Relating to state fiscal matters, including holidays, employee compensation and deductions, reports, consultants, and the comptroller's powers.
(Amended)

SB 665, Relating to the sale and delivery of certain motor fuel; providing criminal, administrative, and civil penalties.
(Amended)

SB 700, Relating to unclaimed property; providing penalties.
(Amended)

SB 701, Relating to certain responsibilities of the comptroller relating to investment and management of funds.
(Amended)

SB 780, Relating to the use of personal leave by school district employees.

SB 841, Relating to ad valorem taxation.
(Committee Substitute/Amended)

SB 987, Relating to alternative uses for money in the compensation to victims of crime fund or in the compensation to victims of crime auxiliary fund.
(Committee Substitute/Amended)

SB 1102, Relating to systems and programs administered by the Employees Retirement System of Texas.
(Committee Substitute/Amended)

SB 1241, Relating to the creation of the Faculty Enhancement Fund for Generalist Physicians.

SB 1247, Relating to regulation of a home and community support services agency; providing an administrative penalty.
(Amended)

SB 1419, Relating to restrictions on the admission of certain persons promised or granted an athletic scholarship or similar financial assistance at a general academic teaching institution.
(Amended)

SB 1447, Relating to the conversion of mutual insurance companies to stock insurance companies.

SB 1498, Relating to rate filings for certain lines of insurance.

SB 1810, Relating to the creation, operation, and funding of the Texas Youthworks Program.
(Amended)

SB 1838, Relating to fees charged for records filed with and maintained by the secretary of state.

SB 1856, Relating to the inspection and maintenance of certain motor vehicles for air pollution control; providing criminal penalties.
(Amended)

SB 1929, Relating to the disposal of certain solid waste and permits for disposal of that waste.
(Committee Substitute/Amended)

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

HB 399 (Viva-voce vote)
HB 587 (Viva-voce vote)
HB 768 (Viva-voce vote)
HB 844 (Viva-voce vote)
HB 1239 (Viva-voce vote)
HB 1294 (Viva-voce vote)
HB 1684 (Viva-voce vote)
HB 2025 (Viva-voce vote)
HB 2049 (Viva-voce vote)
HB 2101 (Viva-voce vote)
HB 2271 (Viva-voce vote)
HB 2385 (Viva-voce vote)
HB 2386 (Viva-voce vote)
HB 2472 (Viva-voce vote)
HB 2615 (Viva-voce vote)
HB 2617 (Viva-voce vote)
HB 2940 (Viva-voce vote)
HB 3306 (Viva-voce vote)
HB 3465 (Viva-voce vote)

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

HB 298
House Conferees: Madden - Chair/Danburg/Denny/Gallego/Jones, Jesse

HB 1150
House Conferees: Greenberg - Chair/Flores/Goodman/Reyna, Arthur/Staples

HB 1596
House Conferees: Hochberg - Chair/Chavez/Davila/McReynolds/Naishtat

HB 1662
House Conferees: Counts - Chair/Bonnen/Eiland/Lewis, Glenn/Smithee

HB 2272
House Conferees: Thompson - Chair/Dunnam/Dutton/Haggerty/Heflin

HB 2981
House Conferees: Junell - Chair/Hawley/Merritt/Moffat/Torres

HB 3019
House Conferees: Allen - Chair/Chisum/Cook/Horn/Howard

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

SB 381
House Conferees: Goodman - Chair/Farrar/Hightower/Keel, Terry/Place

SB 823
House Conferees: Naishtat - Chair/Bailey/Clark/Hill/Tillery

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

CAPITOL PHYSICIAN

Senator Barrientos was recognized and presented Dr. Patricia Hanley of Austin as the "Doctor for the Day."

The Senate welcomed Dr. Hanley and thanked her for her participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

SENATE BILL 1877 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 1877** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 1877**, on page 1, line 16, between "shall" and "establish", by inserting ", with any money specifically appropriated to the department for that purpose,".

The amendment was read.

On motion of Senator Wentworth, the Senate concurred in the House amendment to **SB 1877** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 2517

Senator Shapleigh called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2517** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2517** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapleigh, Chair; Luna, Bivins, West, and Sibley.

(President in Chair)

SENATE BILL 1514 WITH HOUSE AMENDMENT

Senator Truan called **SB 1514** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1514** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to coordinating colonia initiatives.

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

SECTION 1. Subchapter B, Chapter 402, Government Code, is amended by adding Section 402.029 to read as follows:

Sec. 402.029. COORDINATION OF COLONIA INITIATIVES. (a) In this section:

(1) "Agency" includes a state office, institution, or other state governmental entity.

(2) "Colonia" means a geographic area that:

(A) has a majority of the area's population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index; and

(B) is an economically distressed area as defined by Section 17.921, Water Code.

(b) The following agencies shall designate an officer or employee of the agency to serve as the agency's coordinator of colonia initiatives:

(1) the office of the attorney general;

(2) the Texas Education Agency;

(3) the Texas Department of Health;

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

(5) the Texas Natural Resource Conservation Commission;
(6) the Texas Water Development Board;
(7) The University of Texas--Pan American; and
(8) the Texas Workforce Commission.

(c) Each agency's coordinator of colonia initiatives must be the equivalent of a deputy executive director at the agency or have direct or indirect authority over the equivalent of a deputy executive director at the agency.

(d) Each agency's coordinator of colonia initiatives shall coordinate colonia initiatives within the agency and with the other agencies listed in Subsection (b).

(e) The attorney general's coordinator of colonia initiatives shall preside over the group of coordinators for purposes of interagency coordination.

(f) The group of coordinators shall meet at least semiannually at the call of the attorney general's coordinator or according to a schedule established by the group.

(g) Representatives of each agency listed in Subsection (b) who are assigned to duty at an office of the agency near the international border of this state and whose assigned duties include responsibility for some aspect of the agency's work with colonias or with residents of colonias shall meet with each other according to a schedule established by the representatives to coordinate colonia initiatives at the local level. Representatives from the agencies' offices that serve the same county or counties may meet together, or representatives from all of the agencies' offices near the international border may meet together.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Truan moved to concur in the House amendment to **SB 1514**.

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

SENATE RESOLUTION 591

Senator Barrientos offered the following resolution:

WHEREAS, The great State of Texas has a rich and proud history which encompasses a variety of cultural and ethnic heritages; and

WHEREAS, The many individuals who made this history and brought about the introduction and eventual assimilation of these various cultures into our mutual heritage were laid to rest in now historic cemeteries in communities, towns, cities, on homesteads, and in churchyards in the vast geographical area that is Texas; and

WHEREAS, Thousands of these historic Texas cemeteries, particularly those in rural areas, are located on private property whose owners have no relationship to those interred there; and

WHEREAS, These historic cemeteries are often in an imperiled condition; and

WHEREAS, Interested citizens and descendants of those buried in these historic cemeteries have the right by Texas law to visit these sites and maintain them, but are often prevented from visiting due to inaccessibility and/or inconvenience, as well as a general lack of public awareness concerning the issue of cemetery visitation; and

WHEREAS, SAVE TEXAS CEMETERIES, INCORPORATED, a nonprofit corporation chartered by the State of Texas, has undertaken as one of its stated goals to create a greater public awareness of both the historical and cultural importance of preserving historic Texas cemeteries; and

WHEREAS, An essential and inherent element of this stated goal is to provide some measure of guaranteed access to all Texas cemeteries; and

WHEREAS, A twice yearly Date of Visitation is proposed, in an effort to accomplish this goal; and

WHEREAS, These dates should be as follows: the first Sunday in April and the first Sunday in October, to be observed annually; and

WHEREAS, The Texas Senate is proud to sponsor this resolution designating the above dates for the purposes of cemetery visitation; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 75th Legislature, hereby designate the first Sunday in April and the first Sunday in October as Texas Cemetery Visitation Days, known hereafter as Texas Cemeteries: A Bridge to the Past; and, be it further

RESOLVED, That a copy of this Resolution be prepared as an expression of support for this most important cause, in the hope of fostering greater awareness of the rich cultural and historical legacy of Texas, especially as it exists in its thousands of historic cemeteries.

The resolution was again read.

The resolution was previously adopted on Monday, April 28, 1997. The names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate Karen Thompson and Richard Scroggins of Save Texas Cemeteries, Incorporated.

The Senate welcomed its guests.

(Senator Truan in Chair)

CONFERENCE COMMITTEE ON HOUSE BILL 3263

Senator Gallegos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3263** and moved that the request be granted.

The motion prevailed.

(President in Chair)

The President asked if there were any motions to instruct the conference committee on **HB 3263** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Gallegos, Chair; Ellis, Madla, Whitmire, and Cain.

SENATE BILL 54 WITH HOUSE AMENDMENTS

Senator Shapiro called **SB 54** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 54** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to access to certain obstetrical or gynecological health care under a health benefit plan; providing administrative penalties.

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

SECTION 1. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.53D to read as follows:

Art. 21.53D. ACCESS TO CERTAIN OBSTETRICAL OR GYNECOLOGICAL CARE

Sec. 1. DEFINITIONS. In this article:

(1) "Enrollee" means an individual enrolled in a health benefit plan.

(2) "Health benefit plan" means a plan described in Section 2 of this article.

(3) "Physician" means a person licensed as a physician by the Texas State Board of Medical Examiners.

Sec. 2. SCOPE OF ARTICLE. (a) This article applies to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 20 of this code;

(iii) a fraternal benefit society operating under Chapter 10 of this code;

(iv) a stipulated premium insurance company operating under Chapter 22 of this code; or

(v) a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code); and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002); or

(ii) another analogous benefit arrangement;

(2) is offered by an approved nonprofit health corporation that is certified under Section 5.01(a), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), and that holds a certificate of authority issued by the commissioner under Article 21.52F of this code; or

(3) is offered by any other entity not licensed under this code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including an entity that contracts for health care services on a capitation basis.

(b) This article does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury; or

(D) as a supplement to liability insurance;

(2) a plan written under Chapter 26 of this code;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) workers' compensation insurance coverage;

(5) medical payment insurance issued as a part of a motor vehicle insurance policy;

(6) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Subsection (a) of this section;

(7) any health benefit plan that does not provide pregnancy-related benefits; or

(8) any health benefit plan that does not provide well-woman care benefits.

(c) This article applies to each health benefit plan that requires an enrollee to obtain certain specialty health care services through a referral made by a primary care physician or other gatekeeper.

Sec. 3. ACCESS OF FEMALE ENROLLEE TO HEALTH CARE. (a) Each health benefit plan subject to this article shall permit a woman who is entitled to coverage under the plan to select, in addition to a primary care physician, an obstetrician or gynecologist to provide health care services within the scope of the professional specialty practice of a properly credentialed obstetrician or gynecologist. This section does not preclude

a woman from selecting a family physician, internal medicine physician, or other qualified physician to provide that care.

(b) The plan shall include in the classification of persons authorized to provide medical services under the plan a number of properly credentialed obstetricians and gynecologists sufficient to ensure access to the services that fall within the scope of that credential.

(c) This section does not affect the authority of a health benefit plan to establish selection criteria regarding other physicians who provide services through the plan.

Sec. 4. DIRECT ACCESS TO SERVICES OF OBSTETRICIAN OR GYNECOLOGIST. (a) In addition to other benefits authorized by the plan, each health benefit plan shall permit a woman who designates an obstetrician or gynecologist as provided under Section 3 of this article direct access to the health care services of the designated obstetrician or gynecologist without a referral by the woman's primary care physician or prior authorization or precertification from a health benefit plan.

(b) The access to health care services required under this article includes, but is not limited to:

(1) one well-woman examination per year;

(2) care related to pregnancy;

(3) care for all active gynecological conditions; and

(4) diagnosis, treatment, and referral for any disease or condition within the scope of the professional practice of a properly credentialed obstetrician or gynecologist.

(c) A health benefit plan may not impose a copayment or deductible for direct access to the health care services of an obstetrician or gynecologist under this section unless such an additional cost is imposed for access to other health care services provided under the plan.

(d) This section does not affect the authority of a health benefit plan to require the designated obstetrician or gynecologist to forward information concerning the medical care of the patient to the primary care physician. Failure to provide this information may not result in any penalty, financial or otherwise, being imposed upon the obstetrician or gynecologist or the patient by the health benefit plan if the obstetrician or gynecologist has made a reasonable and good-faith effort to provide the information to the primary care physician.

(e) In implementing the access required under Section 3 of this article, a health benefit plan may limit a woman enrolled in the plan to self-referral to one participating obstetrician and gynecologist for both gynecological care and obstetrical care. This subsection does not affect the right of the woman to select the physician who provides that care.

(f) A health benefit plan shall not sanction or terminate primary care physicians as a result of female enrollees' access to participating obstetricians and gynecologists under this section.

Sec. 5. NOTICE. Each health benefit plan shall provide to persons covered by the plan a timely written notice in clear and accurate language of the choices of types of physician providers for the direct access to health care services required by this article.

Sec. 6. RULES. The commissioner shall adopt rules as necessary to implement this article.

Sec. 7. ADMINISTRATIVE PENALTY. An insurance company, health maintenance organization, or other entity that operates a health benefit plan in violation of this article is subject to an administrative penalty as provided by Article 1.10E of this code.

SECTION 2. Article 21.53D, Insurance Code, as added by Section 1 of this Act, applies only to an insurance policy, contract, or evidence of coverage delivered, issued for delivery, or renewed on or after January 1, 1998. A policy, contract, or evidence of coverage delivered, issued for delivery, or renewed before January 1, 1998, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1997.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 54** on page 2, line 25, by inserting an "(a)" between the "(3)" and "is".

Insert on page 3, between lines 2 and 3, a new "(b)" which would contain text which reads "Notwithstanding Section 172.014, Local Government Code, or any other law, this article applies to health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.", renumbering the subsequent lines and realphabetizing the subsequent sections accordingly.

The amendments were read.

On motion of Senator Shapiro, the Senate concurred in the House amendments to **SB 54** by a viva voce vote.

HOUSE CONCURRENT RESOLUTION 300

The President laid before the Senate the following resolution:

HCR 300, Requesting the governor to return **HB 1200** to the House of Representatives for further consideration.

BROWN

The resolution was read.

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

SENATE BILL 118 WITH HOUSE AMENDMENT

Senator Zaffirini called **SB 118** from the President's table for consideration of the House amendment to the bill.

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

Amendment No. 1

Amend **SB 118** as follows:

(1) On page 2, line 23 substitute the following language for Sec. 242.802(c): (c) Not later than the third day after the date a child with a developmental disability is initially placed in an institution, the institution shall notify:

(1) the community resource coordination group for the community in which the institution is located, if any;

(2) if the child is at least three years of age, the school district for the area in which the institution is located; and

(3) if the child is less than three years of age, the local early intervention program for the area in which the institution is located.

(2) On page 3, line 5 delete Sec. 242.803.

The amendment was read.

On motion of Senator Zaffirini, the Senate concurred in the House amendment to **SB 118** by a viva voce vote.

SENATE BILL 30 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 30** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 30** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to fraud and improper payments under the state Medicaid program and other welfare programs; to the creation of private cause of action for false claims for certain government payments; and to the creation of a criminal offense; providing penalties.

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

ARTICLE 1. GENERAL PROVISIONS
RELATING TO WELFARE AGENCIES

SECTION 1.01. COLLECTION OF FOOD STAMP AND FINANCIAL ASSISTANCE PAYMENTS MADE IN ERROR. (a) Chapter 22, Human Resources Code, is amended by adding Sections 22.0251-22.0254 to read as follows:

Sec. 22.0251. TIMELY DETERMINATION OF OVERPAYMENTS. (a) Subject to the approval of the commissioner of health and human services, the department shall:

(1) determine and record the time taken by the department to establish an overpayment claim in the food stamp program or the program of financial assistance under Chapter 31;

(2) set progressive goals for reducing the time described by Subdivision (1); and

(3) adopt a schedule to meet the goals set under Subdivision (2).

(b) The department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a semiannual report detailing the department's progress in reaching its goals under Subsection (a)(2). The report may be consolidated with any other report relating to the same subject that the department is required to submit under other law.

Sec. 22.0252. TELEPHONE COLLECTION PROGRAM. (a) The department shall use the telephone to attempt to collect reimbursement from a person who receives a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31.

(b) The department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a semiannual report on the operation and success of the telephone collection program. The report may be consolidated with any other report relating to the same subject that the department is required to submit under other law.

Sec. 22.0253. PARTICIPATION IN FEDERAL TAX REFUND OFFSET PROGRAM. The department shall participate in the Federal Tax Refund Offset Program (FTROP) to attempt to recover benefits granted by the department in error under the food stamp program. The department shall submit as many claims that meet program criteria as possible for offset against income tax returns.

Sec. 22.0254. PROSECUTION OF FRAUDULENT CLAIMS. (a) The department shall keep a record of the dispositions of referrals made by the department to a district attorney concerning fraudulent claims for benefits under the food stamp program or the program of financial assistance under Chapter 31.

(b) The department may:

(1) request status information biweekly from the appropriate district attorney on each major fraudulent claim referred by the department;

(2) request a written explanation from the appropriate district attorney for each case referred in which the district attorney declines to prosecute; and

(3) encourage the creation of a special welfare fraud unit in each district attorney's office that serves a municipality with a population of more than 250,000, to be financed by amounts provided by the department.

(c) The department by rule may define what constitutes a major fraudulent claim under Subsection (b)(1).

(b) Chapter 22, Human Resources Code, is amended by adding Section 22.0291 to read as follows:

Sec. 22.0291. INFORMATION MATCHING SYSTEM RELATING TO IMMIGRANTS AND FOREIGN VISITORS. (a) The department shall, through the use of a computerized matching system, compare department information relating to applicants for and recipients of food stamps and financial assistance under Chapter 31 with information obtained from the Department of State of the United States and the United States Department of

Justice relating to immigrants and visitors to the United States for the purpose of preventing individuals from unlawfully receiving public assistance benefits administered by the department.

(b) The department may enter into an agreement with the Department of State of the United States and the United States Department of Justice as necessary to implement this section.

(c) The department and federal agencies sharing information under this section shall protect the confidentiality of the shared information in compliance with all existing state and federal privacy guidelines.

(d) The department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a semiannual report on the operation and success of the information matching system required by this section. The report may be consolidated with any other report relating to the same subject matter the department is required to submit under other law.

(c) Not later than January 1, 1998, the Texas Department of Human Services shall begin operation of the telephone collection program required by Section 22.0252, Human Resources Code, as added by this section.

(d) Not later than January 1, 1998, the Texas Department of Human Services shall submit the initial reports required by Sections 22.0251(b) and 22.0291(d), Human Resources Code, as added by this section.

(e) Not later than September 1, 1998, the Texas Department of Human Services shall submit the initial report required by Section 22.0252(b), Human Resources Code, as added by this section.

SECTION 1.02. USE OF EARNED FEDERAL FUNDS. Chapter 22, Human Resources Code, is amended by adding Section 22.032 to read as follows:

Sec. 22.032. USE OF EARNED FEDERAL FUNDS. Subject to the General Appropriations Act, the department may use earned federal funds derived from recovery of amounts paid or benefits granted by the department as a result of fraud to pay the costs of the department's activities relating to preventing fraud.

SECTION 1.03. PAYMENT OF MEDICAID CLAIMS. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Sections 32.043 and 32.044 to read as follows:

Sec. 32.043. DUAL MEDICAID AND MEDICARE COVERAGE. (a) At least annually the department shall identify each individual receiving medical assistance under the medical assistance program who is eligible to receive similar assistance under the Medicare program.

(b) The department shall analyze claims submitted for payment for a service provided under the medical assistance program to an individual identified under Subsection (a) to ensure that payment is sought first under the Medicare program to the extent allowed by law.

Sec. 32.044. MISDIRECTED BILLING. To the extent authorized by federal law, the department shall develop a procedure for the state to:

(1) match claims for payment for medical assistance provided under the medical assistance program against data available from other entities, including the Veterans Administration and nursing facilities, to determine alternative responsibility for payment of the claims; and

(2) ensure that the appropriate entity bears the cost of a claim.

(b) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 1.04. ENHANCED MEDICAID REIMBURSEMENT. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.045 to read as follows:

Sec. 32.045. ENHANCED REIMBURSEMENT. The department shall develop a procedure for:

(1) identifying each service provided under the medical assistance program for which the state is eligible to receive enhanced reimbursement of costs from the federal government; and

(2) ensuring that the state seeks the highest level of federal reimbursement available for each service provided.

(b) The Texas Department of Health shall identify services provided under the state Medicaid program for the period beginning December 31, 1989, and ending immediately before the effective date of this section for which the state was eligible but did not receive enhanced reimbursement of costs at a 90 percent rate from the federal government. For that period, the department shall seek from the federal government all reimbursements to which the state is entitled.

(c) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 1.05. MINIMUM COLLECTION GOAL. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.047 to read as follows:

Sec. 531.047. MINIMUM COLLECTION GOAL. (a) Before August 31 of each year, the commission by rule shall set a minimum goal for the Texas Department of Human Services that specifies the percentage of the amount of benefits granted by the department in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code, that the department should recover. The commission shall set the percentage based on comparable recovery rates reported by other states.

(b) If the department fails to meet the goal set under Subsection (a) for the fiscal year, the commissioner shall notify the comptroller, and the comptroller shall reduce the department's general revenue appropriation by an amount equal to the difference between the amount the department would have collected had the department met the goal and the amount the department actually collected.

(c) The commission, the governor, and the Legislative Budget Board shall monitor the department's performance in meeting the goal set under this section. The department shall cooperate by providing to the commission, the governor, and the Legislative Budget Board, on request, information concerning the department's collection efforts.

(b) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 1.06. COMMISSION POWERS AND DUTIES RELATING TO WELFARE FRAUD. (a) Chapter 531, Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. MEDICAID AND OTHER WELFARE FRAUD, ABUSE, OR OVERCHARGES

Sec. 531.101. AWARD FOR REPORTING MEDICAID FRAUD, ABUSE, OR OVERCHARGES. (a) The commission may grant an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program or reports overcharges in the program if the commission determines that the disclosure results in the recovery of an overcharge or in the termination of the fraudulent activity or abuse of funds.

(b) The commission shall determine the amount of an award. The award must be equal to not less than 10 percent of the savings to this state that result from the individual's disclosure. In determining the amount of the award, the commission shall consider how important the disclosure is in ensuring the fiscal integrity of the program.

(c) An award under this section is subject to appropriation. The award must be paid from money appropriated to or otherwise available to the commission, and additional money may not be appropriated to the commission for the purpose of paying the award.

(d) Payment of an award under this section from federal funds is subject to the permissible use under federal law of funds for this purpose.

(e) A person who brings an action under Subchapter C, Chapter 36, Human Resources Code, is not eligible for an award under this section.

Sec. 531.102. INVESTIGATIONS AND ENFORCEMENT OFFICE. (a) The commission, through the commission's office of investigations and enforcement, is responsible for the investigation of fraud in the provision of health and human services and the enforcement of state law relating to the provision of those services.

(b) The commission shall set clear objectives, priorities, and performance standards for the office that emphasize:

(1) coordinating investigative efforts to aggressively recover money;

(2) allocating resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money; and

(3) maximizing opportunities for referral of cases to the office of the attorney general.

(c) The commission shall train office staff to enable the staff to pursue priority Medicaid and welfare fraud and abuse cases as necessary.

(d) The commission may require employees of health and human services agencies to provide assistance to the commission in connection with the commission's duties relating to the investigation of fraud in the provision of health and human services.

Sec. 531.103. INTERAGENCY COORDINATION. (a) The commission and the office of the attorney general shall enter into a memorandum of understanding to develop and implement joint written procedures for processing cases of suspected fraud, waste, or abuse under the state Medicaid program. The memorandum of understanding shall require:

(1) the commission and the office of the attorney general to set priorities and guidelines for referring cases to appropriate state agencies for investigation to enhance deterrence of fraud, waste, or abuse in the program

and maximize the imposition of penalties, the recovery of money, and the successful prosecution of cases;

(2) the commission to keep detailed records for cases processed by the commission or the office of the attorney general, including information on the total number of cases processed and, for each case:

(A) the agency and division to which the case is referred for investigation;

(B) the date on which the case is referred; and

(C) the nature of the suspected fraud, waste, or abuse;

(3) the commission to notify each appropriate division of the office of the attorney general of each case referred by the commission;

(4) the office of the attorney general to ensure that information relating to each case investigated by that office is available to each division of the office with responsibility for investigating suspected fraud, waste, or abuse;

(5) the office of the attorney general to notify the commission of each case the attorney general declines to prosecute or prosecutes unsuccessfully;

(6) representatives of the commission and of the office of the attorney general to meet not less than quarterly to share case information and determine the appropriate agency and division to investigate each case; and

(7) the commission and the office of the attorney general to submit information requested by the comptroller about each resolved case for the comptroller's use in improving fraud detection.

(b) An exchange of information under this section between the office of the attorney general and the commission or a health and human services agency does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

(c) The commission and the office of the attorney general shall jointly prepare and submit a semiannual report to the governor, lieutenant governor, and speaker of the house of representatives concerning the activities of those agencies in detecting and preventing fraud, waste, and abuse under the state Medicaid program. The report may be consolidated with any other report relating to the same subject matter the commission or office of the attorney general is required to submit under other law.

(d) The commission and the office of the attorney general may not assess or collect investigation and attorney's fees on behalf of any state agency unless the office of the attorney general or other state agency collects a penalty, restitution, or other reimbursement payment to the state.

(e) The commission shall refer a case of suspected fraud, waste, or abuse under the state Medicaid program to the appropriate district attorney, county attorney, city attorney, or private collection agency if the attorney general fails to act within 30 days of referral of the case to the office of the attorney general. A failure by the attorney general to act within 30 days constitutes approval by the attorney general under Section 2107.003.

(f) The district attorney, county attorney, city attorney, or private collection agency may collect and retain costs associated with the case and 20 percent of the amount of the penalty, restitution, or other reimbursement payment collected.

Sec. 531.104. ASSISTING INVESTIGATIONS BY ATTORNEY GENERAL. (a) The commission and the attorney general shall execute a memorandum of understanding under which the commission shall provide investigative support as required to the attorney general in connection with cases under Subchapter B, Chapter 36, Human Resources Code. Under the memorandum of understanding, the commission shall assist in performing preliminary investigations and ongoing investigations for actions prosecuted by the attorney general under Subchapter C, Chapter 36, Human Resources Code.

(b) The memorandum of understanding must provide that the commission is not required to provide investigative support in more than 100 open investigations in a fiscal year.

Sec. 531.105. FRAUD DETECTION TRAINING. (a) The commission shall develop and implement a program to provide annual training to contractors who process Medicaid claims and appropriate staff of the Texas Department of Health and the Texas Department of Human Services in identifying potential cases of fraud, waste, or abuse under the state Medicaid program. The training provided to the contractors and staff must include clear criteria that specify:

(1) the circumstances under which a person should refer a potential case to the commission; and

(2) the time by which a referral should be made.

(b) The Texas Department of Health and the Texas Department of Human Services, in cooperation with the commission, shall periodically set a goal of the number of potential cases of fraud, waste, or abuse under the state Medicaid program that each agency will attempt to identify and refer to the commission. The commission shall include information on the agencies' goals and the success of each agency in meeting the agency's goal in the report required by Section 531.103(c).

Sec. 531.106. LEARNING OR NEURAL NETWORK TECHNOLOGY. (a) The commission shall use learning or neural network technology to identify and deter fraud in the Medicaid program throughout this state.

(b) The commission shall contract with a private or public entity to develop and implement the technology. The commission may require the entity it contracts with to install and operate the technology at locations specified by the commission, including commission offices.

(c) The data used for neural network processing shall be maintained as an independent subset for security purposes.

(d) The commission shall require each health and human services agency that performs any aspect of the state Medicaid program to participate in the implementation and use of the technology.

(e) The commission shall maintain all information necessary to apply the technology to claims data covering a period of at least two years.

(f) The commission shall refer cases identified by the technology to the commission's office of investigations and enforcement or the office of the attorney general, as appropriate.

Sec. 531.107. MEDICAID AND PUBLIC ASSISTANCE FRAUD OVERSIGHT TASK FORCE. (a) The Medicaid and Public Assistance Fraud

Oversight Task Force advises and assists the commission and the commission's office of investigations and enforcement in improving the efficiency of fraud investigations and collections.

(b) The task force is composed of a representative of the:

(1) attorney general's office, appointed by the attorney general;

(2) comptroller's office, appointed by the comptroller;

(3) Department of Public Safety, appointed by the public safety director;

(4) state auditor's office, appointed by the state auditor;

(5) commission, appointed by the commissioner of health and human services;

(6) Texas Department of Human Services, appointed by the commissioner of human services; and

(7) Texas Department of Insurance, appointed by the commissioner of insurance.

(c) The comptroller or the comptroller's designee serves as the presiding officer of the task force. The task force may elect any other necessary officers.

(d) The task force shall meet at least once each fiscal quarter at the call of the presiding officer.

(e) The appointing agency is responsible for the expenses of a member's service on the task force. Members of the task force receive no additional compensation for serving on the task force.

(f) At least once each fiscal quarter, the commission's office of investigations and enforcement shall provide to the task force:

(1) information detailing:

(A) the number of fraud referrals made to the office and the origin of each referral;

(B) the time spent investigating each case;

(C) the number of cases investigated each month, by program and region;

(D) the dollar value of each fraud case that results in a criminal conviction; and

(E) the number of cases the office rejects and the reason for rejection, by region; and

(2) any additional information the task force requires.

Sec. 531.108. FRAUD PREVENTION. (a) The commission's office of investigations and enforcement shall compile and disseminate accurate information and statistics relating to:

(1) fraud prevention; and

(2) post-fraud referrals received and accepted or rejected from the commission's case management system or the case management system of a health and human services agency.

(b) The commission shall:

(1) aggressively publicize successful fraud prosecutions and fraud-prevention programs through all available means, including the use of statewide press releases issued in coordination with the Texas Department of Human Services; and

(2) ensure that a toll-free hotline for reporting suspected fraud in programs administered by the commission or a health and human services agency is maintained and promoted, either by the commission or by a health and human services agency.

(c) The commission shall develop a cost-effective method of identifying applicants for public assistance in counties bordering other states and in metropolitan areas selected by the commission who are already receiving benefits in other states. If economically feasible, the commission may develop a computerized matching system.

(d) The commission shall:

(1) verify automobile information that is used as criteria for eligibility; and

(2) establish a computerized matching system with the Texas Department of Criminal Justice to prevent an incarcerated individual from illegally receiving public assistance benefits administered by the commission.

(e) The commission shall submit to the governor and Legislative Budget Board a semiannual report on the results of computerized matching of commission information with information from neighboring states, if any, and information from the Texas Department of Criminal Justice. The report may be consolidated with any other report relating to the same subject matter the commission is required to submit under other law.

Sec. 531.109. DISPOSITION OF FUNDS. (a) The commission shall deposit the state's share of money collected under this subchapter in a special account in the state treasury.

(b) The commission may spend money in the account for the administration of this subchapter, subject to the General Appropriations Act.

(b) Section 22.028(c), Human Resources Code, is amended to read as follows:

(c) No later than the first day of each month, the department shall send the comptroller a report listing the accounts on which enforcement actions or other steps were taken by the department in response to the records received from the EBT operator under this section, and the action taken by the department. The comptroller shall promptly review the report and, as appropriate, may solicit the advice of the Medicaid and Public Assistance Fraud Oversight Task Force regarding the results of the department's enforcement actions.

(c) Section 531.104, Government Code, as added by this section, takes effect only if the transfer of employees of the Texas Department of Human Services and the Texas Department of Health to the Health and Human Services Commission, as proposed by Section 1.07 of this article, or similar legislation, is enacted by the 75th Legislature in regular session and becomes law.

(d) Not later than January 1, 1998, the Health and Human Services Commission shall award the contract for the learning or neural network technology required by Section 531.106, Government Code, as added by this section, and the contractor shall begin operations not later than that date. If the commission fails to award the contract or the contractor cannot begin

perations on or before January 1, 1998, the commissioner of health and uman services shall enter into an interagency agreement with the omptroller to enable the comptroller to perform the duties prescribed by ection 531.106. In addition to the interagency agreement, the commissioner f health and human services and the comptroller shall execute memorandum of understanding to ensure that the comptroller receives all ata and resources necessary to operate the learning or neural network echnology system.

(e) Not later than April 1, 1998, the Health and Human Services ommission shall submit the initial report required by Section 531.108(e), overnment Code, as added by this section.

(f) In addition to the substantive changes in law made by this section, his section, in adding Section 531.101, Government Code, conforms to a hange in the law made by Section 1, Chapter 444, Acts of the 74th egislature, Regular Session, 1995.

(g) Section 16G, Article 4413(502), Revised Statutes, as added by ection 1, Chapter 444, Acts of the 74th Legislature, Regular Session, 1995, s repealed.

(h) To the extent of any conflict, this Act prevails over another Act of he 75th Legislature, Regular Session, 1997, relating to nonsubstantive dditions to and corrections in enacted codes.

(i) Sections 21.0145 and 22.027, Human Resources Code, are repealed.

(j) Sections 531.102 and 531.106, Government Code, as added by this ection, take effect on the first date that those sections may take effect under ection 39, Article III, Texas Constitution.

SECTION 1.07. CONSOLIDATION OF STAFF. (a) On eptember 1, 1997, or an earlier date provided by an interagency agreement ith the affected agencies:

(1) all powers, duties, functions, programs, and activities performed y or assigned to the Texas Department of Human Services' utilization and ssessment review function immediately before September 1, 1997, are ransferred to the Health and Human Services Commission;

(2) all funds, obligations, contracts, property, and records of the exas Department of Human Services' utilization and assessment review unction are transferred to the Health and Human Services Commission; and

(3) all employees of the Texas Department of Human Services esponsible for the department's utilization and assessment review function ecome employees of the Health and Human Services Commission, to be ssigned duties by the commissioner of health and human services.

(b) On September 1, 1997, or an earlier date provided by an interagency greement with the affected agencies:

(1) all powers, duties, functions, programs, and activities performed y or assigned to the Texas Department of Health's claims review and analysis roup and policy and data analysis group immediately before eptember 1, 1997, are transferred to the Health and Human ervices Commission;

(2) all funds, obligations, contracts, property, and records of the exas Department of Health's claims review and analysis group and policy

and data analysis group are transferred to the Health and Human Services Commission; and

(3) all employees of the Texas Department of Health's claims review and analysis group and policy and data analysis group become employees of the Health and Human Services Commission, to be assigned duties by the commissioner of health and human services.

(c) A rule or form adopted by the Texas Department of Human Services that relates to the utilization and assessment review function or by the Texas Department of Health that relates to the claims review and analysis group or the policy and data analysis group is a rule or form of the Health and Human Services Commission and remains in effect until altered by the commission. The secretary of state is authorized to adopt rules as necessary to expedite the implementation of this subsection.

(d) The commissioner of health and human services shall oversee and assist in the transfer of powers, duties, functions, programs, and activities prescribed by Subsections (a) and (b) of this section.

(e) The commissioner of health and human services shall determine for each power, duty, function, program, or activity scheduled for transfer:

(1) the relevant agency actions that constitute each power, duty, function, program, or activity;

(2) the relevant records, property, and equipment used by a state agency for each power, duty, function, program, or activity;

(3) the state agency employees whose duties directly or indirectly involve a power, duty, function, program, or activity; and

(4) state agency funds and obligations that are related to the power, duty, function, program, or activity.

(f) Based on the determinations made under Subsection (e) of this section, the commissioner of health and human services shall assist the agencies in transferring powers, duties, functions, programs, activities, records, equipment, property, funds, obligations, and employees in accordance with the transfer schedule.

(g) The commissioner of health and human services shall file any federal plan changes required by this section.

(h) The transfer of powers, duties, functions, programs, and activities under this section does not affect or impair any act done, any obligation, right order, license, permit, rule, criterion, standard, or requirement existing, any investigation begun, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

(i) An action brought or proceeding commenced before the effective date of this section, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding before the effective date of this section.

(j) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 1.08. USE OF PRIVATE COLLECTION AGENTS. (a) With assistance from the Council on Competitive Government and subject to approval by the attorney general under Section 2107.003, Government Code the Texas Department of Human Services shall, in addition to other methods

of collection, use private collection agents to collect reimbursements for benefits granted by the department in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code.

(b) If approved by the attorney general, the department shall ensure that the collection agents are engaged in collection work on behalf of the department not later than March 1, 1998. The department shall strive to refer approximately 20 percent of the department's claims for reimbursement to the collection agents.

(c) On March 1, 1998, and September 1, 1998, the department shall submit a progress report to the governor, the Legislative Budget Board, and the Health and Human Services Commission on the department's efforts to use private collection agents to collect reimbursements for erroneous benefits. On March 1, 1999, the department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a final report on the success of the private collection effort.

(d) Unless otherwise directed by the 76th Legislature, the department shall evaluate the success of the use of private collection agents to collect benefit reimbursements and adjust the number of claims referred to the agents, as appropriate.

SECTION 1.09. EXPEDITED FOOD STAMP DELIVERY; IMPACT ON FRAUDULENT CLAIMS. (a) The Texas Department of Human Services shall conduct a study to determine the impact of the one-day screening and service delivery requirements prescribed by Section 33.002(e), Human Resources Code, on the level of fraud in the food stamp program.

(b) Not later than January 1, 1999, the department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a report on the results of the study. The report must include:

(1) detailed statistics by region on the number of fraudulent claims linked to the one-day screening and service delivery requirements; and

(2) recommendations on modifying the one-day screening and service delivery requirements, as authorized by Section 33.002(g), Human Resources Code.

SECTION 1.10. STUDY ON COLLECTION OF ERRONEOUS FOOD STAMP OR FINANCIAL ASSISTANCE BENEFITS THROUGH LIENS OR WAGE GARNISHMENT. (a) The Texas Department of Human Services shall conduct a study to determine the feasibility of collecting amounts of benefits granted by the department in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code, by the garnishment of wages or the filing of liens against property.

(b) Not later than March 1, 1999, the department shall submit to the governor, the Legislative Budget Board, and the Health and Human Services Commission a report on the results of the study.

SECTION 1.11. OPERATION RESTORE TRUST. (a) To the extent authorized by law, the Health and Human Services Commission and the office of the attorney general shall cooperate with entities in other states that are participating in "Operation Restore Trust" and share information regarding service providers excluded from the state Medicaid program.

(b) In this section, "Operation Restore Trust" means the federal program directed at detecting health-care fraud primarily in home health care, nursing home care, and durable medical equipment in certain states.

ARTICLE 2. MEDICAID SERVICE PROVIDERS

SECTION 2.01. AUTHORIZATION FOR AMBULANCE SERVICES. (a) Section 32.024, Human Resources Code, is amended by adding Subsection (t) to read as follows:

(t) The department by rule shall require a physician, nursing facility, health care provider, or other responsible party to obtain authorization from the department or a person authorized to act on behalf of the department before an ambulance is used to transport a recipient of medical assistance under this chapter in circumstances not involving an emergency. The rules must provide that:

(1) a request for authorization must be evaluated based on the recipient's medical needs and may be granted for a length of time appropriate to the recipient's medical condition;

(2) a response to a request for authorization must be made not later than 48 hours after receipt of the request; and

(3) a person denied payment for services rendered because of failure to obtain prior authorization or because a request for prior authorization was denied is entitled to appeal the denial of payment to the department.

(b) Not later than January 1, 1998, the Health and Human Services Commission and each appropriate health and human services agency that operates part of the state Medicaid program shall adopt the rules required by Section 32.024(t), Human Resources Code, as added by this section.

(c) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 2.02. DURABLE MEDICAL EQUIPMENT. (a) Section 32.024, Human Resources Code, is amended by adding Subsection (u) to read as follows:

(u) The department by rule shall require a health care provider who arranges for durable medical equipment for a child who receives medical assistance under this chapter to:

(1) ensure that the child receives the equipment prescribed, the equipment fits properly, if applicable, and the child or the child's parent or guardian, as appropriate considering the age of the child, receives instruction regarding the equipment's use; and

(2) maintain a record of compliance with the requirements of Subdivision (1) in an appropriate location.

(b) Not later than January 1, 1998, the Health and Human Services Commission and each appropriate health and human services agency that operates part of the state Medicaid program shall adopt the rules required by Section 32.024(u), Human Resources Code, as added by this section.

(c) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 2.03. SURETY BOND. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0321 to read as follows:

Sec. 32.0321. SURETY BOND. (a) The department by rule may require each provider of medical assistance in a provider type that has demonstrated significant potential for fraud or abuse to file with the department a surety bond in a reasonable amount.

(b) The bond must be payable to the department to compensate the department for damages resulting from or penalties or fines imposed in connection with an act of fraud or abuse committed by the provider under the medical assistance program.

SECTION 2.04. CRIMINAL HISTORY INFORMATION. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0322 to read as follows:

Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION. (a) The department may obtain from any law enforcement or criminal justice agency the criminal history record information that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

(b) The department by rule shall establish criteria for revoking a provider's enrollment or denying a person's application to enroll as a provider under the medical assistance program based on the results of a criminal history check.

(b) Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.132 to read as follows:

Sec. 411.132. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION; AGENCIES OPERATING PART OF MEDICAL ASSISTANCE PROGRAM. (a) The Health and Human Services Commission or an agency operating part of the medical assistance program under Chapter 32, Human Resources Code, is entitled to obtain from the department the criminal history record information maintained by the department that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

(b) Criminal history record information obtained by the commission or an agency under Subsection (a) may not be released or disclosed to any person except in a criminal proceeding, in an administrative proceeding, on court order, or with the consent of the provider or applicant.

SECTION 2.05. MANAGED CARE ORGANIZATIONS. (a) Section 16A, Article 4413(502), Revised Statutes, is amended by amending Subsection (n) and adding Subsections (o)-(t) to read as follows:

(n) A managed care organization that contracts with the state to provide or arrange to provide health care benefits or services to Medicaid eligible individuals shall:

(1) report to the commission or the state's Medicaid claims administrator, as appropriate, all information required by commission rule, including information necessary to set rates, detect fraud, neglect, and physical abuse, and ensure quality of care;

(2) not later than 30 days after execution of the contract, develop and submit to the operating agency for approval by the commission a plan for preventing, detecting, and reporting fraud and abuse that:

(A) conforms to guidelines developed by the operating agency with assistance from the commission and the office of the attorney general; and

(B) requires the managed care organization to report any known or suspected act of fraud or abuse to the operating agency for referral to the commission for investigation;

(3) include standard provisions developed by the operating agency in each subcontract entered into by the managed care organization that affects the delivery of or payment for Medicaid services;

(4) submit to the commission for approval each subcontract entered into by the managed care organization that affects the delivery of or payment for Medicaid services; and

(5) submit annual disclosure statements to the commission containing information on:

(A) the financial condition of the managed care organization and each of its affiliates; and

(B) ownership interests in the managed care organization or any of its affiliates.

(o) The operating agency shall require that each contract between a managed care organization and the state to provide or arrange to provide health care benefits or services to Medicaid eligible individuals contain provisions:

(1) stating that information provided by a managed care organization under this section may be used as necessary to detect fraud and abuse;

(2) specifying the responsibilities of the managed care organization in reducing fraud and abuse; and

(3) authorizing specific penalties for failure to provide information required by commission rules.

(p) At least once every three years the operating agency shall audit each managed care organization that contracts with the state to provide or arrange to provide health care benefits or services to Medicaid eligible individuals.

(q) A managed care organization audited under Subsection (p) of this section is responsible for paying the costs of the audit. The costs of the audit may be allowed as a credit against premium taxes paid by the managed care organization, except as provided by Section 2, Article 1.28, Insurance Code.

(r) The operating agency and the Texas Department of Insurance shall enter into a memorandum of understanding to coordinate audits of managed care organizations. The memorandum shall:

(1) identify information required in an operating agency audit that is not customarily required in a department audit;

(2) encourage the department to include to the extent possible information identified under Subdivision (1) of this subsection in department audits;

(3) establish procedures for initiating and distributing the findings of audits of a managed care organization;

(4) identify the records of physicians or Medicaid eligible individuals that are served by managed care organizations, that are subject to audit; and

(5) require that operating agency and department personnel that audit a managed care organization receive specific training in detecting Medicaid fraud and abuse.

(s) In this section, "operating agency" means the appropriate health and human services agency operating part of the state Medicaid program.

(t) This section expires September 1, 2001.

(b) Section 532.001, Government Code, as added by H.B. No. 1845 or S.B. No. 898, Acts of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions to and corrections in enacted codes, is amended by adding Subdivision (5) to read as follows:

(5) "Operating agency" means the appropriate health and human services agency operating part of the state Medicaid program.

(c) Subchapter B, Chapter 532, Government Code, as added by H.B. No. 1845 or S.B. No. 898, Acts of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions to and corrections in enacted codes, is amended by adding Sections 532.112 and 532.113 to read as follows:

Sec. 532.112. DUTIES OF MANAGED CARE ORGANIZATION; CONTRACTUAL PROVISIONS. (a) A managed care organization that contracts with the state to provide or arrange to provide health care benefits or services to Medicaid eligible individuals shall:

(1) report to the commission or the state's Medicaid claims administrator, as appropriate, all information required by commission rule, including information necessary to set rates, detect fraud, neglect, and physical abuse, and ensure quality of care;

(2) not later than 30 days after execution of the contract, develop and submit to the operating agency for approval by the commission a plan for preventing, detecting, and reporting fraud and abuse that:

(A) conforms to guidelines developed by the operating agency with assistance from the commission and the office of the attorney general; and

(B) requires the managed care organization to report any known or suspected act of fraud or abuse to the operating agency for referral to the commission for investigation;

(3) include standard provisions developed by the operating agency in each subcontract entered into by the managed care organization that affects the delivery of or payment for Medicaid services;

(4) submit to the commission for approval each subcontract entered into by the managed care organization that affects the delivery of or payment for Medicaid services; and

(5) submit annual disclosure statements to the commission containing information on:

(A) the financial condition of the managed care organization and each of its affiliates; and

(B) ownership interests in the managed care organization or any of its affiliates.

(b) The operating agency shall require that each contract between a managed care organization and the state to provide or arrange to provide

health care benefits or services to Medicaid eligible individual contain provisions:

(1) stating that information provided by a managed care organizatio under this section may be used as necessary to detect fraud and abuse;

(2) specifying the responsibilities of the managed care organizatio in reducing fraud and abuse; and

(3) authorizing specific penalties for failure to provide informatio required by commission rules.

Sec. 532.113. AUDITS; MEMORANDUM OF UNDERSTANDING (a) At least once every three years the operating agency shall audit eac managed care organization that contracts with the state to provide or arrang to provide health care benefits or services to Medicaid eligible individuals.

(b) A managed care organization audited under Subsection (a) i responsible for paying the costs of the audit. The costs of the audit may b allowed as a credit against premium taxes paid by the managed car organization, except as provided by Section 2, Article 1.28, Insurance Code

(c) The operating agency and the Texas Department of Insurance shal enter into a memorandum of understanding to coordinate audits of manage care organizations. The memorandum shall:

(1) identify information required in an operating agency audit that i not customarily required in a department audit;

(2) encourage the department to include to the extent possibl information identified under Subdivision (1) in department audits;

(3) establish procedures for initiating and distributing the finding of audits of a managed care organization;

(4) identify the records of physicians or Medicaid eligibl individuals that are served by managed care organizations that are subject t audit; and

(5) require that operating agency and department personnel tha audit a managed care organization receive specific training in detectin Medicaid fraud and abuse.

(d) Not later than November 1, 1997, the Texas Department of Health o the appropriate health and human services agency operating part of the stat Medicaid program shall develop guidelines applicable to a managed car organization's plan for preventing, detecting, and reporting Medicaid fraud

(e) Section 16A(n)(2), Article 4413(502), Revised Statutes, as amende by this section, or Section 532.112(a)(2), Government Code, as added by thi section, depending on which provision takes effect, applies only to a manage care organization that enters into a contract or renews a contract on or afte November 1, 1997, with the state to provide or arrange to provide health car benefits to Medicaid eligible individuals.

(f) This section applies only to a contract entered into or renewed on c after the effective date of this section. A contract entered into or renewe before the effective date of this section is governed by the law in effec immediately before the effective date of this section, and the former law i continued in effect for that purpose.

(g) A managed care organization that contracts with the state to provid or arrange to provide health care benefits to Medicaid eligible individual before the effective date of this section is not required by this section to:

(1) include standard provisions developed by the state in subcontract executed before the effective date of this section;

(2) submit a subcontract executed before the effective date of this ection to the commission for approval; or

(3) modify a contract between the managed care organization and the tate executed before the effective date of this section.

(h) A managed care organization that renews a contract or subcontract ubject to this section after the effective date of this section shall include in ıe renewed contract or subcontract all provisions required to be included by ıis section.

(i) Subsection (a) of this section takes effect only if either H.B. No. 1845 nor S.B. No. 898, Acts of the 75th Legislature, Regular ession, 1997, relating to nonsubstantive additions to and corrections in nacted codes, take effect.

(j) Subsections (b) and (c) of this section take effect only f H.B. No. 1845 or S.B. No. 898, Acts of the 75th Legislature, Regular ession, 1997, relating to nonsubstantive additions to and corrections in nacted codes, takes effect.

SECTION 2.06. PILOT PROGRAM; ON-SITE REVIEWS OF ROSPECTIVE PROVIDERS. (a) The Health and Human Services ommission by rule shall establish a pilot program to reduce fraud by onducting random on-site reviews of persons who apply to provide health are services under the state Medicaid program before authorizing those ersons to provide the services.

(b) The commission shall implement the pilot program initially in not ıore than five or fewer than three urban counties selected by the commission. he commission shall select counties for the pilot program that:

(1) offer the greatest potential for achieving a reduction of provider raud; and

(2) contain established field offices of the commission or the Texas epartment of Human Services, as appropriate.

(c) At a minimum, the pilot program shall provide for random on-site eviews of durable medical equipment providers, home health providers, ıerapists, and laboratories. The commission may include other groups of roviders in the pilot program.

(d) The commission shall develop questions to be used during an on-site eview of a prospective provider to verify that the provider has the ability to rovide the proposed services.

(e) The on-site reviews shall be conducted by personnel in the ppropriate field offices of the commission or the Texas Department of luman Services.

(f) The commission may waive an on-site review of a prospective rovider if the provider has been subject to a comparable review by certifying body in the preceding year.

(g) If the pilot program is successful in reducing provider fraud in the ounties initially selected under Subsection (b) of this section, the ommission may expand the pilot program to include additional counties.

(h) Not later than January 15, 1999, the commission shall submit to the governor and the legislature a report concerning the effectiveness of the pilot program that includes:

(1) the number of applications denied as a result of an on-site review; and

(2) recommendations on expanding the pilot program.

(i) This section expires September 1, 1999.

SECTION 2.07. DEVELOPMENT OF NEW PROVIDER CONTRACT. (a) As soon as possible after the effective date of this section, the Health and Human Services Commission shall develop a new provider contract for health care services that contains provisions designed to strengthen the commission's ability to prevent provider fraud under the state Medicaid program.

(b) In developing the new provider contract, the commission shall solicit suggestions and comments from representatives of providers in the state Medicaid program.

(c) As soon as possible after development of the new provider contract, the commission and each agency operating part of the state Medicaid program by rule shall require each provider who enrolled in the program before completion of the new contract to reenroll in the program under the new contract or modify the provider's existing contract in accordance with commission or agency procedures as necessary to comply with the requirements of the new contract. A provider must reenroll in the state Medicaid program or make the necessary contract modifications not later than September 1, 1999, to retain eligibility to participate in the program.

SECTION 2.08. COMPETITIVE PROCESS FOR OBTAINING DURABLE MEDICAL EQUIPMENT. (a) As soon as possible and not later than the 45th day after the effective date of this section:

(1) the Texas Department of Health shall develop a process for selecting providers of durable medical equipment and supplies that encourages competition; and

(2) the Health and Human Services Commission shall submit an amendment to the state's Medicaid plan authorizing implementation of the process developed by the Texas Department of Health.

(b) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 2.09. REVIEW OF SERVICE PROVIDER BILLING PRACTICES. (a) The Texas Department of Health shall conduct an automated review of physician, laboratory, radiology, and other health care provider services to identify improper billing practices designed to inflate a service provider's claim for payment for services provided under the state Medicaid program.

(b) After completing the review required by Subsection (a) of this section, the Texas Department of Health shall:

(1) refer each identified improper billing practice to the Health and Human Services Commission's office of investigations and enforcement; and

(2) require the entity that administers the state Medicaid program on behalf of the department to modify the entity's claims processing and

monitoring procedures and computer technology as necessary to prevent improper billing by service providers.

(c) This section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

ARTICLE 3. ADMINISTRATIVE PENALTIES
AND SANCTIONS RELATING TO MEDICAID FRAUD

SECTION 3.01. ADMINISTRATIVE PENALTIES. (a) Section 32.039, Human Resources Code, is amended to read as follows:

Sec. 32.039. [~~CIVIL~~] DAMAGES AND PENALTIES. (a) In this section:

(1) "Claim" [~~, "claim"~~] means an application for payment of health care services under Title XIX of the federal Social Security Act that is submitted by a person who is under a contract or provider agreement with the department.

(2) "Managed care organization" means any entity or person that is authorized or otherwise permitted by law to arrange for or provide a managed care plan.

(3) "Managed care plan" means a plan under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care service. A part of the plan must consist of arranging for or providing health care services as distinguished from indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term does not include a plan that indemnifies a person for the cost of health care services through insurance.

(b) A person commits a violation if the person:

(1) presents or causes to be presented to the department a claim that contains a statement or representation the person knows to be false; or

(2) is a managed care organization that contracts with the department to provide or arrange to provide health care benefits or services to individuals eligible for medical assistance and:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract with the department;

(B) fails to provide to the department information required to be provided by law, department rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment in the organization's managed care plan of an individual eligible for medical assistance or in connection with marketing the organization's services to an individual eligible for medical assistance; or

(D) engages in actions that indicate a pattern of:

(i) wrongful denial of payment for a health care benefit or service that the organization is required to provide under the contract with the department; or

(ii) wrongful delay of at least 45 days or a longer period specified in the contract with the department, not to exceed 60 days, in making payment for a health care benefit or service that the organization is required to provide under the contract with the department.

(c) [~~(b)~~] A person who commits a violation under Subsection (b) [~~presents or causes to be presented to the department a claim that contains a statement or representation the person knows to be false~~] is liable to the department for:

(1) the amount paid, if any, as a result [~~because~~] of the violation [~~false claim~~] and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made; and

(2) payment of an administrative [~~a civil~~] penalty of an amount not to exceed twice the amount paid, if any, as a result [~~because~~] of the violation, plus an amount:

(A) not less than $5,000 or more than $15,000 for each violation that results in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age; or

(B) not more than $10,000 for each violation that does not result in injury to a person described by Paragraph (A) [~~false claim; and~~

[~~(3) payment of a civil penalty of not more than $2,000 for each item or service for which payment was claimed~~].

(d) [~~(c)~~] Unless the provider submitted information to the department for use in preparing a voucher that the provider knew was false or failed to correct information that the provider knew was false when provided an opportunity to do so, this section does not apply to a claim based on the voucher if the department calculated and printed the amount of the claim on the voucher and then submitted the voucher to the provider for the provider's signature. In addition, the provider's signature on the voucher does not constitute fraud. The department shall adopt rules that establish a grace period during which errors contained in a voucher prepared by the department may be corrected without penalty to the provider.

(e) [~~(d)~~] In determining the amount of the penalty to be assessed under Subsection (c)(2) [~~Subdivision (3) of Subsection (b) of this section~~], the department shall consider:

(1) the seriousness of the violation;

(2) whether the person had previously committed a violation [~~submitted false claims~~]; and

(3) the amount necessary to deter the person from committing [~~submitting~~] future violations [~~false claims~~].

(f) [~~(e)~~] If after an examination of the facts the department concludes that the person committed a violation [~~did submit a false claim~~], the department may issue a preliminary report stating the facts on which it based its conclusion, recommending that an administrative [~~a civil~~] penalty under this section be imposed and recommending the amount of the proposed penalty.

(g) [~~(f)~~] The department shall give written notice of the report to the person charged with committing the violation [~~submitting the false claim~~]. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the alleged violation [~~false claim~~], the amount of the

penalty, or both the alleged violation [~~false claim~~] and the amount of the penalty.

(h) [~~(g)~~] Not later than the 10th day after the date on which the person charged with committing the violation [~~submitting the false claim~~] receives the notice, the person may either give the department written consent to the report, including the recommended penalty, or make a written request for an informal review by the department.

(i) [~~(h)~~] If the person charged with committing the violation [~~submitting the false claim~~] consents to the penalty recommended by the department or fails to timely request an informal review, the department shall assess the penalty. The department shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(j) [~~(i)~~] If the person charged with committing the violation [~~submitting a false claim~~] requests an informal review as provided by Subsection (h) [~~(g) of this section~~], the department shall conduct the review. The department shall give the person written notice of the results of the review.

(k) [~~(j)~~] Not later than the 10th day after the date on which the person charged with committing the violation [~~submitting the false claim~~] receives the notice prescribed by Subsection (j) [~~(i) of this section~~], the person may make to the department a written request for a hearing. The hearing must be conducted in accordance with Chapter 2001, Government Code.

(l) [~~(k)~~] If, after informal review, a person who has been ordered to pay a penalty fails to request a formal hearing in a timely manner, the department shall assess the penalty. The department shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(m) Within 30 days after the date on which the board's order issued after a hearing under Subsection (k) becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(n) A person who acts under Subsection (m)(3) within the 30-day period may:

(1) stay enforcement of the penalty by:

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

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

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

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

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

(o) If the commissioner receives a copy of an affidavit under Subsection (n)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(p) [~~(l) Except as provided by Subsection (m) of this section, not later than 30 days after the date on which the department issues a final decision after a hearing under Subsection (j) of this section, a person who has been ordered to pay a penalty under this section shall pay the penalty in full.~~

[~~(m) If the person seeks judicial review of either the fact of the submission of a false claim or the amount of the penalty or of both the fact of the submission and the amount of the penalty, the person shall forward the amount of the penalty to the department for placement in an escrow account or, instead of payment into an escrow account, post with the department a supersedeas bond in a form approved by the department for the amount of the penalty. The bond must be effective until all judicial review of the order or decision is final.~~

[~~(n) Failure to forward the money to or to post the bond with the department within the period provided by Subsection (l) or (m) of this section results in a waiver of all legal rights to judicial review.~~] If the person charged does not pay the amount of the penalty and the enforcement of the penalty is not stayed [~~fails to forward the money or post the bond within the period provided by Subsection (h), (k), (l), or (m) of this section~~], the department may forward the matter to the attorney general for enforcement of the penalty and interest as provided by law for legal judgments. An action to enforce a penalty order under this section must be initiated in a court of competent jurisdiction in Travis County or in the county in [~~from~~] which the violation [~~false claim~~] was committed [~~submitted~~].

(q) [~~(o)~~] Judicial review of a department order or review under this section assessing a penalty is under the substantial evidence rule. A suit may be initiated by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(r) [~~(p)~~] If a penalty is reduced or not assessed, the department shall remit to the person the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the department under this subsection shall be paid at a rate equal to the rate provided by law for legal judgments and shall be paid for the period beginning on the date the penalty is paid to the department under this section and ending on the date the penalty is remitted.

(s) [~~(q)~~] A damage, cost, or penalty collected under this section is not an allowable expense in a claim or cost report that is or could be used to determine a rate or payment under the medical assistance program.

(t) [~~(r)~~] All funds collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(u) A person found liable for a violation under Subsection (c) that resulted in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of 10 years. The department by rule may provide for a period of ineligibility longer than 10 years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. This subsection does not apply to a person who operates a nursing facility.

(v) A person found liable for a violation under Subsection (c) that did not result in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of three years. The department by rule may provide for a period of ineligibility longer than three years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final. This subsection does not apply to a person who operates a nursing facility.

(b) The change in law made by this section applies only to a violation committed on or after the effective date of this section. For purposes of this subsection, a violation is committed on or after the effective date of this section only if each element of the violation occurs on or after that date. A violation committed before the effective date of this section is covered by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

SECTION 3.02. SANCTIONS APPLICABLE TO VENDOR DRUG PROGRAM. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.046 to read as follows:

Sec. 32.046. VENDOR DRUG PROGRAM; SANCTIONS AND PENALTIES. (a) The department shall adopt rules governing sanctions and penalties that apply to a provider in the vendor drug program who submits an improper claim for reimbursement under the program.

(b) The department shall notify each provider in the vendor drug program that the provider is subject to sanctions and penalties for submitting an improper claim.

SECTION 3.03. PROHIBITION OF CERTAIN PERSONS CONVICTED OF FRAUD. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.047 to read as follows:

Sec. 32.047. PROHIBITION OF CERTAIN HEALTH CARE SERVICE PROVIDERS. A person is permanently prohibited from providing or arranging to provide health care services under the medical assistance program if:

(1) the person is convicted of an offense arising from a fraudulent act under the program; and

(2) the person's fraudulent act results in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age.

SECTION 3.04. DEDUCTIONS FROM LOTTERY WINNINGS. (a) Sections 466.407(a) and (c), Government Code, are amended to read as follows:

(a) The executive director shall deduct the amount of a delinquent tax or other money from the winnings of a person who has been finally determined to be:

(1) delinquent in the payment of a tax or other money collected by the comptroller[~~, the state treasurer,~~] or the Texas Alcoholic Beverage Commission;

(2) delinquent in making child support payments administered or collected by the attorney general;

(3) delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

(4) in default on a loan made under Chapter 52, Education Code; or

(5) [~~(4)~~] in default on a loan guaranteed under Chapter 57, Education Code.

(c) The attorney general, comptroller, [~~state treasurer,~~] Texas Alcoholic Beverage Commission, Texas Department of Human Services, Texas Higher Education Coordinating Board, and Texas Guaranteed Student Loan Corporation shall each provide the executive director with a report of persons who have been finally determined to be delinquent in the payment of a tax or other money collected by the agency. The commission shall adopt rules regarding the form and frequency of reports under this subsection.

(b) The Texas Department of Human Services shall take all action necessary to implement the change in law made by this section not later than January 1, 1998. The department may not seek recovery through lottery prize deduction of an amount of a benefit granted in error to a person under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code, before September 1, 1997.

(c) The executive director of the Texas Lottery Commission is not required under Section 466.407, Government Code, as amended by this section, to deduct from lottery prizes erroneous amounts granted to lottery winners by the Texas Department of Human Services until the department provides to the commission all necessary information and reports required for implementation of that section.

ARTICLE 4. CIVIL REMEDIES RELATING TO
MEDICAID FRAUD AND CREATION OF CRIMINAL OFFENSE

SECTION 4.01. REDESIGNATION. (a) Chapter 36, Human Resources Code, is amended by designating Sections 36.001, 36.002, 36.007, 36.008, 36.009, 36.010, 36.011, and 36.012 as Subchapter A, renumbering Sections 36.007, 36.008, 36.009, 36.010, 36.011, and 36.012 as Sections 36.003, 36.004, 36.005, 36.006, 36.007, and 36.008, respectively, and adding a subchapter heading to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

(b) Chapter 36, Human Resources Code, is amended by designating Sections 36.003, 36.004, 36.005, and 36.006 as Subchapter B, renumbering those sections as Sections 36.051, 36.052, 36.053, and 36.054, respectively, and adding a subchapter heading to read as follows:

SUBCHAPTER B. ACTION BY ATTORNEY GENERAL

SECTION 4.02. DEFINITIONS. Section 36.001, Human Resources Code, is amended by amending Subdivisions (5)-(11) and adding Subdivision (12) to read as follows:

(5) "Managed care organization" has the meaning assigned by Section 32.039(a).

(6) "Medicaid program" means the state Medicaid program.

(7) [~~(6)~~] "Medicaid recipient" means an individual on whose behalf a person claims or receives a payment from the Medicaid program or a fiscal agent, without regard to whether the individual was eligible for benefits under the Medicaid program.

(8) [~~(7)~~] "Physician" means a physician licensed to practice medicine in this state.

(9) [~~(8)~~] "Provider" means a person who participates in or who has applied to participate in the Medicaid program as a supplier of a product or service and includes:

(A) a management company that manages, operates, or controls another provider;

(B) a person, including a medical vendor, that provides a product or service to a provider or to a fiscal agent; [~~and~~]

(C) an employee of a provider; and

(D) a managed care organization.

(10) [~~(9)~~] "Service" includes care or treatment of a Medicaid recipient.

(11) [~~(10)~~] "Signed" means to have affixed a signature directly or indirectly by means of handwriting, typewriting, signature stamp, computer impulse, or other means recognized by law.

(12) [~~(11)~~] "Unlawful act" means an act declared to be unlawful under Section 36.002.

SECTION 4.03. UNLAWFUL ACTS RELATING TO MANAGED CARE ORGANIZATION. Section 36.002, Human Resources Code, is amended to read as follows:

Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful act if the person:

(1) knowingly or intentionally makes or causes to be made a false statement or misrepresentation of a material fact:

(A) on an application for a contract, benefit, or payment under the Medicaid program; or

(B) that is intended to be used to determine a person's eligibility for a benefit or payment under the Medicaid program;

(2) knowingly or intentionally conceals or fails to disclose an event:

(A) that the person knows affects the initial or continued right to a benefit or payment under the Medicaid program of:

(i) the person; or

(ii) another person on whose behalf the person has applied for a benefit or payment or is receiving a benefit or payment; and

(B) to permit a person to receive a benefit or payment that is not authorized or that is greater than the payment or benefit that is authorized;

(3) knowingly or intentionally applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly or intentionally makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

(i) a hospital;

(ii) a nursing facility or skilled nursing facility;

(iii) a hospice;

(iv) an intermediate care facility for the mentally retarded;

(v) a personal care facility; or

(vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly or intentionally charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or continued service to a Medicaid recipient if the cost of the service provided to the Medicaid recipient is paid for, in whole or in part, under the Medicaid program;

(6) knowingly or intentionally presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly or intentionally makes a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly or intentionally fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service; [~~or~~]

(9) knowingly or intentionally enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent; or

(10) is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly or intentionally:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;

(B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program; or

(D) obstructs an investigation by the attorney general of an alleged unlawful act under this section.

SECTION 4.04. APPLICABLE PENALTIES AND CONFORMING AMENDMENT. Section 36.004, Human Resources Code, as renumbered by this article as Section 36.052, is amended by amending Subsections (a) and (e) to read as follows:

(a) Except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for:

(1) restitution of the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act;

(2) interest on the value of the payment or benefit described by Subdivision (1) at the prejudgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the benefit was received or paid to the date that restitution is paid to the state;

(3) a civil penalty of:

(A) not less than $5,000 or more than $15,000 for each unlawful act committed by the person that results in injury to an elderly person, as defined by Section 48.002(1), a disabled person, as defined by Section 48.002(8)(A), or a person younger than 18 years of age; or

(B) not less than $1,000 or more than $10,000 for each unlawful act committed by the person that does not result in injury to a person described by Paragraph (A); and

(4) two times the value of the payment or benefit described by Subdivision (1).

(e) The attorney general may:

(1) bring an action for civil remedies under this section together with a suit for injunctive relief under Section 36.051 [~~36.003~~]; or

(2) institute an action for civil remedies independently of an action for injunctive relief.

SECTION 4.05. CONFORMING AMENDMENT. Section 36.005, Human Resources Code, as renumbered by this article as Section 36.053, is amended by amending Subsection (b) to read as follows:

(b) In investigating an unlawful act, the attorney general may:

(1) require the person to file on a prescribed form a statement i writing, under oath or affirmation, as to all the facts and circumstance concerning the alleged unlawful act and other information considere necessary by the attorney general;

(2) examine under oath a person in connection with the allege unlawful act; and

(3) execute in writing and serve on the person a civil investigativ demand requiring the person to produce the documentary material and permi inspection and copying of the material under Section 36.054 [~~36.006~~].

SECTION 4.06. ADDITIONAL SANCTIONS FOR MEDICAID FRAUD Section 36.009, Human Resources Code, as renumbered by this article a Section 36.005, is amended to read as follows:

Sec. 36.005 [~~36.009~~]. SUSPENSION OR REVOCATION OI AGREEMENT; PROFESSIONAL DISCIPLINE. (a) The commissioner o human services, the commissioner of public health, the commissioner o mental health and mental retardation, the executive director of th Department of Protective and Regulatory Services, or the executive directo of another state health care regulatory agency:

(1) shall suspend or revoke:

(A) a provider agreement between the department or agenc and a person, other than a person who operates a nursing facility, found liabl under Section 36.052; and

(B) a permit, license, or certification granted by th department or agency to a person, other than a person who operates a nursin facility, found liable under Section 36.052; and

(2) may suspend or revoke:

(A) [~~(1)~~] a provider agreement between the department o agency and a person who operates a nursing facility found liable unde Section 36.052 [~~36.004~~]; or

(B) [~~(2)~~] a permit, license, or certification granted by th department or agency to a person who operates a nursing facility found liabl under Section 36.052 [~~36.004~~].

(b) A person found liable under Section 36.052 for an unlawful act ma not provide or arrange to provide health care services under the Medicai program for a period of 10 years. The board of a state agency that operate part of the Medicaid program may by rule provide for a period of ineligibilit longer than 10 years. The period of ineligibility begins on the date on whic the determination that the person is liable becomes final. This section doe not apply to a person who operates a nursing facility.

(c) A person licensed by a state regulatory agency who commits a unlawful act is subject to professional discipline under the applicabl licensing law or rules adopted under that law.

(d) For purposes of this section, a person is considered to have bee found liable under Section 36.052 if the person is found liable in an actio brought under Subchapter C.

SECTION 4.07. AUTHORITY OF ATTORNEY GENERAL. (a Subchapter B, Chapter 36, Human Resources Code, as designated by thi article, is amended by adding Section 36.055 to read as follows:

Sec. 36.055. ATTORNEY GENERAL AS RELATOR IN FEDERAL ACTION. To the extent permitted by 31 U.S.C. Sections 3729-3733, the attorney general may bring an action as relator under 31 U.S.C. Section 3730 with respect to an act in connection with the Medicaid program for which a person may be held liable under 31 U.S.C. Section 3729. The attorney general may contract with a private attorney to represent the state under this section.

(b) The office of the attorney general shall develop strategies to increase state recoveries under 31 U.S.C. Sections 3729-3733. The office shall report the results of the office's effort to the legislature not later than September 1, 1998.

SECTION 4.08. CIVIL ACTION BY PRIVATE PERSON FOR MEDICAID FRAUD. Chapter 36, Human Resources Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ACTION BY PRIVATE PERSONS

Sec. 36.101. ACTION BY PRIVATE PERSON AUTHORIZED. (a) A person may bring a civil action for a violation of Section 36.002 for the person and for the state. The action shall be brought in the name of the state.

(b) In an action brought under this subchapter, a person who violates Section 36.002 is liable as provided by Section 36.052.

Sec. 36.102. INITIATION OF ACTION. (a) A person bringing an action under this subchapter shall serve a copy of the petition and a written disclosure of substantially all material evidence and information the person possesses on the attorney general in compliance with the Texas Rules of Civil Procedure.

(b) The petition shall be filed in camera and shall remain under seal until at least the 60th day after the date the petition is filed. The petition may not be served on the defendant until the court orders service on the defendant.

(c) The state may elect to intervene and proceed with the action not later than the 60th day after the date the attorney general receives the petition and the material evidence and information.

(d) The state may, for good cause shown, move the court to extend the time during which the petition remains under seal under Subsection (b). A motion under this subsection may be supported by affidavits or other submissions in camera.

(e) An action under this subchapter may be dismissed before the end of the period prescribed by Subsection (b), as extended as provided by Subsection (d), if applicable, only if the court and the attorney general consent in writing to the dismissal and state their reasons for consenting.

Sec. 36.103. ANSWER BY DEFENDANT. A defendant is not required to file an answer to a petition filed under this subchapter until the 20th day after the date the petition is unsealed and served on the defendant in compliance with the Texas Rules of Civil Procedure.

Sec. 36.104. STATE'S DECISION TO CONTINUE ACTION. Not later than the last day of the period prescribed by Section 36.102(b), as extended as provided by Section 36.102(d), if applicable, the state shall:

(1) proceed with the action; or

(2) notify the court that the state declines to take over the action.

Sec. 36.105. REPRESENTATION OF STATE BY PRIVATE ATTORNEY. The attorney general may contract with a private attorney to represent the state in an action under this subchapter with which the state elects to proceed.

Sec. 36.106. INTERVENTION BY OTHER PARTIES PROHIBITED. A person other than the state may not intervene or bring a related action based on the facts underlying a pending action brought under this subchapter.

Sec. 36.107. RIGHTS OF PARTIES IF STATE CONTINUES ACTION. (a) If the state proceeds with the action, the state has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations set forth by this section.

(b) The state may dismiss the action notwithstanding the objections of the person bringing the action if:

(1) the attorney general notifies the person that the state has filed a motion to dismiss; and

(2) the court provides the person with an opportunity for a hearing on the motion.

(c) The state may settle the action with the defendant notwithstanding the objections of the person bringing the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. On a showing of good cause, the hearing may be held in camera.

(d) On a showing by the state that unrestricted participation during the course of the litigation by the person bringing the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may impose limitations on the person's participation, including:

(1) limiting the number of witnesses the person may call;

(2) limiting the length of the testimony of witnesses called by the person;

(3) limiting the person's cross-examination of witnesses; or

(4) otherwise limiting the participation by the person in the litigation.

(e) On a showing by the defendant that unrestricted participation during the course of the litigation by the person bringing the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

Sec. 36.108. RIGHTS OF PARTIES IF STATE DOES NOT CONTINUE ACTION. (a) If the state elects not to proceed with the action, the person bringing the action has the right to conduct the action.

(b) If the state requests pleadings and deposition transcripts, the parties shall serve the attorney general with copies of all pleadings filed in the action and shall make available to the attorney general copies of all deposition transcripts.

(c) The court, without limiting the status and rights of the person bringing the action, may permit the state to intervene at a later date on a showing of good cause.

Sec. 36.109. STAY OF CERTAIN DISCOVERY. (a) Regardless of whether the state proceeds with the action, on a showing by the state that certain actions of discovery by the person bringing the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period not to exceed 60 days.

(b) The court shall hear a motion to stay discovery under this section in camera.

(c) The court may extend the period prescribed by Subsection (a) on a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

Sec. 36.110. PURSUIT OF ALTERNATE REMEDY BY STATE. (a) Notwithstanding Section 36.101, the state may elect to pursue the state's claim through any alternate remedy available to the state, including any administrative proceeding to determine an administrative penalty. If an alternate remedy is pursued in another proceeding, the person bringing the action has the same rights in the other proceeding as the person would have had if the action had continued under this subchapter.

(b) A finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under this subchapter. For purposes of this subsection, a finding or conclusion is final if:

(1) the finding or conclusion has been finally determined on appeal to the appropriate court;

(2) no appeal has been filed with respect to the finding or conclusion and all time for filing an appeal has expired; or

(3) the finding or conclusion is not subject to judicial review.

Sec. 36.111. AWARD TO PRIVATE PLAINTIFF. (a) If the state proceeds with an action under this subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 10 percent but not more than 25 percent of the proceeds of the action, depending on the extent to which the person substantially contributed to the prosecution of the action.

(b) If the court finds that the action is based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award the amount the court considers appropriate but not more than seven percent of the proceeds of the action. The court shall consider the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(c) If the state does not proceed with an action under this subchapter, the person bringing the action or settling the claim is entitled to receive an

amount that the court decides is reasonable for collecting the civil penalty and damages. The amount may not be less than 25 percent or more than 30 percent of the proceeds of the action.

(d) A payment to a person under this section shall be made from the proceeds of the action. A person receiving a payment under this section is also entitled to receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. Expenses, fees, and costs shall be awarded against the defendant.

(e) In this section, "proceeds of the action" includes proceeds of a settlement of the action.

Sec. 36.112. REDUCTION OF AWARD. (a) Regardless of whether the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of Section 36.002 on which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action the person would otherwise receive under Section 36.111, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation.

(b) If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of Section 36.002, the court shall dismiss the person from the civil action and the person may not receive any share of the proceeds of the action. A dismissal under this subsection does not prejudice the right of the state to continue the action.

Sec. 36.113. AWARD TO DEFENDANT FOR FRIVOLOUS ACTION OR ACTION BROUGHT FOR PURPOSES OF HARASSMENT. (a) If the state does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant the defendant's reasonable attorney's fees and expenses if:

(1) the defendant prevails in the action; and

(2) the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(b) A court finding under Subsection (a)(2) constitutes a finding that the person's attorney is in violation of Section 10.001, Civil Practice and Remedies Code, and the attorney is liable, in addition to the person bringing the action, for an award made under Subsection (a).

(c) Chapter 105, Civil Practice and Remedies Code, applies in an action under this subchapter with which the state proceeds.

Sec. 36.114. CERTAIN ACTIONS BARRED. (a) A person may not bring an action under this subchapter that is based on allegations or transactions that are the subject of a civil suit or an administrative penalty proceeding in which the state is already a party.

(b) A person may not bring an action under this subchapter that is based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. In this subsection, "original source" means an individual who has direct and independent knowledge of the

information on which the allegations are based and has voluntarily provided the information to the state before filing an action under this subchapter that is based on the information.

Sec. 36.115. STATE NOT LIABLE FOR CERTAIN EXPENSES. The state is not liable for expenses that a person incurs in bringing an action under this section.

Sec. 36.116. RETALIATION BY EMPLOYER AGAINST PERSON BRINGING SUIT PROHIBITED. (a) A person who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms of employment by the person's employer because of a lawful act taken by the person in furtherance of an action under this subchapter, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subchapter, is entitled to:

(1) reinstatement with the same seniority status the person would have had but for the discrimination; and

(2) not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

(b) A person may bring an action in the appropriate district court for the relief provided in this section.

Sec. 36.117. SOVEREIGN IMMUNITY NOT WAIVED. Except as provided by Section 36.113(c), this subchapter does not waive sovereign immunity.

Sec. 36.118. ATTORNEY GENERAL COMPENSATION. The office of the attorney general may retain a reasonable portion of recoveries under this subchapter, not to exceed amounts specified in the General Appropriations Act, for the administration of this subchapter.

SECTION 4.09. CRIMINAL OFFENSE AND REVOCATION OF CERTAIN LICENSES. Chapter 36, Human Resources Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. CRIMINAL PENALTIES AND REVOCATION OF CERTAIN OCCUPATIONAL LICENSES

Sec. 36.131. CRIMINAL OFFENSE. (a) A person commits an offense if the person commits an unlawful act under Section 36.002.

(b) An offense under this section is:

(1) a Class C misdemeanor if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is less than $50;

(2) a Class B misdemeanor if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $50 or more but less than $500;

(3) a Class A misdemeanor if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $500 or more but less than $1,500;

(4) a state jail felony if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $1,500 or more but less than $20,000;

(5) a felony of the third degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $20,000 or more but less than $100,000;

(6) a felony of the second degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $100,000 or more but less than $200,000; or

(7) a felony of the first degree if the value of any payment or monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act is $200,000 or more.

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, including a provision in the Penal Code, the actor may be prosecuted under either this section or the other provision.

(d) When multiple payments or monetary or in-kind benefits are provided under the Medicaid program as a result of one scheme or continuing course of conduct, the conduct may be considered as one offense and the amounts of the payments or monetary or in-kind benefits aggregated in determining the grade of the offense.

Sec. 36.132. REVOCATION OF LICENSES. (a) In this section:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to suspension, revocation, forfeiture, or termination by an issuing licensing authority; and

(C) must be obtained before a person may practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means:

(A) the Texas State Board of Medical Examiners;

(B) the State Board of Dental Examiners;

(C) the Texas State Board of Examiners of Psychologists;

(D) the Texas State Board of Social Worker Examiners;

(E) the Board of Nurse Examiners;

(F) the Board of Vocational Nurse Examiners;

(G) the Texas Board of Physical Therapy Examiners;

(H) the Texas Board of Occupational Therapy Examiners; or

(I) another state agency authorized to regulate a provider who receives or is eligible to receive payment for a health care service under the Medicaid program.

(b) A licensing authority shall revoke a license issued by the authority to a person if the person is convicted of a felony under Section 36.131. In revoking the license, the licensing authority shall comply with all procedures generally applicable to the licensing authority in revoking licenses.

SECTION 4.10. APPLICATION. (a) The changes in law made by this article apply only to a violation committed on or after the effective date of this article. For purposes of this section, a violation is committed on or after the effective date of this article only if each element of the violation occurs on or after that date.

(b) A violation committed before the effective date of this article is overed by the law in effect when the violation was committed, and the former aw is continued in effect for this purpose.

ARTICLE 5. SUSPENSION OF LICENSES

SECTION 5.01. SUSPENSION OF LICENSES. (a) Subtitle B, Title 2, luman Resources Code, is amended by adding Chapter 23 to read as follows:

CHAPTER 23. SUSPENSION OF DRIVER'S OR RECREATIONAL LICENSE FOR FAILURE TO REIMBURSE DEPARTMENT

Sec. 23.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit, or ther authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to suspension, revocation, orfeiture, or termination by an issuing licensing authority; and

(C) a person must obtain to:

(i) operate a motor vehicle; or

(ii) engage in a recreational activity, including unting and fishing, for which a license or permit is required.

(2) "Order suspending a license" means an order issued by the epartment directing a licensing authority to suspend a license.

Sec. 23.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. In iis chapter, "licensing authority" means:

(1) the Parks and Wildlife Department; and

(2) the Department of Public Safety of the State of Texas.

Sec. 23.003. SUSPENSION OF LICENSE. The department may issue an rder suspending a license as provided by this chapter of a person who, fter notice:

(1) has failed to reimburse the department for an amount in excess f $250 granted in error to the person under the food stamp program or the rogram of financial assistance under Chapter 31;

(2) has been provided an opportunity to make payments toward the mount owed under a repayment schedule; and

(3) has failed to comply with the repayment schedule.

Sec. 23.004. INITIATION OF PROCEEDING. (a) The department may iitiate a proceeding to suspend a person's license by filing a petition with the epartment's hearings division.

(b) The proceeding shall be conducted by the department's hearings ivision. The proceeding is a contested case under Chapter 2001, overnment Code, except that Section 2001.054 does not apply.

(c) The commissioner shall render a final decision in the proceeding.

Sec. 23.005. CONTENTS OF PETITION. A petition under this iapter must state that license suspension is authorized under ection 23.003 and allege:

(1) the name and, if known, social security number of the person;

(2) the type of license the person is believed to hold and the name of ie licensing authority; and

(3) the amount owed to the department.

Sec. 23.006. NOTICE. (a) On initiating a proceeding under ection 23.004, the department shall give the person named in the petition:

(1) notice of the person's right to a hearing before the hearin division of the department;

(2) notice of the deadline for requesting a hearing; and

(3) a form requesting a hearing.

(b) Notice under this section may be served as in civil cases generall

(c) The notice must state that an order suspending a license shall rendered on the 60th day after the date of service of the notice unless that date:

(1) the person pays the amount owed to the department;

(2) the person presents evidence of a payment history satisfactory the department in compliance with a reasonable repayment schedule; or

(3) the person appears at a hearing before the hearings division a shows that the request for suspension should be denied or stayed.

Sec. 23.007. HEARING ON PETITION TO SUSPEND LICENSE. (a) request for a hearing and motion to stay suspension must be filed with t department not later than the 20th day after the date of service of the noti under Section 23.006.

(b) If a request for a hearing is filed, the hearings division of t department shall:

(1) promptly schedule a hearing;

(2) notify the person and an appropriate representative of t department of the date, time, and location of the hearing; and

(3) stay suspension pending the hearing.

Sec. 23.008. ORDER SUSPENDING LICENSE. (a) On making t findings required by Section 23.003, the department shall render an ord suspending a license.

(b) The department may stay an order suspending a license condition on the person's compliance with a reasonable repayment schedule that incorporated in the order. An order suspending a license with a stay of t suspension may not be served on the licensing authority unless the stay revoked as provided by this chapter.

(c) A final order suspending a license rendered by the department sh be forwarded to the appropriate licensing authority.

(d) If the department renders an order suspending a license, the pers may also be ordered not to engage in the licensed activity.

(e) If the department finds that the petition for suspension should denied, the petition shall be dismissed without prejudice, and an or suspending a license may not be rendered.

Sec. 23.009. DEFAULT ORDER. The department shall consider allegations of the petition for suspension to be admitted and shall render order suspending a license if the person fails to:

(1) respond to a notice issued under Section 23.006;

(2) request a hearing; or

(3) appear at a hearing.

Sec. 23.010. REVIEW OF FINAL ADMINISTRATIVE ORDER. order issued by the department under this chapter is a final agency decisi and is subject to review as provided by Chapter 2001, Government Code.

Sec. 23.011. ACTION BY LICENSING AUTHORITY. (a) On receipt : a final order suspending a license, the licensing authority shall ımediately determine if the authority has issued a license to the person ımed on the order and, if a license has been issued:

(1) record the suspension of the license in the licensing ıthority's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license if required by law for her cases in which a license is suspended.

(b) A licensing authority shall implement the terms of a final order ıspending a license without additional review or hearing. The authority may ovide notice as appropriate to the license holder or to others concerned with e license.

(c) A licensing authority may not modify, remand, reverse, vacate, or ay an order suspending a license issued under this chapter and may not view, vacate, or reconsider the terms of a final order suspending a license.

(d) A person who is the subject of a final order suspending a license is ıt entitled to a refund for any fee or deposit paid to the licensing authority.

(e) A person who continues to engage in the licensed activity after the ıplementation of the order suspending a license by the licensing authority is ıble for the same civil and criminal penalties provided for engaging in the ensed activity without a license or while a license is suspended that apply any other license holder of that licensing authority.

(f) A licensing authority is exempt from liability to a license holder for ıy act authorized under this chapter performed by the authority.

(g) Except as provided by this chapter, an order suspending a license or smissing a petition for the suspension of a license does not affect the power a licensing authority to grant, deny, suspend, revoke, terminate, or renew license.

(h) The denial or suspension of a driver's license under this chapter is verned by this chapter and not by Subtitle B, Title 7, Transportation Code.

Sec. 23.012. MOTION TO REVOKE STAY. (a) The department may e a motion with the department's hearings division to revoke the stay of an der suspending a license if the person does not comply with the terms of reasonable repayment plan entered into by the person.

(b) Notice to the person of a motion to revoke stay under this section may given by personal service or by mail to the address provided by the person, any, in the order suspending a license. The notice must include a notice of aring before the hearings division. The notice must be provided to the rson not less than 10 days before the date of the hearing.

(c) A motion to revoke stay must allege the manner in which the person iled to comply with the repayment plan.

(d) If the department finds that the person is not in compliance with the rms of the repayment plan, the department shall revoke the stay of the order spending a license and render a final order suspending a license.

Sec. 23.013. VACATING OR STAYING ORDER SUSPENDING LICENSE. (a) The department may render an order vacating or staying an der suspending a license if the person has paid all amounts owed to the partment or has established a satisfactory payment record.

(b) The department shall promptly deliver an order vacating or stayin an order suspending a license to the appropriate licensing authority.

(c) On receipt of an order vacating or staying an order suspendin a license, the licensing authority shall promptly reinstate and return th affected license to the person if the person is otherwise qualified fo the license.

(d) An order rendered under this section does not affect the right of th department to any other remedy provided by law, including the right to see relief under this chapter. An order rendered under this section does not affec the power of a licensing authority to grant, deny, suspend, revoke, terminate or renew a license as otherwise provided by law.

Sec. 23.014. FEE BY LICENSING AUTHORITY. A licensing authorit may charge a fee to a person who is the subject of an order suspendin a license in an amount sufficient to recover the administrative costs incurre by the authority under this chapter.

Sec. 23.015. COOPERATION BETWEEN LICENSING AUTHORITIE AND DEPARTMENT. (a) The department may request from each licensin authority the name, address, social security number, license renewal date, an other identifying information for each individual who holds, applies for, c renews a license issued by the authority.

(b) A licensing authority shall provide the requested information in th manner agreed to by the department and the licensing authority.

(c) The department may enter into a cooperative agreement wit a licensing authority to administer this chapter in a cost-effective manner.

(d) The department may adopt a reasonable implementation schedule fc the requirements of this section.

Sec. 23.016. RULES, FORMS, AND PROCEDURES. The departmer by rule shall prescribe forms and procedures for the implementation c this chapter.

(b) The Texas Department of Human Services shall take all actio necessary to implement the change in law made by this article not later tha January 1, 1998. The department may not suspend a license because c a person's failure to reimburse the department for a benefit granted in erro under the food stamp program or the program of financial assistance und Chapter 31, Human Resources Code, before September 1, 1997.

ARTICLE 6. MEASUREMENT OF FRAUD

SECTION 6.01. HEALTH CARE FRAUD STUDY. (a) Subchapter I Chapter 403, Government Code, is amended by adding Section 403.026 read as follows:

Sec. 403.026. HEALTH CARE FRAUD STUDY. (a) The comptroll shall conduct a study each biennium to determine the number and type fraudulent claims for medical or health care benefits submitted:

(1) under the state Medicaid program;

(2) under group health insurance programs administered through t Employees Retirement System of Texas for active and retired sta employees; or

(3) by or on behalf of a state employee and administered by t attorney general under Chapter 501, Labor Code.

(b) A state agency that administers a program identified by ubsection (a) shall cooperate with the comptroller and provide any ıformation required by the comptroller in connection with the study. A state gency may enter into a memorandum of understanding with the comptroller egarding the use and confidentiality of the information provided. This ubsection does not require a state agency to provide confidential information release of the information is prohibited by law.

(c) The comptroller shall report the results of the study to each state gency that administers a program included in the study so that the agency ıay modify its fraud control procedures as necessary.

(b) The comptroller of public accounts shall complete the initial study equired by Section 403.026, Government Code, as added by this section, not ıter than December 1, 1998.

SECTION 6.02. COMPILATION OF STATISTICS. (a) Subchapter B, hapter 531, Government Code, is amended by adding Section 531.0215 to ead as follows:

Sec. 531.0215. COMPILATION OF STATISTICS RELATING TO RAUD. The commission and each health and human services agency that dministers a part of the state Medicaid program shall maintain statistics on ıe number, type, and disposition of fraudulent claims for benefits submitted nder the part of the program the agency administers.

(b) Subchapter C, Chapter 501, Labor Code, is amended by adding ection 501.0431 to read as follows:

Sec. 501.0431. COMPILATION OF STATISTICS RELATING TO RAUD. The director shall maintain statistics on the number, type, and isposition of fraudulent claims for medical benefits under this chapter.

(c) Section 17(a), Texas Employees Uniform Group Insurance Benefits ıct (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read s follows:

(a) The trustee shall:

(1) make a continuing study of the operation and administration of ıis Act, including surveys and reports of group coverages and benefits vailable to employees and on the experience thereof; and

(2) maintain statistics on the number, type, and disposition of raudulent claims for benefits under this Act.

ARTICLE 7. GENERAL FALSE CLAIMS

SECTION 7.01. GENERAL FALSE CLAIMS ACT. (a) Subtitle F, itle 10, Government Code, is amended by adding Chapter 2259 to read as ollows:

CHAPTER 2259. FALSE CLAIMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2259.001. DEFINITIONS. In this chapter:

(1) "Claim" means a claim for money, property, or services made to:

(A) an employee, officer, or agent of a governmental entity; or

(B) a government contractor, if a portion of the money, roperty, or services claimed was or is to be provided by governmental entity.

(2) "Government contractor" means a person who receives mone from a governmental entity to provide goods or a service, acting within th course and scope of the person's obligation to the governmental entity. Th term includes a contractor, grantee, or other recipient of money witho regard to whether the contractor, grantee, or recipient is under contract to th governmental entity.

(3) "Governmental entity" means:

(A) the state;

(B) a local governmental entity;

(C) a board, commission, department, office, or other agenc in the executive branch of state government, including an institution of high education as defined by Section 61.003, Education Code;

(D) the legislature or a legislative agency; or

(E) the supreme court, the court of criminal appeals, a court appeals, or the State Bar of Texas or another judicial agency havin statewide jurisdiction.

(4) "Local governmental entity" means:

(A) a municipality, county, public school district, special-purpose district or authority; or

(B) a court that receives any part of its funding fro a municipality or county.

(5) "Managing official" means an appointed or elected offici responsible for the management or oversight of a governmental entity. In th case of the legislature, the term means the speaker of the house representatives or the lieutenant governor. In the case of a court, the ter means any judge or justice of the court.

(6) "Prosecuting authority" means the attorney for a loc governmental entity or another local government official charged wi investigating, filing, and conducting civil legal proceedings on behalf a local governmental entity.

Sec. 2259.002. PROHIBITED ACTS. A person may not:

(1) present to an officer, employee, or agent of a governmental enti or government contractor a false claim for payment or approval;

(2) make or use a false record or statement to obtain payment approval of a false claim by a governmental entity or government contracto

(3) conspire to defraud a governmental entity or governme contractor by obtaining the payment or approval of a false claim;

(4) deliver to a governmental entity or government contractor le property than the amount of property for which the person receives a receip

(5) make or deliver a receipt that falsely represents the amount property delivered that is to be used by a governmental entity government contractor;

(6) buy or accept as a pledge of an obligation or debt public proper from a person who may not sell or pledge the property;

(7) make or use a false record or statement to conceal, avoid, decrease an obligation to pay or transmit money or property to a government entity or government contractor;

(8) accept the benefits from a false claim made by any person; or

(9) cause an act described by Subdivisions (1) through (8) to be committed by another person.

Sec. 2259.003. REPRESENTATION OF STATE BY PRIVATE ATTORNEY. The attorney general may contract with a private attorney to represent the state in an action under this chapter.

Sec. 2259.004. SOVEREIGN IMMUNITY. (a) Except as provided by Subsection (b), this chapter does not waive sovereign immunity.

(b) Chapter 105, Civil Practice and Remedies Code, applies in an action brought or prosecuted by the state under this chapter.

[Sections 2259.005-2259.010 reserved for expansion]

SUBCHAPTER B. LIABILITY FOR VIOLATIONS

Sec. 2259.011. LIABILITY FOR KNOWING VIOLATION. (a) A court that finds that a person knowingly violated Section 2259.002 shall award the affected governmental entity:

(1) the actual damages sustained by the governmental entity because of the violation;

(2) exemplary damages equal to two times the amount of actual damages; and

(3) attorney's fees and costs incurred by the governmental entity to recover the damages and penalty.

(b) The court may reduce the amount of exemplary damages awarded under Subsection (a)(2) to an amount not less than the amount of actual damages if the person who knowingly violated Section 2259.002:

(1) furnished an official of the governmental entity responsible for investigating false claims violations with all information known to the person about the violation not later than the 30th day after the official requested the information; and

(2) otherwise fully cooperated with any investigation by the governmental entity.

(c) A person knowingly violates Section 2259.002 if the person:

(1) acts with actual knowledge of the facts that constitute the violation;

(2) acts in deliberate ignorance or reckless disregard of those facts or the truth or falsity of those facts; or

(3) acts without actual knowledge of the facts that constitute the violation and, after the violation, learns the facts that constitute the violation and fails to take action to mitigate or rectify the violation.

Sec. 2259.012. CIVIL PENALTY. In addition to amounts awarded under Section 2259.011, the court may award to the affected governmental entity a civil penalty of not more than $10,000 for each false claim unless the person who knowingly violated Section 2259.002 cooperated in the investigation as described by Sections 2259.011(b)(1) and (2).

Sec. 2259.013. LIABILITY JOINT AND SEVERAL; PROPORTIONATE RESPONSIBILITY INAPPLICABLE. Liability under this subchapter is joint and several for a violation described by Section 2259.011(c)(1) or (3) committed by more than one person.

Sec. 2259.014. EXCEPTIONS. A court may not award exemplary damages and attorney's fees and costs under Section 2259.011 or a civil

penalty under Section 2259.012 against a person if the total actual damages resulting from all violations for which damages are being assessed against the person in the case is less than $500.

Sec. 2259.015. DEPOSIT OF MONEY. (a) Money collected on behalf of a governmental entity shall be deposited to the credit of the general revenue fund of the state or of the local governmental entity, as appropriate.

(b) If the action is brought in the names of both the state and one or more local governmental entities, the court shall apportion the award of damages, exemplary damages, and any civil penalty among the state and those local entities on the basis of the loss incurred. Attorney's fees and costs shall be awarded to the entity that incurred the fees and costs.

Sec. 2259.016. LIMITATIONS. (a) Subject to Subsection (b), an action under this subchapter must be brought not later than the third anniversary of the date on which the violation was discovered by:

(1) the attorney general or prosecuting authority; or

(2) a managing official of the affected governmental entity, other than a managing official who participated in the violation.

(b) An action under this subchapter may not be brought after the 10th anniversary of the date on which the violation was committed.

Sec. 2259.017. APPLICATION OF LAW GOVERNING EXEMPLARY DAMAGES. Chapter 41, Civil Practice and Remedies Code, does not apply to exemplary damages awarded under Section 2259.011 or to the civil penalty awarded under Section 2259.012.

[Sections 2259.018-2259.020 reserved for expansion]

SUBCHAPTER C. ATTORNEY GENERAL ACTION

Sec. 2259.021. ATTORNEY GENERAL INVESTIGATION. (a) The attorney general shall investigate alleged violations of Section 2259.002 involving state funds.

(b) If the attorney general finds that a person has violated Section 2259.002, the attorney general may bring an action under Subchapter B against the person.

Sec. 2259.022. AFFECTED LOCAL GOVERNMENTAL ENTITY. (a) If the attorney general brings an action under Subchapter B on a claim that involves local government funds as well as state funds, the attorney general shall provide a copy of the complaint to the appropriate prosecuting authority.

(b) The attorney general shall mail the complaint to the prosecuting authority by certified mail, return receipt requested, not later than the date on which the complaint is filed.

(c) The prosecuting authority may intervene in an action brought by the attorney general under this subchapter not later than the 60th day after the date the prosecuting authority receives the copy of the complaint. The court may permit the prosecuting authority to intervene after that date for good cause.

[Sections 2259.023-2259.030 reserved for expansion]

SUBCHAPTER D. ACTION BROUGHT BY PROSECUTING AUTHORITY

Sec. 2259.031. PROSECUTING AUTHORITY INVESTIGATION. (a) A prosecuting authority shall investigate alleged violations of Section 2259.002 involving funds belonging to a local governmental entity.

(b) If the prosecuting authority finds that a person has violated Section 2259.002, the prosecuting authority may bring an action under Subchapter B against the person.

Sec. 2259.032. ATTORNEY GENERAL. (a) If the prosecuting authority brings an action under Subchapter B on a claim that involves state funds as well as local government funds, the prosecuting authority shall provide a copy of the complaint to the attorney general.

(b) The prosecuting authority shall mail the complaint to the attorney general by certified mail, return receipt requested, not later than the date on which the complaint is filed.

(c) Not later than the 60th day after the date the attorney general receives the copy of the complaint, the attorney general shall:

(1) notify the court that the attorney general intends to proceed with the action and assume primary responsibility for conducting the action; or

(2) notify the court that the attorney general declines to assume primary responsibility for conducting the action.

(d) If the attorney general assumes primary responsibility for conducting the action, the prosecuting authority may continue as a party in the action. If the attorney general declines to assume primary responsibility for conducting the action, the prosecuting authority may continue to conduct the action.

[Sections 2259.033-2259.040 reserved for expansion]

SUBCHAPTER E. PRIVATE CAUSE OF ACTION

Sec. 2259.041. PRIVATE ACTION. A person may bring a civil action in a district court in this state for a violation of Section 2259.002 in the name of the person and the name of the state, the name of a local government, or both the state and the local government, as appropriate.

Sec. 2259.042. SERVICE OF PETITION. (a) A person who brings an action under this subchapter shall serve a copy of the petition in the action on:

(1) the attorney general, if the claim involves state funds; and

(2) the prosecuting authority of the local government, if the claim involves local government funds.

(b) Service under this section shall be made in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

Sec. 2259.043. INTERVENTION. (a) In an action involving only state funds, the attorney general may assume responsibility for prosecution of the action by entering an appearance not later than the 60th day after the date the attorney general receives service of the petition under Section 2259.042.

(b) In an action involving only local government funds, the prosecuting authority may assume responsibility for prosecution of the action by entering an appearance not later than the 60th day after the date the prosecuting authority receives service of the petition under Section 2259.042.

(c) In an action involving state and local government funds, the attorney general may assume primary responsibility for prosecution of the action by entering an appearance not later than the 60th day after the date the attorney general receives service of the petition under Section 2259.042.

(d) If the attorney general assumes primary responsibility for prosecution of the action under Subsection (c), the prosecuting authority may, not later than the 60th day after the date the prosecuting authority receives

service of the petition under Section 2259.042, enter an appearance and proceed as a party in the action.

(e) If the attorney general does not assume primary responsibility for prosecution of the action under Subsection (c), the prosecuting authority may assume responsibility for prosecution of the action not later than the 30th day after the last date the attorney general may enter an appearance under this section.

Sec. 2259.044. RIGHTS OF PARTIES IF GOVERNMENT PROSECUTES ACTION. (a) If the attorney general or the prosecuting authority assumes responsibility for prosecuting the action, the attorney general or prosecuting authority, as appropriate, has the primary responsibility for prosecuting the action and is not bound by an act of the person commencing the action. If both the attorney general and the prosecuting authority enter appearances in the action, the attorney general has primary responsibility for prosecuting the action and is the only party authorized to take the actions described in Subsections (b), (c), and (d). The person commencing the action has the right to continue as a party to the action, subject to the limitations set forth by this section.

(b) The attorney general or prosecuting authority, as appropriate, may dismiss the action notwithstanding the objections of the person commencing the action if:

(1) the attorney general or prosecuting authority notifies the person that the government has filed a motion to dismiss; and

(2) the court provides the person with an opportunity for a hearing on the motion.

(c) The attorney general or prosecuting authority, as appropriate, may settle the action with the defendant notwithstanding the objections of the person commencing the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. On a showing of good cause, the hearing may be held in camera.

(d) On a showing by the attorney general or prosecuting authority, as appropriate, that unrestricted participation during the course of the litigation by the person commencing the action would interfere with or unduly delay the government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may impose limitations on the person's participation, including:

(1) limiting the number of witnesses the person may call;

(2) limiting the length of the testimony of witnesses called by the person;

(3) limiting the person's cross-examination of witnesses; or

(4) otherwise limiting the participation by the person in the litigation.

(e) On a showing by the defendant that unrestricted participation during the course of the litigation by the person commencing the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

Sec. 2259.045. AWARD TO PRIVATE PARTY IF GOVERNMENT PROSECUTES ACTION. (a) If the attorney general or the prosecuting authority assumes responsibility for prosecution of the action under Section 2259.043 and the action is settled or the court enters a judgment for the state or the local government, the court, except as provided by Subsection (c), shall award at least 10 percent but not more than 25 percent of the settlement or judgment to the person who commenced the action under this subchapter.

(b) In determining the amount to award a person under this section, the court shall consider the value of any information or evidence disclosed by the person.

(c) If the court finds that the action is based primarily on disclosures of specific information, other than information provided by the person commencing the action, relating to allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award the amount the court considers appropriate but not more than seven percent of the settlement or judgment. The court shall consider the significance of the information and the role of the person commencing the action in advancing the case to litigation.

Sec. 2259.046. AWARD TO PRIVATE PARTY IF GOVERNMENT DOES NOT PROSECUTE ACTION. (a) If the attorney general or the prosecuting authority does not assume responsibility for prosecution of the action under Section 2259.043 and the action is settled or the court enters a judgment for the state or the local government, the court shall award to the person who prosecuted the action under this subchapter:

(1) at least 25 percent but not more than 30 percent of the settlement or judgment; and

(2) reasonable expenses incurred by the person in prosecuting the action.

(b) In determining the amount to award a person under Subsection (a), the court shall consider the value of the person's prosecution of the action.

Sec. 2259.047. REDUCTION OF AWARD. (a) Regardless of whether the attorney general or the prosecuting authority assumes responsibility for the prosecution of the action under Section 2259.043, if the court finds that the action was commenced by a person who planned and initiated the violation of Section 2259.002 on which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the settlement or judgment the person would otherwise receive, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation.

(b) If the person commencing the action is convicted of criminal conduct arising from the person's role in the violation of Section 2259.002, the court shall dismiss the person from the civil action and the person may not receive any share of the settlement or judgment. A dismissal under this subsection does not prejudice the right of the attorney general or the prosecuting authority to continue the action.

Sec. 2259.048. AWARD TO DEFENDANT FOR FRIVOLOUS ACTION OR ACTION BROUGHT FOR PURPOSES OF HARASSMENT. (a) If the attorney general or the prosecuting authority does not assume responsibility for prosecution of the action and the person commencing the action prosecutes the action, the court may award to the defendant the defendant's reasonable attorney's fees and expenses if:

(1) the defendant prevails in the action; and

(2) the court finds that the claim of the person commencing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(b) A court finding under Subsection (a)(2) constitutes a finding that the person's attorney is in violation of Section 10.001, Civil Practice and Remedies Code, and the attorney is liable, in addition to the person commencing the action, for an award made under Subsection (a).

Sec. 2259.049. CERTAIN ACTIONS BARRED. (a) A person may not bring an action under this subchapter that is based on allegations or transactions that are the subject of a civil suit or an administrative penalty proceeding in which the state or a local governmental entity is already a party.

(b) A person may not bring an action under this subchapter that is based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. In this subsection, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action under this subchapter that is based on the information.

[Section 2259.050 reserved for expansion]

SUBCHAPTER F. INTERFERENCE WITH DISCLOSURE BY EMPLOYEES

Sec. 2259.051. RIGHT TO DISCLOSE INFORMATION AND PARTICIPATE IN ACTION. A person is entitled to:

(1) disclose information relevant to an alleged violation of Section 2259.002 to a governmental entity, a prosecuting authority, the attorney general, or a law enforcement agency;

(2) assist, at the request of the attorney general or a prosecuting authority, in the investigation of an alleged violation of Section 2259.002; or

(3) testify or otherwise participate, at the request of the attorney general or a prosecuting authority, in the furtherance of an action filed or to be filed under this chapter.

Sec. 2259.052. PROHIBITED CONDUCT BY EMPLOYER. (a) An employer may not:

(1) adopt or enforce a rule or policy that prevents an employee from exercising the employee's rights under Section 2259.051; or

(2) retaliate against an employee because the employee has exercised the employee's rights under Section 2259.051.

(b) An employer who violates Subsection (a) is liable to the employee for:

(1) actual damages, including damages for lost wages;

(2) reinstatement to employment with the seniority status, if applicable, that the employee would have had in the absence of the retaliation;

(3) exemplary damages equal to not less than two times the amount of lost wages; and

(4) attorney's fees and costs.

(c) An employee may not recover under Subsection (b) unless:

(1) the employee exercised the employee's rights under Section 2259.051;

(2) if the employee seeks recovery as a result of retaliation, the employee establishes by a preponderance of the evidence in a court proceeding brought under this section that but for the exercise of the employee's rights under Section 2259.051 the retaliation would not have occurred; and

(3) to the extent the employee participated in the violation of Section 2259.002, the employee participated in response to harassment, threats of termination or demotion, or other coercion by the employer.

(d) This section does not apply to an employer who is subject to Chapter 554, Government Code.

(b) This section applies only to an action commenced on or after the effective date of this section without regard to whether the act on which the action is based occurred before, on, or after that date. An action commenced before the effective date of this section is governed by the law applicable to the action immediately before the effective date of this section, and that law is continued in effect for that purpose.

ARTICLE 8. WAIVERS; EFFECTIVE DATE; EMERGENCY

SECTION 8.01. WAIVERS. If before implementing any provision of this Act, a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 8.02. EFFECTIVE DATE. Except as otherwise provided by this Act, this Act takes effect September 1, 1997.

SECTION 8.03. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Floor Amendment No. 1

Amend **CSSB 30** as follows:

(1) In SECTION 1.05(a) of the bill, in proposed Section 531.047(a), Government Code (House Committee Report page 6, line 26), between "commission" and "by", insert ", after consulting with the Texas Department of Human Services,".

(2) In SECTION 1.05(a) of the bill, in proposed Section 531.047(a), Government Code (House Committee Report page 7, line 5), between "states" and the period, insert "or other appropriate factors identified by the commission and the department".

(3) In SECTION 1.05(a) of the bill, in proposed Section 531.047(b), Government Code (House Committee Report page 7, line 10), between "amount" and "the department", insert "of state funds".

(4) In SECTION 1.05(a) of the bill, in proposed Section 531.047(b), Government Code (House Committee Report page 7, line 11), between "amount" and "the department", insert "of state funds".

(5) In SECTION 1.06(a) of the bill (House Committee Report page 16, line 26 through page 17, line 4), strike proposed Section 531.109, Government Code.

(6) In SECTION 2.05(a) of the bill, in amended Section 16A(n)(3), Article 4413(502), Revised Statutes (House Committee Report page 28, line 7), strike "subcontract" and substitute "contract for ancillary services".

(7) In SECTION 2.05(a) of the bill, in amended Section 16A(n)(4), Article 4413(502), Revised Statutes (House Committee Report page 28, line 11), strike "subcontract" and substitute "contract for ancillary services".

(8) In SECTION 2.05(c) of the bill, in proposed Section 532.112(a)(3), Government Code (House Committee Report page 31, line 13), strike "subcontract" and substitute "contract for ancillary services".

(9) In SECTION 2.05(c) of the bill, in proposed Section 532.112(a)(4), Government Code (House Committee Report page 31, line 17), strike "subcontract" and substitute "contract for ancillary services".

(10) In SECTION 2.05(g)(1) of the bill (House Committee Report page 34, line 6), strike "subcontract" and substitute "contract for ancillary services".

(11) In SECTION 2.05(g)(2) of the bill (House Committee Report page 34, line 8), strike "subcontract" and substitute "contract for ancillary services".

(12) In SECTION 2.05(h) of the bill (House Committee Report page 34, lines 13 and 14), strike "or subcontract".

(13) In SECTION 2.05(h) of the bill (House Committee Report page 34, line 15), strike "or subcontract".

(14) In SECTION 4.06 of the bill, in amended Section 36.005(b), Human Resources Code (House Committee Report page 57, line 27), strike "section" and substitute "subsection".

(15) In SECTION 4.08 of the bill, in proposed Section 36.101(a), Human Resources Code (House Committee Report page 59, line 2), strike "name of the state" and substitute "name of the person and of the state".

(16) In SECTION 4.08 of the bill, strike proposed Section 36.104, Human Resources Code (House Committee Report page 60, lines 5-11), and substitute the following:

Sec. 36.104. CONTINUATION OR DISMISSAL OF ACTION BASED ON STATE DECISION. (a) Not later than the last day of the period prescribed by Section 36.102(c), the state shall:

(1) proceed with the action; or

(2) notify the court that the state declines to take over the action.

(b) If the state declines to take over the action, the court shall dismiss the action.

(17) In SECTION 4.08 of the bill, strike proposed Section 36.108, Human Resources Code (House Committee Report page 62, lines 2-12).

(18) In SECTION 4.08 of the bill, in proposed Section 36.109, Human Resources Code (House Committee Report page 62, line 13), strike "36.109" and substitute "36.108".

(19) In SECTION 4.08 of the bill, in proposed Section 36.109(a), Human Resources Code (House Committee Report page 62, lines 13-14), strike "Regardless of whether the state proceeds with the action, on" and substitute "On".

(20) In SECTION 4.08 of the bill, in proposed Section 36.110, Human Resources Code (House Committee Report page 63, line 1), strike "36.110" and substitute "36.109".

(21) In SECTION 4.08 of the bill, in proposed Section 36.111, Human Resources Code (House Committee Report page 63, line 20), strike "36.111" and substitute "36.110".

(22) In SECTION 4.08 of the bill, strike proposed Section 36.111(c), Human Resources Code (House Committee Report page 64, lines 9-14).

(23) In SECTION 4.08 of the bill, in proposed Section 36.111(d), Human Resources Code (House Committee Report page 64, line 15), strike "(d)" and substitute "(c)".

(24) In SECTION 4.08 of the bill, in proposed Section 36.111(e), Human Resources Code (House Committee Report page 64, line 21), strike "(e)" and substitute "(d)".

(25) In SECTION 4.08 of the bill, in proposed Section 36.112, Human Resources Code (House Committee Report page 64, line 23), strike "36.112" and substitute "36.111".

(26) In SECTION 4.08 of the bill, in proposed Section 36.112(a), Human Resources Code (House Committee Report page 64, lines 23-24), strike "Regardless of whether the state proceeds with the action, if" and substitute "If".

(27) In SECTION 4.08 of the bill, in proposed Section 36.112(a), Human Resources Code (House Committee Report page 65, line 2), strike "36.111" and substitute "36.110".

(28) In SECTION 4.08 of the bill, in proposed Section 36.113, Human Resources Code (House Committee Report page 65, line 11) strike "36.113" and substitute "36.112".

(29) In SECTION 4.08 of the bill, in the heading to proposed Section 36.113, Human Resources Code (House Committee Report page 65, lines 11-12), strike "OR ACTION BROUGHT FOR PURPOSES OF HARASSMENT".

(30) In SECTION 4.08 of the bill, strike proposed Sections 36.113(a) and (b), Human Resources Code (House Committee Report page 65, lines 12-24).

(31) In SECTION 4.08 of the bill, in proposed Section 36.113(c), Human Resources Code (House Committee Report page 65, line 25), strike "(c)".

(32) In SECTION 4.08 of the bill, in proposed Section 36.114, Human Resources Code (House Committee Report page 65, line 27), strike "36.114" and substitute "36.113".

(33) In SECTION 4.08 of the bill, in proposed Section 36.115, Human Resources Code (House Committee Report page 66, line 15), strike "36.115" and substitute "36.114".

(34) In SECTION 4.08 of the bill, in proposed Section 36.116, Human Resources Code (House Committee Report page 66, line 18), strike "36.116" and substitute "36.115".

(35) In SECTION 4.08 of the bill, in proposed Section 36.117, Human Resources Code (House Committee Report page 67, line 7), strike "36.117" and substitute "36.116".

(36) In SECTION 4.08 of the bill, in proposed Section 36.117, Human Resources Code (House Committee Report page 67, line 8), strike "36.113(c)" and substitute "36.112".

(37) In SECTION 4.08 of the bill, in proposed Section 36.118, Human Resources Code (House Committee Report page 67, line 10), strike "36.118" and substitute "36.117".

(38) In SECTION 5.01(a) of the bill, in proposed Section 23.004(c), Human Resources Code (House Committee Report page 72, line 9), between "commissioner" and "shall", insert "or the commissioner's designated representative".

(39) In SECTION 7.01(a) of the bill, in proposed Section 2259.014, Government Code (House Committee Report page 84, line 27), between "EXCEPTIONS." and "A", insert "(a)".

(40) In SECTION 7.01(a) of the bill, in proposed Section 2259.014, Government Code (House Committee Report page 85, between lines 4 and 5), insert the following:

(b) A court may not award exemplary damages under Section 2259.011 against a governmental entity.

(41) In SECTION 7.01(a) of the bill, in proposed Section 2259.043, Government Code (House Committee Report page 88, line 17), strike "INTERVENTION" and substitute "INTERVENTION AND CONTINUATION OR DISMISSAL OF ACTION".

(42) In SECTION 7.01(a) of the bill, in proposed Section 2259.043, Government Code (House Committee Report page 89, between lines 15 and 16), insert the following:

(f) If neither the attorney general nor the prosecuting authority assumes responsibility for prosecution of the action, the court shall dismiss the action.

(43) In SECTION 7.01(a) of the bill, in proposed Section 2259.045(a), Government Code (House Committee Report page 91, line 14), between "Subsection (c)" and the comma, insert "and subject to Subsection (d)".

(44) In SECTION 7.01(a) of the bill, in proposed Section 2259.045, Government Code (House Committee Report page 92, between lines 2 and 3), insert the following:

(d) An award to a person under this section is subject to any applicable restrictions under federal law on the use of the proceeds from the settlement or judgment.

(45) In SECTION 7.01(a) of the bill, strike proposed Section 2259.046, Government Code (House Committee Report page 92, lines 3-16).

(46) In SECTION 7.01(a) of the bill, in proposed Section 2259.047, Government Code (House Committee Report page 92, line 17), strike "2259.047" and substitute "2259.046".

(47) In SECTION 7.01(a) of the bill, in proposed Section 2259.047(a), Government Code (House Committee Report page 92, lines 17-20), strike "Regardless of whether the attorney general or the prosecuting authority assumes responsibility for the prosecution of the action under Section 2259.043, if" and substitute "If".

(48) In SECTION 7.01(a) of the bill, strike proposed Section 2259.048, Government Code (House Committee Report page 93, lines 7-21).

(49) In SECTION 7.01(a) of the bill, in proposed Section 2259.049, Government Code (House Committee Report page 93, line 22), strike "2259.049" and substitute "2259.047".

(50) In SECTION 7.01(a) of the bill, immediately following proposed Section 2259.049, Government Code (House Committee Report page 94, line 10), strike "Section 2259.050" and substitute "Sections 2259.048-2259.050".

Floor Amendment No. 2

Amend Amendment No. 1 to **CSSB 30** by Maxey as follows:

(1) Strike Items (39) and (40) (page 6, lines 3-10 of the amendment).

(2) Add the following appropriately-numbered items:

( ) In SECTION 7.01(a) of the bill, in proposed Section 2259.002, Government Code (House Committee Report page 82, line 7), between "A" and "person", insert "private".

( ) In SECTION 7.01(a) of the bill, in proposed Section 2259.011(a), Government Code (House Committee Report page 83, line 16), between "a" and "person", insert "private".

( ) In SECTION 7.01(a) of the bill, in proposed Section 2259.011(b), Government Code, (House Committee Report page 83, line 26), between "the" and "person", insert "private".

( ) In SECTION 7.01(a) of the bill, in proposed Section 2259.011(c), Government Code (House Committee Report page 84, line 7), between "A" and "person", insert "private".

( ) In SECTION 7.01(a) of the bill, in proposed Section 2259.011(c)(2), Government Code (House Committee Report page 84, line 11), strike "deliberate ignorance or".

( ) In SECTION 7.01(a) of the bill, in proposed Section 2259.012, Government Code (House Committee Report page 84, line 20) between "the" and "person", insert "private".

( ) In SECTION 7.01(a) of the bill, in proposed Section 2259.013, Government Code (House Committee Report page 84, line 26), between "one" and "person", insert "private".

( ) In SECTION 7.01(a) of the bill, in proposed Section 2259.014, Government Code (House Committee Report page 85, line 2), between "a" and "person", insert "private".

( ) In SECTION 7.01(a) of the bill, in proposed Section 2259.021(b), Government Code (House Committee Report page 86, line 8), between "a" and "person", insert "private".

( ) In SECTION 7.01(a) of the bill, in proposed Section 2259.031(b), Government Code (House Committee Report page 87, line 3), between "a" and "person", insert "private".

(3) Renumber the existing items in the amendment appropriately.

Floor Amendment No. 3

Amend **CSSB 30** by adding the following article, appropriately numbered, and renumbering the existing articles of the bill accordingly:

ARTICLE _. MISCELLANEOUS PROVISION.

Sec. __ .01. THEFT BY GOVERNMENT CONTRACTOR. (a) Section 31.03(f), Penal Code, is amended to read as follows:

(f) An offense described for purposes of punishment by Subsections (e)(1)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the actor was a public servant at the time of the offense[;] and

[~~(2)~~] the property appropriated came into the actor's custody, possession, or control by virtue of his status as a public servant; or

(2) the actor was in a contractual relationship with government at the time of the offense and the property appropriated came into the actor's custody, possession, or control by virtue of the contractual relationship.

(b) The changes in law made by this section apply only to an offense committed on or after the effective date of this section. For purposes of this section, an offense is committed before the effective date of this section if any element of the offense occurs before that date.

(c) An offense committed before the effective date of this section is covered by the law in effect at the time the offense was committed.

The amendments were read.

Senator Zaffirini moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 30** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Zaffirini, Chair; Nelson, Moncrief, Bivins, and Ogden.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1235 ADOPTED

Senator Ratliff called from the President's table the Conference Committee Report on **HB 1235**. The Conference Committee Report was read and was filed with the Senate on Friday, May 23, 1997.

On motion of Senator Ratliff, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 1912 WITH HOUSE AMENDMENT

Senator Cain called **SB 1912** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1912** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to hazardous liquid or carbon dioxide pipeline facilities.

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

SECTION 1. Section 117.011, Natural Resources Code, is amended to read as follows:

Sec. 117.011. JURISDICTION. (a) The commission has jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101 et seq. [~~in the Hazardous Liquid Pipeline Safety Act of 1979 (Pub.L.No. 96-129)~~].

(b) The commission may seek designation by the Secretary of Transportation as an agent to conduct safety inspections of interstate hazardous liquid or carbon dioxide pipeline facilities located in this state.

SECTION 2. Section 117.012, Natural Resources Code, is amended by adding Subsection (g) to read as follows:

(g) The commission shall adopt rules regarding:

(1) public education and awareness concerning hazardous liquid or carbon dioxide pipeline facilities; and

(2) community liaison for the purpose of responding to an emergency concerning a hazardous liquid or carbon dioxide pipeline facility.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Cain moved to concur in the House amendment to **SB 1912**.

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

SENATE BILL 1911 WITH HOUSE AMENDMENT

Senator Cain called **SB 1911** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1911** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to interstate natural gas pipeline facilities.

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

SECTION 1. Subsection (A), Article 6053-1, Revised Statutes, is amended to read as follows:

(A) For the purpose of providing exclusive state control over safety standards and practices applicable to the transportation of gas and all gas pipeline facilities within the borders of this state to the maximum degree permissible under 49 U.S.C. Section 60101 et seq. [~~the federal Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. Section 60101 et seq.)~~] or any successor legislation, the Railroad Commission of Texas is hereby expressly granted the power to:

(1) describe or adopt by regulation safety standards for all such transportation of gas and gas pipeline facilities which are not subject to exclusive federal control;

(2) [~~, to~~] require record maintenance and reports and to inspect records and facilities to determine compliance with such safety standards;

(3) [~~, and,~~] from time to time, [~~to~~] make certifications and reports;

(4) seek designation by the Secretary of Transportation as an agent to conduct safety inspections of interstate gas pipeline facilities located in this state; and

(5) [~~to~~] take any other requisite action in accordance with 49 U.S.C. Section 60101 et seq. [~~the Natural Gas Pipeline Safety Act of 1968~~] or any successor legislation.

SECTION 2. Article 6053-1, Revised Statutes, is amended by adding Subsection (e) to read as follows:

(e) The Railroad Commission of Texas shall adopt rules regarding:

(1) public education and awareness concerning gas pipeline facilities; and

(2) community liaison for the purpose of responding to an emergency concerning a gas pipeline facility.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Cain moved to concur in the House amendment to **SB 1911**.

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1212 ADOPTED

Senator Sibley called from the President's table the Conference Committee Report on **HB 1212**. The Conference Committee Report was read and was filed with the Senate on Friday, May 23, 1997.

On motion of Senator Sibley, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 329 WITH HOUSE AMENDMENT

Senator Brown called **SB 329** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 329** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the offense of making a false report to a peace officer or to an employee of a law enforcement agency.

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

SECTION 1. Section 37.08, Penal Code, is amended to read as follows:

Sec. 37.08. FALSE REPORT TO PEACE OFFICER OR LAW ENFORCEMENT EMPLOYEE. (a) A person commits an offense if, with intent to deceive, he knowingly makes a false statement that is material to a criminal investigation and makes the statement to:

(1) a peace officer conducting the [~~a criminal~~] investigation; or

(2) any employee of a law enforcement agency that is authorized by the agency to conduct the investigation and that the actor knows is conducting [~~and the statement is material to~~] the investigation.

(b) In this section, "law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

(c) An offense under this section is a Class B misdemeanor.

SECTION 2. This Act takes effect September 1, 1997.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Brown, the Senate concurred in the House amendment to **SB 329** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 381

Senator Madla called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust

the differences between the two Houses on **HB 381** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 381** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Madla, Chair; Gallegos, Lucio, Sibley, and Galloway.

SENATE BILL 489 WITH HOUSE AMENDMENT

Senator Madla called **SB 489** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 489** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of explosives by a county fire marshal in certain counties.

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

SECTION 1. Section 236.001(a), Local Government Code, is amended to read as follows:

(a) This chapter applies only to a county with a population of one [~~two~~] million or more.

SECTION 2. Section 236.003, Local Government Code, is amended to read as follows:

Sec. 236.003. AUTHORITY TO REGULATE; ADOPTION OF RULES. (a) Except as provided by Subsection (b), the commissioners court of the county by order may authorize the county fire marshal [~~sheriff~~] of a county to:

(1) propose rules to implement this chapter; and

(2) in accordance with the rules proposed by the county fire marshal [~~sheriff~~] and adopted by the commissioners court under this chapter:

(A) regulate the production, distribution, transport, transfer, use, and possession of an explosive in the county; and

(B) enforce standards concerning the manufacture, transportation, transfer, use, handling, and storage of explosives as necessary for the protection of the public health, welfare, or safety and of persons possessing, handling, and using explosives.

(b) The commissioners court may not adopt a rule under this chapter that:

(1) authorizes the county fire marshal [~~sheriff~~] to regulate the transportation of explosives if the point of origin and the destination are outside the county; or

(2) regulates a product or activity licensed or regulated under Article 5.43-4, Insurance Code, or a rule adopted under that article.

(c) Rules proposed by the county fire marshal [~~sheriff~~], if adopted by the commissioners court, must include:

(1) the requirement that a person obtain a permit from the county fire marshal [~~sheriff~~] in accordance with this chapter before the person may:

(A) produce, distribute, transport, use, or possess an explosive; or

(B) maintain a permanent storage magazine;

(2) the establishment of procedures for permit application and renewal;

(3) the establishment of procedures that include notice to the permit holder and an opportunity for a hearing, for permit revocation or suspension if the permit holder violates this chapter or a rule adopted under this chapter;

(4) the establishment of fees in accordance with this chapter for the issuance of the permits;

(5) the requirement that persons who produce or transfer explosives keep records of the explosives produced or transferred; and

(6) the requirement that a label be affixed to each unit of explosive in the county stating the type, class, and serial or control number of the explosive.

(d) The rules may not conflict with generally accepted standards of safety concerning explosives and must conform to published standards of the Institute of Makers of Explosives.

(e) The county fire marshal [~~sheriff~~] shall provide a copy of the rules to a person on request and may assess a reasonable fee for the copy.

SECTION 3. Section 236.004(a), Local Government Code, is amended to read as follows:

(a) In a county in which the county fire marshal [~~sheriff~~] regulates explosives under this chapter, a person, including a common, contract, or private carrier, may not produce, distribute, transport, transfer, use, or possess an explosive without a permit issued in accordance with this chapter.

SECTION 4. Section 236.005, Local Government Code, is amended to read as follows:

Sec. 236.005. PERMIT FEES. (a) The county fire marshal [~~sheriff~~] of a county who regulates explosives under this chapter may assess the fees for the issuance or renewal of a permit under this chapter in reasonable amounts set by the commissioners court.

(b) The county fire marshal [~~sheriff~~] shall remit all fees received under this chapter to the county treasurer to be deposited to the credit of the general fund of the county.

SECTION 5. The chapter heading to Chapter 236, Local Government Code, is amended to read as follows:

CHAPTER 236. REGULATION OF EXPLOSIVES BY COUNTY FIRE MARSHAL [~~SHERIFF~~] IN CERTAIN COUNTIES

SECTION 6. (a) A rule proposed by the sheriff and adopted by the commissioners court under Chapter 236, Local Government Code, before the effective date of this Act remains in effect as a rule enforced by the county fire marshal until superseded by a rule adopted by the commissioners court.

(b) A permit under Chapter 236, Local Government Code, that is valid on the effective date of this Act remains valid until it expires or until the county fire marshal suspends or revokes the permit.

(c) A proceeding to suspend or revoke a permit issued by a sheriff under Chapter 236, Local Government Code, before the effective date of this Act that is pending on the effective date of this Act is transferred without change in status to the county fire marshal on the effective date of this Act.

(d) All records relating to permits issued by the sheriff under Chapter 236, Local Government Code, before the effective date of this Act are transferred to the county fire marshal on the effective date of this Act.

(e) A criminal proceeding under Section 236.006, Local Government Code, pending on the effective date of this Act is not affected by the change in law made in this Act.

SECTION 7. This Act takes effect September 1, 1997.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Madla, the Senate concurred in the House amendment to **SB 489** by a viva voce vote.

SENATE BILL 205 WITH HOUSE AMENDMENT

Senator Madla called **SB 205** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 205** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the administration of county roads.

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

SECTION 1. Section 251.005(a), Transportation Code, is amended to read as follows:

(a) A county commissioner serving as a road supervisor shall make a sworn report during the ninth month of the county fiscal year on a form approved by [~~to each regular term of~~] the commissioners court showing:

(1) the condition of each road or part of a road and of each culvert and bridge in the commissioner's precinct;

(2) the amount of money reasonably necessary for maintenance of [~~held by overseers available to be spent on~~] the roads in the precinct during the next county fiscal year;

(3) the number of traffic control devices [~~mileposts and fingerboards~~] in the precinct defaced or torn down;

(4) any new road that should be opened in the precinct; and

(5) any bridges, culverts, or other improvements necessary to place the roads in the precinct in good condition, and the probable cost of the improvements[~~; and~~

[~~(6) the name of each overseer who has failed to work on the roads or who in any way neglected to perform the overseer's duties~~].

SECTION 2. Section 252.101(b), Transportation Code, is amended to read as follows:

(b) Notwithstanding Subsection (a), the commissioners court of Collin, [~~or~~] Dallas, or Van Zandt County may adopt this subchapter instead of the special law for that county if the court determines that this subchapter is better suited to that county than the special law.

SECTION 3. Subchapter A, Chapter 256, Transportation Code, is amended by adding Section 256.009 to read as follows:

Sec. 256.009. REPORT TO COMPTROLLER. (a) Not later than January 30 of each year, the county auditor or, if the county does not have a county auditor, the official having the duties of the county auditor shall file a report with the comptroller stating the total amount of expenditures for county road and bridge construction, maintenance, rehabilitation, right-of-way acquisition, and utility construction and other appropriate road expenditures of county funds in the preceding county fiscal year that are required by the constitution or other law to be spent on public roads or highways. The report must be in a form prescribed by the comptroller.

(b) The comptroller may distribute money under Section 256.002(a) to a county only if the most recent report required by Subsection (a) has been filed.

SECTION 4. In addition to the substantive changes made by this Act, Section 3 of this Act conforms Subchapter A, Chapter 256, Transportation Code, to Section 1, Chapter 568, Acts of the 74th Legislature, Regular Session, 1995. To the extent of any conflict, this Act prevails over another Act of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions and amendments to enacted codes.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

On motion of Senator Madla, the Senate concurred in the House amendment to **SB 205** by a viva voce vote.

SENATE BILL 1529 WITH HOUSE AMENDMENT

Senator Brown called **SB 1529** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1529** on page 3 by striking lines 11 through 13 and renumbering the subsequent sections accordingly.

The amendment was read.

On motion of Senator Brown, the Senate concurred in the House amendment to **SB 1529** by a viva voce vote.

SENATE BILL 1888 WITH HOUSE AMENDMENT

Senator Brown called **SB 1888** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1888** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the repeal of the authority to abolish certain conservation and reclamation districts that become part of more than one municipality.

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

SECTION 1. Section 43.076(a), Local Government Code, is amended to read as follows:

(a) This section applies to a municipality that contains, as a result of the annexation by or the incorporation of the municipality, any part of the area in a water control and improvement district, fresh water supply district, or municipal utility district organized for the primary purpose of providing municipal functions such as the supplying of fresh water for domestic or commercial uses or the furnishing of sanitary sewer service, if:

(1) the balance of the area in the district is located in one or more other municipalities; [~~or~~]

(2) the district is not created by a special act of the legislature and the balance of the area is located in one or more other municipalities and in an unincorporated area; or

(3) the district is a conservation and reclamation district of more than 10,000 acres that provides water and sanitary sewer service to households and parts of which are located in two or more municipalities, one of which has a population of more than 1.6 million.

SECTION 2. Subchapter D, Chapter 43, Local Government Code, is amended by adding Section 43.0761 to read as follows:

Sec. 43.0761. PROVISION OF WATER AND SANITARY SEWER UTILITY SERVICE. (a) A district existing on September 1, 1997, that, within 10 years after the date of its creation, has not provided water and sanitary sewer utility service from its facilities to all household users in its territory shall:

(1) provide water and sanitary sewer utility service from its facilities to all household users in its territory not later than September 1, 1998; or

(2) for that part of the district for which the district does not provide water and sanitary sewer utility service, and for which a municipality does provide those services, provide for periodic payments, as described by Subsection (b), by the district to the municipality that provides the services.

(b) Payments made under Subsection (a)(2) are operation and maintenance expenses of the district and shall be made at least every three months. The total annual amount of the payments may not exceed the lesser of:

(1) the total annual cost to the municipality of providing the water and sanitary sewer utility service, including both capital and operation and maintenance costs and expenses; or

(2) the total annual amount of maintenance and operation taxes and debt service or bond taxes paid to the district by the owners of taxable property within the district that receives water and sanitary sewer utility service from the municipality.

(c) For purposes of Subsection (b)(2), the value of taxable property that receives the utility service shall be determined by the most recent certified tax roll provided by the central appraisal district in which the property is located. The amount of the taxes shall be determined using rates from the district's most recent tax levies.

(d) A district that, on January 1, 1997, was providing water and sanitary sewer utility service to households outside the territory of the district may not discontinue that service and shall continue to provide that service on the basis of rates established by the district in accordance with Chapter 13, Water Code.

(e) In this section, "district" means a conservation and reclamation district of more than 10,000 acres that provides water and sanitary sewer utility service to households and parts of which are located in two or more municipalities, one of which has a population of more than 1.6 million.

SECTION 3. Sections 43.077 and 43.078, Local Government Code, are repealed.

SECTION 4. This Act takes effect September 1, 1997.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Brown, the Senate concurred in the House amendment to **SB 1888** by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1710 ADOPTED

Senator Harris called from the President's table the Conference Committee Report on **HB 1710**. The Conference Committee Report was read and was filed with the Senate on Friday, May 23, 1997.

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 273 ADOPTED

Senator Zaffirini called from the President's table the Conference Committee Report on **SB 273**. The Conference Committee Report was read and was filed with the Senate on Saturday, May 24, 1997.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 506 ADOPTED

Senator Luna called from the President's table the Conference Committee Report on **HB 506**. The Conference Committee Report was read and was filed with the Senate on Friday, May 23, 1997.

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

SENATE BILL 280 WITH HOUSE AMENDMENT

Senator Zaffirini called **SB 280** from the President's table for consideration of the House amendment to the bill.

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

Amendment No. 1

Amend **SB 280** in SECTION 1 of the bill, in amended Section 21.403(c), Education Code (Senate engrossment, page 1, lines 6 and 7), by striking "<u>, in consultation with the State Board for Educator Certification,</u>".

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 280**.

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 39 ADOPTED

Senator Zaffirini called from the President's table the Conference Committee Report on **HB 39**. The Conference Committee Report was read and was filed with the Senate on Saturday, May 24, 1997.

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

CONFERENCE COMMITTEE ON HOUSE BILL 2339

Senator Brown called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2339** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2339** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Wentworth, Duncan, Cain, and Madla.

CONFERENCE COMMITTEE ON HOUSE BILL 1028

Senator Wentworth called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1028** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 1028** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; Lindsay, Ogden, Barrientos, and Cain.

SENATE BILL 495 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 495** from the President's table for consideration of the House amendment to the bill.

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

Amendment No. 1

Amend **SB 495** as follows:

Strike Section 6 of the bill on page 14, lines 13-25, and page 15, lines 1-16, and substitute the following:

SECTION 6. Section 660.024, Government Code, is amended to read as follows:

Sec. 660.024. ADVANCE APPROVAL FOR CERTAIN INTERNATIONAL TRAVEL. (a) The chief administrator of a state agency must give advance written approval for any travel [~~Travel~~] related to official state business for which a reimbursement for travel expenses is claimed or for which an advance for travel expenses to be incurred is sought [~~must have the advance written approval of the governor~~]. A copy of the written approval shall be submitted with the travel voucher to the comptroller in accordance with Section 660.027.

(b) Subsection (a) applies to a travel expense only if it is incurred while traveling to, in, or from a destination that is not in [~~does not apply to travel~~]:

(1) the United States [~~in this state~~]; [~~or~~]

(2) a possession of the United States;

(3) [~~to, in, and from another state,~~] Mexico;[;] or

(4) Canada.

(c) The chief administrator of a state agency may designate an employee of the agency to provide the approval required by this section. [~~The governor may give blanket authority for travel by:~~

[~~(1) personnel of the International Trade Development Division of the Texas Department of Commerce; and~~

[~~(2) law enforcement personnel of the Department of Public Safety.~~]

The amendment was read.

On motion of Senator Armbrister, the Senate concurred in the House amendment to **SB 495** by a viva voce vote.

SENATE BILL 359 WITH HOUSE AMENDMENTS

Senator Brown called **SB 359** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 359** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and operation of the Department of Protective and Regulatory Services, the provision of services to children and families, and suits affecting the parent-child relationship; providing penalties.

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

SECTION 1. Section 40.003, Human Resources Code, is amended to read as follows:

Sec. 40.003. SUNSET PROVISION. The Department of Protective and Regulatory Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2009 [~~1997~~].

SECTION 2. Subchapter A, Chapter 40, Human Resources Code, is amended by amending Section 40.004 and adding Section 40.0041 to read as follows:

Sec. 40.004. PUBLIC INTEREST INFORMATION [~~AND COMPLAINTS~~]. (a) The board [~~department~~] shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board [~~department~~] and to speak on any issue under the jurisdiction of the department.

(b) The department shall prepare information of public interest describing the functions of the department [~~and the department's procedures by which complaints are filed with and resolved by the department~~]. The department shall make the information available to the public and appropriate state agencies.

[~~(c) The department by rule shall establish methods by which the public, consumers, and service recipients can be notified of the mailing addresses and~~

~~telephone numbers of appropriate departmental personnel for the purpose of directing complaints to the department. The department may provide for that notification:~~

[~~(1) on each registration form, application, or written contract for services of a person regulated by the department;~~

[~~(2) on a sign prominently displayed in the place of business of each person regulated by the department; or~~

[~~(3) in a bill for a service provided by a person regulated by the department.~~

[~~(d) The department shall keep an information file about each complaint filed with the department relating to:~~

[~~(1) a license holder or entity regulated by the department; or~~

[~~(2) a service delivered by the department.~~

[~~(e) If a written complaint is filed with the department relating to a license holder or entity regulated by the department or a service delivered by the department, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.~~]

Sec. 40.0041. COMPLAINT PROCESS. (a) The department shall develop and implement a uniform process for receiving and resolving complaints against the department throughout the state. The process shall include:

(1) statewide procedures through which the public, consumers, and service recipients are informed:

(A) of the right to make a complaint against the department, including the mailing addresses and telephone numbers of appropriate department personnel responsible for receiving complaints and providing related assistance; and

(B) of the department's procedures for resolving a complaint, including the right to appeal a decision made at the local level;

(2) development and statewide distribution of a form or telephone system that may be used to make a complaint;

(3) a requirement that the department provide information by mail or telephone regarding the department's procedures for investigating and resolving a complaint to each person who makes a complaint; and

(4) a requirement that the department provide status information at least quarterly to a person with a pending complaint against the department, unless the information would jeopardize an undercover investigation.

(b) In addition to other appropriate methods, the department may provide the information specified by Subsection (a)(1):

(1) on each registration form, application, or written contract for services of a person regulated by the department;

(2) on a sign prominently displayed in the place of business of each person regulated by the department; or

(3) in a bill for service provided by a person regulated by the department.

(c) The department shall keep an information file about each complaint made against the department that the department has authority to resolve.

(d) The executive director shall develop a consistent, statewide process for addressing an appeal by a person dissatisfied with the resolution of a complaint at the regional level. The process shall include an opportunity for appeal of a complaint without the participation of the department's ombudsman office.

(e) The department shall develop and maintain a centralized tracking system to gather information concerning all complaints made against the department throughout the state. The department shall require its personnel to provide information regarding each complaint for inclusion in records maintained under the tracking system at the department's state headquarters, regardless of the location or level at which the complaint is initiated or resolved. The department shall require at least the following information to be maintained for each complaint:

(1) the date the complaint is received;

(2) the name of the person making the complaint;

(3) the subject matter of the complaint;

(4) a record of all persons contacted by the department in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for each complaint determined by the department to require no corrective action, an explanation of the reason that the complaint was closed without action.

(f) The department shall periodically prepare and deliver reports to the board and the executive director regarding the number, type, and resolution of complaints made in the state against the department.

SECTION 3. Subchapter A, Chapter 40, Human Resources Code, is amended by adding Section 40.008 to read as follows:

Sec. 40.008. PROGRAM ACCESSIBILITY. The department shall comply with federal and state laws related to program and facility accessibility. The department shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services.

SECTION 4. Subsection (a), Section 40.021, Human Resources Code, is amended to read as follows:

(a) The board is composed of six members appointed by the governor with the advice and consent of the senate. The governor shall [~~annually~~] designate one member to be the presiding officer of the board to serve in that capacity at the pleasure of the governor.

SECTION 5. Section 40.022, Human Resources Code, is amended to read as follows:

Sec. 40.022. RESTRICTIONS ON BOARD APPOINTMENT OR MEMBERSHIP. (a) A person is not eligible for appointment as a member of the board if the person or the person's spouse:

(1) is a person who is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds [~~a substantial amount of money~~] from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that is regulated by the department or that receives funds [~~money~~] from the department;

(3) uses or receives a substantial amount of tangible goods, services, or money from the department, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses [~~incurred as a board member~~], or as a client or a parent or guardian of a client receiving services from the department; or

(4) is an employee, officer, or paid consultant of a trade association in a field under the jurisdiction of the department.

(b) In addition to the requirements of Subsection (a), a person is not eligible for appointment as a public member of the board if the person or the person's spouse is registered, certified, or licensed by an occupational regulatory agency in a field under the jurisdiction of the department. [~~A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation in or for a profession related to the operation of the department may not serve as a member of the board.~~]

SECTION 6. Subchapter B, Chapter 40, Human Resources Code, is amended by adding Section 40.0225 to read as follows:

Sec. 40.0225. RESTRICTIONS ON BOARD MEMBERS AND EMPLOYEES. (a) An officer, employee, or paid consultant of a Texas trade association in a field under the jurisdiction of the department may not be a member of the board or an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in a field under the jurisdiction of the department may not be a member of the board and may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person may not serve as a member of the board or act as the general counsel to the board or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 7. Subchapter B, Chapter 40, Human Resources Code, is amended by adding Section 40.0226 to read as follows:

Sec. 40.0226. BOARD MEMBER TRAINING. (a) Before a member of the board may assume the member's duties and before the member may be

confirmed by the senate, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

(1) the enabling legislation that created the department and the board;

(2) the programs operated by the department;

(3) the role and functions of the department;

(4) the rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

(6) the results of the most recent formal audit of the department;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict-of-interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

SECTION 8. Subsection (b), Section 40.028, Human Resources Code, is amended to read as follows:

(b) The board shall:

(1) supervise the executive director's administration and enforcement of the laws of this state that impose duties on the department or board; and

(2) develop and implement policies that clearly separate the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the department.

SECTION 9. Subchapter B, Chapter 40, Human Resources Code, is amended by adding Section 40.0305 to read as follows:

Sec. 40.0305. STRATEGIC TECHNOLOGY STEERING COMMITTEE. (a) The department shall establish a strategic technology steering committee within the department to evaluate major information technology project proposals.

(b) The steering committee shall consist of the department's information resources manager and other department employees designated by the executive director from senior management, information technology staff, and employees who are primary users of information resources. The information resources manager shall serve as presiding officer of the committee.

(c) The steering committee shall prioritize the department's major information technology project proposals and provide oversight and coordination of the projects.

(d) In evaluating major information technology project proposals, the steering committee shall:

(1) assess the major information needs of the department;

(2) define standard criteria for setting priorities for the department's information needs;

(3) forecast the returns to the department on project investments;

(4) evaluate the department's available information resources; and

(5) review, approve, and evaluate the status of projected costs and benefits related to project proposals.

(e) The steering committee shall make recommendations to the executive director based on the committee's performance of its duties.

SECTION 10. Section 40.032, Human Resources Code, is amended to read as follows:

Sec. 40.032. PERSONNEL. (a) The executive director may employ personnel necessary to administer the department's duties.

(b) The executive director or the executive director's designated representative shall develop an intradepartmental career ladder program that addresses opportunities for mobility and advancement for employees within the department. The program[~~, one part of which~~] shall require the intradepartmental posting of all [~~non-entry-level~~] positions concurrently with any public posting.

(c) The executive director or the executive director's designated representative shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

(d) The executive director or the executive director's designated representative shall provide to members of the board and to the department's employees, as often as is necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The executive director or the executive director's designated representative shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that comply with Chapter 21, Labor Code;

(2) a comprehensive analysis of the department's workforce that meets federal and state laws, rules, regulations, and instructions adopted under those laws, rules, and regulations [~~guidelines~~];

(3) procedures by which a determination can be made about the extent of [~~significant~~] underuse in the department's workforce of all persons for whom federal or state laws, rules, regulations, and instructions adopted under those laws, rules, and regulations [~~guidelines~~] encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of [~~significant~~] underuse [~~in the department's workforce of all persons for whom federal or state guidelines encourage a more equitable balance~~].

(f) The policy statement required under Subsection (e) shall:

(1) be filed with the governor's office;

(2) [;] cover an annual period;

(3) [~~, and~~] be updated at least annually; and

(4) be reviewed by the Commission on Human Rights for compliance with Subsection (e)(1).

(g) The governor's office shall develop and deliver a biennial report to the legislature based on the information submitted under Subsection (f). The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 11. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Section 40.0525 to read as follows:

Sec. 40.0525. SEPARATION OF INVESTIGATORY AND SERVICE DELIVERY FUNCTIONS. (a) To the extent feasible, the department shall separate the performance of investigations by department employees from the delivery of services to clients and their families. The department may take into consideration the needs and caseloads in the different programs and regions of the state in developing policies for the separation of the department's investigatory and service delivery functions.

(b) The department shall develop policies and procedures for the exchange of information between employees who are responsible for performing investigations and employees who are responsible for the delivery of services to clients and families.

(c) This section does not require the department to establish separate departments for investigations and service delivery.

SECTION 12. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Sections 40.0563, 40.0564, and 40.0565 to read as follows:

Sec. 40.0563. COUNTY OUTREACH PROGRAM. (a) The department shall develop and implement a standard statewide outreach program under which the department:

(1) informs each county of the availability of federal funds to pay costs of providing child protective services within the county; and

(2) provides technical assistance on request to a county seeking federal funds.

(b) In implementing the program, the department shall:

(1) designate local department personnel responsible for performing the functions specified in Subsection (a);

(2) designate a statewide coordinator responsible for coordinating the activities of local department personnel and developing methods of providing information to counties; and

(3) develop a database that:

(A) identifies department and county personnel involved with the outreach program; and

(B) contains information regarding the date and type of assistance provided by the department to each county.

(c) The department, in consultation with the Legislative Budget Board, shall ensure that a record is maintained of the amount of funding for child protective services that each county receives directly from the federal government.

Sec. 40.0564. DEPARTMENT FUNDS. All money paid to the department under this chapter is subject to Subchapter F, Chapter 404, Government Code.

Sec. 40.0565. REPORT. The department shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The annual report must meet the reporting requirements, including reporting deadlines, applicable to financial reporting in the General Appropriations Act.

SECTION 13. Section 40.058, Human Resources Code, is amended to read as follows:

Sec. 40.058. CONTRACTS AND AGREEMENTS. (a) The department may enter into contracts or agreements with any person, including a federal, state, or other public or private agency, as necessary to perform any of the department's powers or duties.

(b) A contract for the purchase of program-related client services must include:

(1) clearly defined goals and outcomes that can be measured to determine whether the objectives of the program are being achieved;

(2) clearly defined sanctions or penalties for noncompliance with contract terms; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(c) The department shall monitor a contractor's performance under a contract for the purchase of program-related client services. In monitoring performance, the department shall:

(1) use a risk-assessment methodology to ensure compliance with financial and performance requirements under the contract; and

(2) obtain and evaluate program cost information to ensure that all costs, including administrative costs, are reasonable and necessary to achieve program objectives.

(d) An agreement made under this section is not subject to Chapter 771 or 791, Government Code.

(e) This section does not prohibit the department from entering into a contract or agreement subject to Chapter 771 or 791, Government Code, for a purpose authorized in the applicable chapter.

SECTION 14. Section 40.061, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) This section does not provide immunity to a department employee who, in a suit affecting the parent-child relationship in which child abuse is alleged or that arises out of a child abuse investigation or in a criminal prosecution for an offense in which child abuse is an element, commits or attempts to commit perjury, fabricates or attempts to fabricate evidence, or knowingly conceals information that would establish that a person alleged to have committed an act of child abuse did not commit child abuse.

SECTION 15. Section 40.062, Human Resources Code, is amended to read as follows:

Sec. 40.062. EXEMPTION FROM CERTAIN COSTS AND FEES. The department is not required to pay any cost or fee otherwise imposed for court proceedings, including a:

(1) filing fee or fee for issuance or service of process imposed by Section 110.002 [~~14.13~~], Family Code, or by Section 51.317, 51.318(b)(2), or 51.319, Government Code;

(2) transfer fee imposed by Section 110.002 [~~11.06(l)~~] or 110.005 [~~14.13~~], Family Code;

(3) court reporter fee imposed by Section 51.601, Government Code;

(4) judicial fund fee imposed by Sections 51.701 and 51.702, Government Code;

(5) judge's fee imposed by Section 25.0008, 25.00263, or 25.0029, Government Code; or

(6) cost or security fee imposed by Section 12 or 622, Probate Code.

SECTION 16. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Sections 40.066, 40.067, and 40.068 to read as follows:

Sec. 40.066. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Except as provided by Subsection (e), the department and the chief administrative law judge of the State Office of Administrative Hearings shall adopt a memorandum of understanding under which the State Office of Administrative Hearings, on behalf of the department, conducts all contested case hearings authorized or required by law to be conducted by the department under the administrative procedure law, Chapter 2001, Government Code.

(b) The memorandum of understanding shall require the chief administrative law judge, the department, and the executive director to cooperate in connection with a contested case hearing and may authorize the State Office of Administrative Hearings to perform any administrative act, including giving of notice, that is required to be performed by the department or executive director.

(c) The administrative law judge who conducts a contested case hearing for the State Office of Administrative Hearings on behalf of the department shall enter the final decision in the case after completion of the hearing.

(d) The department by interagency contract shall reimburse the State Office of Administrative Hearings for the costs incurred in conducting contested case hearings for the department. The department may pay an hourly fee for the costs of conducting those hearings or a fixed annual fee negotiated biennially by the department and the State Office of Administrative Hearings to coincide with the department's legislative appropriations request.

(e) This section does not apply to a personnel grievance hearing involving a department employee.

Sec. 40.067. DELIVERY OF SERVICES IN AREAS BORDERING UNITED MEXICAN STATES. The department shall:

(1) study issues related to providing child and adult protective services in areas bordering the United Mexican States;

(2) develop a plan for providing those services in the most efficient manner; and

(3) pursue and enter into agreements for coordinated services, to the extent permissible under federal law, with the United Mexican States or any of its political subdivisions.

Sec. 40.068. LOCAL ACCOUNTS. (a) The department may establish and maintain local bank or savings accounts for a client of the department as necessary to administer funds belonging to the client or received in trust for or on behalf of the client.

(b) Funds maintained in an account for the benefit of a child who is under the managing conservatorship of the department may be used by the department for the support of the child, including the payment of foster care expenses, or may be paid to a person providing care for the child.

(c) The department shall spend funds in a guardianship of a child's estate in compliance with Chapter XIII, Texas Probate Code.

(d) Except as provided by Subsection (c), funds maintained in an account for the benefit of a client of the department may be used to provide care, including medical care, for the client.

SECTION 17. Section 42.002, Human Resources Code, is amended by amending Subdivisions (3) and (9) and adding Subdivisions (16) and (17) to read as follows:

(3) "Child-care facility" means a facility licensed or certified by the department to provide assessment, [~~that provides~~] care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

(9) "Family home" means a home that [~~regularly~~] provides regular care in the caretaker's own residence for not more than six children under 14 years of age, excluding [~~the caretaker's own~~] children who are related to the caretaker, and that provides care after school hours for not more than six additional elementary school children, but the total number of children, including children who are related to the caretaker [~~the caretaker's own~~], does not exceed 12 at any given time. The term does not include a home that provides care exclusively for any number of children who are related to the caretaker.

(16) "Children who are related to the caretaker" means children who are the children, grandchildren, siblings, great-grandchildren, nieces, or nephews of the caretaker, whether by affinity or consanguinity or as the result of a relationship created by court decree.

(17) "Regular care" means care that is provided at least four hours a day, three or more days a week, for more than nine consecutive weeks.

SECTION 18. Subsections (e) and (l), Section 42.042, Human Resources Code, are amended to read as follows:

(e) The department shall promulgate minimum standards that apply to licensed child-care facilities and to registered family homes covered by this chapter and that will:

(1) promote the health, safety, and welfare of children attending a facility or registered family home;

(2) promote safe, comfortable, and healthy physical facilities and registered family homes for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities and registered family homes; and

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs.

(l) In promulgating [~~The department shall adopt~~] minimum standards for the regulation of [~~regulating~~] family homes that register with the department, the department [~~division. The rules~~] must address the minimum qualifications, education, and training required of a person who operates a registered family home [~~registered with the division~~].

SECTION 19. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0425 to read as follows:

Sec. 42.0425. ASSESSMENT SERVICES. (a) The department by rule shall regulate assessment services provided by child-care facilities or child-placing agencies. A child-care facility or child-placing agency may not provide assessment services unless specifically authorized by the department.

(b) The department by rule shall establish minimum standards for assessment services. The standards must provide that consideration is given to the individual needs of a child, the appropriate place for provision of services, and the factors listed in Section 42.042(e).

(c) In this section, "assessment services" means the determination of the placement needs of a child who requires substitute care.

SECTION 20. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0505 to read as follows:

Sec. 42.0505. RENEWAL OF LICENSE. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required annual fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed under the provisions of this section.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the department 1-1/2 times the required annual fee.

(c) If the person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the department two times the required annual fee.

(d) If the person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(e) At least 30 days before the expiration of a person's license, the department shall send written notice of the impending license expiration to the person at the license holder's last known address according to the records of the department.

SECTION 21. Subsection (b), Section 42.044, Human Resources Code, is amended to read as follows:

(b) The department [~~division~~] shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

SECTION 22. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Sections 42.0441-42.0443 to read as follows:

Sec. 42.0441. INSPECTION RESULTS. Immediately after completing a monitoring inspection under Section 42.044 of a licensed day-care center, licensed group day-care home, or registered family home, the authorized representative of the department shall review the results of the monitoring inspection with a representative of the facility and give the facility an opportunity to respond to the inspection results.

Sec. 42.0442. COORDINATION OF INSPECTIONS; ELIMINATION OF DUPLICATIVE INSPECTIONS. (a) The department shall coordinate monitoring inspections of licensed day-care centers, licensed group day-care homes, and registered family homes performed by another state agency to eliminate redundant inspections.

(b) The department shall form an interagency task force with the Texas Department of Health, the Texas Department of Human Services, and the Texas Workforce Commission to develop an inspection protocol that will coordinate inspections by those agencies. The protocol must assign the required items for inspection by each agency and facilitate the sharing of inspection data and compliance history.

Sec. 42.0443. INSPECTION INFORMATION DATABASE. (a) If feasible using available information systems, the department shall establish a computerized database containing relevant inspection information on licensed day-care centers, licensed group day-care homes, and registered family homes from other state agencies and political subdivisions of the state.

(b) The department shall make the data collected by the department available to another state agency or political subdivision of the state for the purpose of administering programs or enforcing laws within the jurisdiction of that agency or subdivision. If feasible using available information systems, the department shall make the data directly available to the Texas Department of Health, the Texas Department of Human Services, and the Texas Workforce Commission through electronic information systems. The department, the Texas Department of Health, the Texas Department of Human Services, and the Texas Workforce Commission shall jointly plan the development of child-care inspection databases that, to the extent feasible, are similar in their design and architecture to promote the sharing of data.

(c) The department may provide inspection data on licensed day-care centers, licensed group day-care homes, or registered family homes to the public if the department determines that providing inspection data enhances consumer choice with respect to those facilities.

SECTION 23. Section 42.046, Human Resources Code, is amended by amending Subsection (a) and the section heading to read as follows:

Sec. 42.046. [~~LICENSE~~] APPLICATION FOR LICENSE OR REGISTRATION. (a) An applicant for a license to operate a child-care facility or child-placing agency or for a registration to operate a family home shall submit to the department [~~division~~] the appropriate fee prescribed by Section 42.054 [~~of this code~~] and a completed application on a form provided by the department [~~division~~].

SECTION 24. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0461 to read as follows:

Sec. 42.0461. PUBLIC NOTICE AND HEARING IN CERTAIN COUNTIES: RESIDENTIAL CHILD CARE. (a) Before the department may issue a license, other than a renewal license, for the operation or the expansion of the capacity of a foster group home or foster family home that is located in a county with a population of less than 250,000 and that provides child care for 24 hours a day at a location other than the actual residence of a child's primary caretaker or of a child care institution, the applicant for the license or expansion shall, at the applicant's expense:

(1) conduct a public hearing on the application in accordance with department rules after notifying the department of the date, time, and location of the hearing; and

(2) publish notice of the application in a newspaper of general circulation in the community in which the child-care services are proposed to be provided.

(b) The notice required by Subsection (a)(2) must be published at least 10 days before the date of the public hearing required by Subsection (a)(1) and must include:

(1) the name and address of the applicant;

(2) the address at which the child-care services are proposed to be provided;

(3) the date, time, and location of the public hearing;

(4) the name, address, and telephone number of the department as the licensing authority; and

(5) a statement informing the public that a person may submit written comments to the department concerning the application instead of or in addition to appearing at the public hearing.

(c) The department shall require a representative of the department to attend the public hearing in an official capacity for the purpose of receiving public comments on the application.

(d) Before issuing a license described by Subsection (a), the department shall consider:

(1) the degree of community support for the application;

(2) the amount of local resources available to support children proposed to be served by the applicant;

(3) the impact of the proposed child-care services on the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the affect, if any, on the children proposed to be served by the applicant; and

(4) the impact of the proposed child-care services on the community and the affect on opportunities for social interaction for the children proposed to be served by the applicant.

(e) The department may deny the application if the department determines that:

(1) the application lacks a reasonable degree of community support;

(2) the community has insufficient resources to support children proposed to be served by the applicant;

(3) granting the application would significantly increase the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the increase would adversely affect the children proposed to be served by the applicant; or

(4) granting the application would have a significant adverse impact on the community and would limit opportunities for social interaction for the children proposed to be served by the applicant.

(f) A child-placing agency that is located in a county with a population of less than 250,000 and that proposes to verify an agency home or agency group home that provides child care for 24 hours a day at a location other than the actual residence of a child's primary caretaker shall:

(1) comply with the notice and hearing requirements imposed by Subsections (a) and (b); and

(2) after conducting the required public hearing, provide the department with information relating to the considerations specified in Subsection (d).

(g) The department may prohibit the child-placing agency from verifying the proposed agency home or agency group home on the same grounds that the department may deny an application under Subsection (e).

SECTION 25. Subsection (c), Section 42.052, Human Resources Code, is amended to read as follows:

(c) A family home that provides care for three or fewer children, excluding [~~the caretaker's own~~] children who are related to the caretaker, may register with the department [~~division~~]. A family home that provides care for four or more children, excluding [~~the caretaker's own~~] children who are related to the caretaker, shall [~~must~~] register with the department [~~division~~]. A registration remains valid until revoked or surrendered. The operator of a registered home must display the registration in a prominent place at the home.

SECTION 26. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Sections 42.057 and 42.058 to read as follows:

Sec. 42.057. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) In accordance with rules adopted by the department, the director, owner, or operator of a child-care facility or family home shall:

(1) when applying to operate a child-care facility or when registering a family home, submit to the department for use in conducting background and criminal history checks:

(A) the name of the director, owner, and operator of the facility or home and the name of each person employed at the facility or home; and

(B) the name of each person 14 years of age or older who will regularly or frequently be staying or working at the facility or home while children are being provided care; and

(2) after receiving a license, registration, or certification of approval, submit to the department for use in conducting background and criminal history checks the name of any person not submitted to the department under Subdivision (1) who:

(A) becomes a director, owner, or operator of the facility or home;

(B) is employed at the facility or home; or

(C) is 14 years of age or older and regularly or frequently stays or works at the facility or home while children are being provided care.

(b) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a);

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(c) The department by rule shall require a child-care facility or family home to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

Sec. 42.058. COMPETITIVE BIDDING OR ADVERTISING RULES. (a) The board may not adopt rules restricting competitive bidding or advertising by a license holder or registration holder except to prohibit false, misleading, or deceptive practices or to prevent a violation of this chapter.

(b) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's or registration holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder or registration holder; or

(4) restricts the license holder's or registration holder's advertisement under a trade name.

SECTION 27. Subchapter D, Chapter 42, Human Resources Code, is amended by adding Section 42.0705 to read as follows:

Sec. 42.0705. RANGE OF PENALTIES. The department shall revoke, suspend, or refuse to renew a license or registration, place on probation a person whose license or registration has been suspended, or reprimand a license holder or registration holder for a violation of this chapter or a rule of the board. If a license or registration suspension is probated, the department may require the license holder or registration holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit services to the areas prescribed by the department;

(3) continue or review professional education until the license holder or registration holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation; or

(4) take corrective action relating to the violation on which the probation is based.

SECTION 28. Section 42.071, Human Resources Code, is amended to read as follows:

Sec. 42.071. [~~LICENSE~~] SUSPENSION, EVALUATION, OR PROBATION OF LICENSE OR REGISTRATION. (a) The department [~~division~~] may suspend the license of a facility or the registration of a family home that has temporarily ceased operation but has definite plans for starting operations again within the time limits of the issued license or registration.

(b) The department [~~division~~] may suspend a facility's license or a family home's registration for a definite period rather than deny or revoke the license or registration if the department [~~division~~] finds repeated noncompliance with standards that do not endanger the health and safety of children. To qualify for license or registration suspension under this subsection, a facility or family home must suspend its operations and show that standards can be met within the suspension period.

(c) If the department [~~division~~] finds a facility or family home is in repeated noncompliance with standards that do not endanger the health and safety of children, the department [~~division~~] may schedule the facility or family home for evaluation or probation rather than suspend or revoke the facility's license or the family home's registration. The department [~~division~~] shall provide notice to the facility or family home of the evaluation or probation and of the items of noncompliance not later than the 10th day before the evaluation or probation period begins. The department [~~division~~] shall designate a period of not less than 30 days during which the facility or family home will remain under evaluation. During the evaluation or probation period, the facility or family home must correct the items that were in noncompliance and report the corrections to the department [~~division~~] for approval.

(d) The department [~~division~~] shall revoke the license of a facility or the registration of a family home that does not comply with standards at the end of a license or registration suspension.

(e) The department [~~division~~] may suspend or revoke the license of a facility or the registration of a family home that does not correct items that were in noncompliance or that does not comply with required standards within the applicable evaluation or probation period.

SECTION 29. Subchapter D, Chapter 42, Human Resources Code, is amended by adding Section 42.0715 to read as follows:

Sec. 42.0715. COSTS CHARGED TO FACILITY OR FAMILY HOME. The department shall charge a facility or family home for reimbursement of the reasonable cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan for the facility or family home.

SECTION 30. Section 42.072, Human Resources Code, is amended to read as follows:

Sec. 42.072. LICENSE OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION. (a) The department [~~division~~] may suspend, deny, [~~or~~] revoke, or refuse to renew the license, registration, or certification of

approval of a facility or family home that does not comply with the requirements of this chapter, the standards and rules of the department, or the specific terms of the license, registration, or certification. The department may revoke the probation of a person whose license or registration is suspended if the person violates a term of the conditions of probation.

(b) If the department proposes to take an action under Subsection (a), the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. Rules of practice adopted by the board under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings. [~~The division shall notify the person operating or proposing to operate a facility of the reasons for the denial or revocation and of the person's right to appeal the decision within 30 days after receiving the notice.~~]

(c) [~~A person who wishes to appeal a license denial or revocation shall notify the director by certified mail within 30 days after receiving the notice required in Subsection (b) of this section. The person shall send a copy of the notice of appeal to the assigned division representative.~~

[~~(d) The denial or revocation of a license or certification and the appeal from that action are governed by the procedure for a contested case hearing under Chapter 2001, Government Code.~~

[~~(e) A person whose license has been denied or revoked may challenge the decision by filing a suit in a district court of Travis County or the county in which the person's facility is located within 30 days after receiving the decision. The trial shall be de novo.~~

[~~(f) Records of the hearing shall be kept for two years after a decision is rendered. On request, and at the person's own expense, the division shall supply a copy of the verbatim transcript of the hearing to a person appealing a license denial or revocation in district court.~~

[~~(g) A person may continue to operate a facility during an appeal of a license denial or revocation unless the division has obtained injunctive relief under Section 42.074 or civil penalties under Section 42.075 or the facility has been closed under Section 42.073.~~

[~~(h)~~] A person whose license, registration, or certification is revoked may not apply for any license, registration, or certification under this chapter before the second anniversary of the date on which the revocation takes effect by department or court order.

(d) The department by rule may provide for denial of an application or renewal for a licensed facility or for registering a family home or may revoke a facility's license or a family home's registration based on findings of criminal history as a result of a background or criminal history check.

SECTION 31. Section 42.073, Human Resources Code, is amended to read as follows:

Sec. 42.073. EMERGENCY SUSPENSION AND CLOSURE OF A FACILITY OR FAMILY HOME. (a) The department [~~division~~] shall suspend a facility's license or a family home's registration and[~~,~~] order the

immediate closing of the facility or family home[~~, and place the children attending or residing in the facility elsewhere~~] if:

(1) the department [~~division~~] finds the facility or family home is operating in violation of the applicable standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of the children attending or residing in the facility or family home.

(b) An order suspending a license or registration and an order closing a facility or family home under this section is immediately effective on the date on which the [~~license~~] holder of the license or registration receives written notice or on a later date specified in the order.

(c) An order is valid for 10 days after the effective date of the order.

(d) The suspension of a license or registration and the closure of a [~~the~~] facility or family home and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

SECTION 32. Subsections (a) and (c), Section 42.074, Human Resources Code, are amended to read as follows:

(a) When it appears that a person has violated, is violating, or is threatening to violate the licensing, certification, or registration requirements of this chapter or the department's licensing, certification, or registration rules and standards, the department [~~division~~] may file a suit in a district court in Travis County or in the county where the facility or family home is located for assessment and recovery of civil penalties under Section 42.075 [~~of this code~~], for injunctive relief, including a temporary restraining order, or for both injunctive relief and civil penalties.

(c) At the department's [~~division's~~] request, the attorney general or the county or district attorney of the county in which the facility or family home is located shall conduct a suit in the name of the State of Texas for injunctive relief, to recover the civil penalty, or for both injunctive relief and civil penalties as authorized by Subsection (a) [~~of this section~~].

SECTION 33. Subsection (a), Section 42.075, Human Resources Code, is amended to read as follows:

(a) A person is subject to a civil penalty of not less than $50 nor more than $100 for each day of violation and for each act of violation if the person:

(1) threatens serious harm to a child in a facility or family home by violating a provision of this chapter or a department rule or standard;

(2) violates a provision of this chapter or a department rule or standard three or more times within a 12-month period; or

(3) places a public advertisement for an unlicensed facility or unregistered family home.

SECTION 34. Section 42.076, Human Resources Code, is amended to read as follows:

Sec. 42.076. CRIMINAL PENALTIES. (a) A person who operates a child-care facility or child-placing agency without a license commits a Class B misdemeanor.

(b) A person who operates a family home without a registration commits a Class B misdemeanor.

(c) A person who places a public advertisement for an unlicensed facility or an unregistered family home commits a Class C misdemeanor.

[~~(c) A person who places an advertisement for a registered family home in violation of Section 42.052(f) of this code commits a Class C misdemeanor.~~]

(d) It is not an offense under this section if a professional provides legal or medical services to:

(1) a parent who identifies the prospective adoptive parent and places the child for adoption without the assistance of the professional; or

(2) a prospective adoptive parent who identifies a parent and receives placement of a child for adoption without assistance of the professional.

SECTION 35. Section 42.077, Human Resources Code, is amended to read as follows:

Sec. 42.077. NOTICE OF ACTION AGAINST FACILITY OR FAMILY HOME. (a) If the department revokes or suspends a facility's license or a family home's registration, the department shall publish notice of this action in a newspaper of general circulation in the county in which the facility or family home is located. The newspaper shall place the notice in the section in which advertisements for day-care services are normally published.

(b) If a person who operates a facility or family home that has had its license or registration revoked or suspended later applies for a new license or registration to operate the same facility or family home, the department shall charge the person an application fee in an amount necessary to reimburse the department for the cost of the notice relating to that facility or family home.

(c) The department shall pay for publication of the notice from funds appropriated to the department for licensing and regulating child-care facilities and for registering and regulating family homes and from appeal and application fees collected under Subsection (b) [~~of this section~~] and appropriated to the department.

(d) A facility or family home that has its license or registration revoked or suspended shall mail notification of this action by certified mail to the parents or guardian of the child served by the facility or family home. The facility or family home shall mail the notification within five days of the effective date of the [~~license~~] revocation or suspension of the license or registration.

SECTION 36. Subchapter D, Chapter 42, Human Resources Code, is amended by adding Section 42.078 to read as follows:

Sec. 42.078. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a facility or family home licensed or registered under this chapter that violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for a violation may be in an amount not to exceed $100. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or

potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the executive director determines that a violation has occurred, the director may issue a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the recommendation is issued, the executive director shall give written notice of the recommendation to the person owning or operating the facility. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive director or fails to respond to the notice in a timely manner, the executive director shall issue an order and impose the recommended penalty.

(h) If the person requests a hearing, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and issue a final decision finding that a violation has occurred and imposing a penalty or finding that no violation occurred.

(i) The notice of the administrative law judge's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the administrative law judge's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

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

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

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

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

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) On receipt of a copy of an affidavit under Subsection (k)(2), the executive director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be sent to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

SECTION 37. Chapter 43, Human Resources Code, is amended by adding Section 43.0042 to read as follows:

Sec. 43.0042. RECOGNITION OF LICENSE ISSUED BY ANOTHER STATE. (a) The department may waive any prerequisite to obtaining a license for an applicant:

(1) after reviewing the applicant's credentials and determining that the applicant holds a valid license from another state that has license requirements substantially equivalent to those of this state; or

(2) after determining the applicant has a valid license from another state with which this state has a reciprocity agreement.

(b) The department may enter into an agreement with another state to permit licensing by reciprocity.

SECTION 38. Chapter 43, Human Resources Code, is amended by adding Section 43.0055 to read as follows:

Sec. 43.0055. COMPETITIVE BIDDING OR ADVERTISING RULES. (a) The department may not adopt rules restricting competitive bidding or advertising by a license holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the department may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) the license holder's advertisement under a trade name.

SECTION 39. Section 43.006, Human Resources Code, is amended to read as follows:

Sec. 43.006. FEES. The board may set and charge fees for administering an examination and issuing an initial license, [~~or~~] renewal license, or provisional license in amounts necessary to cover the costs of administering this chapter.

SECTION 40. Chapter 43, Human Resources Code, is amended by adding Section 43.0081 to read as follows:

Sec. 43.0081. PROVISIONAL LICENSE. (a) The department may issue a provisional license to an applicant licensed in another state who applies for a license in this state. An applicant for a provisional license under this section must:

(1) be licensed in good standing as a child-care administrator for at least two years in another state, the District of Columbia, a foreign country, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this chapter;

(2) have passed a national or other examination recognized by the department that demonstrates competence in the field of child-care administration; and

(3) be sponsored by a person licensed by the department under this chapter with whom the provisional license holder may practice under this section.

(b) The department may waive the requirement of Subsection (a)(3) for an applicant if the department determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the department approves or denies the provisional license holder's application for a license. The department shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder passes the examination required by Section 43.004;

(2) the department verifies that the provisional license holder has the academic and experience requirements for a license under this chapter; and

(3) the provisional license holder satisfies any other license requirements under this chapter.

(d) The department must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department may extend the 180-day limit if the results of the license holder's examination have not been received by the department.

SECTION 41. Subsections (b) through (f), Section 43.009, Human Resources Code, are amended to read as follows:

(b) The board shall recognize, prepare, or administer continuing education programs for license holders. The continuing education requirement may be fulfilled by studies in the areas of legal aspects of child care, concepts related to the field of social work, or other subjects approved by the department.

(c) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the department before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in the activities that require a license until the license has been renewed under the provisions of this section.

(d) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the department one and [~~the required renewal fee and a fee that is~~] one-half times the required renewal [~~of the examination~~] fee [~~for the license~~].

(e) If a person's license has been expired for longer than 90 days but less than one year [~~two years~~], the person may renew the license by paying to the department two times the required [~~all unpaid~~] renewal [~~fees and a~~] fee [~~that is equal to the examination fee for the license~~].

(f) If a person's license has been expired for one year [~~two years~~] or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. If the [~~However, the department may renew without reexamination an expired license of a~~] person [~~who~~] was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application, the person may renew an expired license without reexamination. The person must pay to the department a fee that is equal to two times the required renewal [~~the examination~~] fee for the license.

SECTION 42. Section 43.010, Human Resources Code, is amended to read as follows:

Sec. 43.010. LICENSE REVOCATION, [~~OR~~] SUSPENSION, OR REFUSAL; REPRIMAND OR PROBATION. (a) The department shall revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation by the license holder of this chapter or a rule of the board.

(b) The department may revoke a license if the license holder is:

(1) convicted of a felony;

(2) convicted of a misdemeanor involving fraud or deceit;

(3) addicted to a dangerous drug or intemperate in the use of a lcohol; or

(4) grossly negligent in performing duties as a child-care administrator.

(c) [~~(b)~~] The department shall suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of this chapter or a rule of the board.

(d) If a license suspension is probated, the department may require the license holder:

(1) to report regularly to the department on the conditions [~~matters that are the basis~~] of the probation;

(2) to limit practice to the areas prescribed by the department; or

(3) to continue or renew professional education until the practitioner attains a degree of skill satisfactory to the department in those areas in which improvement is a condition [~~that are the basis~~] of the probation.

SECTION 43. Chapter 43, Human Resources Code, is amended by adding Sections 43.0105 and 43.0106 to read as follows:

Sec. 43.0105. REVOCATION OF PROBATION. The department may revoke the probation of a license holder whose license is suspended if the license holder violates a term of the conditions of probation.

Sec. 43.0106. DISCIPLINARY HEARING. If the department proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. Rules of practice adopted by the board under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

SECTION 44. Subdivision (2), Section 48.002, Human Resources Code, is amended to read as follows:

(2) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or

(B) sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under[~~:~~

[~~(i)~~] Section 21.08, Penal Code (indecent exposure)[;] or

[~~(ii)~~] Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

SECTION 45. Subsection (a), Section 48.0215, Human Resources Code, as amended by Chapters 76, 303, and 1039, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

(a) The department shall file an application under Section 682 or 875 [~~Chapter XIII~~], [~~of the~~] Texas Probate Code, to be appointed guardian of the person or [~~and~~] estate or both of an individual who is a minor, is a conservatee of the department, and, because of a physical or mental condition, will be substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs when the individual becomes an adult. If a less restrictive alternative to guardianship is available for an individual, the department shall pursue the alternative instead of applying for appointment as a guardian.

SECTION 46. Section 48.0215, Human Resources Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) As a last resort, the department may apply to be appointed guardian of the person or estate of an elderly or disabled person who is found by the department to be in a state of abuse, neglect, or exploitation, and who, because of a physical or mental condition, will be substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs. A representative of the department shall take the oath required by the Texas Probate Code on behalf of the department if the department is appointed guardian. If the department knows that an individual is willing and able to serve as the guardian, the department may inform the court of that individual's willingness and ability.

(e) The department may not be required to pay fees associated with the appointment of a guardian ad litem or attorney ad litem.

SECTION 47. Section 48.036, Human Resources Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as prescribed by Section 48.082, a person having [~~reasonable~~] cause to believe that an elderly or disabled person is in the state of abuse, exploitation, or neglect shall report the information required by Subsection (b) immediately to the department.

(c) The duty imposed by Subsection (a) applies without exception to a person whose professional communications are generally confidential, including an attorney, clergy member, medical practitioner, social worker, and mental health professional.

SECTION 48. Subchapter C, Chapter 48, Human Resources Code, is amended by adding Section 48.0362 to read as follows:

Sec. 48.0362. FALSE REPORT; PENALTY. A person commits an offense if the person knowingly or intentionally reports information as

provided in this chapter that the person knows is false or lacks factual foundation. An offense under this section is a Class B misdemeanor.

SECTION 49. Section 48.037, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) The department by rule may assign priorities and prescribe investigative procedures for conducting investigations according to the degree of severity and immediacy of the alleged harm to the individual. Notwithstanding Subsection (a), the department's priorities and procedures may provide that an investigation is not required to be initiated within 24 hours in all cases. This subsection does not apply to investigations conducted under Subchapter E.

SECTION 50. Section 48.081, Human Resources Code, is amended to read as follows:

Sec. 48.081. INVESTIGATION OF REPORTS IN MHMR FACILITIES AND IN COMMUNITY CENTERS. (a) The department shall receive and investigate reports of the abuse, neglect, or exploitation of an individual:

(1) receiving services in a facility operated by the Texas Department of Mental Health and Mental Retardation; or

(2) being provided services through a program under contract with a facility operated by the Texas Department of Mental Health and Mental Retardation.

(b) The department and the Texas Department of Mental Health and Mental Retardation shall develop joint rules to facilitate investigations in state mental health and mental retardation facilities.

(c) The department shall receive and investigate a report of the alleged abuse, neglect, or exploitation of an individual receiving services in a community center or from a program providing services under contract with a community center.

(d) The department shall forward to a state mental health or mental retardation facility, a community center, or a program providing mental health or mental retardation services under contract with such a facility or community center:

(1) a copy of any report the department receives relating to alleged or suspected abuse, neglect, or exploitation of an individual receiving services from that facility, community center, or program; and

(2) a copy of the department's investigation findings and report.

(e) The department and the Texas Department of Mental Health and Mental Retardation by joint rules shall establish procedures for resolving disagreements between the department and the Texas Department of Mental Health and Mental Retardation concerning the department's investigation findings. A confirmed investigation finding by the department may not be changed by a superintendent of a state mental health or mental retardation facility or a director of a community center.

(f) After completion of the appeals process, the department shall refer a complaint relating to an investigation conducted by the department under this section to the department's ombudsman office for appropriate action.

(g) [~~(f)~~] If the department's investigation under this section reveals that an elderly or disabled person has been abused by another person in a manner

that constitutes a criminal offense under any law, including Section 22.04, Penal Code, a copy of the investigation shall be submitted to the appropriate law enforcement agency.

(h) The department by rule may assign priorities to an investigation conducted by the department under this section. The primary criterion used by the department in assigning a priority must be the risk that a delay in the investigation will impede the collection of evidence.

(i) The department and the Texas Department of Mental Health and Mental Retardation shall jointly develop and implement a single system to track reports and investigations under this section. To facilitate implementation of the system, the department and the Texas Department of Mental Health and Mental Retardation shall use appropriate methods of measuring the number and outcome of reports and investigations under this section.

(j) [~~(g)~~] In this section, "community center" has the meaning assigned by Section 531.002, Health and Safety Code.

SECTION 51. Subsections (b) through (f), Section 48.101, Human Resources Code, are amended to read as follows:

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

(c) A court may order disclosure of confidential information only if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of that hearing is served on the department or investigating state agency and each interested party; and

(3) the court determines after the hearing and an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual who:

(A) is the subject of a report of abuse, neglect, or exploitation;

(B) makes a report of abuse, neglect, or exploitation; or

(C) participates in an investigation of reported abuse, neglect, or exploitation.

(d) The department or investigating state agency by rule shall provide for the release on request to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise confidential information relating to that report. The department or investigating state agency shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

(e) The department or investigating state agency may adopt rules relating to the release of information contained in the record of a deceased individual who was the subject of an investigation conducted by [~~to whom~~] the department or investigating state agency [~~has provided protective services~~]. The rules must be consistent with the purposes of this chapter and any applicable state or federal law.

(f) The department or investigating state agency may establish procedures to exchange with another state agency or governmental entity information that is necessary for the department, state [~~or the~~] agency, or entity to properly execute its respective duties and responsibilities to provide services to elderly or disabled persons under this chapter or other law. An exchange of information under this subsection does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

SECTION 52. Subsection (a), Section 48.103, Human Resources Code, is amended to read as follows:

(a) A person, including a guardian and notwithstanding Section 675, Texas Probate Code, may not interfere with:

(1) an investigation by the department or by a protective services agenc of alleged abuse, neglect, or exploitation of an elderly or disabled person; or

(2) the provision of protective services to an elderly or disabled person.

SECTION 53. Section 161.001, Family Code, is amended to read as follows:

Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP. The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Chapter 264;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been adjudicated to be criminally responsible for the death or serious injury of a child;

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state; [~~or~~]

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services or an authorized agency for not less than six months [~~one year~~], and:

(i) the department or authorized agency has made reasonable efforts to return the child to the parent;

(ii) the parent has not regularly visited or maintained significant contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment; or

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child; and

(2) that termination is in the best interest of the child.

SECTION 54. Subchapter B, Chapter 201, Family Code, is amended by adding Section 201.1085 to read as follows:

Sec. 201.1085. DISCRETIONARY APPOINTMENT OF MASTER FOR CHILD PROTECTION CASES. The presiding judge of an administrative judicial region may appoint a master for a court handling child protection cases if the court needs assistance in order to process the cases in a reasonable time.

SECTION 55. Section 261.001, Family Code, is amended by adding Subdivision (7) to read as follows:

(7) "Board" means the Board of Protective and Regulatory Services.

SECTION 56. Section 261.107, Family Code, is amended to read as follows:

Sec. 261.107. FALSE REPORT; PENALTY. A person commits an offense if the person knowingly or intentionally makes a report as provided in

this chapter that the person knows is false or lacks factual foundation. An offense under this section [~~subsection~~] is a Class A [~~B~~] misdemeanor.

SECTION 57. Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.3015 to read as follows:

Sec. 261.3015. FLEXIBLE RESPONSE SYSTEM. (a) In assigning priorities and prescribing investigative procedures based on the severity and immediacy of the alleged harm to a child under Section 261.301(d), the board by rule shall establish a flexible response system to allow the department to allocate resources by investigating serious cases of abuse and neglect and providing assessment and family preservation services in less serious cases.

(b) The classification under the flexible response system of a case may be changed as warranted by the circumstances.

(c) The department may implement the flexible response system by establishing a pilot program in a single department service region. The department shall study the results of the system in the region in determining the method by which to implement the system statewide.

SECTION 58. Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.3016 to read as follows:

Sec. 261.3016. INVESTIGATION BY LAW ENFORCEMENT PILOT PROGRAM. (a) Not later than March 1, 1998, the department may enter into an agreement with the sheriff of a county having a population of not more than 25,000 under which the sheriff shall have the duty to conduct investigations of reports of abuse or neglect under this chapter.

(b) An agreement under this section must:

(1) specify the respective responsibilities of the sheriff and of the department in the investigative process;

(2) provide that the department shall assist in the removal of a child under Chapter 262 if necessary for the protection of the child;

(3) provide for the use of any available children's advocacy center or multidisciplinary team under Subchapter E, Chapter 264;

(4) include provisions for the reimbursement by the department from available state and federal funds of the costs incurred by the sheriff in conducting an investigation of a report of abuse or neglect; and

(5) contain other provisions that the sheriff and department determine to be necessary and appropriate.

(c) This section may not be interpreted as preventing the department from assisting a sheriff in an investigation under this section.

(d) An agreement under this section is not required to include the investigation by a sheriff of a report of abuse or neglect that is alleged to have occurred in a facility or home regulated by the department under Chapter 42, Human Resources Code, or an investigation conducted by the department under Section 48.081, Human Resources Code, or Section 261.404.

(e) If an agreement is made under this section, the department and the sheriff who is a party to the agreement shall report, not later than December 1, 1998, to the governor, the lieutenant governor, the speaker of the house of representatives, and the legislature regarding the performance of investigations under the agreement.

SECTION 59. Section 261.311, Family Code, is amended to read as follows:

Sec. 261.311. NOTICE OF REPORT [~~INTERVIEW OR EXAMINATION~~]. (a) When [~~If,~~] during an investigation of a report of suspected child abuse or neglect[;] a representative of the department or the designated agency conducts an interview with or an examination of a child, the department or designated agency shall make a reasonable effort before 24 hours after the time of the interview or examination to notify each parent of the child and the child's legal guardian, if one has been appointed, of the nature of the allegation and of the fact that the interview or examination was conducted.

(b) If a report of suspected child abuse or neglect is administratively closed by the department or designated agency as a result of a preliminary investigation that did not include an interview or examination of the child, the department or designated agency shall make a reasonable effort before the expiration of 24 hours after the time the investigation is closed to notify each parent and legal guardian of the child of the disposition of the investigation.

(c) The notice required by Subsection (a) or (b) is not required if the department or agency determines that the notice is likely to endanger the safety of the child who is the subject of the report, the person who made the report, or any other person who participates in the investigation of the report.

(d) The notice required by Subsection (a) or (b) may be delayed at the request of a law enforcement agency if notification during the required time would interfere with an ongoing criminal investigation.

SECTION 60. Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.315 to read as follows:

Sec. 261.315. REMOVAL OF CERTAIN INVESTIGATION INFORMATION FROM RECORDS. (a) At the conclusion of an investigation in which the department determines that the person alleged to have abused or neglected a child did not commit abuse or neglect, the department shall notify the person of the person's right to request the department to remove information about the person's alleged role in the abuse or neglect report from the department's records.

(b) On request under Subsection (a) by a person whom the department has determined did not commit abuse or neglect, the department shall remove information from the department's records concerning the person's alleged role in the abuse or neglect report.

(c) The board shall adopt rules necessary to administer this section.

SECTION 61. Subsection (a), Section 262.109, Family Code, is amended to read as follows:

(a) The department or other agency must give written notice as prescribed by this section to each parent of the child or to the child's [~~parent,~~] conservator[;] or legal guardian when a representative of the Department of Protective and Regulatory Services or other agency takes possession of a child under this chapter.

SECTION 62. Subsection (c), Section 262.201, Family Code, is amended to read as follows:

(c) If the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a continuing danger to the physical health or safety of the child and for the child to remain in the home is contrary to the welfare of the child, the court shall:

(1) issue an appropriate temporary order under Chapter 105; and

(2) inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

SECTION 63. Subchapter A, Chapter 263, Family Code, is amended by adding Section 263.006 to read as follows:

Sec. 263.006. WARNING TO PARENTS. At the status hearing under Subchapter C and at each permanency hearing under Subchapter D held after the court has rendered a temporary order appointing the department as temporary managing conservator, the court shall inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents are willing and able to provide the child with a safe environment.

SECTION 64. Section 263.201, Family Code, is amended to read as follows:

Sec. 263.201. STATUS HEARING; TIME. Not later than the 60th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child [~~of a full adversary hearing under Chapter 262~~], the court shall hold a status hearing to review the child's status and the permanency plan developed for the child.

SECTION 65. The heading to Subchapter D, Chapter 263, Family Code, is amended to read as follows:

SUBCHAPTER D. PERMANENCY [~~REVIEW~~] HEARINGS

SECTION 66. Subsections (a) and (b), Section 263.301, Family Code, are amended to read as follows:

(a) Notice of a permanency [~~review~~] hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to all persons entitled to notice of the hearing.

(b) The following persons are entitled to at least 10 days' notice of a permanency hearing [~~to review a child's placement~~] and are entitled to present evidence and be heard at the hearing:

(1) the department;

(2) the foster parent or director of the group home or institution where the child is residing;

(3) each parent of the child;

(4) the managing conservator or guardian of the child; [~~and~~]

(5) an attorney ad litem appointed for the child under Chapter 107;

(6) a volunteer advocate appointed for the child under Chapter 107; and

(7) any other person or agency named by the court to have an interest in the child's welfare.

SECTION 67. Section 263.302, Family Code, is amended to read as follows:

Sec. 263.302. CHILD'S ATTENDANCE AT HEARING. The [~~court may dispense with the attendance of the~~] child shall attend each permanency hearing unless the court specifically excuses the child's attendance. Failure by the child to attend a hearing does not affect the validity of an order rendered at the [~~at a placement review~~] hearing.

SECTION 68. Subchapter D, Chapter 263, Family Code, is amended by adding Section 263.3025 to read as follows:

Sec. 263.3025. PERMANENCY PLAN. (a) The department shall prepare a permanency plan for a child for whom the department has been appointed temporary managing conservator. The department shall give a copy of the plan to each person entitled to notice under Section 263.301(b) not later than the 10th day before the date of the child's first permanency hearing.

(b) In addition to the requirements of the department rules governing permanency planning, the permanency plan must contain the information required to be included in a permanency progress report under Section 263.303.

(c) The department shall modify the permanency plan for a child as required by the circumstances and needs of the child.

SECTION 69. Section 263.303, Family Code, is amended to read as follows:

Sec. 263.303. PERMANENCY PROGRESS [~~STATUS~~] REPORT. (a) Not later than the 10th day before the date set for each permanency hearing other than the first permanency [~~review~~] hearing, the department or other authorized agency shall file with the court and provide to each party, the child's attorney ad litem, and the child's volunteer advocate a permanency progress [~~status~~] report unless the court orders a different period for providing the report [~~or orders that a report is not required for a specific hearing~~].

(b) The permanency progress [~~status~~] report must:

(1) recommend that the suit be dismissed; or

(2) recommend that the suit continue, and:

(A) identify the date for dismissal of the suit under this chapter;

(B) provide:

(i) the name of any person entitled to notice under Chapter 102 who has not been served;

(ii) a description of the efforts by the department or another agency to locate and request service of citation; and

(iii) a description of each parent's assistance in providing information necessary to locate an unserved party;

(C) evaluate [~~all relevant information concerning each of the guidelines under this chapter and~~] the parties' compliance with temporary orders and with the service plan;

(D) evaluate whether the child's placement in substitute care meets the child's needs and recommend other plans or services to meet the child's special needs or circumstances;

(E) describe the permanency plan for the child and recommend actions necessary to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter; and

(F) [~~(2) recommend one of the following actions:~~

[~~(A) that the child be returned to the child's home and that the suit be dismissed;~~

[~~(B) that the child be returned to the child's home with the department or other agency retaining conservatorship;~~

[~~(C) that the child remain in substitute care for a specified period and that the child's parents continue to work toward providing the child with a safe environment;~~

[~~(D) that the child remain in substitute care for a specified period and that termination of parental rights be sought under this code;~~

[~~(E) that a child who has resided in substitute care for at least 18 months be placed or remain in permanent or long-term substitute care because of the child's special needs or circumstances; or~~

[~~(F) that other plans be made or other services provided in accordance with the child's special needs or circumstances; and~~

[~~(3)~~] with respect to a child 16 years of age or older, identify the services needed to assist the child in the transition to adult life.

(c) A parent whose parental rights are the subject of a suit affecting the parent-child relationship, the attorney for that parent, or the child's attorney ad litem or guardian ad litem may file a response to the department's or other agency's report filed under Subsection (b). A response must be filed not later than the third day before the date of the hearing.

SECTION 70. Section 263.304, Family Code, is amended to read as follows:

Sec. 263.304. INITIAL PERMANENCY [~~REVIEW~~] HEARING; TIME. Not later than the 180th day after the date the court renders a temporary order appointing the department as temporary managing conservator of a child [~~of the conclusion of the full adversary hearing under Chapter 262~~], the court shall hold a permanency hearing to review the status of, and permanency plan for, the [~~a~~] child to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the suit under this chapter [~~in substitute care in the court's jurisdiction, including the time for the completion of the plan and the projected date for the achievement of the child's permanency plan~~].

SECTION 71. Section 263.305, Family Code, is amended to read as follows:

Sec. 263.305. SUBSEQUENT PERMANENCY [~~REVIEW~~] HEARINGS. A subsequent permanency hearing before entry of a final order [~~Subsequent review hearings~~] shall be held [~~not earlier than 5 1/2 months and~~] not later than the 120th day [~~seven months~~] after the date of the last permanency hearing in the suit. For [~~unless, for~~] good cause shown or on the court's own motion [~~by a party~~], the court may order more frequent hearings [~~an earlier hearing is approved by the court~~].

SECTION 72. Section 263.306, Family Code, is amended to read as follows:

Sec. 263.306. PERMANENCY [~~REVIEW~~] HEARINGS: PROCEDURE. At each permanency [~~review~~] hearing the court shall [~~determine~~]:

(1) identify [~~the identity of~~] all persons or parties present at the hearing or those given notice but failing to appear;

(2) review the efforts of the department or another agency in:

(A) attempting to locate all necessary persons;

(B) requesting service of citation; and

(C) obtaining the assistance of a parent in providing information necessary to locate an absent parent;

(3) return the child to the parent or parents if [~~whether~~] the child's parent or parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(4) place the child with a person or entity, other than a parent, entitled to service under Chapter 102 if the person or entity is willing and able to provide the child with a safe environment and the return of the child is in the child's best interest;

(5) evaluate the department's efforts to identify relatives who could provide the child with a safe environment, if the child is not returned to a parent or another person or entity entitled to service under Chapter 102;

(6) evaluate the parties' compliance with temporary orders and

[~~(3) the extent to which the child's parents have taken the necessary actions or responsibilities toward achieving the plan goal during the period of the service plan and the extent to which the department or other authorized agency has provided assistance to the parents as provided in~~] the service plan;

(7) determine [~~(4)~~] whether:

(A) the child continues to need substitute care;

(B) [~~and whether~~] the child's current placement is appropriate for meeting the child's needs; and

(C) other plans or services are needed to meet the child's special needs or circumstances;

(8) if the child is placed in institutional care, determine whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;

(9) if the child is 16 years of age or older, order services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;

(10) determine plans, services, and further temporary orders necessary to ensure that a final order is rendered before the date for dismissal of the suit under this chapter; and

(11) determine the date for dismissal of the suit under this chapter and give notice in open court to all parties of:

(A) the dismissal date;

(B) the date of the next permanency hearing; and

(C) the date the suit is set for trial.

[~~(5) a date for achieving the child's permanency plan;~~

[~~(6) if the child has been in substitute care for not less than 18 months, the future status of the child and the appropriateness of the date by which the child may return home and whether to render further appropriate orders;~~

[~~(7) if the child is in substitute care outside the state, whether the out-of-state placement continues to be appropriate and in the best interest of the child;~~

[~~(8) whether the child's parents are willing and able to provide the child with a safe environment without the assistance of a service plan and, if so, return the child to the parents;~~

[~~(9) whether the child's parents are willing and able to provide the child with a safe environment with the assistance of a service plan and, if so, return the child or continue the placement of the child in the child's home under the department's or other agency's supervision;~~

[~~(10) whether the child's parents are presently unwilling or unable to provide the child with a safe environment, even with the assistance of a service plan, and, if so, order the child to remain under the department's or other agency's managing conservatorship for a period of time specified by the court;~~

[~~(11) whether a long-term substitute care placement is in the child's best interest because of the child's special needs or circumstances and, if so, begin a long-term substitute care placement and if the child is placed in institutional care, whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;~~

[~~(12) whether a child is 16 years of age or older and, if so, order the services that are needed to assist the child in making the transition from substitute care to independent living if the services are available in the community;~~

[~~(13) whether the child has been placed with the department under a voluntary placement agreement and, if so, order that the department will institute further proceedings or return the child to the parents;~~

[~~(14) whether the department or authorized agency has custody, care, and control of the child under an affidavit of relinquishment of parental rights naming the department managing conservator and, if so, direct the department or authorized agency to institute further proceedings; and~~

[~~(15) whether parental rights to the child have been terminated and, if so, determine whether the department or authorized agency will attempt to place the child for adoption.~~]

SECTION 73. Chapter 263, Family Code, is amended by adding Subchapters E and F to read as follows:

SUBCHAPTER E. FINAL ORDER FOR CHILD UNDER DEPARTMENT CARE

Sec. 263.401. DISMISSAL AFTER ONE YEAR; EXTENSION. (a) Unless the court has rendered a final order or granted an extension under Subsection (b), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child.

(b) On or before the time described by Subsection (a) for the dismissal of the suit, the court may extend the court's jurisdiction of the suit for a period stated in the extension order, but not longer than 180 days after the time described by Subsection (a), if the court has continuing jurisdiction of the suit and the appointment of the department as temporary managing conservator is in the best interest of the child. If the court grants an extension, the extension order must also:

(1) schedule the new date for dismissal of the suit; and

(2) make further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit.

(c) If the court grants an extension, the court shall render a final order or dismiss the suit on or before the date specified in the extension order and may not grant an additional extension.

(d) For purposes of this section, a final order is an order that:

(1) requires that a child be returned to the child's parent;

(2) names a relative of the child or another person as the child's managing conservator;

(3) without terminating the parent-child relationship, appoints the department as the managing conservator of the child; or

(4) terminates the parent-child relationship and appoints a relative of the child, another suitable person, or the department as managing conservator of the child.

Sec. 263.402. RETURN OF CHILD TO PARENT OR PLACEMENT WITH RELATIVE. (a) Notwithstanding Section 263.401, the court may retain jurisdiction and not dismiss the suit or render a final order as required by that section if the court renders a temporary order that:

(1) finds that retaining jurisdiction under this section is in the best interest of the child;

(2) orders the department to return the child to the child's parent or to place the child with a relative of the child;

(3) orders the department to continue to serve as temporary managing conservator of the child; and

(4) orders the department to monitor the child's placement to ensure that the child is in a safe environment.

(b) If the court renders an order under this section, the court shall:

(1) include in the order specific findings regarding the grounds for the order; and

(2) schedule a new date, not later than the 180th day after the date the temporary order is rendered, for dismissal of the suit.

(c) If a child placed with a parent or relative under this section must be moved from that home by the department before the dismissal of the suit or the rendering of a final order, the court shall, at the time of the move, schedule a new date for dismissal of the suit. The new dismissal date may not be later than the original dismissal date established under Section 263.401 or the 180th day after the date the child is moved under this subsection, whichever date is later.

(d) If the court renders an order under this section, the court must include in the order specific findings regarding the grounds for the order.

Sec. 263.403. FINAL ORDER APPOINTING DEPARTMENT AS MANAGING CONSERVATOR WITHOUT TERMINATING PARENTAL RIGHTS. (a) The court may render a final order appointing the department as managing conservator of the child without terminating the rights of the parent of the child if the court finds that:

(1) appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; and

(2) it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator.

(b) In determining whether the department should be appointed as managing conservator of the child without terminating the rights of a parent of the child, the court shall take the following factors into consideration:

(1) that the child will reach 18 years of age in not less than three years;

(2) that the child is 12 years of age or older and has expressed a strong desire against termination or being adopted;

(3) that the child has special medical or behavioral needs that make adoption of the child unlikely; and

(4) the needs and desires of the child.

[Sections 263.404-263.500 reserved for expansion]

SUBCHAPTER F. PLACEMENT REVIEW HEARINGS

Sec. 263.501. PLACEMENT REVIEW AFTER FINAL ORDER. (a) If the department has been named as a child's managing conservator in a final order that does not include termination of parental rights, the court shall conduct a placement review hearing at least once every six months until the child becomes an adult.

(b) If the department has been named as a child's managing conservator in a final order that terminates a parent's parental rights, the court shall conduct a placement review hearing at least once every six months until the date the child is adopted or the child becomes an adult.

(c) Notice of a placement review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to each person entitled to notice of the hearing.

(d) The following are entitled to not less than 10 days' notice of a placement review hearing:

(1) the department;

(2) the foster parent or director of the group home or institution in which the child is residing;

(3) each parent of the child;

(4) each possessory conservator or guardian of the child;

(5) the child's attorney ad litem and volunteer advocate, if the appointments were not dismissed in the final order; and

(6) any other person or agency named by the court as having an interest in the child's welfare.

(e) The court may dispense with the requirement that the child attend a placement review hearing.

Sec. 263.502. PLACEMENT REVIEW REPORT. (a) Not later than the 10th day before the date set for a placement review hearing, the department or other authorized agency shall file a placement review report with the court and provide a copy to each person entitled to notice under Section 263.501(d).

(b) For good cause shown, the court may order a different time for filing the placement review report or may order that a report is not required for a specific hearing.

(c) The placement review report must:

(1) evaluate whether the child's current placement is appropriate for meeting the child's needs;

(2) evaluate whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) identify the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living if the services are available in the community;

(4) identify other plans or services that are needed to meet the child's special needs or circumstances; and

(5) describe the efforts of the department or authorized agency to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption.

Sec. 263.503. PLACEMENT REVIEW HEARINGS; PROCEDURE. At each placement review hearing, the court shall determine whether:

(1) the child's current placement is appropriate for meeting the child's needs;

(2) efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community;

(4) other plans or services are needed to meet the child's special needs or circumstances; and

(5) the department or authorized agency has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption.

SECTION 74. Section 264.009, Family Code, is amended to read as follows:

Sec. 264.009. LEGAL REPRESENTATION OF DEPARTMENT. (a) Except as provided by Subsection (b) or (c), in any action under this code [~~title~~], the department shall be represented in court by the county[~~:~~

[~~(1) prosecuting~~] attorney [~~who represents the state in criminal cases in the district or county court~~] of the county where the action is brought, unless the district attorney or criminal district attorney of the county elects to provide representation[~~; or~~

[~~(2) attorney general~~].

(b) If the county attorney, district attorney, or criminal district attorney is unable to represent the department in an action under this code because of a conflict of interest or because special circumstances exist, the attorney general shall represent the department in the action.

(c) If the attorney general is unable to represent the department in an action under this code, the attorney general shall deputize an attorney who has contracted with the department under Subsection (d) or an attorney employed by the department under Subsection (e) to represent the department in the action.

(d) Subject to the approval of the attorney general, the department may contract with a private attorney to represent the department in an action under this code.

(e) The department may employ attorneys to represent the department in an action under this code [~~In a county with a population of 2,800,000 or more, in an action under this title, the department shall be represented in court by the:~~

[~~(1) attorney who represents the state in civil cases in the district or county court of the county where the action is brought; or~~

[~~(2) attorney general~~].

SECTION 75. Subchapter B, Chapter 264, Family Code, is amended by amending Section 264.106 and adding Section 264.1061 to read as follows:

Sec. 264.106. CONTRACTS FOR SUBSTITUTE CARE SERVICES [~~CONTRACT RESIDENTIAL CARE~~]. (a) The department shall:

(1) assess the need for substitute care services throughout the state; and

(2) contract with substitute care providers only to the extent necessary to meet the need for those services.

(b) Before contracting with a substitute care provider, the department shall determine whether:

(1) community resources are available to support children placed under the provider's care; and

(2) the appropriate public school district has sufficient resources to support children placed under the provider's care if the children will attend public school.

(c) In addition to the requirements of Section 40.058(b), Human Resources Code, a contract with a substitute care provider must include provisions that:

(1) enable the department to monitor the effectiveness of the provider's services; and

(2) authorize the department to terminate the contract or impose sanctions for a violation of a provision of the contract that specifies performance criteria.

(d) In determining whether to contract with a substitute care provider, the department shall consider the provider's performance under any previous contract for substitute care services between the department and the provider.

(e) In this section, "substitute care provider" means a person who provides residential care for children for 24 hours a day, including:

(1) a child-care institution, as defined by Section 42.002, Human Resources Code;

(2) a child-placing agency, as defined by Section 42.002, Human Resources Code;

(3) a foster group home or foster family home, as defined by Section 42.002, Human Resources Code; and

(4) an agency group home or agency home, as defined by Section 42.002, Human Resources Code, other than an agency group home, agency home, or a foster home verified or certified by the department [~~make reasonable efforts to ensure that the expenditure of appropriated funds to~~

~~purchase contract residential care for children is allocated to providers on a fixed monthly basis if:~~

[~~(1) the allocation is cost effective; and~~

[~~(2) the number, type, needs, and conditions of the children served are reasonably constant.~~

[~~(b) This section does not apply to the purchase of care in a foster family home~~].

Sec. 264.1061. FOSTER PARENT PERFORMANCE. The department shall monitor the performance of a foster parent who has been verified by the department in the department's capacity as a child-placing agency. The method under which performance is monitored must include the use of objective criteria by which the foster parent's performance may be assessed. The department shall include references to the criteria in a written agreement between the department and the foster parent concerning the foster parent's services.

SECTION 76. Section 264.107, Family Code, is amended to read as follows:

Sec. 264.107. PLACEMENT OF CHILDREN. (a) In making a placement of a child removed from the home of the child's custodial parent, the department shall consider placing the child in the home of the child's noncustodial parent.

(b) The department shall use a system for the placement of children in contract residential care, including foster care, that conforms to the levels of care adopted and maintained by the Health and Human Services Commission.

(c) [~~(b)~~] The department shall use the standard application for the placement of children in contract residential care as adopted and maintained by the Health and Human Services Commission.

SECTION 77. Subchapter B, Chapter 264, Family Code, is amended by adding Section 264.1075 to read as follows:

Sec. 264.1075. USE OF ASSESSMENT SERVICES. Before placing a child in substitute care, the department shall use assessment services provided by a child-care facility or child-placing agency in accordance with Section 42.0425, Human Resources Code, to determine the appropriate substitute care for the child.

SECTION 78. Subchapter C, Chapter 264, Family Code, is amended by adding Sections 264.206 and 264.207 to read as follows:

Sec. 264.206. SEARCH FOR ADOPTIVE PARENTS. (a) The department shall begin its efforts to locate qualified persons to adopt a child, including persons registered with the adoptive parent registry under Subchapter B, at the time the department's permanency plan for the child becomes the termination of the parent-child relationship and adoption of the child.

(b) The department shall report to the court in which the department petitions for termination of the parent-child relationship on the child's adoptability and the department's search for prospective adoptive parents for the child, including information relating to the department's efforts to work with licensed child-placing agencies.

Sec. 264.207. DEPARTMENT PLANNING AND ACCOUNTABILITY. (a) The department shall adopt policies that provide for the improvement of the department's services for children and families, including policies that provide for conducting a home study within four months after the date an applicant is approved for an adoption and documenting the results of the home study within 30 days after the date the study is completed. The policies adopted under this section must:

(1) be designed to increase the accountability of the department to individuals who receive services and to the public; and

(2) assure consistency of services provided by the department in the different regions of the state.

(b) To accomplish the goals stated in Subsection (a), the department shall:

(1) establish time frames for the initial screening of families seeking to adopt children;

(2) provide for the evaluation of the effectiveness of the department's management-level employees in expeditiously making permanent placements for children;

(3) establish, as feasible, comprehensive assessment services in various locations in the state to determine the needs of children and families served by the department;

(4) emphasize and centralize the monitoring and promoting of the permanent placement of children receiving department services;

(5) establish goals and performance measures in the permanent placement of children;

(6) seek private licensed child-placing agencies to place a child in the department's managing conservatorship who has been available for permanent placement for more than 90 days;

(7) provide information to private licensed child-placing agencies concerning children under Subdivision (6);

(8) provide incentives for a private licensed child-placing agency that places a child, as defined by Section 162.301, under Subdivision (6);

(9) encourage foster parents to be approved by the department as both foster parents and adoptive parents;

(10) address failures by the department's service regions in making permanent placements for children in a reasonable time; and

(11) require the department's service regions to participate in the Texas Adoption Resources Exchange.

SECTION 79. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.047 to read as follows:

Sec. 531.047. SUBSTITUTE CARE PROVIDER OUTCOME STANDARDS. (a) The commission, after consulting with representatives from the Department of Protective and Regulatory Services, the Texas Juvenile Probation Commission, and the Texas Department of Mental Health and Mental Retardation, shall by rule adopt result-oriented standards that a provider of substitute care services for children under the care of the state must achieve.

(b) A health and human services agency that purchases substitute care services must include the result-oriented standards as requirements in each substitute care service provider contract.

(c) A health and human services agency may provide information about a substitute care provider, including rates, contracts, outcomes, and client information, to another agency that purchases substitute care services.

SECTION 80. Section 700, Texas Probate Code, is amended to read as follows:

Sec. 700. OATH OF GUARDIAN. (a) The guardian shall take an oath to discharge faithfully the duties of guardian for the person or estate, or both, of a ward.

(b) A representative of the Department of Protective and Regulatory Services shall take the oath required by Subsection (a) of this section if the department is appointed guardian.

SECTION 81. (a) Representatives from each state agency that purchases substitute care services for children under the state's care shall meet to:

(1) assess the total need for substitute care services in this state; and

(2) develop and implement a competitive bidding process to purchase substitute care services.

(b) Except as provided by Subsection (c) of this section, each state agency must use the competitive bidding process created under Subsection (a) of this section to purchase substitute care services.

(c) A state agency is not required to use the competitive bidding process to purchase:

(1) foster family care services;

(2) substitute care services in a geographic area of this state that has a shortage of service providers; or

(3) specialized substitute care services if there is a shortage of providers of the specialized services.

(d) The state agency representatives shall meet and develop the competitive bidding process for purchasing substitute care services as soon as possible after the effective date of this Act.

(e) Not later than September 1, 1998, the Department of Protective and Regulatory Services shall develop and implement a pilot program under which the department purchases substitute care services through a competitive bidding process. The department must design the pilot program to produce a substitute care system that is outcome-based and that uses the department's outcome measures.

SECTION 82. (a) Sections 263.308 and 263.309, Family Code, are repealed.

(b) Section 42.050, Human Resources Code, as amended by Chapter 1052, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

SECTION 83. (a) Except as otherwise provided by this Act, this Act takes effect September 1, 1997.

(b) The Board of Protective and Regulatory Services shall adopt rules necessary to administer the changes in law made by this Act not later than November 1, 1997.

(c) The changes in law made by this Act in the qualifications of, and the prohibitions applying to, members of the Board of Protective and Regulatory Services do not affect the entitlement of a member serving on the board immediately before September 1, 1997, to continue to carry out the functions of the board for the remainder of the member's term. The changes in law apply only to a member appointed on or after September 1, 1997. This Act does not prohibit a person who is a member of the board on September 1, 1997, from being reappointed to the board if the person has the qualifications required for a member under Chapter 40, Human Resources Code, as amended by this Act.

(d) The executive director of the Department of Protective and Regulatory Services shall appoint the members of the strategic technology steering committee established by Section 40.0305, Human Resources Code, as added by this Act, not later than November 1, 1997.

(e) Except as provided by Section 84 of this Act and Subsection (f) of this section, the change in law made by this Act relating to a disciplinary proceeding or contested case of the Department of Protective and Regulatory Services applies only to a proceeding initiated on or after the effective date of this Act.

(f) The change in law made by this Act relating to the imposition of a penalty or other disciplinary action on a person or entity regulated by the Department of Protective and Regulatory Services applies only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

(g) The change in law made by this Act relating to the qualifications for a license issued by the Department of Protective and Regulatory Services applies only to an application for a license made on or after the effective date of this Act. An application made before the effective date of this Act is governed by the law in effect on the date the application was made, and the former law is continued in effect for that purpose.

(h) The change in law made by this Act regarding the termination of the parent-child relationship applies only to a suit affecting the parent-child relationship in which termination of the parent-child relationship is sought filed on or after the effective date of this Act. A suit affecting the parent-child relationship in which termination of the parent-child relationship is sought filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 84. (a) The change in law made by this Act relating to a contested case hearing conducted by the State Office of Administrative Hearings on behalf of the Department of Protective and Regulatory Services applies only to a hearing that begins on or after January 1, 1998. Notwithstanding any other provision of this Act, a hearing that begins before that date is governed by the law in effect at the time the hearing begins, and that law is continued in effect for that purpose.

(b) The executive director of the Department of Protective and Regulatory Services and the chief administrative law judge of the State Office

of Administrative Hearings may agree to transfer contested cases pending before the Department of Protective and Regulatory Services to the State Office of Administrative Hearings before January 1, 1998.

SECTION 85. Section 42.0461, Human Resources Code, as added by this Act, applies only to an application for a license or for authorization to expand capacity under a license filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

SECTION 86. (a) The change in law made by Sections 61 through 73 of this Act takes effect January 1, 1998.

(b) Except as provided by Subsection (c) of this section, Sections 61 through 73 of this Act apply to a pending suit affecting the parent-child relationship regardless of whether the suit was commenced before, on, or after the effective date of this Act.

(c) If the Department of Protective and Regulatory Services has been appointed temporary managing conservator of a child before January 1, 1998, the court shall at the first hearing conducted on or after that date under Chapter 263, Family Code, establish a date for dismissal of the suit not later than the second anniversary of the date of the hearing, unless the court has rendered a final order before the dismissal date.

SECTION 87. The Health and Human Services Commission shall adopt the rules required by Section 531.047, Government Code, as added by this Act, not later than January 1, 1998.

SECTION 88. An agency that purchases substitute care services shall review the effectiveness of the result-oriented standards adopted under Section 531.047, Government Code, as added by this Act, and report to the governor, lieutenant governor, speaker of the house of representatives, comptroller, and Legislative Budget Board not later than January 31, 1999.

SECTION 89. Not later than September 15, 1997, each agency or subdivision of the state that inspects child-care facilities shall submit a copy of the inspection form used by the agency or subdivision to the Department of Protective and Regulatory Services for the department's use in implementing Section 42.0441, Human Resources Code, as added by this Act.

SECTION 90. Not later than February 1, 1998, the Department of Protective and Regulatory Services, the Texas Department of Human Services, the Texas Department of Health, and the Texas Workforce Commission shall report the recommendations for the protocol for coordinated inspections provided by Section 42.0442, Human Resources Code, as added by this Act, to their respective governing boards or commissions. The implementation of the protocol shall begin not later than June 1, 1998.

SECTION 91. The Department of Protective and Regulatory Services shall establish a working group to coordinate the processing of child protection cases. The working group shall consist of representatives from the Office of Court Administration, the Texas Supreme Court, and district and county attorneys' offices. The working group shall report its recommendations to the Texas Supreme Court not later than September 1, 1998. After

considering the recommendations of the working group, the Texas Supreme Court shall adopt rules regarding the processing of child protection cases.

SECTION 92. If, before implementing any provision of this Act, a state agency determines that a waiver or authorization from a federal agency is necessary to implement a provision, the state agency shall request the waiver or authorization and may delay implementing the provision until the waiver or authorization is granted.

SECTION 93. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1

Amend **CSSB 359** by adding the following appropriately numbered SECTIONS to read as follows and renumbering existing SECTIONS accordingly:

SECTION ___. Section 40.001, Human Resources Code, is amended by adding Subdivision (5) to read as follows:

(5) "Family preservation" includes the protection of parents and their children from needless family disruption because of unfounded accusations of child abuse or neglect. It does not include the provision of state social services for the rehabilitation of parents convicted of abusing or neglecting their children.

SECTION ___. Section 40.029, Human Resources Code, is amended to read as follows:

Sec. 40.029. RULES. (a) The board shall propose and adopt rules to:

(1) ensure the department's compliance with state and federal law; and

(2) facilitate the implementation of departmental programs.

(b) The board shall propose and adopt rules that further the policy of family preservation.

SECTION ___. Section 40.051, Human Resources Code, is amended to read as follows:

Sec. 40.051. STRATEGIC PLAN FOR DEPARTMENT. The department shall develop a departmental strategic plan based on the goals and priorities stated in the commission's coordinated strategic plan for health and human services. The department shall also develop its plan based on furthering the policy of family preservation.

Floor Amendment No. 2

Amend **CSSB 359** as follows:

(1) In SECTION 14 of the bill, in amended Section 40.061(c), Human Resources Code, strike "investigation or" (page 15, line 22, House Committee Printing) and substitute "investigation,".

(2) In SECTION 14 of the bill, in amended Section 40.061(c), Human Resources Code, strike lines 23-26 (page 15, lines 23-26, House Committee Printing) and substitute the following:

"child abuse is an element, or in the preparation of the suit or prosecution:

(1) commits or attempts to commit perjury;

(2) fabricates or attempts to fabricate evidence;

(3) knowingly conceals or fails to disclose information that may lead to a finding that a person alleged to have committed child abuse did not commit child abuse; or

(4) violates state or federal law in the investigation or prosecution of the suit."

Floor Amendment No. 3

Amend **CSSB 359** by adding the following appropriately numbered SECTION to read as follows and renumbering existing SECTIONS accordingly:

SECTION ___. Section 42.042, Human Resources Code, is amended by adding Subsection (p) to read as follows:

(p) The department by rule shall prescribe minimum training standards for an employee of a regulated child-care facility, including the time required for completing the training. The department may not require an employee to repeat required training if the employee has completed the training within the time prescribed by department rule. The department's local offices shall make available at the local office locations a copy of the rules regarding minimum training standards, information enabling the owner or operator of a regulated facility to apply for training funds from other agencies to lower facility costs, and any other materials the department may develop to assist the owner or operator or other entity in providing the training.

Floor Amendment No. 4

Amend **CSSB 359** as follows:

(1) In SECTION 24 of the bill, in proposed Section 42.0461(d), Human Resources Code (House Committee Report page 25, lines 16 and 17), strike Subdivision (1) and renumber Subdivisions (2)-(4) as Subdivisions (1)-(3), respectively.

(2) In SECTION 24 of the bill, in proposed Section 42.0461(e), Human Resources Code (House Committee Report page 26, lines 4 and 5), strike Subdivision (1) and renumber Subdivisions (2)-(4) as Subdivisions (1)-(3), respectively.

Amendment No. 5

Amend **CSSB 359** as follows:

(1) On page 31, line 22, delete the word "shall" and insert the word "may".

Amendment No. 6

Amend **CSSB 359** as follows:

(1) On page 38, line 18, by inserting subsection (d) as follows and renumbering the following sections accordingly:

(d) Monetary penalties shall not be assessed for violation of clerical errors or standards which do not clearly apprise the facility or family home of the required standard.

Amendment No. 7

Amend **CSSB 359** as follows:

(1) On page 38, line 3, after the word "chapter" before the "." insert the following: "Non-monetary, administrative penalties or remedies including but not limited to corrective action plans, probation, and evaluation periods shall be imposed when appropriate before monetary penalties."

Floor Amendment No. 8

Amend **CSSB 359**, in SECTION 36 of the bill, by striking proposed Section 42.078(b), Human Resources Code (house committee report, page 38, lines 4-6), and substituting the following:

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The penalty for a violation may be in an amount not to exceed the following limits, based on the number of children receiving care at the facility or family home at the time of the violation:

Number of children	Maximum amount of penalty
20 or less	$20
21-40	$30
41-60	$40
61-80	$50
81-100	$75
More than 100	$100

Floor Amendment No. 9

Amend **CSSB 359** by inserting the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION ___. Subchapter C, Chapter 161, Family Code, is amended by adding Section 161.2011 to read as follows:

Sec. 161.2011. STAY OF PROCEEDING; ACCESS TO CHILD. (a) A suit to terminate the parent-child relationship shall be stayed during the time that any criminal charges filed against a parent whose rights are subject to termination in the suit are pending if the criminal charges are directly related to the grounds for which termination of the parent's rights are sought.

(b) The court in which a suit to terminate the parent-child relationship is pending may render an order denying a parent access to a child if the parent is indicted for criminal activity that constitutes a ground for terminating the parent-child relationship under Section 161.001. The denial of access under this section shall continue until the date the criminal charges for which the parent was indicted are resolved and the court renders an order providing for access to the child by the parent.

Floor Amendment No. 10

Amend **CSSB 359** as follows:

(1) Add the following appropriately numbered SECTION:

SECTION ___. Sections 261.101(a) and (b), Family Code, are amended to read as follows:

(a) A person having cause to believe that a child's physical or mental health or welfare has been [~~or may be~~] adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

(b) If a professional has cause to believe that a child has been [~~or may be~~] abused or neglected, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, and day-care employees.

(2) Add the following appropriately numbered SECTION:

SECTION ___. The change in law made by this Act to Section 261.101, Family Code, applies only to a report of child abuse or neglect made on or after the effective date of this Act. A report made before that date is governed by the law in effect on the date the report was made, and the former law is continued in effect for that purpose.

(3) Renumber the sections of the bill accordingly.

Floor Amendment No. 11

Amend **CSSB 359** by adding the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION ___. Section 261.101(b) and (c), Family Code, are amended to read as follows:

(b) If a professional has cause to believe that a child has been or may be abused or neglected <u>or that a child is a victim of an offense under Section 21.11, Penal Code</u>, the professional shall make a report not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected <u>or is a victim of an offense under Section 21.11, Penal Code</u>. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, [~~and~~] day-care employees<u>, and an employee of a clinic or health care facility that provides reproductive services</u>.

(c) The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, [~~and~~] a mental health professional<u>, and an employee of a clinic or health care facility that provides reproductive services</u>.

Floor Amendment No. 12

Amend **CSSB 359**, as follows:

(1) Strike Section 54 of the bill and substitute the following:

The heading of Subchapter B, Chapter 201, Family Code, is amended to read as follows:

SUBCHAPTER B. MASTERS FOR CHILD SUPPORT AND MASTERS FOR CHILD PROTECTIVE SERVICES CASES [~~MASTER~~]

(2) After Section 54, add the following new Sections 55, 56, 57, 58, and 59 and renumber remaining sections accordingly.

SECTION 55. Subchapter B, Chapter 201, Family Code, is amended by adding Section 201.1005 to read as follows:

Sec. 201.1005. DEFINITIONS. In this subchapter:

(1) "Child protection case" means a proceeding brought by the Department of Protective and Regulatory Services under this title.

(2) "Department" means Department of Protective and Regulatory Services.

SECTION 56. Section 201.101, Family Code, is amended by amending Subsection (a) and adding Subsection (3) to read as follows:

(a) The presiding judge of each administrative judicial region, after conferring with the judges of courts in the region having jurisdiction of Title IV-D and child protection cases, shall determine which courts require the appointment of a full-time or part-time master to complete each Title IV-D case within the time specified in this subchapter or to complete child protection cases within a reasonable time.

(e) If the presiding judge determines that a court requires a master to complete child protection cases in a reasonable time and a master has been appointed under Sec. 201.1085, the presiding judge shall, by a general order, refer all child protection cases to the master. At the option of the judge, referral of child protection cases may be made before or after entry of an emergency order under Chapter 262. Referral of child protection cases may not be made for individual cases or case by case, but shall be made by general order. The presiding judge need not appoint a master unless sufficient funds are available from state or federal funds to pay the costs of such master.

SECTION 57. Section 201.104, Family Code, is amended to read as follows:

Sec. 201.104. OTHER POWERS AND DUTIES OF MASTER. (A) On motion of a party, a master may refer a complex case back to the judge for final disposition after the master has recommended temporary support in a Title IV-D case or at any time in a child protection case.

(b) A master shall take testimony and make a record in all Title IV-D and child protection cases as provided by this chapter.

SECTION 58. Section 201.107, Family Code, is amended to read as follows:

Sec. 201.107. STATE AND FEDERAL FUNDS. (a) The office of court administration may contract with the Title IV-D agency or any other departments or agencies for available state and federal funds under Title IV-D or any other law and may employ personnel needed to implement and administer this subchapter. A master and other personnel appointed under this section may also use available state funds and public or private grants.

(b) The presiding judges of the administrative judicial regions, state agencies, and counties may contract with the Title IV-D agency or other

departments or agencies for available federal funds under Title IV-D or any other law to reimburse costs and salaries associated with masters and personnel appointed under this section and may also use available state funds and public or private grants.

(c) The presiding judges, [~~and~~] the Title IV-D agency, and the department shall act and are authorized to take any action necessary to maximize the amount of federal funds available under the Title IV-D program or any other law.

SECTION 59. Subchapter B, Chapter 201, Family Code, is amended by adding Section 201.085 to read as follows:

Sec. 201.1085. APPOINTMENT OF MASTER FOR CHILD PROTECTION CASES.

The presiding judge of an administrative judicial region shall appoint a master for a court handing child protection cases if the court needs assistance in order to process the cases in a reasonable time if sufficient state or federal funds are available to pay the costs of such master. The presiding judge may not appoint a Title IVD master as a master for child protection cases.

Floor Amendment No. 13

Amend **CSSB 359** by adding the following appropriately numbered SECTION and renumbering the remaining SECTIONS of the bill accordingly:

SECTION __. Section 40.002(b), Human Resources Code is amended to read as follows:

(b) The department is the state agency with primary responsibility for:

(1) providing protective services for children and elderly and disabled persons, including investigations of alleged abuse, neglect, or exploitation in facilities of the Texas Department of Mental Health and Mental Retardation;

(2) providing family support and family preservation services which respect the fundamental right of parents to control the education and upbringing of their children; and

(3) regulating child-care facilities and child-care administrators.

Floor Amendment No. 14

Amend **CSSB 359** on page 19, line 19 through page 20, line 15 by striking SECTION 18 of the bill.

Floor Amendment No. 15

Amend **CSSB 359** by adding the following appropriately numbered section and renumbering the sections of the bill accordingly:

SECTION __. Subchapter A, Chapter 261, Family Code, is amended by adding Sections 261.004 and 261.005 to read as follows:

Sec. 261.004. STATISTICS OF ABUSE AND NEGLECT OF CHILDREN. The department shall prepare and disseminate statistics relating to the department's activities under this subtitle and include in an annual report available to the public the following information:

(1) the number of initial phone calls received by the department alleging abuse and neglect;

(2) the outcome of initial investigations by the department detailing the number of calls for which an initial investigation is made; and

(3) the number of cases pursued by the department in each stage of the judicial process, including civil and criminal proceedings and the results of each proceeding.

Sec. 261.005. ANNUAL COUNTY DATA REPORTS. (a) Each county shall report to the department not later than December 1 of each year the following information:

(1) the number of children reported to the county during the preceding year as having been abused or neglected;

(2) of the children to whom Subdivision (1) applies:

(A) the number for whom the report was substantiated;

(B) the number for whom the report was unsubstantiated; and

(C) the number for whom the report was determined to be false;

(3) of the children to whom Subdivision (2) applies:

(A) the number who did not receive services during the preceding year under a state or federal program;

(B) the number who received services during the preceding year under a state or federal program; and

(C) the number who were removed from the child's home during the preceding year;

(4) the number of families that received preventative services from the county during the preceding year;

(5) the number of children who died in the county during the preceding year as a result of child abuse or neglect;

(6) of the children to whom Subdivision (5) applies, the number who were in foster care at the time of death;

(7) the number of child protective services workers in the county responsible for report intake and screening during the preceding year;

(8) the response time by the appropriate agency with respect to conducting an initial investigation of a report of child abuse or neglect in the county;

(9) the response time by the appropriate agency with respect to providing services to families and children in the county for whom an allegation of abuse or neglect has been made;

(10) the number of child protective services workers in the county responsible for intake, assessment, and investigation of child abuse and neglect reports during the preceding year compared to the number of reports investigated during the year before the preceding year;

(11) the number of children in the county who were returned to their families or who received family preservation services and who, before the fifth anniversary of the date of return or receipt, were the victims of substantiated reports of child abuse or neglect, including abuse or neglect resulting in the death of the child; and

(12) the number of children in the county for whom a person was appointed by the court to represent the best interests of the child and the average number of out-of-court contacts between the person and the child.

(b) The department shall summarize all reports received under this section from a county and compile the information in a report to be submitted to the general public not later than February 1 of each year.

Floor Amendment No. 16

Amend **CSSB 359** as follows:

(1) On page 60, between lines 19 and 20 add new SECTIONS 59 and 60 to the bill to read as follows:

SECTION 59. Section 261.201 (a), Family Code, is amended to read as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

SECTION 60. Section 261.302, Family Code, is amended by adding Subsection (e) to read as follows:

(e) An interview with a child alleged to be a victim of physical abuse or sexual abuse shall be audiotaped or videotaped unless the investigating agency determines that good cause exists for not audiotaping or videotaping the interview in accordance with rules of the agency. Good cause may include, but is not limited to, such considerations as the age of the child and the nature and seriousness of the allegations under investigation. Nothing in this subsection shall be construed as prohibiting the investigating agency from audiotaping or videotaping an interview of a child on any case for which such audiotaping or videotaping is not required under this subsection.

(2) Renumber subsequent SECTIONS as appropriate.

Floor Amendment No. 17

Amend **CSSB 359** by striking the section of the bill providing for a pilot program for child abuse investigations, by adding the following appropriately numbered section, and by renumbering the sections of the bill accordingly:

SECTION ___. Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.3019 to read as follows:

Sec. 261.3019. PILOT PROGRAM FOR INVESTIGATIONS OF CHILD ABUSE. (a) On or after September 1, 1997, but not later than March 1, 1998, the department shall enter into an agreement with a sheriff of a county with a population of not less than 500,000, and if necessary for jurisdictional purposes any other law enforcement agency, under which the sheriff or law enforcement agency shall conduct investigations of reports of abuse.

(b) The commissioners court of a county with a population of 25,000 or less may also establish a pilot program under this section independently or in conjunction with the commissioners court of an adjacent county with a population of 25,000 or less.

(c) An agreement under this section shall:

(1) specify the respective roles of law enforcement and department staff in the investigative process;

(2) provide for the department to assist in the removal of children under Chapter 262 as necessary for the protection of children;

(3) provide for the use of any available children's advocacy center or multidisciplinary team under Subchapter E, Chapter 264; and

(4) contain provisions the department and the sheriff and law enforcement determine to be necessary and appropriate.

(d) The commissioners court of a county that is eligible to establish a pilot program and that intends to do so shall inform the department of the county's intent to establish the program. On establishment of the program in a county, authority to conduct an investigation of a report of abuse is transferred from the department to the county's law enforcement agency. After the date of the transfer, the department may only conduct an investigation of a report of abuse in the county at the request of the sheriff or local law enforcement agency. The department may provide advice and technical assistance to the county to ensure that the county complies with state and federal law in implementing and operating the pilot program.

(e) Under the pilot program, the commissioners court:

(1) shall establish a local telephone hotline for the receipt of reports of child abuse and develop a plan for the transfer of calls received by the state child abuse hotline to the local law enforcement agency;

(2) shall develop a plan to be submitted to the department that specifies the manner in which the county's law enforcement agency shall handle investigations, investigator training, and the processing of reports made to the local hotline and other telephone calls;

(3) is entitled to receive from the department funding in an amount consistent with the costs of implementation of the pilot program in the county; and

(4) may contract with other appropriate local law enforcement agencies, if necessary for jurisdictional purposes, to implement the pilot program.

(f) Under the pilot program, the department shall:

(1) from available state or federal funds, provide funding to the county in an amount consistent with the costs of implementing the pilot program in the county, including costs of establishing and operating the local telephone hotline under Subsection (e); and

(2) provide to a participating county law enforcement agency:

(A) information regarding:

(i) the average number of child abuse cases that are typically investigated; and

(ii) staff and investigator training; and

(B) other assistance necessary to adequately implement and fund the pilot program.

(g) Under the pilot program, the commissioners court shall establish an independent local citizens review board composed of seven volunteers who represent the community, including members who have experience in matters relating to child abuse and including one member who is licensed as a psychologist, one member licensed as a medical or health professional, and one member who is a licensed or ordained priest, rabbi, or officer of a religious organization. A member of a review board may not be an employee of or contract with any participating law enforcement agency or the department. The citizens review board shall prepare and make available to the public on an annual basis a report containing a summary of the activities of the board.

(h) The commissioners court may apply for any available federal funds or grants and may research other sources of funding for the county's participation in the pilot program.

(i) An agreement under Subsection (a) is not required to provide for:

(1) the investigation of abuse alleged to have occurred in a facility or home regulated by the department under Chapter 42, Human Resources Code; or

(2) an investigation conducted under Section 48.081, Human Resources Code, or Section 261.404.

(j) The state auditor shall perform an audit and evaluation of the pilot program under this section. In preparing the evaluation, the auditor shall consider any report prepared by a citizens review board established under Subsection (g). The auditor shall report, not later than March 1, 2001, the results of the audit and evaluation to the presiding officers of both houses of the 77th Legislature and to the governor. The report must include an evaluation of the strengths and weaknesses of the pilot program and a recommendation about the feasibility of expanding the pilot program statewide.

(k) The department shall adopt rules necessary to perform the department's duties under this section.

(l) This section expires September 1, 2001.

Floor Amendment No. 18

Amend **CSSB 359** by inserting an appropriately numbered SECTION and renumbering the subsequent SECTIONS accordingly:

SECTION ___. Subchapter B, Chapter 261, Family Code, is amended by adding Section 261.1055 to read as follows:

Sec. 261.1055. NOTIFICATION OF DISTRICT ATTORNEYS. (a) A district attorney may inform the department or designated agency that the district attorney wishes to receive notification of some or all reports of suspected abuse or neglect of children who were in the county at the time the report was made or who were in the county at the time of the alleged abuse or neglect.

(b) If the district attorney makes the notification under this section, the department or designated agency shall, on receipt of a report of suspected abuse or neglect, immediately notify the district attorney as requested and the department or designated agency shall forwards a copy of the reports to the district attorney on request.

Floor Amendment No. 19

Amend **CSSB 359** as follows:

(1) Insert the following appropriately numbered section:

SECTION ___. Subchapter C, Chapter 262, Family Code, is amended by adding Section 262.2015 to read as follows:

Sec. 262.2015. ACCELERATED TRIAL ON THE MERITS. The court may accelerate the trial schedule to result in a final order for a child under the care of the department at an earlier date than provided by Subchapter C, Chapter 263, if the court:

(1) orders at the conclusion of the full adversary hearing that the child may not be placed in the child's home;

(2) finds that the child is a victim of serious bodily injury or sexual abuse; and

(3) finds that there is probable cause to believe that a party to the suit has engaged in conduct against the child that would constitute an offense under the following provisions of the Penal Code:

(A) Section 21.11 (indecency with a child);

(B) Section 22.011 (sexual assault);

(C) Section 22.02 (aggravated assault);

(D) Section 22.021 (aggravated sexual assault);

(E) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(F) Section 22.041 (abandoning or endangering child);

(G) Section 25.02 (prohibited sexual conduct);

(H) Section 43.25 (sexual performance by a child); or

(I) Section 43.26 (possession or promotion of child pornography).

(2) Renumber subsequent sections appropriately.

Floor Amendment No. 20

Amend **CSSB 359** in SECTION 76 of the bill, in amended Section 264.107, Family Code, between "noncustodial parent" and the period (page 81, line 27, House Committee Printing), by inserting "or a relative of the child".

Floor Amendment No. 22

Amend **CSSB 359** (House Committee Report) as follows:

(1) Add the appropriately numbered SECTIONS to the bill to read as follows and renumber existing SECTIONS of the bill accordingly:

SECTION ___. Section 531.001, Government Code, is amended to read as follows:

Sec. 531.001. DEFINITIONS. In this chapter:

(1) "Caseload standards" means the minimum and maximum number of cases that an employee can reasonable be expected to perform in a normal work month based on the number of cases handled by or the number of different job functions performed by the employee.

(2) "Commission" means the Health and Human Services Commission.

(3) [~~(2)~~] "Commissioner" means the commissioner of health and human services.

(4) [~~(3)~~] "Health and human services agencies" includes the:

(A) Interagency Council on Early Childhood Intervention Services;

(B) Texas Department on Aging;

(C) Texas Commission on Alcohol and Drug Abuse;

(D) Texas Commission for the Blind;

(E) Texas Commission for the Deaf and Hard of Hearing ~~Impaired~~;

(F) Texas Department of Health;

(G) Texas Department of Human Services;

(H) Texas Juvenile Probation Commission;

(I) Texas Department of Mental Health and Mental Retardation;

(J) Texas Rehabilitation Commission; and

(K) Department of Protective and Regulatory Services.

(5) "Professional caseload standards" means caseload standards that are established or are recommended for establishment for employees of health and human services agencies by management studies conducted for health and human services agencies or by an authority or association, including the Child Welfare League of America, the National Eligibility Workers Association, the National Association of Social Workers, and associations of state health and human services agencies.

SECTION __. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.047 to read as follows:

Sec. 531.047. CASELOAD STANDARDS. (a) After considering the recommendations of the caseload standards advisory committees under Section 531.048(e), the commissioner may establish caseload standards and other standards relating to caseloads for each category of caseworker employed by the Texas Department of Human Services or the Department of Protective and Regulatory Services.

(b) In establishing standards under this section, the commissioner shall:

(1) ensure the standards are based on the actual duties of the caseworker;

(2) ensure the caseload standards are reasonable and achievable;

(3) ensure the standards are consistent with existing professional caseload standards;

(4) consider standards developed by other states for caseworkers in similar positions of employment; and

(5) ensure the standards are consistent with existing caseload standards of other state agencies.

(c) Subject to the availability of funds appropriated by the legislature, the commissioner of human services and the executive director of the Department of Protective and Regulatory Services shall use the standards established by the commissioner under this section to determine the number of personnel to assign as caseworkers for their respective agencies.

(d) Subject to the availability of funds appropriated by the legislature, the Texas Department of Human Services and the Department of Protective

and Regulatory Services shall use the standards established by the commissioner to assign caseloads to individual caseworkers employed by those agencies.

(e) The commissioner shall include a recommendation made to the commissioner by a caseload standards advisory committee under Section 531.048(e) in the strategic plan of the agency that is the subject of the recommendation.

(f) Nothing in this section may be construed to create a cause of action.

SECTION ___. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.048 to read as follows:

Sec. 531.048. CASELOAD STANDARDS ADVISORY COMMITTEES.

(a) A caseload standards advisory committee is established in the Department of Protective and Regulatory Services, and a caseload standards advisory committee is established in the Texas Department of Human Services.

(b) A caseload standards advisory committee is composed of 10 employees appointed by the commissioner who are unit supervisors or caseworkers in the agency in which the committee is established. To the extent practicable, a caseload standards advisory committee must include a unit supervisor or caseworker from each program area of the agency in which the committee is established.

(c) The commissioner shall make appointments to a caseload standards advisory committee from a list submitted by the commissioner or the executive director of the agency in which the committee is established.

(d) Members of a caseload standards advisory committee serve at the pleasure of the commissioner.

(e) Each caseload standards advisory committee shall:

(1) review professional caseload standards and other caseload standards and recommendations the committee considers appropriate and recommend to the commissioner minimum and maximum caseloads for each category of caseworker employed by the agency in which the advisory committee is established; and

(2) advise and make recommendations to the commissioner on granting the agency in which the advisory committee has been established the authority to waive certain reporting standards when the caseload of a caseworker employed by the agency exceeds the maximum number established by the commissioner under Section 531.047(a).

(f) The commissioner shall dissolve a caseload standards advisory committee if the commissioner determines that the caseload standards advisory committee is no longer necessary to develop and implement the standards required under Section 531.047(a).

(g) Except as otherwise provided by this section, a caseload standards advisory committee is subject to Article 6252-33, Revised Statutes.

(h) Nothing in this section may be construed to create a cause of action.

SECTION ___. (a) A caseload standards advisory committee shall make its recommendations under Section 531.048(e), Government Code, as added by this Act, not later than March 1, 1998.

(b) The commissioner of health and human services shall adopt rules prescribing the standards required by Section 531.047(a), Government Code, as added by this Act, not later than September 1, 1999.

Floor Amendment No. 23

Amend **CSSB 359** by adding the following appropriately numbered sections and renumbering the sections of the bill accordingly:

SECTION __. Subsection (e), Article 49.10, Code of Criminal Procedure, is amended to read as follows:

(e) A justice of the peace shall order an autopsy performed on a body if;

(1) the justice determines that an autopsy is necessary to determine or confirm the nature and cause of death;

(2) the deceased was a child younger than six years of age and the death is determined [~~was reported~~] under Section 264.514 [~~Chapter 264~~], Family Code, to be unexpected or the result of abuse or neglect; or

(3) directed to do so by the district attorney, criminal district attorney, or, if there is no district or criminal district attorney, the county attorney.

SECTION __. Section 264.514, Family Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A medical examiner or justice of the peace notified of a death of a child under Section 264.513 shall hold an inquest under Chapter 49, Code of Criminal Procedure, to determine whether the death is unexpected or the result of abuse or neglect. An inquest is not required under this subchapter if the child's death is expected and is due to a congenital or neoplastic disease. A death caused by an infectious disease may be considered an expected death if:

(1) the disease was not acquired as a result of trauma or poisoning;

(2) the infectious organism is identified using standard medical procedures; and

(3) the death is not reportable to the Texas Department of Health under Chapter 81, Health and Safety Code.

(c) In this section, the terms "abuse" and "neglect" have the meaning assigned those terms by Section 261.001.

SECTION __. The changes in law made by this Act by the amendment to Article 49.10, Code of Criminal Procedure, and Section 264.514, Family Code, take effect September 1, 1997, and apply only to death of a child younger than six years of age that occurs on or after September 1, 1997. A death of a child that occurs before September 1, 1997, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Amendment No. 24

Amend **CSSB 359** in SECTION 24 of the bill, added Section 42.0461, Human Resources Code, as follows:

(1) By inserting between ", and "for" (page 24, line 11) "or certificate to operate under Subchapter E".

(2) After "license" (page 24, line 17) insert ", certificate".
(3) After "license" (page 25, line 14) insert "or certificate".

Amendment No. 25

Amend **CSSB 359** as follows:

(1) In SECTION 16 of the bill, added Section 40.068, Human Resources Code, by striking "child's" (page 18, line 14) and substituting "client's"

(2) In SECTION 24 of the bill, added Section 42.0461(a), Human Resources Code, by striking "250,000" (page 24, line 14) and substituting "300,000".

(3) In SECTION 24 of the bill, added Section 42.0461(f), Human Resources Code, by striking "that is located in a county with a population of less than 250,000 and" (page 26, lines 17 and 18).

(4) In SECTION 24 of the bill, added Section 42.0461(f), Human Resources Code, by inserting "that is located in a county with a population of less than 300,000" between "home" and "that" (page 26, line 19).

(5) In SECTION 31 of the bill, amended Section 42.073, Human Resources Code, by striking all of subsection (d) (page 34, lines 21 through 24) and substituting the following:

"[~~(d) The suspension of a license and the closure of the facility and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.~~]"

(6) In SECTION 74 of the bill, amended Section 264.009(a), Family Code, by striking "(b) or (c)" (page 78, line 16) and substituting "(b), (c) or (f)".

(7) In SECTION 74 of the bill, amended Section 264.004, Family Code, by inserting the following between lines 18 and 19:

"(f) In a county with a population of 2,800,000 or more, in an action under this code, the department shall be represented in court by the attorney who represents the state in civil cases in the district or county court of the county where the action is brought. If such attorney is unable to represent the department in an action under this code because of a conflict of interest or because special circumstances exist, the attorney general shall represent the department in the action."

Floor Amendment No. 26

Amend **CSSB 359** on page 58 by striking lines 15-19 and substituting the following:

Sec. 261.107. FALSE REPORT; PENALTY. (a) A person commits an offense if the person knowingly or intentionally makes a report as provided in this chapter that the person knows is false or lacks factual foundation. An offense under this section [subsection] is a Class A [B] misdemeanor unless it is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a state jail felony.

(b) A finding by a court in a suit affecting the parent-child relationship that a report made under this chapter before or during the suit was false or lacking factual foundation may be grounds for the court to modify an order providing for possession of or access to the child who was the subject of the

report by restricting further access to the child by the person who made the report.

(c) The appropriate county prosecuting attorney shall be responsible for the prosecuting of an offense under this section.

Floor Amendment No. 27

Amend **CSSB 359** as follows:

(1) In SECTION 14 of the bill, in the recital (House Committee Report, page 15, line 18), between "by" and "adding", insert "amending Subsection (a) and".

(2) In SECTION 14 of the bill (House Committee Report, page 15, between lines 18 and 19), insert the following:

(a) A department employee, a member of a multidisciplinary team established under Section 40.0523, or an authorized department volunteer who performs a departmental duty or responsibility is immune from civil or criminal liability for any act or omission that relates to the duty or responsibility if the person acted in good faith and within the scope of the person's authority.

(3) In SECTION 16 of the bill, in the recital (House Committee Report, page 16, line 19), strike "40.067, and 40.068" and substitute "40.067, 40.068, and 40.069".

(4) In SECTION 16 of the bill (House Committee Report, page 18, between lines 17 and 18), insert the following:

Sec. 40.069. REQUIRED AFFIDAVIT FOR APPLICANTS FOR EMPLOYMENT. (a) An applicant for temporary or permanent employment with the department whose employment or potential employment with the department involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF _____

COUNTY OF _____

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;

2. Pleaded guilty to (whether or not resulting in a conviction);

3. Pleaded nolo contendere or no contest to;

4. Admitted;

5. Had any judgment or order rendered against me (whether by default or otherwise);

6. Entered into any settlement of an action or claim of;

7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;

8. Been diagnosed as having or have been treated for any mental or emotional condition arising from; or,

9. Resigned under threat of termination of employment or volunteerism for;

10. Had a report of child abuse or neglect made and substantiated against me for;

11. Have any pending criminal charges against me in this or any other jurisdiction for:

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;
2. Rape or other sexual assault;
3. Physical, sexual, emotional abuse and/or neglect of a minor;
4. Incest;
5. Exploitation, including sexual, of a minor;
6. Sexual misconduct with a minor;
7. Molestation of a child;
8. Lewdness or indecent exposure;
9. Lewd and lascivious behavior;
10. Obscene or pornographic literature, photographs, or videos;
11. Assault, battery, or any violent offense involving a minor;
12. Endangerment of a child;
13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;
14. Unfitness as a parent or custodian;
15. Removing children from a state or concealing children in violation of a court order;
16. Restrictions or limitations on contact or visitation with children or minors;
17. Any type of child abduction; or,
18. Similar or related conduct, matters, or things.

Except the following (list all incidents, location, description, and date) (if none, write NONE):

Signed _____

Date _____.

Subscribed and sworn to (or affirmed) before me this ____ day of _____

_____, _____.

Signature of notarial officer _____.

(seal, if any, of notarial officer)

My commission expires: _____

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

(5) In SECTION 19 of the bill, in the recital (House Committee Report, page 20, line 17), strike "Section 42.0425" and substitute "Sections 42.0425, 42.0426, and 42.0427".

(6) In SECTION 19 of the bill (House Committee Report, page 21, between lines 3 and 4), insert the following:

Sec. 42.0426. TRAINING OF PERSONNEL. A licensed facility or registered family home shall provide training for staff members in:

(1) the recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure of reporting suspected occurrences of child abuse, neglect, and sexual molestation to the department or other appropriate entity;

(2) the application of first aid; and

(3) the prevention and spread of communicable diseases.

Sec. 42.0427. PARENTAL VISITATION. All areas of a licensed facility must be accessible to a parent of a child who is receiving care at the facility if the parent visits the child during the facility's hours of operation.

(7) Strike SECTION 21 of the bill (House Committee Report, page 21, lines 26-27 through page 22, lines 1-5) and substitute the following:

SECTION 21. Subsections (a), (b), and (c), Section 42.044, Human Resources Code, are amended to read as follows:

(a) An authorized representative of the department [~~division~~] may visit a facility or registered family home during operating hours to investigate, inspect, and evaluate.

(b) The department [~~division~~] shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(c) The department [~~division~~] must investigate a facility when a complaint is received. The department shall investigate a registered family home when the department receives a complaint of abuse or neglect, as defined by Section 261.001, Family Code, of a child at the home. The department [~~division~~] representative must notify the facility's director or authorized representative when a complaint is being investigated and report in writing the results of the investigation to the director or the director's authorized representative.

(8) In SECTION 25 of the bill, strike the recital (House Committee Report, page 27, lines 4 and 5), and substitute "Subsections (c) and (f), Section 42.052, Human Resources Code, are amended to read as follows:"

(9) In SECTION 25 of the bill (House Committee Report, page 27, between lines 14 and 15), insert the following:

(f) A family home may not place a public advertisement that uses the title "registered family home" or any variation of the phrase unless the home is registered with the department [~~division~~] under this chapter. Any public advertisement for a registered family home which uses the title "registered family home" must contain a provision in bold type stating: "THIS HOME IS REGISTERED WITH THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."

(10) In SECTION 26 of the bill, in the recital (House Committee Report, page 27, line 16), strike "Sections 42.057 and 42.058" and substitute "Sections 42.057, 42.058, and 42.059".

(11) In SECTION 26 of the bill, strike proposed Section 42.057, Human Resources Code (House Committee Report, page 27, lines 17-27 through page 28, lines 1-26), and substitute the following:

Sec. 42.057. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) In accordance with rules adopted by the department, the director, owner, or operator of a child-care facility or family home shall, when applying to operate a child-care facility or when registering a family home and at least once during each 24 months after receiving a license, registration,

or certification of approval, submit to the department for use in conducting background and criminal history checks:

(1) the name of the director, owner, and operator of the facility or home and the name of each person employed at the facility or home; and

(2) the name of each resident of the home and any other person who will regularly or frequently be staying or working at the facility or home while children are being provided care.

(b) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a);

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(c) The department by rule shall require a child-care facility or family home to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

(12) In SECTION 26 of the bill (House Committee Report, page 29, between lines 14 and 15), insert the following:

Sec. 42.059. REQUIRED AFFIDAVIT FOR APPLICANTS FOR EMPLOYMENT WITH FACILITY OR REGISTERED FAMILY HOME. (a) An applicant for temporary or permanent employment with a licensed facility or registered family home whose employment or potential employment with the facility or home involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF _____

COUNTY OF _____

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;

2. Pleaded guilty to (whether or not resulting in a conviction);

3. Pleaded nolo contendere or no contest to;

4. Admitted;

5. Had any judgment or order rendered against me (whether by default or otherwise);

6. Entered into any settlement of an action or claim of;

7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;

8. Been diagnosed as having or have been treated for any mental or emotional condition arising from; or,

9. Resigned under threat of termination of employment or volunteerism for;

10. Had a report of child abuse or neglect made and substantiated against me for;

11. Have any pending criminal charges against me in this or any other jurisdiction for;

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;
2. Rape or other sexual assault;
3. Physical, sexual, emotional abuse and/or neglect of a minor;
4. Incest;
5. Exploitation, including sexual, of a minor;
6. Sexual misconduct with a minor;
7. Molestation of a child;
8. Lewdness or indecent exposure;
9. Lewd and lascivious behavior;
10. Obscene or pornographic literature, photographs, or videos;
11. Assault, battery, or any violent offense involving a minor;
12. Endangerment of a child;
13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;
14. Unfitness as a parent or custodian;
15. Removing children from a state or concealing children in violation of a court order;
16. Restrictions or limitations on contact or visitation with children or minors;
17. Any type of child abduction; or,
18. Similar or related conduct, matters, or things.

Except the following (list all incidents, location, description, and date) (if none, write NONE)

Signed _____

Date _____.

Subscribed and sworn to (or affirmed) before me this _____ day of _____

_____, _____.

Signature of notarial officer _____

(seal, if any, of notarial officer)

My commission expires: _____

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

(13) In SECTION 30 of the bill, in amended Section 42.072, Human Resources Code (House Committee Report, page 33, lines 23-27), strike Subsection (d) and substitute the following:

(d) The department by rule may provide for denial of an application or renewal for a licensed facility, for certification of approval of a facility, or for registering a family home or may revoke a facility's license or certification or a family home's registration based on findings of criminal history as a result of a background or criminal history check.

(14) Add the following appropriately numbered SECTIONS to the bill and renumber existing SECTIONS of the bill accordingly:

SECTION ___. Subsection (a), Section 261.105, Family Code, is amended to read as follows:

(a) All reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare shall be referred immediately to the department or the designated agency.

SECTION __. Subsection (a), Section 261.301, Family Code, is amended to read as follows:

(a) With assistance from the appropriate state or local law enforcement agency, the [~~The~~] department or designated agency shall make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare.

SECTION __. Section 411.114, Government Code, is amended to read as follows:

Sec. 411.114. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. (a)(1) In this subsection the terms "child," "child-care facility," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(2) The Department of Protective and Regulatory Services shall [~~is entitled to~~] obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, or certification under Chapter 42, Human Resources Code;

(B) an owner or employee of or an applicant for employment by a child-care facility or family home licensed, registered, or certified under that chapter;

(C) a resident of a registered family home, but not a child in the home's care or a parent of the child;

(D) an applicant for a position with the Department of Protective and Regulatory Services, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E) [~~a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;~~

[~~(F) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;~~

[~~(G)~~] an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of Protective and Regulatory Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F) [~~(H)~~] a volunteer or applicant volunteer with the Department of Protective and Regulatory Services;

(G) [~~(I) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;~~

[~~(J)~~] a person providing or applying to provide adoptive or foster care for children in the care of the Department of Protective and

Regulatory Services and other adults living with that person in the residence in which the child will reside;

(H) [~~(K)~~] a Department of Protective and Regulatory Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

(I) [~~(L)~~] a person who is the subject of a report the department receives alleging that the person has abused or neglected a child, an elderly person, or a person with a disability, provided that report has proven to have merit;

(J) [~~(M)~~] a relative providing or applying to provide in-home care for a child in the care of the Department of Protective and Regulatory Services and other adults living with that relative in the residence in which the child will reside; or

(K) [~~(N)~~] a person providing child care for a child who is in the care of the Department of Protective and Regulatory Services and who is or will be receiving adoptive, foster, or in-home care[;

[~~(O) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected; or~~

[~~(P) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America~~].

(3) The Department of Protective and Regulatory Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(B) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;

(C) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;

(D) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(E) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America; or

(F) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information.

(4) Subject to Section 411.087, the department shall:

(A) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subdivision (2); or

(B) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subdivision (2).

(5) The Department of Protective and Regulatory Services may not use the authority granted under this section to harass an employee or

volunteer. The Board of Protective and Regulatory Services shall adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

(6) [~~(4)~~] Criminal history record information obtained by the Department of Protective and Regulatory Services under this subsection may not be released to any person except:

(A) on court order;

(B) with the consent of the person who is the subject of the criminal history record information;

(C) for purposes of an administrative hearing held by the Department of Protective and Regulatory Services concerning the person who is the subject of the criminal history record information; or

(D) as provided by Subdivision (7) [~~(5)~~].

(7) [~~(5)~~] The Department of Protective and Regulatory Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) a child-care facility that employs or is considering employing the person who is the subject of the criminal history record information;

(C) a person or business entity described by Subsection (a)(2)(E) [~~(a)(2)(G)~~] who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information; or

(D) an adult residing with a child and the person who is the subject of the criminal history record information, if the Department of Protective and Regulatory Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the child or adult.

(b) The failure or refusal to provide a complete set of fingerprints or a complete name on request constitutes good cause for dismissal or refusal to hire, as applicable, with regard to a volunteer of or an employee or applicant for permanent or temporary employment with the department, or a facility, home, business, or other entity, if the volunteer position, employment, or potential employment involves direct interaction with or the opportunity to interact and associate with children.

(c) The Department of Protective and Regulatory Services may charge an organization or person that requests criminal history record information under Subsection (a)(3) [~~(a)(2)~~] a fee in an amount necessary to cover the costs of obtaining the information on the organization's or person's behalf.

SECTION ___. Section 40.052, Human Resources Code, is amended to read as follows:

Sec. 40.052. DUTIES RELATING TO DELIVERY OF SERVICES. The department shall:

(1) propose and implement service delivery standards for departmental programs;

(2) provide training and technical assistance to regional and local service providers;

(3) provide joint training on the investigation of reports of child abuse or neglect to department personnel and law enforcement personnel in appropriate state and local law enforcement agencies;

(4) develop and implement systems for monitoring departmental program performance and service delivery;

(5) [~~(4)~~] promote innovative service delivery at the local level; and

(6) [~~(5)~~] cooperate and coordinate as appropriate with other governmental entities in the delivery of services.

SECTION ___. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Sections 40.0522 and 40.0523 to read as follows:

Sec. 40.0522. COMMUNITY EDUCATION AND TRAINING RELATING TO CHILD ABUSE OR NEGLECT. (a) The department shall assure the availability of community education programs designed to improve participation of the general public in preventing, identifying, and treating cases of child abuse or neglect, including parent education programs.

(b) The department shall assure that training concerning child abuse or neglect is available to professionals who are required by law to report, investigate, or litigate those cases.

Sec. 40.0523. MULTIDISCIPLINARY TEAMS. (a) To the extent possible, the department shall establish multidisciplinary teams to provide services relating to a report of child abuse or neglect. A multidisciplinary team shall include professionals in parent education and in each professional discipline necessary to provide comprehensive medical and psychological services to a child who is the subject of a report and to members of the child's household.

(b) Members of a multidisciplinary team may exchange information relating to a report of child abuse or neglect as necessary to facilitate a thorough investigation of the report. The department may adopt rules governing the exchange of information between team members.

(c) A multidisciplinary team established under this section shall coordinate services provided by the department to a child and to members of the child's household with services available from other sources, including public and private agencies in the community. The goal of the multidisciplinary team is to provide the greatest range of services possible without duplication of effort.

(d) The department shall establish a process by which members of a multidisciplinary team are involved in the department's development and implementation of procedures relating to coordination of the department's child abuse or neglect services with services provided by other public and private agencies.

SECTION ___. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0445 to read as follows:

Sec. 42.0445. REQUIRED BACKGROUND SEARCH OF CENTRAL REGISTRY OF REPORTED CASES OF CHILD ABUSE OR NEGLECT. (a) Before the department issues or renews a license, registration, or certification under this subchapter, the department shall search the central registry of reported cases of child abuse or neglect established under Section 261.002, Family Code, to determine whether the applicant or the

owner or an employee of the facility or family home is listed in the registry as a person who abused or neglected a child.

(b) The department may adopt rules to implement this section.

Amendment No. 28

Amend the Wise amendment to **CSSB 359** on page 4 by striking the word "or" on line 15 and striking "registered family home" on line 16.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 359** on third reading by amending amendment number 20 by Wohlgemuth to **CSSB 359**, adopted on second reading, by striking the text of the amendment and substituting the following:

Amend **CSSB 359** by striking Section 264.107(a), Family Code, (page 81, lines 24-27, house committee report) and substituting the following:

(a) The department shall place a child removed from the child's custodial parent with the child's noncustodial parent or with a relative of the child if placement with the noncustodial parent is inappropriate, unless placement with the noncustodial parent or a relative is not in the best interest of the child.

The amendments were read.

Senator Brown moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **SB 359** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brown, Chair; Armbrister, Zaffirini, Moncrief, and Harris.

CONFERENCE COMMITTEE ON HOUSE BILL 583

Senator Barrientos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 583** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 583** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chair; Bivins, West, Luna, and Shapiro.

CONFERENCE COMMITTEE ON HOUSE BILL 2906

Senator Ratliff called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2906** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **HB 2906** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ratliff, Chair; Armbrister, Carona, Cain, and Fraser.

COMMITTEE SUBSTITUTE HOUSE BILL 1305 ON SECOND READING

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

CSHB 1305, Relating to safety consultations.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1305** by deleting the existing SECTION 2 and substituting in lieu thereof the following:

SECTION 2. This Act shall apply to a cause of action, pleadings or motions in a suit filed on or after the effective date hereof. Any suit filed and commenced before the effective date of this Act is governed by the law applicable thereto and in effect prior to the effective date hereof, and, solely for that purpose, such law is continued in effect.

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

(Senator Shapleigh in Chair)

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 1305** as follows:

On page 1, line 17, after the word "liability" insert the following;

"except in cases of gross negligence or intentional misconduct"

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

CSHB 1305 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

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

COMMITTEE SUBSTITUTE HOUSE BILL 1305 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1305** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Shapleigh.

CSHB 1305 was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

COMMITTEE SUBSTITUTE HOUSE BILL 1908 ON SECOND READING

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

CSHB 1908, Relating to the placement of signs along certain public roads.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1908** by striking SECTION 2 of the bill and substituting the following:

SECTION 2. Chapter 393, Transportation Code, is amended by adding Section 393.0025 to read as follows:

Sec. 393.0025. MUNICIPAL AUTHORITY TO REGULATE SIGN PLACEMENT. (a) A person may not place a sign on the right-of-way of a road or highway maintained by a municipality unless the placement is authorized by the municipality.

(b) This section does not apply to the right-of-way of a road or highway in the state highway system.

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

CSHB 1908 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

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

COMMITTEE SUBSTITUTE HOUSE BILL 1908 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1908** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Harris.

CSHB 1908 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

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

BILLS AND RESOLUTIONS SIGNED

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

SB 23, SB 46, SB 141, SB 167, SB 187, SB 227, SB 253, SB 298, SB 337, SB 461 (Signed subject to Art. III, Sec. 49a, Texas Constitution), **SB 462, SB 487, SB 644, SB 674, SB 711, SB 937, SB 972, SB 1106, SB 1246, SB 1578, SB 1607, SB 1651, SB 1893, SB 1914, SCR 34, SCR 88, SCR 97, SCR 98, SJR 45**

HOUSE BILL 2297 ON SECOND READING

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

HB 2297, Relating to the Texas Judicial Council.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2297** as follows:

(1) In SECTION 5 of the bill, in amended Section 71.014(a), Government Code, strike "chief justice of the supreme court [~~governor~~]" and substitute "governor".

(2) In SECTION 6 of the bill, in amended Section 71.015(b), Government Code, strike "chief justice of the supreme court [~~governor~~]" and substitute "governor".

(3) In SECTION 11 of the bill, in Subsection (b), strike "chief justice of the supreme court" and substitute "governor".

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

HB 2297 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2297 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2297** be placed on its third reading and final passage.

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

HB 2297 was read third time and was passed by a viva voce vote.

HOUSE BILL 1230 ON SECOND READING

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

HB 1230, Relating to the place of detention for juveniles in certain counties and to the use or establishment of certain criminal detention facilities.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1230** as follows:

1. Amend SECTION 1. Section 51.12, Family Code, by amending Subsection (b) to read as follows:

(b) The proper authorities in each county shall provide a suitable place of detention for children who are parties to proceedings under this title, but the juvenile ~~[court]~~ board shall control the conditions and terms of detention and detention supervision and shall permit visitation with the child at all reasonable times.

2. Delete SECTION 10.

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

HB 1230 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1230 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1230** be placed on its third reading and final passage.

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

HB 1230 was read third time and was passed by a viva voce vote.

HOUSE BILL 1898 ON SECOND READING

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

HB 1898, Relating to the relocation of utilities by the Texas Department of Transportation essential to the timely completion of a state highway improvement project.

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

HOUSE BILL 1898 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1898** be placed on its third reading and final passage.

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

HB 1898 was read third time and was passed by the following vote: Yeas 31, Nays 0.

(President in Chair)

HOUSE BILL 972 ON SECOND READING

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

HB 972, Relating to systems for providing access to driver's license record information held by the Department of Public Safety.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 972** as follows:

(1) Add the following new sections to the bill, appropriately numbered, and renumber subsequent sections of the bill accordingly:

SECTION ___. Subtitle J, Title 7, Transportation Code, is amended by adding Chapter 730 to read as follows:

CHAPTER 730. MOTOR VEHICLE RECORDS DISCLOSURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 730.001. DEFINITIONS. In this chapter:

(1) "Agency" includes any agency of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

(2) "Disclose" means to make available or make known personal information contained in a motor vehicle record about a person to another person, by any means of communication.

(3) "Individual record" means a motor vehicle record obtained by an agency containing personal information about an individual who is the subject of the record as identified in a request.

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local governmental entity authorized to issue an identification document. The term includes a driver record maintained by the Department of Public Safety. The term does not include a record that pertains to a motor carrier.

(5) "Person" means an individual, organization, or entity but does not include this state or an agency of this state.

(6) "Personal information" means information that identifies a person, including an individual's photograph or computerized photographic image, social security number, driver identification number, name, address other than the postal routing code, telephone number, and medical or disability information. The term does not include information on vehicle accidents, driving or equipment-related violations, or driver's license or registration status.

(7) "Record" includes any book, paper, photograph, photostat, card, film, tape, recording, electronic data, printout, or other documentary material regardless of physical form or characteristics.

Sec. 730.002. RULES. Each agency to which this chapter applies shall adopt rules to implement and enforce this chapter.

[Sections 730.003-730.020 reserved for expansion]

SUBCHAPTER B. MOTOR VEHICLE RECORDS DISCLOSURE ACT

Sec. 730.021. SHORT TITLE. This subchapter may be cited as the Motor Vehicle Records Disclosure Act.

Sec. 730.022. PURPOSE. The purpose of this subchapter is to implement 18 U.S.C. Chapter 123 and to protect the interest of an individual in the individual's personal privacy by prohibiting the disclosure and use of personal information contained in motor vehicle records, except as authorized by the individual or by law.

Sec. 730.023. PROHIBITION ON DISCLOSURE AND USE OF PERSONAL INFORMATION FROM MOTOR VEHICLE RECORDS. Notwithstanding any other provision of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.024-730.027, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Sec. 730.024. REQUIRED DISCLOSURE. Personal information obtained by an agency in connection with a motor vehicle record shall be disclosed for use in connection with any matter of:

(1) motor vehicle or motor vehicle operator safety;

(2) motor vehicle theft;

(3) motor vehicle emissions;

(4) motor vehicle product alterations, recalls, or advisories;

(5) performance monitoring of motor vehicles or motor vehicle dealers by a motor vehicle manufacturer; or

(6) removal of nonowner records from the original owner records of a motor vehicle manufacturer to carry out the purposes of:

(A) the Automobile Information Disclosure Act, 15 U.S.C. Section 1231 et seq.;

(B) 49 U.S.C. Chapters 301, 305, 323, 325, 327, 329, and 331;

(C) the Anti Car Theft Act of 1992, 18 U.S.C. Sections 553, 981, 982, 2119, 2312, 2313, and 2322, 19 U.S.C. Sections 1646b and 1646c, and 42 U.S.C. Section 3750a et seq., all as amended;

(D) the Clean Air Act, 42 U.S.C. Section 7401 et seq., as amended; and

(E) any other statute or regulation enacted or adopted under or in relation to a law included in Paragraphs (A)-(D).

Sec. 730.025. REQUIRED DISCLOSURE WITH CONSENT. Personal information obtained by an agency in connection with a motor vehicle record shall be disclosed to a requestor who demonstrates, in such form and manner as the agency requires, that the requestor has obtained the written consent of the person who is the subject of the information.

Sec. 730.026. PERMITTED DISCLOSURES. (a) Personal information obtained by an agency in connection with a motor vehicle record may be disclosed to any requestor by an agency if the requestor:

(1) provides the requestor's name and address and any proof of that information required by the agency; and

(2) represents that the use of the personal information will be strictly limited to:

(A) use by:

(i) a government agency, including any court or law enforcement agency, in carrying out its functions; or

(ii) a private person or entity acting on behalf of a government agency in carrying out the functions of the agency;

(B) use in connection with a matter of:

(i) motor vehicle or motor vehicle operator safety;

(ii) motor vehicle theft;

(iii) motor vehicle product alterations, recalls, or advisories;

(iv) performance monitoring of motor vehicles, motor vehicle parts, or motor vehicle dealers;

(v) motor vehicle market research activities, including survey research; or

(vi) removal of nonowner records from the original owner records of motor vehicle manufacturers;

(C) use in the normal course of business by a legitimate business or an agent, employee, or contractor of the business, but only:

(i) to verify the accuracy of personal information submitted by the individual to the business or an agent, employee, or contractor of the business; and

(ii) if the information as submitted is not correct or is no longer correct, to obtain the correct information, for the sole purpose of preventing fraud by, pursuing a legal remedy against, or recovering on a debt or security interest against the individual;

(D) use in conjunction with a civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, execution or enforcement of a judgment or order, or under an order of any court;

(E) use in research or in producing statistical reports, but only if the personal information is not published, redisclosed, or used to contact any individual;

(F) use by an insurer or insurance support organization, or by a self-insured entity, or an agent, employee, or contractor of the entity, in connection with claims investigation activities, antifraud activities, rating, or underwriting;

(G) use in providing notice to an owner of a towed or impounded vehicle;

(H) use by a licensed private investigator agency or licensed security service for a purpose permitted under this section;

(I) use by an employer or an agent or insurer of the employer to obtain or verify information relating to a holder of a commercial driver's license that is required under 49 U.S.C. Chapter 313;

(J) use in connection with the operation of a private toll transportation facility;

(K) use for bulk distribution for surveys, marketing, or solicitations, but only if the agency has implemented procedures to ensure that:

(i) persons are provided an opportunity, in a clear and conspicuous manner, to opt out and prohibit those uses; and

(ii) the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, or solicitations, and that surveys, marketing, or solicitations will not be directed at any individual who has timely requested that the material not be directed at that individual; and

(L) use for any other purpose specifically authorized by law that relates to the operation of a motor vehicle or to public safety.

(b) The only personal information an agency may release under this section is the individual's:

(1) name and address;

(2) date of birth; and

(3) driver's license number.

Sec. 730.027. DISCLOSURE OF INDIVIDUAL RECORD. (a) Personal information obtained by an agency in connection with a motor vehicle record that is contained in an individual record may be disclosed to a requestor without regard to intended use if the agency has:

(1) provided, in a clear and conspicuous manner on forms for issuance or renewal of an operator's or driver's license, registration, title, or identification document, notice that personal information collected by the agency may be disclosed to any person making a request for an individual record; and

(2) provided in a clear and conspicuous manner on that form an opportunity for each person who is the subject of the record to prohibit that disclosure.

(b) An agency may include the notice described by Subsection (a)(1) on forms used by members of the general public.

Sec. 730.028. REQUESTS TO PROHIBIT DISCLOSURE. Each agency shall distinguish between a request by a person under Section 730.027 to prohibit disclosure of personal information in the person's individual record and a request under Section 730.026(a)(2)(K) by a person to prohibit disclosure of that information.

Sec. 730.029. DISCLOSURE OF THUMB OR FINGER IMAGES PROHIBITED. Notwithstanding any other provision of this chapter, if an agency obtains an image of an individual's thumb or finger in connection with the issuance of a license, permit, or certificate to the individual, the agency may:

(1) use the image only in connection with the issuance of the license, permit, or certificate; and

(2) disclose the image only if disclosure is expressly authorized by law.

Sec. 730.030. FEES. Unless a fee is imposed by law, an agency that has obtained information in connection with a motor vehicle may adopt reasonable fees for disclosure of that personal information under this subchapter.

Sec. 730.031. ADDITIONAL CONDITIONS. (a) In addition to the payment of a fee adopted under Section 730.030, an agency may require a requestor to provide reasonable assurance:

(1) as to the identity of the requestor; and

(2) that use of the personal information will be only as authorized or that the consent of the person who is the subject of the information has been obtained.

(b) An agency may require the requestor to make or file a written application in the form and containing any certification requirement the agency may prescribe.

Sec. 730.032. RESALE OR REDISCLOSURE. (a) An authorized recipient of personal information, other than a recipient under Section 730.026(a)(2)(K)(ii) or Section 730.027, may resell or redisclose the information for any use permitted under Section 730.026, other than a use described by Section 730.026(a)(2)(K)(ii).

(b) An authorized recipient of an individual record under Section 730.027 may resell or redisclose personal information for any purpose.

(c) An authorized recipient of personal information for bulk distribution for surveys, marketing, or solicitations under Section 730.026(a)(2)(K)(ii) may resell or redisclose personal information only in compliance with the terms of that section.

(d) Any authorized recipient who resells or rediscloses personal information obtained from an agency shall be required by that agency to:

(1) maintain for a period of not less than five years records as to any person or entity receiving that information and the permitted use for which it was obtained; and

(2) make those records available for inspection by the agency on request.

Sec. 730.033. ORGANIZATION OF RECORDS. An agency that maintains motor vehicle records in relation to motor vehicles is not required to also maintain those records in relation to an individual named in those records.

Sec. 730.034. FALSE REPRESENTATION; PENALTY. (a) A person commits an offense if the person:

(1) requests the disclosure of personal information from an agency's records under this subchapter and misrepresents the person's identity; or

(2) makes a false statement to the agency on an application required by the agency under this subchapter.

(b) An offense under this section is a Class A misdemeanor.

[Sections 730.035-730.060 reserved for expansion]

SUBCHAPTER C. DISSEMINATION OF PERSONAL INFORMATION ON INTERNET

Sec. 730.061. DEFINITION. In this subchapter, "internet" means the international computer network of federal and nonfederal interoperable packet switched data networks or a similar computer bulletin board or computer network accessible to the public.

Sec. 730.062. RELEASE OF PERSONAL INFORMATION BY AGENCY. Notwithstanding any other law, including Chapter 501, 502, 521, or 522 of this code, Subchapter B of this chapter, and Chapter 552, Government Code, an agency is prohibited from providing a person with personal information from the agency's motor vehicle records, unless the person receiving the information is the individual to whom the information pertains or that individual's agent or the person agrees in writing with the agency that the person will not:

(1) disseminate or publish the information on the internet; or

(2) permit another to disseminate or publish the information on the internet.

Sec. 730.063. PUBLICATION OR DISCLOSURE OF PERSONAL INFORMATION ON INTERNET. A person may not publish or disclose on the internet personal information from a motor vehicle record that has been obtained directly or indirectly from an agency without the consent of the individual to whom the information pertains.

Sec. 730.064. CIVIL ENFORCEMENT. A district or county attorney or the attorney general may file suit in a district court to enjoin a violation of this chapter or to compel compliance with this chapter.

Sec. 730.065. CIVIL CAUSE OF ACTION. (a) A person who knowingly discloses or uses personal information from an agency's motor vehicle records in violation of this chapter is liable for damages caused by the disclosure or use in an action brought in a district court by the individual to whom the information relates.

(b) A person who brings a suit under Subsection (a) may recover:

(1) actual damages, or if actual damages are less than $2,500, actual damages and liquidated damages of not less than $2,500;

(2) punitive damages, on proof of wilful or reckless disregard of the law;

(3) reasonable attorney's fees and litigation costs; and

(4) other equitable and preliminary relief that the court finds appropriate.

Sec. 730.066. FALSE STATEMENT TO AGENCY; PENALTY. (a) A person commits an offense if the person makes a false statement or representation to an agency to obtain personal information pertaining to any individual from the agency's motor vehicle records under this subchapter.

(b) An offense under this section is a Class A misdemeanor.

Sec. 730.067. DISSEMINATION OR PUBLICATION OF PERSONAL INFORMATION ON INTERNET PROHIBITED; PENALTY. (a) A person commits an offense if the person:

(1) has access to or is in possession of personal information obtained from an agency's motor vehicle records; and

(2) disseminates or publishes the information on the internet without the consent of the individual to whom the information pertains.

(b) An offense under this section is a Class A misdemeanor.

Sec. 730.068. AFFIRMATIVE DEFENSE TO CIVIL ACTION OR PROSECUTION. It is an affirmative defense to an action brought under Section 730.065 or to a prosecution brought under Section 730.067 that the person disclosed or used the personal information of the individual in compliance with and for a purpose authorized by the federal Driver's Privacy Protection Act of 1994 (18 U.S.C. Section 2721 et seq.).

SECTION __ . Subsections (d) through (g), Section 411.0201, Government Code, are amended to read as follows:

(d) [~~The department shall provide an adequate number of microfilm readers and printers to allow the public convenient and inexpensive access to records created under Subsection (a). The department shall index the records alphabetically, by number, by subject matter, or by other appropriate references and shall provide the index to the public to promote convenient access.~~

[~~(e)~~] A photograph, microphotograph, or film of a record reproduced under Subsection (a) is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A certified or authenticated copy of such a photograph, microphotograph, or film is admissible as evidence equally with the original photograph, microphotograph, or film.

(e) [~~(f)~~] The director or an authorized representative may certify the authenticity of a photograph, microphotograph, or film of a record reproduced under this section and shall charge a fee for the certified photograph, microphotograph, or film as provided by law.

(f) [~~(g)~~] Certified records shall be furnished to any person who is authorized by law to receive them.

SECTION __. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.130 to read as follows:

Sec. 552.130. EXCEPTION: MOTOR VEHICLE RECORDS. (a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local governmental entity authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

SECTION__ . Section 552.222, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The officer for public information and the officer's agent may not make an inquiry of a requestor except to establish proper identification or except as provided by Subsection (b) or (c).

(c) If the information requested relates to a motor vehicle record, the officer for public information or the officer's agent may require the requestor to provide additional identifying information sufficient for the officer or the officer's agent to determine whether the requestor is eligible to receive the information under Chapter 730, Transportation Code. In this subsection, "motor vehicle record" has the meaning assigned that term by Section 730.001, Transportation Code.

SECTION __. Section 502.008, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) This section does not authorize the release of information that is prohibited from disclosure under Chapter 730.

SECTION ___. Section 521.045, Transportation Code, is amended to read as follows:

Sec. 521.045. DISCLOSURE OF CERTAIN INFORMATION RELATING TO INDIVIDUAL OPERATOR. On receipt of a written request and payment of a $4 fee, the department may disclose information relating to an individual's date of birth, current license status, and most recent address, as shown in the department's records, to a person who:

(1) is eligible to receive [~~demonstrates a legitimate need for~~] the information under Chapter 730; and

(2) submits to the department the individual's driver's license number or the individual's full name and date of birth.

SECTION ___. Subsection (a), Section 521.046, Transportation Code, is amended to read as follows:

(a) In addition to the information authorized to be released under Section 521.045, on receipt of a written request and payment of a $6 fee, the department may disclose that information and information regarding each reported traffic law conviction and motor vehicle accident in which the individual received a citation, by date and location, within the three years preceding the date of the request, to a person who:

(1) is eligible to receive [~~demonstrates a legitimate need for~~] the information under Chapter 730; and

(2) submits to the department the individual's driver's license number or the individual's full name and date of birth.

SECTION ___. Section 521.050, Transportation Code, is amended to read as follows:

Sec. 521.050. SALE OF LICENSE INFORMATION. (a) In addition to the provisions of this subchapter relating to the disclosure of driver's license information on an individual, the department may provide a purchaser with a magnetic tape of the names, addresses, and dates of birth of all license holders that are contained in the department's basic driver's license record file if the purchaser certifies in writing that the purchaser is eligible to receive the information under Chapter 730.

(b) A magnetic tape provided under this section may contain only the names, addresses, and dates of birth of individuals who have not prohibited the disclosure of personal information relating to those individuals under Section 521.052 and Chapter 730.

(c) The department may also periodically provide to the purchaser of the information any addition to that file.

(d) [~~(b)~~] Before the department may provide information under Subsection (a), the purchaser must agree to delete the name, address, and date of birth of an individual whose name is also included on the mail or telephone preference list maintained by a recognized trade association that is used to remove the name of an individual who has requested that the individual's name not be made available for solicitation purposes.

SECTION __. Section 521.051, Transportation Code, is amended to read as follows:

Sec. 521.051. DISCLOSURE OF CERTAIN INFORMATION PROHIBITED. The department may not disclose class-type listings from the basic driver's license record file to any person except as provided by Section 521.049(c), regardless of whether the requestor is eligible to receive the information under Chapter 730.

SECTION __. Section 521.052, Transportation Code, is amended to read as follows:

Sec. 521.052. DISCLOSURE OF INDIVIDUAL INFORMATION PROHIBITED. (a) Except as provided by Sections 521.045, 521.046, 521.049(c), and 521.050[~~,~~] and by Chapter 730 [~~521.051 and by Subsection (d)~~], the department may not disclose information from the department's files that relates to personal information, as that term is defined by Section 730.001 [~~the address of an individual if:~~

[~~(1) the department's files contain a statement executed by that individual that restricts public access to the information; and~~

[~~(2) the individual has:~~

[~~(A) provided the department in writing an accurate mailing address, other than a post office box number, in the municipality, if any, and county in this state in which the individual resides and to which public access is not to be restricted;~~

[~~(B) consented in writing to receive service of process under the laws of this state at that alternate address; and~~

[~~(C) paid to the department a fee of $5, if the individual established or changed an alternate address at any time other than when the individual renewed the individual's driver's license or personal identification certificate~~].

(b) The department shall provide written notice to each applicant for an original or renewal license or personal identification certificate, or a duplicate or corrected license or certificate, that the applicant is entitled to prohibit disclosure of personal information under Chapter 730 and is entitled to execute a statement that prohibits [~~restricts~~] public access to personal information relating to the [~~address of the~~] applicant.

(c) [~~An individual who has executed a statement under this section shall notify the department of any change in the individual's alternate address in~~

~~writing before the 10th day after the date on which the alternate address is changed.~~

[~~(d) The department is not prohibited under this section from disclosing information relating to the address of an individual who:~~

[~~(1) gives the department an inaccurate alternate mailing address; or~~

[~~(2) fails to provide the department with the notification required by Subsection (c).~~

[~~(c)~~] An individual may at any time revoke a [~~the~~] statement executed under Subsection (b) [~~(a)~~]. Revocation of an executed statement must be in writing in the manner prescribed by the department.

[~~(f) The department or an officer or employee of the department is not liable to a person damaged or injured by the disclosure of information to which public access is restricted under this section.~~]

SECTION ___. Subsection (a), Section 521.053, Transportation Code, is amended to read as follows:

(a) The department may provide to any person the information specified by Section 521.045, 521.046, or 521.047 and by Section 601.022, for the fee required by those sections, that relate to the holder of or applicant for a commercial driver's license under Chapter 522 if the person is eligible to receive the information under Chapter 730.

SECTION ___. Section 550.065, Transportation Code, is amended to read as follows:

Sec. 550.065. RELEASE OF ACCIDENT REPORTS AND CERTAIN INFORMATION RELATING TO ACCIDENTS. (a) This section applies only to information that is held by the department or another governmental entity and relates to a motor vehicle accident, including:

(1) information reported under this chapter, Section 601.004, or Chapter 772, Health and Safety Code;

(2) information contained in a dispatch log, towing record, or a record of a 9-1-1 service provider; and

(3) the part of any other record that includes information relating to the date of the accident, the name of any person involved in the accident, or the specific location of the accident [~~An accident report prepared by a peace officer and submitted to the department after January 1, 1970, is a public record open for inspection~~].

(b) Except as provided by Subsection (c), the information is privileged and for the confidential use of:

(1) the department; and

(2) an agency of the United States, this state, or a local government of this state that has use for the information for accident prevention purposes.

(c) On written request and payment of any required fee, the department or the governmental entity shall release the information to:

(1) an entity described by Subsection (b);

(2) the law enforcement agency that employs the peace officer who investigated the accident and sent the information to the department;

(3) the court in which a case involving a person involved in the accident is pending if the report is subpoenaed; or

(4) a person who provides the department or governmental entity with the name of any person involved in the accident and one or more of the following:

(A) the date of the accident; or

(B) the specific address or the highway or street where the accident occurred.

(d) The department or governmental entity shall request information on a written form adopted by the department or the entity to determine whether the person or entity requesting the information is entitled to receive the information under Subsection (c).

(e) [~~On written request and payment of the required fee, the department or a law enforcement agency shall provide a copy of a peace officer's report that may be released under this section.~~

[~~(c)~~] The fee for a copy of the peace officer's report is $4. The copy may be certified by the department or a law enforcement agency for an additional fee of $2. The department may issue a certification that no report is on file for a fee of $4.

(f) If the person or entity requesting the information is entitled to receive the information under Subsection (c), Subchapter F, Chapter 552, Government Code, applies in connection with:

(1) making the information available to that person or entity if the information exists in a paper record;

(2) providing that person or entity access to the information if the information exists in an electronic medium or in an electronic form; and

(3) providing a copy of the information to that person or entity.

SECTION ___. Subsection (a), Section 601.022, Transportation Code, is amended to read as follows:

(a) The department, on request and receipt of the required fee, shall provide any person a certified abstract of the record of conviction of a person subject to this chapter for violation of a law relating to the operation of a motor vehicle or the record of any injury or damage caused by the person's operation of a motor vehicle if the requestor is eligible to receive the information under Chapter 730.

(2) Strike Section 2 of the bill and substitute the following sections, appropriately numbered:

SECTION ___. (a) This Act takes effect September 1, 1997.

(b) Not later than January 1, 1998, each agency of this state that on September 1, 1997, compiles or maintains motor vehicle records shall adopt rules to implement the procedures described by Subsection (a)(2)(K), Section 730.026, Transportation Code, as added by this Act. An agency of this state that after September 1, 1997, begins to compile or maintain motor vehicle records shall adopt rules to implement the procedures described by Subsection (a)(2)(K), Section 730.026, Transportation Code, as added by this Act, not later than the 121st day after the date that the agency begins to compile or maintain motor vehicle records.

SECTION ___. (a) In addition to the substantive changes made by this Act, this Act conforms Section 550.065, Transportation Code, to Section 1, Chapter 894, Acts of the 74th Legislature, 1995.

(b) Section 1, Chapter 894, Acts of the 74th Legislature, 1995, is repealed.

(c) To the extent of any conflict, this Act prevails over another Act of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions to and corrections in enacted codes.

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

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

HB 972 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 972 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 972** be placed on its third reading and final passage.

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

HB 972 was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 3478 ON SECOND READING

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

HB 3478, Relating to the designation of a portion of State Highway 35 as the John B. Coleman Memorial Highway.

There was objection.

Senator Ellis then moved to suspend the regular order of business and take up **HB 3478** for consideration at this time.

The motion prevailed by the following vote: Yeas 20, Nays 10.

Yeas: Barrientos, Bivins, Cain, Carona, Duncan, Ellis, Gallegos, Lindsay, Lucio, Luna, Madla, Moncrief, Nixon, Ratliff, Shapleigh, Sibley, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Brown, Fraser, Galloway, Harris, Haywood, Nelson, Ogden, Patterson, Truan.

Absent: Shapiro.

HB 3478 was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Armbrister, Brown, Fraser, Galloway, Harris, Haywood, Nelson, Ogden, Patterson, Shapiro, and Truan asked to be recorded as voting "Nay" on the passage of the bill to third reading.

MOTION TO PLACE HOUSE BILL 3478 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3478** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 20, Nays 11. (Not receiving four-fifths vote of Members present)

Yeas: Barrientos, Bivins, Cain, Carona, Duncan, Ellis, Gallegos, Lindsay, Lucio, Luna, Madla, Moncrief, Nixon, Ratliff, Shapleigh, Sibley, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Brown, Fraser, Galloway, Harris, Haywood, Nelson, Ogden, Patterson, Shapiro, Truan.

HOUSE BILL 2345 ON SECOND READING

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

HB 2345, Relating to the authority of a general-law municipality to annex additional areas.

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

HOUSE BILL 2345 ON THIRD READING

Senator Nixon moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2345** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Galloway.

HB 2345 was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

(Senator Moncrief in Chair)

HOUSE BILL 2180 ON SECOND READING

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

HB 2180, Relating to review of mandated coverage in health benefit plans.

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

HOUSE BILL 2180 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2180** be placed on its third reading and final passage.

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

HB 2180 was read third time and was passed by a viva voce vote.

HOUSE BILL 1427 ON THIRD READING

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

HB 1427, Relating to the possession and use of tobacco products by employees of the Texas Department of Criminal Justice.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Gallegos, Galloway, Harris, Haywood, Lindsay, Lucio, Luna, Madla, Nelson, Ogden, Patterson, Ratliff, Shapiro, Shapleigh, Sibley, Truan, West, Whitmire.

Nays: Fraser, Moncrief, Nixon, Wentworth, Zaffirini.

CONFERENCE COMMITTEE REPORT ON SENATE JOINT RESOLUTION 33

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 26, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SJR 33** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONCRIEF	GALLEGO
BIVINS	EILAND
LUCIO	SWINFORD
RATLIFF	WALKER
TRUAN	
On the part of the Senate	On the part of the House

A JOINT RESOLUTION

proposing a constitutional amendment relating to the purposes for which money in the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund may be used.

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

SECTION 1. Article I, Texas Constitution, is amended by adding Section 31 to read as follows:

Sec. 31. (a) The compensation to victims of crime fund created by general law and the compensation to victims of crime auxiliary fund created by general law are each a separate dedicated account in the general revenue fund.

(b) Except as provided by Subsection (c) of this section and subject to legislative appropriation, money deposited to the credit of the compensation to victims of crime fund or the compensation to victims of crime auxiliary fund from any source may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance.

(c) The legislature may provide by law that money in the compensation to victims of crime fund or in the compensation to victims of crime auxiliary fund may be expended for the purpose of assisting victims of episodes of mass violence if other money appropriated for emergency assistance is depleted.

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by S.J.R. No. 33, 75th Legislature, Regular Session, 1997, and expires January 2, 1998.

(b) The amendment to Article I of this constitution takes effect January 1, 1998.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1997. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment designating the purposes for which money in the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund may be used."

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 99

Senator Patterson submitted the following Conference Committee Report:

Austin, Texas
May 24, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 99** have had

the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

PATTERSON	PITTS
WENTWORTH	ALEXANDER
FRASER	COUNTS
GALLOWAY	SIEBERT
	UHER
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the wearing of protective headgear by certain motorcycle operators and passengers and to a driver's license that authorizes the operation of a motorcycle.

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

SECTION 1. Section 521.421, Transportation Code, is amended by amending Subsections (b) and (e) and adding Subsection (f) to read as follows:

(b) The fee for renewal of a Class M license <u>or for renewal of a license that includes authorization to operate a motorcycle</u> is $21.

(e) An applicant who changes from a lower to a higher class of license or who adds a type of vehicle <u>other than a motorcycle</u> to the license shall pay a $10 fee for the required examination.

<u>(f) An applicant applying for additional authorization to operate a motorcycle shall pay a $15 fee for the required application.</u>

SECTION 2. Section 522.029, Transportation Code, is amended by amending Subsections (a) and (d) and adding Subsections (f) and (g) to read as follows:

(a) The fee for a commercial driver's license or commercial driver learner's permit issued by the department is $40<u>, except as provided by Subsection (f)</u>.

(d) An applicant who is changing a class of license, endorsement, or restriction or who is adding a class of vehicle <u>other than a motorcycle</u> to the license must pay a fee of $10 for the examination, except for a renewal or original issuance of a commercial driver's license.

<u>(f) The fee for renewal of a commercial driver's license or a commercial driver learner's permit that includes authorization to operate a motorcycle is $45.</u>

<u>(g) An applicant who is applying for additional authorization to operate a motorcycle shall pay a fee of $15 for the examination.</u>

SECTION 3. Section 661.003, Transportation Code, is amended to read as follows:

Sec. 661.003. OFFENSES RELATING TO NOT WEARING PROTECTIVE HEADGEAR. (a) A person commits an offense if the person:

(1) operates or rides as a passenger on a motorcycle on a public street or highway; and

(2) is not wearing protective headgear that meets safety standards adopted by the department.

(b) A person commits an offense if the person carries on a motorcycle on a public street or highway a passenger who is not wearing protective headgear that meets safety standards adopted by the department.

(c) It is an exception to the application of Subsection (a) or (b) [~~a defense to prosecution under this section~~] that at the time the offense was committed, the person required to wear protective headgear[~~:~~

[~~(1)~~] was at least 21 [~~18~~] years old[~~;~~] and had successfully completed a motorcycle operator training and safety course under Chapter 662 or was covered by a health insurance plan providing the person with at least $10,000 in medical benefits for injuries incurred as a result of an accident while operating or riding on a motorcycle [~~(2) presented a medical exemption complying with Subsection (d) to the peace officer who arrested the person~~].

(d) The Department of Public Safety shall issue a sticker to a person who:

(1) applies to the department on a form provided by the department;

(2) provides the department with evidence satisfactory to the department showing that the person:

(A) is the owner of a motorcycle that is currently registered in this state; and

(B) has successfully completed the training and safety course described by Subsection (c) or has the insurance coverage described by that subsection; and

(3) pays a fee of $5 for the sticker [~~Only a practicing physician licensed by the Texas State Board of Medical Examiners may issue a medical exemption and the physician may issue the medical exemption only to a person who has an acute head or facial injury that would be worsened if the person wore protective headgear. The medical exemption must be on a form prescribed by the department and expires on the 10th day after the date it is issued~~].

(e) A person may apply to the Department of Public Safety for a sticker for each motorcycle owned by the applicant.

(f) A sticker issued by the Department of Public Safety under Subsection (d) expires on the third anniversary of the date of issuance.

(g) A person operating or riding as a passenger on a motorcycle that displays on the license plate of the motorcycle or the license plate mounting bracket a sticker issued by the Department of Public Safety under Subsection (d) is presumed to have successfully completed the training and safety course described by Subsection (c) or to have the insurance coverage described by that subsection.

(h) An offense under this section is a misdemeanor punishable by a fine of not less than $10 or more than $50.

(i) In this section, "health insurance plan" means an individual, group, blanket, or franchise insurance policy, insurance agreement, evidence of coverage, group hospital services contract, health maintenance organization membership, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident.

SECTION 4. Chapter 662, Transportation Code, is amended by adding Section 662.011 to read as follows:

Sec. 662.011. MOTORCYCLE EDUCATION FUND ACCOUNT. (a) Of each fee collected under Sections 521.421(b) and (f), Sections 522.029(f) and (g), and Section 661.003(d), the Department of Public Safety shall send $5 to the comptroller for deposit to the credit of the motorcycle education fund account.

(b) Money deposited to the credit of the motorcycle education fund account may be used only to defray the cost of administering the motorcycle operator training and safety program.

SECTION 5. (a) In addition to the new changes in law made by this Act, this Act conforms the Transportation Code to the changes in law made by:

(1) Section 1(38), Chapter 1058, Acts of the 74th Legislature, Regular Session, 1995; and

(2) Section 1, Chapter 539, Acts of the 74th Legislature, Regular Session, 1995.

(b) Section 1, Chapter 539, Acts of the 74th Legislature, Regular Session, 1995, is repealed.

(c) To the extent of any conflict, this Act prevails over another Act of the 75th Legislature, Regular Session, 1997, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 6. (a) This Act takes effect September 1, 1997.

(b) The changes in law made by Sections 1 and 2 of this Act to a fee that an applicant under Chapters 521 and 522, Transportation Code, must pay apply only to a person who applies to the Department of Public Safety on or after September 1, 1997, for renewal of a Class M driver's license or for the addition to the person's driver's license or commercial learner's permit or driver's license of authorization to operate a motorcycle. The fee required of a person who applies to the Department of Public Safety before September 1, 1997, for renewal of a Class M driver's license or for the addition of authorization to operate a motorcycle is covered by the law in effect on the date the person applied to the Department of Public Safety, and the former law is continued in effect for that purpose.

(c) The changes in law made by Section 3 of this Act apply only to an offense committed on or after September 1, 1997. An offense committed before September 1, 1997, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before September 1, 1997, if any element of the offense occurred before that date.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 190

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 26, 1997

Honorable Bob Bullock
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 190** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ZAFFIRINI	NAISHTAT
TRUAN	HILDERBRAN
MONCRIEF	DAVILA
NELSON	MADDEN
PATTERSON	McREYNOLDS
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of nursing homes and similar facilities; providing penalties.

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

ARTICLE 1. REGULATION OF
NURSING HOMES AND SIMILAR FACILITIES

SECTION 1.01. Section 242.001, Health and Safety Code, is amended to read as follows:

Sec. 242.001. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) It is the goal of this chapter to ensure that institutions in this state deliver the highest possible quality of care. This chapter, and the rules and standards adopted under this chapter, establish minimum acceptable levels of care. A violation of a minimum acceptable level of care established under this chapter or a rule or standard adopted under this chapter is forbidden by law. Each institution licensed under this chapter shall, at a minimum, provide quality care in accordance with this chapter and the rules and standards. Components of quality of care addressed by these rules and standards include:

(1) quality of life;
(2) access to care;
(3) continuity of care;
(4) comprehensiveness of care;
(5) coordination of services;

(6) humaneness of treatment;

(7) conservatism in intervention;

(8) safety of the environment;

(9) professionalism of caregivers; and

(10) participation in useful studies.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program. The rules and standards may not be less stringent than the Medicaid certification standards imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100-203.

(c) The rules and standards adopted under this chapter apply to each licensed institution. The rules and standards are intended for use in state surveys of the facilities and any investigation and enforcement action and are designed to be useful to consumers and providers in assessing the quality of care provided in an institution.

(d) The legislature finds that the construction, maintenance, and operation of institutions shall be regulated in a manner that protects the residents of the institutions by:

(1) providing the highest possible quality of care;

(2) strictly monitoring all factors relating to the health, safety, welfare, and dignity of each resident;

(3) imposing prompt and effective remedies for noncompliance with licensing standards; and

(4) providing the public with information concerning the operation of institutions in this state.

(e) It is the legislature's intent that this chapter accomplish the goals listed by Subsection (d).

(f) This chapter shall be construed broadly to accomplish the purposes set forth in this section. [~~The purpose of this chapter is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards for the treatment of residents of institutions and the establishment, construction, maintenance, and operation of institutions that, in the light of advancing knowledge, will promote safe and adequate treatment of residents.~~]

SECTION 1.02. Section 242.002, Health and Safety Code, is amended to read as follows:

Sec. 242.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Human Services.

(2) "Commissioner" means the commissioner of human services.

(3) "Controlling person" means a person who controls an institution or other person as described by Section 242.0021.

(4) "Department" means the Texas Department of Human Services.

(5) [~~(3)~~] "Elderly person" means an individual who is 65 years of age or older.

(6) "Facility" means an institution.

(7) [~~(4)~~] "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.

(8) "Home" means an institution.

(9) [~~(5)~~] "Hospital" has the meaning assigned by Chapter 241 (Texas Hospital Licensing Law).

(10) [~~(6)~~] "Institution" means:

(A) an establishment that:

(i) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and

(ii) provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or other services that meet some need beyond the basic provision of food, shelter, and laundry; or

(B) a foster care type residential facility that provides room and board to fewer than five persons who:

(i) are not related within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to the proprietor; and

(ii) because of their physical or mental limitation, or both, require a level of care and services suitable to their needs that contributes to their health, comfort, and welfare.

(11) [~~(7)~~] "Person" means an individual, firm, partnership, corporation, association, [~~or~~] joint stock company, limited partnership, limited liability company, or any other legal entity and includes a legal successor of those entities.

(12) [~~(8)~~] "Resident" means an individual, including a patient, who resides in an institution.

[~~(9) "Commissioner" means the commissioner of human services.~~]

SECTION 1.03. Subchapter A, Chapter 242, Health and Safety Code, is amended by adding Section 242.0021 to read as follows:

Sec. 242.0021. CONTROLLING PERSON. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an institution or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an institution;

(2) any person who is a controlling person of a management company or other business entity that operates an institution or that contracts with another person for the operation of an institution; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an institution, is in a position of actual control or authority with respect to the institution, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(c) A controlling person described by Subsection (b)(3) does not include a person, such as an employee, lender, secured creditor, or landlord, who does

not exercise any influence or control, whether formal or actual, over the operation of an institution.

(d) The department may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person.

SECTION 1.04. Section 242.005, Health and Safety Code, is amended to read as follows:

Sec. 242.005. PERFORMANCE REPORTS [~~ANNUAL REPORT~~]. (a) The department and the attorney general each shall prepare annually a full report of the operation and administration of their respective responsibilities under this chapter, including recommendations and suggestions considered [~~it considers~~] advisable.

(b) The Legislative Budget Board and the state auditor shall jointly prescribe the form and content of reports required under this section.

(c) The department and the attorney general shall submit the required reports [~~report~~] to the governor and the legislature not later than October 1 of each year.

SECTION 1.05. Subchapter A, Chapter 242, Health and Safety Code, is amended by adding Sections 242.015 and 242.016 to read as follows:

Sec. 242.015. LICENSED ADMINISTRATOR. (a) Each institution must have a licensed nursing facility administrator.

(b) The administrator shall:

(1) manage the institution;

(2) be responsible for:

(A) delivery of quality care to all residents; and

(B) implementation of the policies and procedures of the institution; and

(3) work at least 40 hours per week on administrative duties.

Sec. 242.016. FEES AND PENALTIES. Except as expressly provided by this chapter, a fee or penalty collected by or on behalf of the department under this chapter must be deposited to the credit of the general revenue fund and may be appropriated only to the department to administer and enforce this chapter. Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless the department or other state agency assesses and collects a penalty described under this chapter.

SECTION 1.06. Section 242.032, Health and Safety Code, is amended to read as follows:

Sec. 242.032. LICENSE OR RENEWAL APPLICATION. (a) An application for a license *or renewal of a license* is made to the department on a form provided by the department and must be accompanied by the license fee.

(b) The application must contain information that the department requires.

(c) The applicant or license holder must furnish evidence to affirmatively establish the applicant's or license holder's ability to comply with:

(1) minimum standards of medical care, nursing care, and financial condition; and

(2) any other applicable state or federal standard.

(d) The department shall consider the background and qualifications of:

(1) the applicant or license holder;

(2) a partner, officer, director, or managing employee of the applicant or license holder;

(3) a person who owns or who controls the owner of the physical plant of a facility in which the institution operates or is to operate; and

(4) a controlling person with respect to the institution for which a license or license renewal is requested.

(e) In making the evaluation required by Subsection (d), the department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and any other person described by Subsection (d) operated an institution at any time during the five-year period preceding the date on which the application is made. The department by rule shall determine what constitutes a satisfactory compliance history. The department may also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time during the five-year period preceding the date on which the application is made[~~, which may include affirmative evidence of ability to comply with the standards and rules adopted under this chapter~~].

SECTION 1.07. Section 242.033(a), Health and Safety Code, is amended to read as follows:

(a) After receiving an application for a license, the department shall issue the license if, after inspection and investigation, it finds that the applicant or license holder, and any other person described by Section 242.032(d), [~~and facilities~~] meet the requirements established under each provision of this chapter and any rule or standard adopted under this chapter.

SECTION 1.08. Section 242.034, Health and Safety Code, is amended to read as follows:

Sec. 242.034. LICENSE FEES. (a) The board may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed $250 [~~$150~~] plus:

(1) $10 [~~$5~~] for each unit of capacity or bed space for which a license is sought; and

(2) a background examination fee imposed under Subsection (c).

(b) An additional license fee may be charged as provided by Section 242.097.

(c) The board may establish a background examination fee in an amount necessary to defray the department's expenses in administering its duties under Sections 242.032(d) and (e).

(d) [~~(b)~~] The license fee must be paid with each application for an initial license, a renewal license, or a change of ownership license.

(e) [~~(c)~~] The state is not required to pay the license fee.

(f) [~~(d)~~] An approved increase in bed space is subject to an additional fee.

(g) [~~(e) Except as provided by Section 242.097, all license fees collected shall be deposited in the state treasury to the credit of the department and may be appropriated to the department to administer and enforce this chapter.~~

[~~(f)~~] The license fees established under this chapter are an allowable cost for reimbursement under the medical assistance program administered by the Texas Department of Human Services under Chapter 32, Human Resources Code. Any fee increases shall be reflected in reimbursement rates prospectively.

SECTION 1.09. Section 242.037, Health and Safety Code, as amended by Chapters 583 and 1049, Acts of the 74th Legislature, Regular Session, 1995, is amended to read as follows:

Sec. 242.037. RULES; MINIMUM STANDARDS. (a) The department shall make and enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents' rights.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program.

(c) The rules and standards adopted by the department may not be less stringent than the Medicaid certification standards and regulations imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100-203.

(d) To implement Sections 242.032(d) and (e), the department by rule shall adopt minimum standards for the background and qualifications of any person described by Section 242.032(d). The department may not issue or renew a license if a person described by Section 242.032 does not meet the minimum standards adopted under this section.

(e) In addition to standards or rules required by other provisions of this chapter, the [~~The~~] board shall [~~may~~] adopt, publish, and enforce minimum standards relating to:

(1) the construction of an institution, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) the regulation of the number and qualification of all personnel, including management and nursing personnel, responsible for any part of the care given to the residents;

(3) requirements for in-service education of all employees who have any contact with the residents;

(4) training on the care of persons with Alzheimer's disease and related disorders for employees who work with those persons;

(5) sanitary and related conditions in an institution and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(6) the nutritional [~~dietary~~] needs of each resident according to good nutritional practice or the recommendations of the physician attending the resident;

(7) equipment essential to the residents' health and welfare; [~~and~~]

(8) the use and administration of medication in conformity with applicable law and rules;

(9) care and treatment of residents and any other matter related to resident health, safety, and welfare;

(10) licensure of institutions; and

(11) implementation of this chapter.

(f) [~~(b)~~] The board shall adopt, publish, and enforce minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents in [~~as an employee of~~] an institution and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by board rule, on a schedule determined by board rule.

(g) To administer the surveys for provider certification provided for by federal law and regulation, the department must identify each area of care that is subject to both state licensing requirements and federal certification requirements. For each area of care that is subject to the same standard under both federal certification and state licensing requirements, an institution that is in compliance with the federal certification standard is considered to be in compliance with the same state licensing requirement.

[~~(b) Notwithstanding Section 222.0255(b), an institution that is certified as being in compliance with each standard of participation in the state Medicaid program that relates to the same subject matter as a minimum standard established under Subsection (a) is not required to satisfy the minimum standard established under that subsection.~~]

SECTION 1.10. Section 242.042, Health and Safety Code, is amended to read as follows:

Sec. 242.042. POSTING. (a) Each institution shall prominently and conspicuously post for display in a public area of the institution that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;

(3) a notice in a form prescribed by the department stating that licensing inspection reports and other related reports which show deficiencies cited by the department are available at the institution for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the institution; [~~and~~]

(4) a concise summary of the most recent inspection report relating to the institution;

(5) notice that the department can provide summary reports relating to the quality of care, recent investigations, litigation, and other aspects of the operation of the institution;

(6) notice that the Texas Board of Nursing Facility Administrators can provide information about the nursing facility administrator;

(7) any notice or written statement required to be posted under Section 242.072(c); and

(8) notice that informational materials relating to the compliance history of the institution are available for inspection at a location in the institution specified by the sign.

(b) The notice required by Subsection (a)(8) must also be posted at each door providing ingress to and egress from the institution.

(c) The informational materials required to be maintained for public inspection by an institution under Subsection (a)(8) must be maintained in a well-lighted accessible location and must include:

(1) any information required to be included under Section 242.504; and

(2) a statement of the institution's record of compliance with this chapter and the rules and standards adopted under this chapter that is updated not less frequently than bi-monthly and that reflects the record of compliance during the period beginning one year before the date the statement is last updated, in the form required by the department.

SECTION 1.11. Subsection (c), Section 242.045, Health and Safety Code, is amended to read as follows:

(c) An offense under this section is a third degree felony [~~Class B misdemeanor~~].

SECTION 1.12. Section 242.061, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, the [~~or~~] license holder, or any other person described by Section 242.032(d) has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner; or

(2) committed any act described by Sections 242.066(a)(2)-(6) [~~substantially failed to comply with the requirements established under this chapter~~].

(c) The department may deny, suspend, or revoke the license of an institution if any person described by Section 242.032(d) has been excluded from holding a license under Section 242.0615.

SECTION 1.13. Subchapter C, Chapter 242, Health and Safety Code, is amended by adding Section 242.0615 to read as follows:

Sec. 242.0615. EXCLUSION. (a) The department, after providing notice and opportunity for a hearing, may exclude a person from eligibility for a license under this chapter if the person or any person described by Section 242.032(d) has substantially failed to comply with this chapter and the rules adopted under this chapter. The authority granted by this subsection is in addition to the authority to deny issuance of a license under Section 242.061(a).

(b) Exclusion of a person under this section must extend for a period of at least two years, but may not exceed a period of 10 years.

SECTION 1.14. Section 242.063, Health and Safety Code, is amended by amending Subsections (a), (b), and (d) and adding Subsection (e) to read as follows:

(a) The department may petition a district court for:

(1) a temporary restraining order to restrain a person from [~~continuing~~] a violation or threatened violation of the standards imposed under [~~prescribed by~~] this chapter or any other law affecting residents if the department reasonably believes [~~finds~~] that the violation or threatened violation creates an immediate threat to the health and safety of a resident; and

(2) an injunction to restrain a person from a violation or threatened violation of the standards imposed under this chapter or by any other law affecting residents if the department reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident [~~the institution's residents~~].

(b) A district court, on petition of the department, may by injunction:

(1) prohibit a person from violating [~~continuing a violation of~~] the standards or licensing requirements prescribed by this chapter;

(2) restrain or prevent the establishment, conduct, management, or operation of an institution without a license issued under this chapter; or

(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating or threatening to violate the standards or licensing requirements prescribed by this chapter.

(d) Notwithstanding Chapter 15, Civil Practice and Remedies Code, or Section 65.023, Civil Practice and Remedies Code, a [~~A~~] suit for a temporary restraining order or other injunctive relief may [~~must~~] be brought in Travis County or in the county in which the alleged violation occurs.

(e) The department by rule shall define "threatened violation" for the purpose of this section.

SECTION 1.15. Section 242.065, Health and Safety Code, is amended to read as follows:

Sec. 242.065. CIVIL PENALTY. (a) A person who violates or causes a violation of this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than $1,000 [~~$100~~] or more than $20,000 [~~$10,000~~] for each act of violation if the department determines the violation threatens the health and safety of a resident.

(b) In determining the amount of a penalty to be awarded under this section, the trier of fact shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or potential hazard created by the violation to the health or safety of a resident;

(2) the history of violations committed by the person or the person's affiliate, employee, or controlling person;

(3) the amount necessary to deter future violations;

(4) the efforts made to correct the violation;

(5) any misrepresentation made to the department or to another person regarding:

(A) the quality of services rendered or to be rendered to residents;

(B) the compliance history of the institution or any institutions owned or controlled by an owner or controlling person of the institution; or

(C) the identity of an owner or controlling person of the institution;

(6) the culpability of the individual who committed the violation; and

(7) any other matter that should, as a matter of justice or equity, be considered.

(c) Each day of a continuing violation constitutes a separate ground for recovery.

(d) Any party to a suit under this section may request a jury.

(e) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The department by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(f) A payment made to satisfy an obligation under this section is not an allowable cost for reimbursement under the state Medicaid program.

(g) A civil penalty awarded under this section constitutes a fine, penalty, or forfeiture payable to and for the benefit of a government unit and is not compensation for actual pecuniary loss.

(h) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited partnership, each partner of the partnership;

(2) with respect to a corporation:

(A) an officer;

(B) a director;

(C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(D) a controlling individual;

(3) with respect to an individual:

(A) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and

(B) each corporation or other business entity in which the individual or another affiliate of the individual is:

(i) an officer;

(ii) a director;

(iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(iv) a controlling individual;

(4) with respect to a limited partnership:

(A) a general partner; and

(B) a limited partner who is a controlling individual;

(5) with respect to a limited liability company:

(A) an owner who is a manager as described by the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); and

(B) each owner who is a controlling individual; and

(6) with respect to any other business entity, a controlling individual.

SECTION 1.16. Section 242.066, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsections (f), (g), and (h) to read as follows:

(a) The department may assess an administrative [~~a civil~~] penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the department;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by an institution; or

(B) any portion of the premises of an institution;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter; or

(6) fails to pay a penalty assessed by the department under this chapter not later than the 10th day after the date the assessment of the penalty becomes final.

(b) Except as provided by Subsection (f) and Section 242.0665(c), the [~~The~~] penalty may not exceed $10,000 a day for each violation.

(f) The penalty for a violation of Section 242.072(c), a rule adopted under Section 242.1225, or a right of a resident adopted under Subchapter L may not exceed $1,000 a day for each violation. This subsection does not apply to conduct that violates both Subchapter K or a standard adopted under Subchapter K and a right of a resident adopted under Subchapter L.

(g) The persons against whom an administrative penalty may be assessed under Subsection (a) include:

(1) an applicant for a license under this chapter;

(2) a license holder;

(3) a partner, officer, director, or managing employee of a license holder or applicant; and

(4) a person who controls an institution.

(h) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

SECTION 1.17. Subchapter C, Chapter 242, Health and Safety Code, is amended by adding Section 242.0665 to read as follows:

Sec. 242.0665. RIGHT TO CORRECT. (a) The department may not collect an administrative penalty against an institution under this subchapter if, not later than the 45th day after the date the institution receives notice under Section 242.067(c), the institution corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the department determines:

(A) results in serious harm to or death of a resident;

(B) constitutes a serious threat to the health or safety of a resident; or

(C) substantially limits the institution's capacity to provide care;

(2) to a violation described by Sections 242.066(a)(2)-(6);

(3) to a violation of a rule adopted under Section 242.1225 or of Section 242.133 or 242.1335; or

(4) to a violation of a right of a resident adopted under Subchapter L.

(c) An institution that corrects a violation under Subsection (a) must maintain the correction. If the institution fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess an administrative penalty under this subchapter for the subsequent violation. A penalty assessed under this subsection shall be equal to three times the amount of the penalty assessed but not collected under Subsection (a). The department is not required to provide the institution an opportunity to correct the subsequent violation under this section.

SECTION 1.18. Sections 242.067, 242.068, 242.069, and 242.070, Health and Safety Code, are amended to read as follows:

Sec. 242.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) The department may issue a preliminary report stating the facts on which it concludes that a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter has occurred if it has:

(1) [~~it has~~] examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 242.069 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended; [~~and~~]

(3) a statement of whether the violation is subject to correction under Section 242.0665 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the institution must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; [~~or~~]

(2) make a written request for a hearing; or

(3) if the violation is subject to correction under Section 242.0665, submit a plan of correction to the department for approval.

(e) If the violation is subject to correction under Section 242.0665, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm that the violation has been corrected and shall notify the person that:

(1) the correction is satisfactory and that a penalty is not assessed; or

(2) the correction is not satisfactory and that a penalty is recommended.

(f) Not later than the 20th day after the date on which a notice under Subsection (e)(2) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(g) If the person charged with the violation consents to the administrative penalty recommended by the department, [~~or~~] does not timely respond to a [~~the~~] notice sent under Subsection (c) or (e), or fails to correct the violation to the department's satisfaction, the commissioner or the commissioner's designee shall[~~:~~

[~~(1)~~] assess the administrative penalty recommended by the department[~~; or~~

[~~(2) order a hearing to be held on the findings and recommendations in the department's report~~].

(h) [~~(f)~~] If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Sec. 242.068. HEARINGS ON ADMINISTRATIVE PENALTIES [~~HEARING~~]. (a) An administrative law judge [~~The commissioner~~] shall order a hearing and give notice of the hearing if[~~:~~

[~~(1)~~] a person charged under Section 242.067(c) requests a hearing[~~; or~~

[~~(2) the commissioner or the commissioner's designee orders a hearing~~].

(b) The hearing shall be held before an administrative law judge [~~by a hearing examiner designated by the commissioner~~].

(c) The administrative law judge [~~hearing examiner~~] shall make findings of fact and conclusions of law [~~promptly issue to the commissioner a written decision~~] regarding the occurrence of a violation of this chapter or a rule or order adopted or license issued under this chapter [~~and a recommendation regarding the amount of the proposed penalty if a penalty is warranted~~].

(d) Based on the findings of fact and conclusions of law [~~recommendations of the hearing examiner~~], the administrative law judge [~~commissioner~~] by order shall [~~may~~] find:

(1) a violation has occurred and assess an administrative [~~a civil~~] penalty; or

(2) a violation has not occurred.

(e) Proceedings under this section are subject to Chapter 2001, Government Code.

Sec. 242.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The commissioner shall give notice of the decision taken under Section 242.068(d) to the person charged. If the commissioner finds that a violation has occurred and has assessed an administrative [~~a civil~~] penalty, the commissioner shall give written notice to the person charged of:

(1) the findings;

(2) [;] the amount of the penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether payment of the penalty or other action under Section 242.071 is required;[;] and

(5) the person's right to judicial review of the order.

(b) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the failure to correct the violation to the department's satisfaction, or all of the above.

(c) Notwithstanding Subsection (b), the department may permit the person to pay the penalty in installments or may require the person to use the amount of the penalty under the department's supervision in accordance with Section 242.071.

(d) If the person does not pay the penalty within the 30-day period:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest. [~~If the person seeks judicial review of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (b), shall:~~

[~~(1) send the amount of the penalty to the commissioner for placement in an escrow account; or~~

[~~(2) post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until the judicial review of the order or decision is final.~~

[~~(d) A person who fails to comply with Subsection (c) waives the right to judicial review, and the commissioner may request enforcement by the attorney general.~~]

(e) If a penalty is reduced or not assessed, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(f) Accrued interest on amounts remitted by the commissioner under Subsection (e)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid [~~to the commissioner~~] under Subsection (b) [~~(c)~~] and ending on the date the penalty is remitted.

(g) Interest under Subsection (d) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the notice of the commissioner's order is received by the person and ending on the date the penalty is paid [~~A penalty collected under this section shall be deposited to the credit of the nursing and convalescent home trust fund established under Section 242.096~~].

Sec. 242.070. APPLICATION OF OTHER LAW. The department may not assess more than one monetary [~~a~~] penalty under [~~both~~] this chapter [~~subchapter and Section 32.021, Human Resources Code,~~] for a violation arising out of the same act or failure to act, except as provided by Section 242.0665(c). This section does not prohibit the department from assessing a monetary penalty under this chapter and a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

SECTION 1.19. Subchapter C, Chapter 242, Health and Safety Code, is amended by adding Sections 242.071-242.073 to read as follows:

Sec. 242.071. AMELIORATION OF VIOLATION. In lieu of ordering payment of the administrative penalty under Section 242.069, the commissioner may require the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

Sec. 242.072. OTHER REMEDIES. (a) If the commissioner finds that an institution has committed an act for which a civil penalty may be imposed under Section 242.065, the commissioner may, as appropriate under the circumstances, order the institution to immediately suspend admissions.

(b) A suspension of admissions ordered under Subsection (a) is effective on the date a representative of the institution receives notice of the order and of the manner in which the order may be appealed. The department must provide an opportunity for a hearing with respect to an appeal of the order not later than the 14th day after the date the suspension becomes effective.

(c) During the period that an institution is ordered to suspend admissions, the institution shall post a notice of the suspension on all doors providing ingress to and egress from the institution. The notice shall be posted in the form required by the department.

(d) A person commits an offense if the person knowingly:

(1) violates Subsection (c); or

(2) removes a notice posted under Subsection (c) before the facility is allowed to admit residents.

(e) An offense under Subsection (d) is a Class C misdemeanor.

Sec. 242.073. LEGAL ACTION BY THE ATTORNEY GENERAL. (a) The department and the attorney general shall work in close cooperation throughout any legal proceedings requested by the department.

(b) The commissioner must approve any settlement agreement to a suit brought under this chapter or any other law relating to the health and safety of residents in institutions.

SECTION 1.20. Section 242.096(e), Health and Safety Code, is amended to read as follows:

(e) Any unencumbered amount in the nursing and convalescent home trust fund in excess of $500,000 [~~$100,000~~] at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing this chapter.

SECTION 1.21. Section 242.097, Health and Safety Code, is amended to read as follows:

Sec. 242.097. ADDITIONAL LICENSE FEE. (a) In addition to the license fee provided by Section 242.034, the department shall adopt an annual fee to be charged and collected if the amount of the nursing and convalescent home trust fund is less than $500,000 [~~$100,000~~]. The fee shall be deposited to the credit of the nursing and convalescent home trust fund created by this subchapter.

(b) The department shall set the fee for each nursing and convalescent home at $1 for each licensed unit of capacity or bed space in that home or in an amount necessary to provide $500,000 [~~$100,000~~] in the fund.

SECTION 1.22. Subchapter E, Chapter 242, Health and Safety Code, is amended by adding Section 242.1225 to read as follows:

Sec. 242.1225. ADDITIONAL REPORTING REQUIREMENT. (a) The board shall adopt rules requiring any person required to report abuse or neglect under Section 242.122 to report other conduct or conditions specified by the rules. The rules must require reporting of conduct or conditions resulting in exploitation of residents and accidental injury to or hospitalization of residents.

(b) A report made under this section must be made in the manner specified by board rule.

SECTION 1.23. Section 242.126, Health and Safety Code, is amended to read as follows:

Sec. 242.126. INVESTIGATION AND REPORT OF DEPARTMENT OR DESIGNATED [~~RECEIVING~~] AGENCY. (a) The department or the designated agency shall make a thorough investigation [~~promptly~~] after receiving an [~~either the~~] oral or written report of abuse or neglect under Section 242.122 or another complaint alleging abuse or neglect.

(b) The primary purpose of the investigation is the protection of the resident.

(c) The agency shall begin the investigation:

(1) within 24 hours of receipt of the report or other allegation, if the report of abuse or neglect or other complaint alleges that:

(A) a resident's health or safety is in imminent danger;

(B) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint; or

(C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint; or

(2) before the end of the next working day after the date of receipt of the report of abuse or neglect or other complaint, if the report or complaint alleges the existence of circumstances that could result in abuse or neglect and that could place a resident's health or safety in imminent danger.

(d) The department shall adopt rules governing the conduct of investigations, including procedures to ensure that the complainant and the resident, the resident's next of kin, and any person designated to receive information concerning the resident receive periodic information regarding the investigation.

(e) In investigating the report of abuse or neglect or other complaint, the investigator for the investigating agency shall:

(1) make an unannounced visit to the institution to determine the nature and cause of the alleged abuse or neglect of the resident;

(2) interview each available witness identified by any source as having personal knowledge relevant to the report of abuse or neglect or other complaint;

(3) personally inspect any physical circumstance that is relevant and material to the report of abuse or neglect or other complaint and that may be objectively observed; and

(4) write an investigation report that includes:

(A) the investigator's personal observations;

(B) a review of relevant documents and records;

(C) a summary of each witness statement; and

(D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation.

(f) An investigator for an investigating agency shall conduct an interview under Subsection (e)(2) in private unless the witness expressly requests that the interview not be private.

(g) Not later than the 30th day after the date the investigation is complete, the investigator shall prepare the written report required by Subsection (e). The department shall make the investigation report available to the public on request after the date the department's letter of determination is complete. The department shall delete from any copy made available to the public the name of:

(1) any resident, unless the department receives written authorization from a resident or the resident's legal representative requesting the resident's name be left in the report;

(2) the person making the report of abuse or neglect or other complaint; and

(3) an individual interviewed in the investigation.

(h) In the investigation, the department or the designated agency shall determine:

(1) the nature, extent, and cause of the abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other residents;

(4) an evaluation of the persons responsible for the care of the residents;

(5) the adequacy of the institution environment; and

(6) any other information required by the department.

(i) [~~(d) The investigation may include a visit to the resident's institution and an interview with the resident if these actions are determined by the department to be appropriate.~~

[~~(e)~~] If the department attempts to carry out an on-site investigation and it is shown that admission to the institution, or any place where the resident is located, cannot be obtained, a probate or county court shall order the person responsible for the care of the resident or the person in charge of a place where the resident is located to allow entrance for the interview and investigation.

(j) [~~(f)~~] Before the completion of the investigation the department shall file a petition for temporary care and protection of the resident if the department determines that immediate removal is necessary to protect the resident from further abuse or neglect.

(k) [~~(g)~~] The department or the designated agency shall make a complete final written report of the investigation and submit the report and its recommendations to the district attorney and, if a law enforcement agency has not investigated the report of abuse or neglect or other complaint, to the appropriate law enforcement agency.

SECTION 1.24. Section 242.127, Health and Safety Code, is amended to read as follows:

Sec. 242.127. CONFIDENTIALITY. A report, record, or working paper used or developed in an investigation made under this subchapter and the name of any person making a report under this subchapter are [~~is~~] confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency.

SECTION 1.25. Section 242.133(a), Health and Safety Code, is amended to read as follows:

(a) A person has a cause of action against an institution, or the owner or employee of the institution, that suspends or terminates the employment of the person or otherwise disciplines or discriminates or retaliates against the person for making a report or complaint under this chapter to [~~reporting the abuse or neglect of a resident to the person's supervisors,~~] the department[~~;~~] or a law enforcement agency, for reporting the abuse or neglect or other complaint to the person's supervisors, or for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the institution.

SECTION 1.26. Section 242.1335(a), Health and Safety Code, is amended to read as follows:

(a) An institution may not retaliate or discriminate against a resident if the resident, the resident's guardian, or any other person makes a complaint or files a grievance concerning the facility or reports [~~abuse or neglect~~] in accordance with this chapter [~~subchapter~~].

SECTION 1.27. Subchapter H, Chapter 242, Health and Safety Code, as added by Section 5, Chapter 1049, Acts of the 74th Legislature, Regular Session, 1995, is redesignated as Subchapter J and the subchapter heading is amended to read as follows:

SUBCHAPTER J [~~H~~]. ARBITRATION OF CERTAIN DISPUTES

SECTION 1.28. Section 242.253(c), Health and Safety Code, is amended to read as follows:

(c) The party that elects arbitration [~~department~~] shall pay the cost of the arbitration [~~if the department elects the arbitration. The cost of the arbitration shall be shared equally by the department and the institution if the institution elects the arbitration~~]. The total fees and expenses paid for an arbitrator for a day may not exceed $500.

SECTION 1.29. Sections 242.267 and 242.268, Health and Safety Code, are amended to read as follows:

Sec. 242.267. COURT VACATING ORDER. (a) On a finding described by Subsection (b) [~~application of the institution~~], a court shall:

(1) on application of an institution, vacate an arbitrator's order with respect to an arbitration conducted at the election of the department; or

(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of an institution.

(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:

(1) the order was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the arbitrator under Section 242.264(a).

(c) [~~(b)~~] If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(d) [~~(c)~~] A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the institution or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(e) [~~(d)~~] Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

Sec. 242.268. NO ARBITRATION IN CASE OF EMERGENCY ORDER OR CLOSING ORDER. This subchapter does not apply to an order issued under Section 242.062 or 242.072, and neither the department nor the institution may elect to arbitrate a dispute if the subject matter of the dispute is part of the basis for:

(1) revocation, denial, or suspension of an institution's license;

(2) issuance of a closing order under Section 242.062; or

(3) suspension of admissions under Section 242.072.

SECTION 1.30. Chapter 242, Health and Safety Code, is amended by redesignating Subchapter F as Subchapter N and adding a new Subchapter F and Subchapters K, L, and M to read as follows:

SUBCHAPTER F. MEDICAL, NURSING, AND DENTAL SERVICES OTHER THAN ADMINISTRATION OF MEDICATION

Sec. 242.151. PHYSICIAN SERVICES. (a) An institution shall have at least one medical director who is licensed as a physician in this state.

(b) The attending physician is responsible for a resident's assessment and comprehensive plan of care and shall review, revise, and sign orders relating to any medication or treatment in the plan of care. The responsibilities imposed on the attending physician by this subsection may be performed by an advanced practice nurse or a physician assistant pursuant to protocols jointly developed with the attending physician.

(c) Each resident has the right to choose a personal attending physician.

Sec. 242.152. PHYSICIAN SERVICES FOR RESIDENTS YOUNGER THAN 18 YEARS OF AGE. (a) An institution shall use appropriate pediatric consultative services for a resident younger than 18 years of age, in accordance with the resident's assessment and comprehensive plan of care.

(b) A pediatrician or other physician with training or expertise in the clinical care of children with complex medical needs shall participate in all aspects of the resident's medical care.

Sec. 242.153. DIRECTOR OF NURSING SERVICES. An institution shall have a director of nursing services who shall be a registered nurse. The director of nursing services is responsible for:

(1) coordinating each resident's comprehensive plan of care; and

(2) ensuring that only personnel with an appropriate license or permit administer medication.

Sec. 242.154. NURSING SERVICES. (a) An institution shall provide the nursing care required to allow each resident to achieve and maintain the highest possible degree of function and independence medically possible.

(b) The institution shall maintain sufficient staff to provide nursing and related services:

(1) in accordance with each resident's plan of care; and

(2) to obtain and maintain the physical, mental, and psychosocial functions of each resident at the highest practicable level, as determined by the resident's assessment and plan of care.

Sec. 242.155. PEDIATRIC NURSING SERVICES. An institution shall ensure that:

(1) nursing services for a resident younger than 18 years of age are provided by a staff member who has been instructed and has demonstrated competence in the care of children; and

(2) consultative pediatric nursing services are available to the staff if the institution has a resident younger than 18 years of age.

Sec. 242.156. REQUIRED MEDICAL EXAMINATION. (a) Except as required by federal law, the department shall require that each resident be given at least one medical examination each year.

(b) The department shall specify the details of the examination.

Sec. 242.157. DENTAL EXAMINATION. (a) The department shall require that each resident of an institution or the resident's custodian be asked at least once each year if the resident desires a dental examination and possible treatment at the resident's own expense.

(b) Each institution shall be encouraged to use all reasonable efforts to arrange for a dental examination for each resident who desires one.

(c) The institution is not liable for any costs relating to a dental examination under this section.

SUBCHAPTER K. QUALITY OF CARE

Sec. 242.401. QUALITY OF LIFE. (a) An institution shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life and dignity. An institution that admits a resident who is younger than 18 years of age must provide care to meet the resident's unique medical and developmental needs.

(b) A resident of an institution has the right to reside and receive services in the institution with reasonable accommodation of individual needs, except to the extent the health or safety of the resident or other residents would be endangered.

Sec. 242.402. QUALITY OF CARE. An institution shall provide to each resident the necessary care or service needed to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being, in accordance with:

(1) each resident's individual assessment and comprehensive plan of care; and

(2) the rules and standards relating to quality of care adopted under this chapter.

Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF CARE. (a) The department shall adopt standards to implement Sections 242.401 and 242.402. Those standards must, at a minimum, address:

(1) admission of residents;

(2) care of residents younger than 18 years of age;

(3) an initial assessment and comprehensive plan of care for residents;

(4) transfer or discharge of residents;

(5) clinical records;

(6) infection control at the institution;

(7) rehabilitative services;

(8) food services;

(9) nutrition services provided by a director of food services who is licensed by the Texas State Board of Examiners of Dietitians or, if not so licensed, who is in scheduled consultation with a person who is so licensed as frequently and for such time as the department shall determine necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of each resident;

(10) social services and activities;

(11) prevention of pressure sores;

(12) bladder and bowel retraining programs for residents;

(13) prevention of complications from nasogastric or gastrotomy tube feedings;

(14) relocation of residents within an institution;

(15) postmortem procedures; and

(16) appropriate use of chemical and physical restraints.

(b) The department may adopt standards in addition to those required by Subsection (a) to implement Sections 242.401 and 242.402.

Sec. 242.404. POLICIES, PROCEDURES, AND PRACTICES FOR QUALITY OF CARE AND QUALITY OF LIFE. (a) Each institution shall

comply with the standards adopted under this subchapter and shall develop written operating policies to implement those standards.

(b) The policies and procedures must be available to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

[Sections 242.405-242.500 reserved for expansion]

SUBCHAPTER L. RIGHTS OF RESIDENTS

Sec. 242.501. RESIDENT'S RIGHTS. (a) The department by rule shall adopt a statement of the rights of a resident. The statement must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

(1) to be free from abuse and exploitation;

(2) to safe, decent, and clean conditions;

(3) to be treated with courtesy, consideration, and respect;

(4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;

(5) to privacy, including privacy during visits and telephone calls;

(6) to complain about the institution and to organize or participate in any program that presents residents' concerns to the administrator of the institution;

(7) to have information about the resident in the possession of the institution maintained as confidential;

(8) to retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment;

(9) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;

(10) to a written statement or admission agreement describing the services provided by the institution and the related charges;

(11) to manage the resident's own finances or to delegate that responsibility to another person;

(12) to access money and property that the resident has deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;

(13) to keep and use personal property, secure from theft or loss;

(14) to not be relocated within the institution, except in accordance with standards adopted by the department under Section 242.403;

(15) to receive visitors;

(16) to receive unopened mail and to receive assistance in reading or writing correspondence;

(17) to participate in activities inside and outside the institution;

(18) to wear the resident's own clothes;

(19) to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent;

(20) to not be discharged from the institution except as provided in the standards adopted by the department under Section 242.403; and

(21) to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(b) A right of a resident may be restricted only to the extent necessary to protect:

(1) a right of another resident, particularly a right of the other resident relating to privacy and confidentiality; or

(2) the resident or another person from danger or harm.

(c) The department may adopt rights of residents in addition to those required by Subsection (a) and may consider additional rights applicable to residents in other jurisdictions.

Sec. 242.502. RIGHTS CUMULATIVE. The rights established under this subchapter are cumulative of the rights established under any other law.

Sec. 242.503. DUTIES OF INSTITUTION. (a) An institution shall develop and implement policies to protect resident rights.

(b) An institution and the staff of an institution may not violate a right adopted under this subchapter.

Sec. 242.504. INFORMATION ABOUT RESIDENT'S RIGHTS AND VIOLATIONS. (a) An institution shall inform each resident and the resident's next of kin or guardian of the rights adopted under this subchapter and shall explain the rights to the resident and the resident's next of kin or guardian. The institution shall provide a written statement of:

(1) all of the resident's rights; and

(2) any additional rules adopted by the institution involving resident rights and responsibilities.

(b) The institution shall provide a copy of the written statement to:

(1) each resident;

(2) the next of kin or guardian of each resident; and

(3) each member of the staff of the institution.

(c) The institution shall maintain a copy of the statement, signed by the resident or the resident's next of kin or guardian, in the institution's records.

(d) The institution shall post the written statement in the manner required by Section 242.042.

(e) An institution that has been cited by the department for a violation of any right adopted under this subchapter shall include a notice of the citation in the informational materials required by Section 242.042(a)(8). The notice of citation must continue to be included in the informational materials until any regulatory action or proceeding with respect to the violation is complete and the department has determined that the institution is in full compliance with the applicable requirement.

[Sections 242.505-242.550 reserved for expansion]

SUBCHAPTER M. COMPLAINT INSPECTIONS

Sec. 242.551. COMPLAINT REQUESTING INSPECTION. (a) A person may request an inspection of an institution in accordance with this chapter by

making a complaint notifying the department of an alleged violation of law and requesting an inspection.

(b) The department shall encourage a person who makes an oral complaint under Subsection (a) to submit a written, signed complaint.

Sec. 242.552. DISCLOSURE OF SUBSTANCE OF COMPLAINT. The department may not provide information to the institution relating to the substance of a complaint made under this subchapter before an on-site inspection is begun in accordance with this subchapter.

Sec. 242.553. CONFIDENTIALITY. The name of the person making the complaint is confidential and may not be released to the institution or any other person, unless the person making the complaint specifically requests that the person's name be released.

Sec. 242.554. PRELIMINARY REVIEW OF COMPLAINT; INSPECTION. (a) On receipt of a complaint under this subchapter, the department shall make a preliminary review of the complaint.

(b) Within a reasonable time after receipt of the complaint, the department shall make an on-site inspection or otherwise respond to the complaint unless the department determines that:

(1) the person making the complaint made the complaint to harass the institution;

(2) the complaint is without any reasonable basis; or

(3) sufficient information in the possession of the department indicates that corrective action has been taken.

(c) The department shall promptly notify the person making the complaint of the department's proposed course of action under Subsection (b) and the reasons for that action.

[Sections 242.555-242.600 reserved for expansion]

SUBCHAPTER N [F]. ADMINISTRATION OF MEDICATION [~~MEDICAL AND DENTAL CARE~~]

Sec. 242.601. MEDICATION ADMINISTRATION. (a) An institution must establish medication administration procedures to ensure that:

(1) medications to be administered are checked against the order of a physician, advanced practice nurse, or physician assistant pursuant to protocols jointly developed with a physician;

(2) the resident is identified before the administration of a medication;

(3) each resident's clinical record includes an individual medication record in which the dose of medication administered is properly recorded by the person who administered the medication;

(4) medications and biologicals are prepared and administered to a resident by the same individual, except under unit-of-use package distribution systems; and

(5) a medication prescribed for one resident is not administered to any other person.

(b) The medication administration procedures must comply with this subchapter and the rules adopted by the board under Section 242.608.

Sec. 242.602. PHARMACIST SERVICES. (a) An institution shall:

(1) employ a licensed pharmacist responsible for operating the institution's pharmacy; or

(2) contract, in writing, with a licensed pharmacist to advise the institution on ordering, storage, administration, and disposal of medications and biologicals and related recordkeeping.

(b) The institution shall allow residents to choose their pharmacy provider from any pharmacy that is qualified to perform the services.

Sec. 242.603. STORAGE AND DISPOSAL OF MEDICATIONS. (a) An institution shall store medications under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Poisons, medications used externally, and medications taken internally shall be stored on separate shelves or in separate cabinets. Medication stored in a refrigerator containing other items shall be kept in a separate compartment with appropriate security. The institution shall store a medication in a locked area that must remain locked unless an individual authorized to distribute the medication is present.

(b) The institution shall properly dispose of:

(1) any medication that is discontinued or outdated, except as provided by Subsection (c); and

(2) any medication in a container with a worn or illegible label or missing a label.

(c) A discontinued medication that has not been destroyed must be reinstated if reordered.

(d) An institution shall release the medications of a resident who is transferred directly to another institution or who is discharged to home to the new institution or to the resident or resident's next of kin or guardian, as appropriate. The institution may release a medication to a resident only on the written or verbal authorization of the attending physician.

Sec. 242.604. REPORTS OF MEDICATION ERRORS AND ADVERSE REACTIONS. An institution's nursing staff must report medication errors and adverse reactions to the resident's physician in a timely manner, as warranted by an assessment of the resident's condition, and record the errors and reactions in the resident's clinical record.

Sec. 242.605. MEDICATION REFERENCE SOURCES. An institution shall maintain updated medication reference texts or sources. If the institution has a resident younger than 18 years of age, these texts or sources must include information on pediatric medications, dosages, sites, routes, techniques of administration of medications, desired effects, and possible side effects.

Sec. 242.606 [~~242.151~~]. PERMITS TO ADMINISTER MEDICATION. A person may not administer medication to a resident unless the person:

(1) holds a license under state law that authorizes the person to administer medication; or

(2) holds a permit issued under Section 242.610 [~~242.154~~] and acts under the authority of a person who holds a license under state law that authorizes the person to administer medication.

Sec. 242.607 [~~242.1511~~]. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 242.606 and 242.614 [~~242.151 and 242.158~~] do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Board of Nurse Examiners;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Board of Vocational Nurse Examiners;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under this subchapter who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Board of Nurse Examiners or the department and the Board of Vocational Nurse Examiners, as appropriate.

Sec. 242.608 [~~242.152~~]. RULES FOR ADMINISTRATION OF MEDICATION. The board by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to administer medication to a resident;

(2) curricula to train persons to administer medication to a resident;

(3) minimum standards for the approval of programs to train persons to administer medication to a resident and for rescinding approval; and

(4) the acts and practices that are allowed or prohibited to a permit holder.

Sec. 242.609 [~~242.153~~]. TRAINING PROGRAMS TO ADMINISTER MEDICATION. (a) An application for the approval of a training program must be made to the department on a form and under rules prescribed by the board.

(b) The department shall approve a training program that meets the minimum standards adopted under Section 242.608 [~~242.152~~]. The department may review the approval annually.

Sec. 242.610 [~~242.154~~]. ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. (a) To be issued or to have renewed a permit to administer medication, a person shall apply to the department on a form prescribed and under rules adopted by the board.

(b) The department shall prepare and conduct, at the site of the training program, an examination for the issuance of a permit.

(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) The department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 242.608 [~~242.152~~];

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee determined by the board.

(e) A permit is valid for one year and is not transferable.

(f) The department may issue a permit to an employee of a state or federal agency listed in Section 242.003(a)(6)(B).

Sec. 242.611 [~~242.155~~]. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. [~~(a)~~] The board shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions. The fees may not exceed:

(1) $25 for a combined permit application and examination fee; and

(2) $15 for a renewal permit application fee.

[~~(b) Fees received under this section may only be appropriated to the department to defray costs incurred under this section.~~]

Sec. 242.612 [~~242.156~~]. VIOLATION OF PERMITS TO ADMINISTER MEDICATION. (a) For the violation of this subchapter or a rule adopted under this subchapter, the department may:

(1) suspend, revoke, or refuse to renew a permit;

(2) suspend a permit in an emergency; or

(3) rescind training program approval.

(b) Except as provided by Section 242.613 [~~242.157~~], the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

Sec. 242.613 [~~242.157~~]. EMERGENCY SUSPENSION OF PERMITS TO ADMINISTER MEDICATION. (a) The department shall issue an order to suspend a permit issued under this subchapter if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.

Sec. 242.614 [~~242.158~~]. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly administers medication to a resident and the person:

(1) does not hold a license under state law that authorizes the person to administer medication; or

(2) does not hold a permit issued by the department under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

[~~Sec. 242.159. REQUIRED MEDICAL EXAMINATION. (a) The department shall require each resident to be given at least one medical examination each year.~~

[~~(b) The department shall specify the details of the examination.~~

[~~Sec. 242.160. DENTAL EXAMINATION. (a) The department shall require that each resident of a nursing home or custodial care home or the resident's custodian be asked at least once each year if the resident desires a dental examination and possible treatment at the resident's own expense.~~

[~~(b) Each nursing home or custodial care home shall be encouraged to use all reasonable efforts to arrange for a dental examination for each resident who desires one.~~

[~~(c) The nursing home or custodial care home is not liable for any costs relating to a dental examination under this section.~~]

Sec. 242.615 [~~242.161~~]. EMERGENCY MEDICATION KIT. (a) An institution licensed under this chapter is entitled to maintain a supply of controlled substances in an emergency medication kit for a resident's emergency medication needs.

(b) The controlled substances shall be labeled in accordance with all applicable state and federal food and drug laws, including Chapter 481 (Texas Controlled Substances Act).

(c) The board shall adopt rules governing the amount, type, and procedure for use of the controlled substances in the emergency medication kit. The storage of the controlled substances in the kit is under the supervision of the consultant pharmacist.

(d) The administration of the controlled substances in the emergency medication kit shall comply with all applicable laws.

SECTION 1.31. Chapter 242, Health and Safety Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. LEGISLATIVE OVERSIGHT

Sec. 242.651. DEFINITION. In this subchapter, "committee" means the long-term care legislative oversight committee.

Sec. 242.652. COMPOSITION OF COMMITTEE; PRESIDING OFFICER. (a) The committee is composed of:

(1) two members of the senate and one public member appointed by the lieutenant governor; and

(2) two members of the house of representatives and one public member appointed by the speaker of the house of representatives.

(b) A member of the committee serves at the pleasure of the appointing official.

(c) The lieutenant governor and the speaker of the house of representatives shall appoint the presiding officer of the committee on an alternating basis. The presiding officer shall serve a two-year term expiring February 1 of each odd-numbered year.

Sec. 242.653. COMMITTEE POWERS AND DUTIES. (a) The committee shall:

(1) meet at the call of the presiding officer;

(2) receive information about rules proposed or adopted by the department; and

(3) review specific recommendations for legislation proposed by the department or the attorney general relating to nursing facility rules and regulations and other long-term care issues.

(b) The committee may issue process, in accordance with Section 301.024, Government Code, to compel the attendance of witnesses and the production of books, records, documents, and instruments required by the committee.

(c) The committee shall monitor the effectiveness and efficiency of the nursing facility regulatory system of this state.

(d) The committee may request reports and other information from the department and the attorney general relating to the nursing facility regulatory system of this state and other long-term care issues.

(e) The committee shall use the existing staff resources of the senate and the house of representatives to assist the committee in performing its duties under this section.

Sec. 242.654. REPORT. (a) The committee shall report to the governor, lieutenant governor, and speaker of the house of representatives not later than November 15 of each even-numbered year.

(b) The report must include:

(1) identification of significant problems in the nursing facility regulatory system, with recommendations for action;

(2) the effectiveness and efficiency of the nursing facility regulatory system of this state, with recommendations for any necessary research;

(3) an analysis of the continuum of care of long-term services available to citizens of this state; and

(4) recommendations for legislative action.

Sec. 242.655. RIGHTS OF EMPLOYEES; RETALIATION PROHIBITED. (a) An employee of the department may cooperate with the committee in the performance of its functions.

(b) The department may not suspend or terminate the employment of, or take another adverse personnel action against, an employee of the department solely because the employee cooperates with the committee in good faith.

(c) In this section, "personnel action" has the meaning assigned by Section 554.001, Government Code.

SECTION 1.32. Section 222.0255, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) Chapter 242 establishes the minimum licensing standards for an institution. The licensing standards adopted by the department under this chapter shall be adopted subject to Section 242.037(b) and must comply with Section 242.037(c) and the other provisions of Chapter 242.

SECTION 1.33. Section 250.006, Health and Safety Code, is amended to read as follows:

Sec. 250.006. CONVICTIONS BARRING EMPLOYMENT. A person convicted of an offense listed in this section may not be employed in a position the duties of which involve direct contact with a consumer in a facility:

(1) an offense under Chapter 19, Penal Code (criminal homicide);

(2) an offense under Chapter 20, Penal Code (kidnapping and false imprisonment);

(3) an offense under Section 21.11, Penal Code (indecency with a child);

(4) an offense under Section 22.011, Penal Code (sexual assault);

(5) an offense under Section 22.02, Penal Code (aggravated assault);

(6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);

(7) an offense under Section 22.041, Penal Code (abandoning or endangering child);

(8) an offense under Section 22.08, Penal Code (aiding suicide);

(9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);

(10) [~~(5)~~] an offense under Section 25.08, Penal Code (sale or purchase of a child);

(11) [~~(6)~~] an offense under Section 28.02, Penal Code (arson);

(12) [~~(7)~~] an offense under Section 29.02, Penal Code (robbery); or

(13) [~~(8)~~] an offense under Section 29.03, Penal Code (aggravated robbery).

SECTION 1.34. Section 242.012, Health and Safety Code, is repealed.

SECTION 1.35. The Texas Board of Human Services shall adopt rules as necessary to implement the change in law made by this article not later than January 1, 1998.

SECTION 1.36. (a) The change in law made by this article to Section 242.097, Health and Safety Code, applies only to a license fee originally due on or after the effective date of this Act. A license fee that was originally due before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) The change in law made by this article to Section 250.006, Health and Safety Code, applies only to a person hired on or after September 1, 1997, in a position the duties of which involve direct contact with a consumer in a facility. That change does not apply to a person hired before September 1, 1997, in a position the duties of which involve direct contact with a consumer in a facility as long as the person remains continuously employed in that position on and after September 1, 1997.

SECTION 1.37. Except as provided by Section 1.36 of this article, this article applies only to conduct occurring on or after January 1, 1998. Conduct occurring before January 1, 1998, is governed by the law as it existed immediately before September 1, 1997, and that law is continued in effect for that purpose.

ARTICLE 2. GOVERNMENT FUNDING OF NURSING SERVICES

SECTION 2.01. Section 32.021, Human Resources Code, is amended by amending Subsections (d), (h), (i), (j), and (k) and adding Subsections (l), (m), (n), and (o) to read as follows:

(d) The department shall [~~may~~] include in its contracts for the delivery of medical assistance by nursing facilities provisions for monetary penalties to be assessed for [~~contract~~] violations as required by 42 U.S.C. Section 1396r, including without limitation the Omnibus Budget Reconciliation Act (OBRA), P.L. 100-203, Nursing Home Reform Amendments of 1987, provided that the department shall:

(1) provide for an informal dispute resolution process in the department's central office; the informal dispute resolution process shall:

(A) require the institution to request informal dispute resolution no later than the 10th calendar day after notification by the department of a violation of a standard or standards;

(B) require the department to complete the process no later than the 30th calendar day after receipt of a request from the institution for informal dispute resolution; and

(C) require any individual representing an institution in an informal dispute resolution process to register with the department and disclose the following:

(i) the individual's five-year employment history during the preceding five years, including employment in regulatory agencies of this state and other states;

(ii) ownership, including the identity of the controlling person or persons, of the institution the person is representing before the department; and

(iii) the identity of other entities the person represents or has represented before the agency during the previous 24 months [~~establish a penalties and sanctions advisory committee of consumer advocates and long-term care providers to help develop and monitor an appropriate system for assessing penalties~~]; and

(2) develop rules [~~in accordance with Subsection (i)~~] to adjudicate claims in contested cases.

(h) Medicaid nursing facilities shall also comply with state licensure rules, which may be more stringent than the requirements for certification [~~Except to the extent necessary to implement rights granted to an elderly individual under Chapter 102, the rules adopted by the department for certification of nursing facilities as being in compliance with the requirements for participation in the state Medicaid program may not be different from the standards imposed by federal law~~]. The [~~This subsection does not prevent the~~] department shall use appropriate [~~from using any~~] civil, administrative, or criminal remedies [~~remedy~~] authorized by state or federal law with respect to a facility that is in violation of a certification or licensing requirement.

(i) Except as provided by Subsections (j) and (k), a department survey, complaint investigation, incident investigation, or survey report [~~The rules adopted under Subsection (d)(2) must provide for:~~

[~~(1) an informal dispute resolution process that provides for adjudication by an appropriate disinterested person in a regional office of the department and an informal appeal to the department's central office;~~

[~~(2) an administrative appeals process under Chapter 2001, Government Code; and~~

[~~(3) the arbitration process described by Subsection (k).~~

[~~(j) A finding by the department~~] that documents that an institution has violated a standard for participation in the state Medicaid program, or the assessment of a monetary penalty by the department or the payment of a monetary penalty by the institution [~~under this section~~], is not admissible as

evidence in a civil action to prove that the institution has committed a violation.

(j) Subsection (i) [~~This subsection~~] does not:

(1) apply in an enforcement action or related proceeding in which the state or an agency or political subdivision of the state is a party;

(2) prohibit or limit the testimony of a department surveyor or investigator in a civil action; or

(3) bar the admission into evidence in a civil action of a written finding, survey report, complaint investigation, incident investigation, or inspection report of the department that is offered:

(A) to establish warning or notice to an institution of a relevant finding; or

(B) under any rule or evidentiary predicate of the Texas Rules of Civil Evidence.

(k) A department surveyor or investigator may testify in a civil action as to observations, factual findings, conclusions, or violations of requirements for licensure or for certification for participation in the state Medicaid program that were made in the discharge of official duties for the department, in accordance with the Texas Rules of Civil Evidence.

(l) The department may not include as a reimbursable item to a nursing facility an administrative or civil penalty assessed against the facility under this chapter or under Chapter 242, Health and Safety Code.

(m) Notwithstanding any provision of law to the contrary, the department shall terminate a nursing facility's provider agreement if the department has imposed required Category 2 or Category 3 remedies on the facility three times within a 24-month period unless the department makes an affirmative finding that good cause exists to waive this requirement to facilitate a change in ownership to protect residents of a facility. In this subsection, "Category 2 remedies" and "Category 3 remedies" have the meanings assigned by 42 C.F.R. Section 488.408.

(n) An assessment of monetary penalties under this section is subject to arbitration under Subchapter J [~~H~~], Chapter 242, Health and Safety Code.

(o) In any circumstance in which a nursing facility would otherwise be required to admit a resident transferred from another facility, because of an emergency or otherwise, the nursing facility may not admit a resident whose needs cannot be met through service from the facility's staff or in cooperation with community resources or other providers under contract. If a nursing facility refuses to admit a resident under this subsection, the nursing facility shall provide a written statement of the reasons for the refusal to the department within a period specified by department rule. A nursing facility that fails to provide the written statement, or that includes false or misleading information in the statement, is subject to monetary penalties assessed in accordance with this chapter.

SECTION 2.02. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0213 to read as follows:

Sec. 32.0213. NURSING FACILITY BED CERTIFICATION AND DECERTIFICATION. (a) The department by rule shall establish procedures for:

(1) controlling the number of Medicaid beds in nursing facilities;

(2) decertification of unused Medicaid beds in nursing facilities; and

(3) reallocation of nursing home beds decertified under Subdivision (2) to other nursing facilities.

(b) The procedures established under this section must take into account the occupancy rate of the nursing facility.

SECTION 2.03. Section 32.034(c), Human Resources Code, is amended to read as follows:

(c) The section does not apply if federal matching funds are not available to pay the facility whose [a] contract is being cancelled. If [because] federal matching funds cannot be used, no state funds may be used to pay the facility [for contract payments are no longer available or if the contract expires according to its terms].

SECTION 2.04. If before the Texas Department of Human Services implements Section 32.021(o), Human Resources Code, as added by this Act, the Health and Human Services Commission determines that a waiver or authorization from a federal agency is necessary for implementation, the commission shall request the waiver or authorization and the Texas Department of Human Services shall delay implementing this Act until the waiver or authorization is granted.

ARTICLE 3. EFFECTIVE DATE; EMERGENCY

SECTION 3.01. This Act takes effect September 1, 1997.

SECTION 3.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

HOUSE BILL 976 ON SECOND READING

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

HB 976, Relating to the abolition of the Texas Workers' Compensation Insurance Facility and the transfer of the assets and liabilities of that facility.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 976** as follows:

In SECTION 1 of the bill, amending the Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), in proposed Section 26, by striking subsection (1) and inserting the following in lieu thereof:

(1) The association may invest Texas workers' compensation insurance facility account funds in the types of investments authorized by law for an insurer authorized to write workers' compensation insurance coverage in this state. The association shall develop an investment policy for the Texas workers' compensation insurance facility account and shall submit that policy to the comptroller for review and approval.

The committee amendment was read.

On motion of Senator Armbrister, Committee Amendment No. 1 was tabled by a viva voce vote.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 976** by striking all below the enacting clause and substituting the following.

PART 1. PRIVATIZATION OF FACILITY

SECTION 1.01. PURPOSE. The purpose of this part is to provide a means to:

(1) convert the Texas workers' compensation insurance facility into a stock insurance company and facilitate the transfer of control to a third party as provided by this part; and

(2) ensure that the converted facility has full authority to enforce the rights of the facility existing immediately before the effective date of the conversion without impairment or limitation, except as expressly provided by this part.

SECTION 1.02. DEFINITIONS. In this part:

(1) "Closing date" means the effective date of the closing of the transactions contemplated by a conversion agreement, as provided by that agreement, and is the effective date of the conversion.

(2) "Commission" means the Texas Workers' Compensation Commission.

(3) "Commissioner" means the commissioner of insurance.

(4) "Converted facility" means the entity that exists after the facility is converted under this part.

(5) "Facility" means the Texas workers' compensation insurance facility that was established under Article 5.76-2, Insurance Code.

(6) "Fund" means the employers' rejected risk fund for providing workers' compensation coverages for rejected risks, as provided by Article 5.76-2, Insurance Code, as that article existed before its repeal.

(7) "Insurer" means a stock company, mutual company, reciprocal, or interinsurance exchange, the Texas Workers' Compensation Insurance Fund, or a Lloyd's association authorized to write workers' compensation insurance in this state.

(8) "Servicing company" means a member of the facility or other eligible entity that is designated by the commissioner to issue a policy that evidences the insurance coverages provided by the fund to a rejected risk and to service the risk as provided by Article 5.76-2, Insurance Code, as that article existed before its repeal.

SECTION 1.03. CONVERSION; CONVERSION EFFECTIVE DATE; CONTINGENT TRANSFER. (a) If a conversion agreement receives the approvals described by Sections 1.04 and 1.05 of this part, the facility shall convert from a nonprofit unincorporated association to a Texas stock property and casualty insurance company incorporated under Chapter 2, Insurance Code, effective on the consummation of the transactions contemplated by the agreement.

(b) If the required approvals are not obtained or the transactions are not consummated on or before August 31, 1997, the facility may not be converted, and instead, the operation of the facility shall be transferred to the Texas Property and Casualty Insurance Guaranty Association in accordance with Part 2 of this Act.

SECTION 1.04. CONVERSION AGREEMENT. The facility may enter into an agreement to issue and sell shares of the capital stock created as a result of the conversion described by Section 1.03 of this part. To take effect, the agreement must be approved by a majority of the voting members of the governing committee of the facility at a meeting at which a quorum is present.

SECTION 1.05. COMMISSIONER APPROVAL. (a) On approval under Section 1.04 of this part, an agreement shall be submitted to the commissioner for approval. The agreement must be submitted to the commissioner not later than June 30, 1997. The commissioner shall review the agreement in the manner provided for review of a filing under Article 21.49-1, Insurance Code.

(b) If the commissioner approves the agreement, the commissioner shall order that the facility be converted.

SECTION 1.06. EFFECT OF CONVERSION. (a) The converted facility may exercise all the rights, privileges, powers, and authority of any other stock corporation organized to transact property and casualty insurance business in this state, subject to the requirements of this part. On the closing date:

(1) the converted facility is considered to be a continuation of the facility; and

(2) subject to Section 1.07 of this part, the converted facility is vested with all property of the facility.

(b) The converted facility may enforce all contract and statutory rights of the facility under any servicing company arrangements, and this part may not be construed as an assignment of the facility's rights or obligations under those agreements.

(c) Each debt, claim, and cause of action of the facility, and all property rights, privileges, franchises, and other interests of the facility, remain the property of the converted facility.

(d) The rights of all policyholders and creditors and the standing of all claims under the facility shall be preserved unimpaired under the converted facility.

(e) Subject to Section 1.07 of this part, each debt, liability, and duty of the facility becomes a debt, liability, or duty of the converted facility and may be enforced against the converted facility as if it were incurred or contracted by the converted facility.

(f) A cause of action or similar proceeding in which the facility was a party that is pending on the effective date of the conversion:

(1) is not affected by the conversion;

(2) may be continued to be prosecuted by or against the converted facility; and

(3) continues to be governed by and conducted under Article 5.76-2, Insurance Code, as that article existed before its repeal, and the applicable bylaws, rules, and regulations of the facility, as amended by the converted facility.

(g) The converted facility may not, without the prior consent of the commissioner, amend its bylaws, rules, or regulations in a manner that would reasonably be likely to have a material adverse effect on employees, beneficiaries, or the holders of or insureds under policies issued under Article 5.76, Insurance Code, or under Article 5.76-2, Insurance Code, as that article existed before its repeal.

(h) The converted facility may audit, at the converted facility's expense, the books and records of each company that services policies of insurance issued under Article 5.76, Insurance Code, or under Article 5.76-2, Insurance Code, as that article existed before its repeal. The audit must be limited to:

(1) the books and records that relate to the policies described by this subsection; and

(2) claims paid on behalf of or charged to the converted facility.

SECTION 1.07. APPLICABLE LAW. Except as otherwise provided by this part, Article 5.76-2, Insurance Code, ceases to apply to the facility on the closing date and does not apply to the converted facility. Specifically, neither the converted facility nor any other insurer succeeds to the facility's right to assess the facility's member insurers under Section 4.04, Article 5.76-2, Insurance Code.

SECTION 1.08. COMPLIANCE; CAPITALIZATION REQUIREMENTS. (a) The converted facility shall comply with the Insurance Code and rules adopted by the commissioner except as otherwise provided by this part. If the converted facility does not issue any policies of insurance after the closing date, the converted facility:

(1) is exempt from:

(A) the risk-based capital and surplus regulations adopted under Article 2.02, Insurance Code; and

(B) the requirements adopted under Article 21.45, Insurance Code;

(2) may discount the reserves for losses and loss adjustment expenses in a manner and to the extent authorized by the commissioner in the order approving the conversion agreement;

(3) may reflect accounts receivable as an admitted asset, notwithstanding the regulations adopted under Articles 2.08 and 2.10, Insurance Code, if those accounts receivable are guaranteed by an insurance company authorized to do business in this state:

(A) in an amount not to exceed $15 million; and

(B) in a manner and to the extent authorized by the commissioner in the order approving the conversion agreement; and

(4) may receive full credit for the reinsurance contemplated by the conversion agreement to the extent ordered by the commissioner, notwithstanding Article 5.75-1, Insurance Code, and the rules adopted under that article.

(b) The commissioner shall set the capitalization requirements of the converted facility in the order approving the conversion agreement.

SECTION 1.09. FINAL ASSESSMENT. (a) The facility, through action by its governing committee, may make a final assessment of the insurance carriers licensed in this state in accordance with Section 4.04, Article 5.76-2, Insurance Code, as that section existed before its repeal, and the facility's bylaws, rules, and regulations in the amount that the governing committee determines is necessary to consummate the transactions contemplated by the conversion agreement. The final assessment must be made at a time to allow the assessment to be paid in full on or before the closing date.

(b) On or before the closing date, and under terms and conditions the governing committee considers necessary or advisable to consummate the transactions contemplated by the conversion agreement, the governing committee may:

(1) bind the carriers described by Subsection (a) of this section to reinsure a portion of the facility's liabilities instead of payment of any or all of the final assessment under Subsection (a) of this section; or

(2) defer payment on any or all of the final assessment.

(c) A reinsurance arrangement approved by the governing committee must compute a member insurer's participation in reinsurance in the same manner that is used for the computation of assessments under Section 4.04, Article 5.76-2, Insurance Code, as that section existed before its repeal.

SECTION 1.10. IMMUNITY. The immunity provisions of Sections 2.05(h) and 2.12, Article 5.76-2, Insurance Code, as those provisions existed before their repeal, continue to apply to each act or omission that occurs before, on, or after the closing date and that is performed by the persons or entities covered by those provisions, including an act or omission related to the powers and duties contained in this part.

SECTION 1.11. DEFENSE; INDEMNIFICATION. If any party institutes or continues an action against the facility, or the governing committee, executive director, staff, agents, servants, or employees of the facility, whether or not serving in that capacity on the closing date, in connection with or arising from either the facility's operations or the transactions contemplated by the conversion agreement, the converted facility shall defend, indemnify, and hold harmless that person or entity from liability for any act or omission of that person or entity in connection with, or arising from the performance of, the powers and duties exercised under Article 5.76-2, Insurance Code, as that article existed before its repeal, but only on, and subject to, the terms and conditions set forth in the conversion agreement, which must be substantially as beneficial to the indemnified person or entity as the indemnification set forth in the facility's bylaws in effect on the closing date.

SECTION 1.12. CONTROLLING LAW. If a conflict exists between this part and any other statute relating to the facility, this part controls.

SECTION 1.13. CONFORMING AMENDMENT. Article 21.28-C, Insurance Code, is amended by adding Sections 26 and 27 to read as follows:

Sec. 26. COVERAGE FOR WORKERS' COMPENSATION INSURANCE POLICIES ISSUED BY TEXAS WORKERS' COMPENSATION INSURANCE FACILITY. (a) Notwithstanding any other provision of this article, this article applies to each policy of insurance issued under Article 5.76 of this code or Article 5.76-2 of this code, as that article existed before its repeal.

(b) Notwithstanding any other provision of this article, after the conversion of the Texas workers' compensation insurance facility to a stock insurance company, that converted facility shall be considered an impaired insurer for purposes of this article if any of the actions described by Section 5(9)(A) or (B) of this article occurs to the converted facility.

(c) A claim under such an insurance policy is a covered claim for purposes of this article if the claim satisfies the definition under Section 5(8) of this article, whether or not the converted facility:

(1) issued or assumed the policy; or

(2) was licensed to do business in this state at the time:

(A) the policy was written; or

(B) the converted facility became an impaired insurer.

(d) If a conflict exists between this section and any other statute relating to the Texas workers' compensation insurance facility or the Texas Property and Casualty Insurance Guaranty Association, this section controls.

Sec. 27. IMMUNITY. There is no liability on the part of, and a cause of action does not arise against, any member insurer of the association, the association, an agent or employee of the association, a member of the board of directors of the association, or the commissioner or the commissioner's representative for any act or omission in the performance of any activity related to the negotiations relating to the privatization of the Texas workers' compensation insurance facility. This section applies to each activity undertaken by such a person or entity, regardless of the date of the act or omission.

SECTION 1.14. EFFECTIVE DATE FOR PART 1. This part takes effect immediately.

PART 2. CONTINGENT TRANSFER

SECTION 2.01. TRANSFER TO TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION; EFFECTIVE DATE. (a) If the conversion required under Part 1 of this Act does not occur on or before August 31, 1997, the Texas Property and Casualty Insurance Guaranty Association, on September 1, 1997, shall take control of the operations and all of the assets, liabilities, and obligations of the Texas workers' compensation insurance facility as provided by this part.

(b) This part takes effect September 1, 1997, but only if the conversion described by Subsection (a) of this section does not occur before that date. If that conversion does occur before that date, this part has no effect.

SECTION 2.02. CONFORMING AMENDMENT. Article 21.28-C, Insurance Code, is amended by adding Section 26 to read as follows:

Sec. 26. TRANSFER OF FACILITY TO ASSOCIATION. (a) The purpose of this section is to:

(1) provide a means for the transfer of control of the assets, liabilities, and obligations of the Texas workers' compensation insurance facility to the Texas Property and Casualty Insurance Guaranty Association; and

(2) ensure that the association has full authority to enforce the rights of the facility without limitation, except as expressly provided by this section.

(b) In addition to the definitions under Section 5 of this Act, in this section:

(1) "Comptroller" means the Texas comptroller of public accounts.

(2) "Facility" means the Texas workers' compensation insurance facility.

(3) "Fund" means the Texas Workers' Compensation Insurance Fund.

(4) "Insurer" means an insurance company licensed to do business in this state.

(5) "Texas workers' compensation insurance facility account" means the account maintained by the association for the assets of the facility.

(c) The association shall take control of the facility's assets, liabilities, and obligations and may administer all of the remaining aspects of the facility's operation. The association has full authority to enforce the contract or statutory rights of the facility under any servicing company agreements. This section may not be construed to be an assignment of the facility's rights or obligations under those agreements.

(d) The association shall maintain the Texas workers' compensation insurance facility account separately from the association's accounts described by Section 6 of this Act. Each claim, expense, or other liability related to the assets, liabilities, and obligations of the facility shall be paid from, and all collections and receipts shall be deposited into, the Texas workers' compensation insurance facility account. Funds in the Texas workers' compensation insurance facility account shall be maintained outside the state treasury.

(e) Not later than June 1 of each year, the association shall report its operating results for the Texas workers' compensation insurance facility account to the commissioner on a calendar year premium and an accident year loss basis.

(f) For a claim in which the compensable injury occurred before January 1, 1992, the association shall compute at least annually its results for incurred losses in the Texas workers' compensation insurance facility account, including incurred but not reported losses, by accident year. If there is a deficit or surplus from the operation of the Texas workers' compensation insurance facility account for those claims, the amount of the deficit or surplus shall be assessed or rebated to the member insurers licensed in this state who were members of the facility during the calendar year. Each member insurer shall pay a proportionate share of the total assessment or receive a proportionate share of the total rebate based on that insurer's portion of the total voluntary workers' compensation insurance writings during the calendar year. The fund is not liable for any deficit incurred on a policy with an effective date before January 1, 1992.

(g) For claims with an accident date on or after January 1, 1992, the association shall compute at least annually its results for incurred losses in the Texas workers' compensation insurance facility account, including incurred but not reported losses, by accident year. If there is a deficit or surplus from operation of the Texas workers' compensation insurance facility account for those claims, the amount of the deficit or surplus shall be assessed or rebated to the member insurers licensed in this state who were members of the facility during the calendar year and to the fund. Each member insurer and the fund shall pay a proportionate share of the total assessment or receive a proportionate share of the total rebate based on its portion of the total voluntary workers' compensation insurance writings during the calendar year.

(h) The association may provide for the redistribution of all or part of an assessment that would otherwise be levied on a member insurer under Subsection (f) or (g) of this section if the member insurer is unable to pay the full assessment because the member insurer is in liquidation at the time of the assessment.

(i) The association may authorize the deferment of the payment of an assessment made under Subsection (f) or (g) of this section. A deferment may be allowed only if the cash flow of the Texas workers' compensation insurance facility account is adequate to meet all needs.

(j) If a member insurer or the fund elects to defer any portion of an assessment as provided by this section, the entire unpaid portion of the assessment and any accrued interest must be shown as a liability on each financial and annual statement of that insurer.

(k) A member insurer may not be allowed a credit against any tax levied by this state as a result of an assessment paid under this section.

(l) The association may invest Texas workers' compensation insurance facility account funds in the types of investments authorized by law for an insurer authorized to write workers' compensation insurance coverage in this state. The association shall develop an investment policy for the Texas workers' compensation insurance facility account and shall submit that policy to the commissioner for review and approval.

(m) The association shall submit to the commissioner for approval a plan of operation to ensure the fair, reasonable, and equitable administration of the Texas workers' compensation insurance facility account not later than October 1, 1997. The commissioner shall approve or disapprove the association's plan of operation of the Texas workers' compensation insurance facility account not later than the 60th day after the date on which the association submits the plan to the commissioner.

(n) If the commissioner does not approve the plan of operation, the association shall submit to the commissioner an amended plan of operation with any amendments necessary or suitable to ensure the fair, reasonable, and equitable administration of the Texas workers' compensation insurance facility account. The plan of operation and any amendments take effect on approval in writing by the commissioner. If the association fails to submit suitable amendments to the plan, the commissioner, after notice and hearing, shall adopt reasonable rules as necessary or advisable to implement this section. Those rules shall continue in force until modified by the

commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(o) In addition to all immunities and protections otherwise provided by this article, the association succeeds to all rights, defenses, immunities, and liabilities of the facility in each cause of action or other proceeding pending by or against the facility on September 1, 1997, or filed after that date. The immunity provisions of Sections 2.05(h) and 2.12, Article 5.76-2 of this code, as those provisions existed before their repeal, continue to apply to each act or omission that occurs before, on, or after September 1, 1997, and that is performed by the persons or entities covered by those provisions.

(p) If any party institutes or continues an action against the facility, the governing committee of the facility, the executive director of the facility, a member insurer solely in that insurer's capacity as a member insurer, or an agent, servant, attorney, consultant, or employee of the facility, whether or not serving in that capacity on September 1, 1997, in connection with or arising from either the facility's operations or the transactions contemplated by this section, the association shall defend, indemnify, and hold harmless that person or entity from liability for any act or omission of that person or entity in connection with, or arising from the performance of, the person's or entity's powers and duties on behalf of the facility. A cause of action or other proceeding described by this subsection shall continue to be governed by and conducted under this section and Article 5.76-2 of this code, as that article existed before its repeal, and the applicable bylaws, rules, and regulations of the facility, and those provisions are continued in effect for the purposes of this section.

(q) The association may enter into negotiations for the privatization to a single insurer of all the assets, liabilities, and obligations maintained in the Texas workers' compensation insurance facility account. If the association determines that privatization under this subsection is in the best interest of this state, the association shall obtain the written approval of the commissioner before entering into a privatization agreement to consummate the applicable transaction.

(r) Any net proceeds from the privatization of the Texas workers' compensation insurance facility account shall be rebated in accordance with Subsection (g) of this section.

(s) If an insurer that assumes the assets, liabilities, and obligations maintained in the Texas workers' compensation insurance facility account under a privatization agreement approved under Subsection (q) of this section becomes an impaired insurer after that privatization agreement takes effect, any remaining facility claims shall be covered claims under this article.

(t) If a conflict exists between this section and any other statute relating to the facility or the association, this section controls.

PART 3. REPEALER; TRANSITION; EMERGENCY

SECTION 3.01. REPEALER. Except as otherwise provided by this Act, the following laws are repealed on the effective date of this Act:

(1) Article 5.76-2, Insurance Code; and

(2) Section 18.24(b), Chapter 12, Acts of the 72nd Legislature, 2nd Called Session, 1991, as amended by Section 8, Chapter 885, Acts of the 73rd Legislature, Regular Session, 1993.

SECTION 3.02. SEVERABILITY CLAUSE. If any provision of this Act or the application of this Act to any person or entity or circumstance is held invalid by a court of competent jurisdiction, that invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 3.03. SAVING CLAUSE. The repeal of Article 5.76-2, Insurance Code, under Section 3.01 of this Act does not affect rights and liabilities accruing under that article before the effective date of this Act, and that article is continued in effect for that purpose and for the purposes expressly provided by this Act or Section 26, Article 21.28-C, Insurance Code, as added by this Act.

SECTION 3.04. INFORMATION RELATING TO CRIMINAL WRONGDOING. The Texas workers' compensation insurance facility shall deliver to the office of the district attorney of Travis County, not later than the 30th day after the effective date of the conversion or transfer occurring under this Act, any evidence of possible criminal wrongdoing or fraud by others that is known, as the result of litigation or otherwise, to the facility or an employee or agent of the facility.

SECTION 3.05. EFFECTIVE DATE. This part takes effect:

(1) on the closing date of the conversion of the Texas workers' compensation insurance facility under Part 1 of this Act as that date is defined by Section 1.02 of this Act; or

(2) on September 1, 1997, if Part 2 of this Act takes effect.

SECTION 3.06. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

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

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **HB 976** as follows:

(1) Insert the following appropriately numbered SECTION to read as follows:

"SECTION ____. Surpluses and assessments calculated by the Texas Workers' Compensation Insurance Facility and rebated or assessed to insurance carriers under Section 4.04, Article 5.76-2, Insurance Code, for accident years 1991, 1992, 1993, and 1994 shall be passed through to retrospectively rated risks written during the appropriate calendar year. The commissioner shall establish an appropriate pass-through allowance to ensure that retrospectively rated risks receive a portion of the rebate or pay a portion of the assessment based on the premium paid by the retrospectively rated risk as a proportion of the total voluntary writings by the insurance carrier in the calendar year."

(2) Renumber the subsequent sections appropriately.

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

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

HB 976 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 976 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 976** be placed on its third reading and final passage.

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

HB 976 was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2318 ON SECOND READING

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

HB 2318, Relating to the charge and control of certain state facilities located in Kerrville.

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

HOUSE BILL 2318 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2318** be placed on its third reading and final passage.

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

HB 2318 was read third time and was passed by a viva voce vote.

HOUSE BILL 3583 ON SECOND READING

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

HB 3583, Relating to zoning around Lake Somerville.

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

HOUSE BILL 3583 ON THIRD READING

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3583** be placed on its third reading and final passage.

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

HB 3583 was read third time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3583** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 231, Local Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ZONING AROUND LAKE SOMERVILLE

Sec. 231.201. DEFINITIONS. In this subchapter:

(1) "Affected county" means Burleson, Milam, Lee, or Washington County.

(2) "Lake area" means the area within 5,000 feet of the project boundary line for Lake Somerville.

Sec. 321.202. LAKE SOMERVILLE PLANNING COMMISSION. (a) A lake planning commission is established for the lake area in Burleson, Milam, Lee, and Washington counties and is composed of:

(1) one resident of each affected county, appointed by the county judge of that county; and

(2) the presiding officer of the commission appointed by the county judge of Burleson County.

(b) Except for the initial appointed members, the appointed members of the commission are appointed for terms of two years expiring on February 1 of each odd-numbered year. The initial appointed members are appointed for terms expiring on the first February 1 of an odd-numbered year occurring after the date of their appointment.

(c) The commissioners court of the affected counties may employ staff for the use of the commission in performing its functions.

Sec. 231.203. COMMISSION STUDIES; REPORTS; HEARINGS. (a) At the request of the commissioners court of an affected county, the lake planning commission shall, or on its own initiative the commission may, conduct studies of the lake area in that county and prepare reports to advise the commissioners court about matters affecting the lake area in that county, including the need for zoning regulations in the lake area in that county.

(b) Before the commission may prepare a report, it must hold a public hearing at which members of the public may present testimony about any subject to be included in the commission's report. The commission shall give notice of the hearing as required by the commissioners court of the affected county.

SECTION 2. This Act takes effect September 1, 1997.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by unanimous consent.

HB 3583 as amended was finally passed by the following vote: Yeas 31, Nays 0.

(President in Chair)

HOUSE CONCURRENT RESOLUTION 256 ON SECOND READING

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

HCR 256, Designating Hearne the Sunflower Capital of Texas.

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

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Monday, May 26, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 301
INSTRUCTING THE ENROLLING CLERK TO TECHNICAL CORRECTIONS TO HB 1917

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

SB 1
House Conferees: Lewis, Ron - Chair/Cook/Counts/Puente/Walker

SB 370
House Conferees: Bosse - Chair/Alexander/Davis/Gray/Hill

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

COMMITTEE SUBSTITUTE HOUSE BILL 1971 ON SECOND READING

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

CSHB 1971, Relating to usury and the regulation of lenders.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1971** as follows:

(1) In SECTION 1 of the bill, in proposed Article 1D.201, Title 79, Revised Statutes (Senate committee printing, page 8, lines 32-34), strike Subsection (c) and substitute the following:

(c) A person engaged in the business of making loans described by Subsection (a) or (b) must obtain a license under Chapter 3A unless the person is:

(1) a bank, savings bank, or savings and loan association; or

(2) an insurance agent licensed under Article 21.14, Insurance Code, who negotiates or arranges a loan described by Subsection (a) or (b) on behalf of a bank or savings and loan association provided that the insurance agent or the bank or savings and loan association does not make the provision of insurance a condition to apply for or obtain a loan or service from the bank or savings and loan association.

(2) In SECTION 2 of the bill, in proposed Article 3A.101(a), Title 79, Revised Statutes (Article 5069-3A.101, Vernon's Texas Civil Statutes) (Senate committee printing, page 17, line 54), strike "or be a bank, savings bank, or savings and loan association".

(3) In SECTION 2 of the bill, in proposed Article 3A.101, Title 79, Revised Statutes (Article 5069-3A.101, Vernon's Texas Civil Statutes) (Senate committee printing, page 17, between lines 64 and 65), insert the following:

(c) A bank, savings bank, or savings and loan association is not required to obtain a license under Subsection (a).

(d) An insurance agent licensed under Article 21.14 Insurance Code, is not required to obtain a license to negotiate or arrange a loan on behalf of a bank, savings bank, or savings and loan association provided that the insurance agent or the bank, savings bank, or savings and loan association does not make the provision of insurance a condition to apply for or obtain a loan or service from the bank, savings bank, or savings and loan association.

(4) Add the following appropriately numbered SECTIONS to the bill and renumber existing SECTIONS of the bill accordingly:

SECTION ___. Subsection (a), Article 8.01, Title 79, Revised Statutes (Article 5069-8.01, Vernon's Texas Civil Statutes), is amended to read as follows:

(a)(1)[~~(a)~~] Any person who violates this Subtitle by contracting for, charging or receiving interest or[;] time price differential [~~or other charges~~] which is [~~are~~] greater than the amount authorized by this Subtitle, shall forfeit to the obligor twice the amount of interest or time price differential [~~and default and deferment charges~~] contracted for, charged or received, and reasonable attorneys' fees fixed by the court.

(2) Any person who violates this Subtitle by contracting for, charging, or receiving a charge, other than interest or time price differential, which is greater than the amount authorized by this Subtitle, shall forfeit to the obligor:

(A) the greater of:

(i) three times the amount of the difference between the amount of the other charge contracted for, charged or received, and the appropriate amount authorized by this Subtitle; or

(ii) $2,000 or 20 percent of the principal balance, whichever is less; and

(B) reasonable attorneys' fees fixed by the court.

SECTION __. Article 8.02, Title 79, Revised Statutes (Article 5069-8.02, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8.02. CONTRACTING FOR, CHARGING OR RECEIVING INTEREST OR[;] TIME PRICE DIFFERENTIAL [~~OR OTHER CHARGES~~] IN EXCESS OF DOUBLE THE AMOUNT AUTHORIZED. Any person who violates this Subtitle by contracting for, charging or receiving interest or[;] time price differential [~~or other charges~~] which is [~~are~~] in the aggregate in excess of double the total amount of interest or[;] time price differential [~~and other charges~~] authorized by this Subtitle shall forfeit to the obligor as an additional penalty all principal or principal balance, as well as all interest or time price differential, [~~and all other charges,~~] and shall pay reasonable attorneys' fees actually incurred by the obligor in enforcing the provisions of this Article; provided further that any such person violating provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Hundred Dollars. Each contract or transaction in violation of this Article shall constitute a separate offense punishable hereunder.

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

Senator Harris offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 1971** by inserting the following appropriately numbered SECTION and renumbering the remaining SECTIONS of the bill accordingly:

SECTION __. (a) Title 2, Business & Commerce Code, is amended by adding Chapter 20 to read as follows:

CHAPTER 20. REGULATION OF
CONSUMER CREDIT REPORTING AGENCIES

Sec. 20.01. DEFINITIONS. In this chapter:

(1) "Adverse action" includes:

(A) the denial of, increase in a charge for, or reduction in the amount of insurance for personal, family, or household purposes;

(B) the denial of employment or other decision made for employment purposes that adversely affects a current or prospective employee; or

(C) an action or determination with respect to a consumer's application for credit that is adverse to the consumer's interests.

(2) "Consumer" means an individual who resides in this state.

(3) "Consumer file" means all of the information about a consumer that is recorded and retained by a consumer reporting agency regardless of how the information is stored.

(4) "Consumer report" means a communication or other information by a consumer reporting agency relating to the credit worthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living of a consumer that is used or expected to be used or collected, wholly or partly, as a factor in establishing the consumer's eligibility for credit or insurance for personal, family, or household purposes, employment purposes, or other purpose authorized under Sections 603 and 604 of the Fair Credit Reporting Act (15 U.S.C. Sections 1681a and 1681b), as amended. The term does not include:

(A) a report containing information solely on a transaction between the consumer and the person making the report;

(B) an authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) a report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer makes a decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures that must be made under Section 615 of the Fair Credit Reporting Act (15 U.S.C. Section 1681m), as amended, to the consumer in the event of adverse action against the consumer;

(D) any communication of information described in this subdivision among persons related by common ownership or affiliated by corporate control; or

(E) any communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity before the time that the information is initially communicated to direct that such information not be communicated among such persons.

(5) "Consumer reporting agency" means a person that regularly engages wholly or partly in the practice of assembling or evaluating consumer credit information or other information on consumers to furnish consumer reports to third parties for monetary fees, for dues, or on a cooperative nonprofit basis. The term does not include a business entity that provides only check verification or check guarantee services.

(6) "Investigative consumer report" means all or part of a consumer report in which information on the character, general reputation, personal characteristics, or mode of living of a consumer is obtained through a personal interview with a neighbor, friend, or associate of the consumer or others with whom the consumer is acquainted or who may have knowledge concerning any such information. The term does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

Sec. 20.02. PERMISSIBLE PURPOSES; PROHIBITION; USE OF CONSUMER'S SOCIAL SECURITY NUMBER. (a) A consumer reporting agency may furnish a consumer report only:

(1) in response to a court order issued by a court with proper jurisdiction;

(2) in accordance with the written instructions of the consumer to whom the report relates; or

(3) to a person the agency has reason to believe:

(A) intends to use the information in connection with a transaction involving the extension of credit to, or review or collection of an account of, the consumer to whom the report relates;

(B) intends to use the information for employment purposes as authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act;

(C) intends to use the information in connection with the underwriting of insurance involving the consumer as authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act;

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental entity required by law to consider an applicant's financial responsibility or status;

(E) has a legitimate business need for the information in connection with a business transaction involving the consumer; or

(F) intends to use the information for any purpose authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act.

(b) A consumer reporting agency may not prohibit a user of a consumer report or investigative consumer report from disclosing the contents of the report or providing a copy of the report to the consumer to whom it relates at the consumer's request if adverse action against the consumer based wholly or partly on the report has been taken or is contemplated by the user of the report. A user of a consumer report or a consumer reporting agency may not be found liable or otherwise held responsible for a disclosed or copied report when acting under this subsection. The disclosure or copy of the report, by itself, does not make a user of the report a consumer reporting agency.

(c) If a consumer furnishes the consumer's social security number to a person for use in obtaining a consumer report, the person shall include the consumer's social security number with the request for the consumer report and shall include the social security number with all future reports of information regarding the consumer made by the person to a consumer reporting agency unless the person has reason to believe that the social security number is inaccurate.

Sec. 20.03. DISCLOSURES TO CONSUMERS. (a) On request and proper identification provided by a consumer, a consumer reporting agency shall disclose to the consumer in writing all information pertaining to the consumer in the consumer reporting agency's files at the time of the request, including:

(1) the name of each person requesting credit information about the consumer during the preceding six months and the date of each request;

(2) a set of instructions describing how information is presented on the consumer reporting agency's written disclosure of the consumer file; and

(3) if the consumer reporting agency compiles and maintains files on a nationwide basis, a toll-free number at which personnel are available to consumers during normal business hours for use in resolving a dispute if the consumer submits a written dispute to the consumer reporting agency.

(b) The information must be disclosed in a clear, accurate manner that is understandable to a consumer.

(c) A consumer reporting agency shall provide a copy of the consumer's file to the consumer on the request of the consumer and on evidence of proper identification, as directed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act.

Sec. 20.04. CHARGES FOR CERTAIN DISCLOSURES. (a) Except as provided by Subsection (b), a consumer reporting agency may impose a reasonable charge on a consumer for the disclosure of information pertaining to the consumer. The amount of the charge may not exceed $8. On January 1 of each year, a consumer reporting agency may increase the charge for disclosure to a consumer. The increase, if any, must be based proportionally on changes to the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor with fractional changes rounded to the nearest 50 cents.

(b) A consumer reporting agency may not charge a fee for:

(1) a request by a consumer for a copy of the consumer's file made not later than the 60th day after the date on which adverse action is taken against the consumer;

(2) notification of the deletion of information that is found to be inaccurate or can no longer be verified sent to a person designated by the consumer, as prescribed by Section 611 of the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended;

(3) a set of instructions for understanding the information presented on the consumer report; or

(4) a toll-free telephone number that consumers may call to obtain additional assistance concerning the consumer report.

Sec. 20.05. REPORTING OF INFORMATION PROHIBITED. (a) Except as provided by Subsection (b), a consumer reporting agency may not furnish a consumer report containing information related to:

(1) a case under Title 11 of the United States Code or under the federal Bankruptcy Act in which the date of entry of the order for relief or the date of adjudication predates the consumer report by more than 10 years;

(2) a suit or judgment in which the date of entry predates the consumer report by more than seven years or the governing statute of limitations, whichever is longer;

(3) a tax lien in which the date of payment predates the consumer report by more than seven years;

(4) a record of arrest, indictment, or conviction of a crime in which the date of disposition, release, or parole predates the consumer report by more than seven years; or

(5) another item or event that predates the consumer report by more than seven years.

(b) A consumer reporting agency may furnish a consumer report that contains information described by Subsection (a) if the information is provided in connection with:

(1) a credit transaction with a principal amount that is or may reasonably be expected to be $150,000 or more;

(2) the underwriting of life insurance for a face amount that is or may reasonably be expected to be $150,000 or more; or

(3) the employment of a consumer at an annual salary that is or may reasonably be expected to be $75,000 or more.

(c) A consumer reporting agency may not furnish medical information about a consumer in a consumer report that is being obtained for employment purposes or in connection with a credit, insurance, or direct marketing transaction unless the consumer consents to the furnishing of the medical information.

Sec. 20.06. DISPUTE PROCEDURE. (a) If the completeness or accuracy of information contained in a consumer's file is disputed by the consumer and the consumer notifies the consumer reporting agency of the dispute, the agency shall reinvestigate the disputed information free of charge and record the current status of the disputed information not later than the 30th business day after the date on which the agency receives the notice. The consumer reporting agency shall provide the consumer with the option of notifying the agency of a dispute concerning the consumer's file by speaking directly to a representative of the agency during normal business hours.

(b) Not later than the fifth business day after the date on which a consumer reporting agency receives notice of a dispute from a consumer in accordance with Subsection (a), the agency shall provide notice of the dispute to each person who provided any information related to the dispute.

(c) A consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under Subsection (a) if the agency reasonably determines that the dispute is frivolous or irrelevant. An agency that terminates a reinvestigation of disputed information under this subsection shall promptly notify the consumer of the termination and the reasons for the termination by mail, or if authorized by the consumer, by telephone. The presence of contradictory information in a consumer's file does not by itself constitute reasonable grounds for determining that the dispute is frivolous or irrelevant.

(d) If disputed information is found to be inaccurate or cannot be verified after a reinvestigation under Subsection (a), the consumer reporting agency, unless otherwise directed by the consumer, shall promptly delete the information from the consumer's file, revise the consumer file, and provide the revised consumer report to the consumer and, on the request of the consumer, to each person who requested the consumer report within the preceding six months. The consumer reporting agency may not report the inaccurate or unverified information in subsequent reports.

(e) Information deleted under Subsection (d) may not be reinserted in the consumer's file unless the person who furnishes the information to the

consumer reporting agency reinvestigates and states in writing or by electronic record to the agency that the information is complete and accurate.

(f) A consumer reporting agency shall provide written notice of the results of a reinvestigation or reinsertion made under this section not later than the fifth business day after the date on which the reinvestigation or reinsertion has been completed. The notice must include:

(1) a statement that the reinvestigation is complete;

(2) a statement of the determination made by the agency on the completeness or accuracy of the disputed information;

(3) a copy of the consumer's file or consumer report and a description of the results of the reinvestigation;

(4) a statement that a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency on request, including the name, business address, and, if available, the telephone number of each person contacted in connection with the information;

(5) a statement that the consumer is entitled to add a statement to the consumer's file disputing the accuracy or completeness of the information as provided by Section 611 of the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended; and

(6) a statement that the consumer may be entitled to dispute resolution as prescribed by this section, after the consumer receives the notice specified under this subsection.

(g) This section does not require a person who obtains a consumer report for resale to another person to alter or correct an inaccuracy in the consumer report if the report was not assembled or prepared by the person.

Sec. 20.07. CORRECTION OF INACCURATE INFORMATION. (a) A consumer reporting agency shall provide a person who provides consumer credit information to the agency with the option of correcting previously reported inaccurate information by submitting the correction by facsimile or other automated means.

(b) The credit reporting agency which receives a correction shall have reasonable procedures to assure that previously reported inaccurate information in a consumer's file is corrected in a prompt and timely fashion.

Sec. 20.08. CONSUMER'S RIGHT TO FILE ACTION IN COURT OR ARBITRATE DISPUTES. (a) An action to enforce an obligation of a consumer reporting agency to a consumer under this chapter may be brought in any court as provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, or, if agreed to by both parties, may be submitted to binding arbitration after the consumer has followed all dispute procedures in Section 20.06 and has received the notice specified in Section 20.06(f) in the manner provided by the rules of the American Arbitration Association.

(b) A decision rendered by an arbitrator under this section does not affect the validity of an obligation or debt owed by the consumer to any party.

(c) A prevailing party in an action or arbitration proceeding brought under this section shall be compensated for the party's attorney fees and costs of the proceeding as determined by the court or arbitration.

(d) A consumer may not submit to arbitration more than one action against a particular consumer reporting agency during any 120-day period.

(e) The results of an arbitration action brought against a consumer reporting agency doing business in this state shall be communicated in a timely manner to other consumer reporting agencies doing business in this state.

(f) If a determination is made in favor of a consumer after submission of a dispute to arbitration, the disputed adverse information in the consumer's file or record shall be removed or stricken in a timely manner. If the adverse information is not removed or stricken, the consumer may bring an action against the noncomplying agency under this section regardless of the 120-day waiting period required under this section.

Sec. 20.09. CIVIL LIABILITY. (a) A consumer reporting agency that wilfully violates this chapter is liable to the consumer against whom the violation occurs for the greater of three times the amount of actual damages to the consumer or $1,000, reasonable attorney fees, and court or arbitration costs.

(b) A consumer reporting agency that negligently violates this chapter is liable to the consumer against whom the violation occurs for the greater of the amount of actual damages to the consumer or $500, reasonable attorney fees, and court or arbitration costs. A consumer reporting agency is not considered to have negligently violated this chapter if, not later than the 30th day after the date on which the agency receives notice of a dispute from the consumer under Section 20.06 that clearly explains the nature and substance of the dispute, the agency completes the reinvestigation and sends the consumer and, at the request of the consumer, each person who received the consumer information written notification of the results of the reinvestigation in accordance with Section 20.06(f).

(c) In addition to liability imposed under Subsection (a), a consumer reporting agency that does not correct a consumer's file and consumer report before the 10th day after the date on which a judgment is entered against the agency because of inaccurate information contained in a consumer's file is also liable for $1,000 a day until the inaccuracy is corrected.

Sec. 20.10. REMEDIES CUMULATIVE. An action taken under this chapter does not prohibit a consumer from taking any other action authorized by law except that a credit reporting agency may not be subject to suit with respect to any issue that was the subject of an arbitration proceeding brought under Section 20.08.

(b) Subsection (a) of this section takes effect October 1, 1997.

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

CSHB 1971 as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1971 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1971** be placed on its third reading and final passage.

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

CSHB 1971 was read third time and was passed by a viva voce vote.

HOUSE BILL 2850 ON SECOND READING

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

HB 2850, Relating to the exclusion from emergency service districts and rural fire prevention districts of certain territory subject to ad valorem assessments.

The bill was read second time.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2850** as follows:

(1) Insert the following appropriately numbered sections:

SECTION ___. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Section 775.0345 to read as follows:

Sec. 775.0345. ELECTION OF BOARD IN DISTRICT LOCATED WHOLLY IN CERTAIN COUNTIES WITH POPULATION OF 2,800,000 OR MORE. (a) The governing body of a district that is located wholly in a county that has a population of 2,800,000 or more and that includes at least part of four or more rural fire prevention districts consists of a five-person board of emergency services commissioners elected at large as provided by this section. The emergency services commissioners serve two-year terms.

(b) After a district located wholly in a county that has a population of 2,800,000 or more and that includes at least part of four or more rural fire prevention districts is created, an election shall be held on the first Tuesday after the first Monday in November of an odd-numbered year to elect the initial emergency services commissioners. A candidate in the initial election must file with the county clerk not later than the 45th day before election day an application for a place on the ballot. The county shall conduct the initial election for the district. The district shall reimburse the county for the expenses of the election after the initial board takes office.

(c) The initial emergency services commissioners' terms of office begin on January 1 of the year following the election.

(d) The general election for commissioners shall be held on the first Tuesday after the first Monday in November of odd-numbered years. An application for a place on the ballot must be filed with the secretary of the board not later than the 45th day before election day.

(e) A vacancy in the office of commissioner shall be filled for the unexpired term by appointment by the remaining commissioners.

SECTION ___. An election shall be held in each emergency services district located wholly in a county that has a population of 2,800,000 or more and that includes at least part of four or more rural fire prevention districts on

November 4, 1997, to elect the emergency services commissioners for the district. The board of emergency services commissioners appointed for the district is abolished, except that the appointed commissioners shall serve until the elected commissioners take office. The initial election replacing the appointed board with an elected board shall be conducted and the terms of initial commissioners determined in accordance with the provisions governing an initial election under Section 775.0345, Health and Safety Code, as added by this Act, except that the initial election is conducted by the district instead of the county.

(2) Renumber sections of the bill appropriately.

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

HB 2850 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2850 ON THIRD READING

Senator Galloway moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2850** be placed on its third reading and final passage.

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

HB 2850 was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2736 ON SECOND READING

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

HB 2736, Relating to risk pools established by political subdivisions to provide liability coverage.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 2736** in Section 119.012(b)(2)(B), Local Government Code, as added by SECTION 1 of the bill (page 2, lines 4-6, House Engrossment), by striking "not later than the 72nd hour after the time the agreement is made, and prior to formal action by the governing body," and substituting "not later than the 72nd hour before the governing body takes formal action with respect to the agreement,".

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

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2736** as follows:

On page 1, line 39, SECTION 1. Chapter 119, Local Government

Code, proposed Section 119.012 by inserting a "," after the word "body" and adding, "or authorized agent,"

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

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 2736** as follows:

HB 2736 is amended by adding a new Section 2 to read as follows and renumbering the present Section 2 and all subsequent sections appropriately:

On page 2, line 16, SECTION 2. Chapter 119, Local Government Code, is amended by adding Section 119.014 to read as follows:

Sec. 119.014 APPLICATION REQUIREMENTS. The requirements of Section 119.012 shall apply to cancellation of, or any change to the terms or conditions of, a contractual obligation to indemnify for liability for the acts or omissions of a county or its officers and employees provided to any county through any intergovernmental risk sharing pool or insurance coverage.

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

HB 2736 as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2736 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2736** be placed on its third reading and final passage.

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

HB 2736 was read third time and was passed by a viva voce vote.

HOUSE BILL 1463 ON SECOND READING

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

HB 1463, Relating to the sale of real property placed in the name of the state as a result of a tax foreclosure sale.

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

HOUSE BILL 1463 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1463** be placed on its third reading and final passage.

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

HB 1463 was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 3065 ON SECOND READING

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

HB 3065, Relating to the eligibility of lending institutions to participate in the linked deposit program established in the Department of Agriculture.

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

HOUSE BILL 3065 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3065** be placed on its third reading and final passage.

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

HB 3065 was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1229 ON SECOND READING

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

HB 1229, Relating to application of the professional prosecutors law to the district attorney of the 32nd Judicial District.

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

HOUSE BILL 1229 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1229** be placed on its third reading and final passage.

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

HB 1229 was read third time and was passed by a viva voce vote.

HOUSE BILL 2733 ON SECOND READING

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

HB 2733, Relating to the operation of golf carts on a public road or highway.

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

HOUSE BILL 2733 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2733** be placed on its third reading and final passage.

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

HB 2733 was read third time and was passed by a viva voce vote.

HOUSE JOINT RESOLUTION 31 ON THIRD READING

Senator Patterson moved that the regular order of business be suspended and that **HJR 31** be placed on its third reading and final passage.

HJR 31, Proposing a constitutional amendment permitting an encumbrance against homestead property for certain extensions of equity credit.

The motion prevailed by the following vote: Yeas 21, Nays 8, Present-not voting 2.

Yeas: Barrientos, Cain, Carona, Ellis, Gallegos, Galloway, Harris, Lindsay, Lucio, Moncrief, Nelson, Nixon, Patterson, Ratliff, Shapiro, Shapleigh, Sibley, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Duncan, Luna, Madla, Ogden, Truan.

Present-not voting: Fraser, Haywood.

HJR 31 was read third time.

Senator Patterson offered the following amendment to Floor Amendment No. 2:

Floor Amendment No. 5

Amend Floor Amendment No. 2 to **HJR 31** by striking everything below the amendment clause and substituting the following:

(5) [~~, or for~~] work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if: [~~and in this last case only when~~]

(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the 12th day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days

after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

The amendment to Floor Amendment No. 2 was read and was adopted by unanimous consent.

Question recurring on the adoption of Floor Amendment No. 2 as amended, the amendment as amended was adopted by unanimous consent.

HJR 31 as amended was finally passed by the following vote: Yeas 21, Nays 8, Present-not voting 2.

Yeas: Barrientos, Cain, Carona, Ellis, Gallegos, Galloway, Harris, Lindsay, Lucio, Moncrief, Nelson, Nixon, Patterson, Ratliff, Shapiro, Shapleigh, Sibley, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Duncan, Luna, Madla, Ogden, Truan.

Present-not voting: Fraser, Haywood.

GUEST PRESENTED

Senator Shapleigh was recognized and introduced to the Senate Araceli Valdez of El Paso, "Miss Texas 1994."

The Senate welcomed Miss Valdez.

(Senator Brown in Chair)

BILLS AND RESOLUTIONS SIGNED

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

HB 63, HB 115, HB 119, HB 130, HB 137, HB 155, HB 218, HB 253, HB 349, HB 658, HB 697, HB 733, HB 803, HB 812, HB 819, HB 846, HB 853, HB 1043, HB 1356, HB 1467, HB 1477, HB 1611, HB 1637, HB 1692, HB 1836, HB 1880, HB 1909, HB 1961, HB 1975, HB 2061, HB 2062, HB 2063, HB 2069, HB 2129, HB 2146, HB 2261, HB 2482, HB 2488, HB 2493, HB 2561, HB 2681, HB 2841, HB 2845, HB 3016, HB 3052, HB 3087, HB 3197, HB 3244, HB 3279, HB 3383, HB 3391, HB 3428, HB 3567, HB 3572, HB 3587, HB 3607, HCR 21, HCR 254, HB 10, HB 21, HB 710, HB 827, HB 864, HB 998, HB 1070, HB 1168, HB 1173, HB 1336, HB 1418, HB 1734, HB 1755, HB 1789, HB 1811, HB 1812, HB 1886, HB 1928, HB 2033, HB 2283, HB 2380, HB 2626, HB 2874, HB 3012, HB 3054, HB 3086, HB 3135, HB 3137, HB 3189, HB 3203, HB 3269, HB 3278, HB 3563, HCR 274, HCR 287

HOUSE BILL 2198 ON SECOND READING

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

HB 2198, Relating to the issuance of Texas Commission on Alcohol and Drug Abuse license plates.

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

HOUSE BILL 2198 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2198** be placed on its third reading and final passage.

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

HB 2198 was read third time and was passed by a viva voce vote.

HOUSE BILL 1465 ON SECOND READING

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

HB 1465, Relating to the regulation of staff leasing services companies; providing penalties.

The bill was read second time.

Senator Patterson offered the following amendment to the bill:

Floor Amendment No. 1

(1) Amend **HB 1465** as follows:

In SECTION 1, amend Sec. 91.001(7) (the definition of controlling person) to read as follows:

(7) "Controlling person" means an individual who:

(A) possesses direct or indirect control of 25 percent [~~an officer or director of a corporation that offers or proposes to offer staff leasing services, a shareholder holding 10 percent~~] or more of the voting securities [~~stock~~] of a corporation that offers or proposes to offer staff leasing services[~~, or a partner of a partnership that offers or proposes to offer staff leasing services~~]; [~~or~~]

(B) possesses the authority to set policy and direct management of a company that offers or proposes to offer staff leasing services;

(C) is employed, appointed, or authorized by a company that offers or proposes to offer staff leasing services to enter into a contract with a client company on behalf of the company; or

(D) a person who is an officer or director of a corporation or a general partner of a partnership that offers or proposes to offer staff leasing services [~~an individual who directly or indirectly has the power to direct or cause the~~

~~direction of the management or policies of a company that offers or proposes to offer staff leasing services through:~~]

[~~(i) the ownership of voting securities;~~]

[~~(ii) contract; or~~]

[~~(iii) another means~~].

(2) In SECTION 8, amend Sec. 91.015(d) to read as follows and add a Subsection (f):

Sec. 91.015. LICENSE APPLICATION. (a) To receive a staff leasing services company original [~~or renewal~~] license, a person shall [~~must~~] file with the department a written application accompanied by the application fee.

(b) The department shall [~~may~~] require an applicant for a license to provide information [~~and certifications~~] necessary to determine that the applicant meets the licensing requirements of this chapter. The department shall [~~may~~] also require the applicant to provide information [~~and certifications~~] necessary to determine whether individuals affiliated with the applicant are qualified to serve as controlling persons.

(c) Before denying a license application, the department shall provide written notice to an applicant specifying the reasons for the denial. [~~An applicant or license holder is ineligible for a license for two years after the date of a final department action on the denial or revocation of a license applied for or issued under this chapter. This restriction does not apply to a denial or revocation of a license because of:~~]

[~~(1) an inadvertant error or omission in the application if that error or omission is promptly corrected;~~]

[~~(2) insufficient experience documented to the department at the time of the previous application; or~~]

[~~(3) the inability of the department to complete the criminal background investigation required under Section 91.013 because of insufficient information received from a local, state, or federal law enforcement agency.~~]

(d) Removal, demotion, or discharge of a controlling person in response to an order of the department of the alleged unsuitability of that controlling person is an affirmative defense to any claim by that individual based on the removal, demotion, or discharge. [~~An applicant or license holder is ineligible for a license for one year after the date of a final department action on the denial or revocation of a license applied for or issued under this chapter if the reason for the denial or revocation was that one or more of the controlling persons affiliated with the applicant or license holder was determined by the department to be unsuitable and each unsuitable controlling person has in fact ceased to be a controlling person of the applicant or license holder.~~]

(e) A controlling person who has been evaluated by the department under this chapter is not required to be reevaluated if that person changes the person's affiliation or employment from one applicant or license holder to another applicant or license holder.

(f) Following denial or revocation of a license, and prior to issuing a new license or reinstating a license, the Department shall consider:

(1) the extent to which the applicant or license holder has adequately corrected any problems; and

(2) whether the applicant or license holder has demonstrated that the applicant or license holder had exercised due diligence to avoid the reason or reasons for the denial or revocation.

The applicant or license holder shall bear the burden of proof with respect to Subdivisions (1) and (2).

(3) In SECTION 14, amend 91.021(a) to read as follows:

Sec. 91.021. SANCTIONS [~~DISCIPLINARY PROCEDURES; REINSTATEMENT~~] (a) On a finding that a ground for disciplinary action exists under one or more provisions of Section 91.020(a), the department shall impose administrative sanctions as provided in Section 17, Article 9100, Revised Statutes; provided however, for the purposes of this Act, the department may impose an administrative penalty in an amount not less than $1,000 for each violation, but not more than $50,000 [~~may:~~

[~~(1) deny an application for a license;~~

[~~(2) revoke, restrict, or refuse to renew a license;~~

[~~(3) impose an administrative penalty in an amount not less than $1,000 for each violation, but not more than $50,000;~~

[~~(4) issue a reprimand; or~~

[~~(5) place the license holder on probation for the period and subject to conditions that the department specifies~~].

(4) deleting SECTION 16; and

(5) In SECTION 22, replace the existing language in Subsection (i) with the following:

(i) An assigned employee of a staff leasing services company is considered to have left the assigned employee's last work without good cause if the staff leasing services company demonstrates that:

(1) the staff leasing services company gave written notice to the assigned employee to contact the staff leasing services company on termination of assignment at a client company; and

(2) the assigned employee did not contact the staff leasing services company regarding reassignment or continued employment; provided that the assigned employee may show that good cause existed for the assigned employee's failure to contact the staff leasing services company.

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

HB 1465 as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

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

HOUSE BILL 1465 ON THIRD READING

Senator Patterson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1465** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Moncrief.

HB 1465 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

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

HOUSE BILL 1456 ON SECOND READING

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

HB 1456, Relating to the statute of limitations for claims against licensed interior designers and landscape architects.

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

RECORD OF VOTE

Senator Wentworth asked to be recorded as "Present-not voting" on the passage of the bill to third reading.

HOUSE BILL 1456 ON THIRD READING

Senator Cain moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1456** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Wentworth.

HB 1456 was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Wentworth asked to be recorded as "Present-not voting" on the final passage of the bill.

SENATE BILL 1566 WITH HOUSE AMENDMENT

Senator Cain called **SB 1566** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Amendment No. 1

Amend **SB 1566** as follows:

(1) Insert the following appropriately numbered section in the bill:

SECTION ___ . Section 7, Physician Assistant Licensing Act (Article 4495b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. LICENSURE QUALIFICATIONS. The board shall issue a license under this Act to an applicant who:

(1) submits an application on a form prescribed by the board;

(2) pays the application fee as prescribed by the board;

(3) has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Committee on Allied Health Education and Accreditation or by that committee's predecessor or successor entities, [~~and~~] has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants, and holds a valid certificate issued by the National Commission on Certification of Physician Assistants;

(4) certifies that the applicant is mentally and physically able to function safely as a physician assistant;

(5) does not have a license, certification, or registration as a physician assistant in this state or from any other licensing authority that is currently revoked or suspended or the applicant is not subject to probation or other disciplinary action for cause resulting from the applicant's acts as a physician assistant, unless the board takes that fact into consideration in determining whether to issue the license;

(6) is of good moral character;

(7) submits to the board any other information the board considers necessary to evaluate the applicant's qualifications; and

(8) meets any other requirement established by rules adopted by the board.

(2) Renumber the sections of the bill accordingly.

The amendment was read.

On motion of Senator Cain, the Senate concurred in the House amendment to **SB 1566** by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 2394

Senator Fraser called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2394** and moved that the request be granted.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2394** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Fraser, Chair; Duncan, Lindsay, Ogden, and Cain.

HOUSE CONCURRENT RESOLUTION 294

The Presiding Officer laid before the Senate the following resolution:

HCR 294, Instructing the enrolling clerk of the House of Representatives to correct **HB 2071**.

LUCIO

The resolution was read.

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

(Senator Sibley in Chair)

CONFERENCE COMMITTEE ON SENATE JOINT RESOLUTION 17 DISCHARGED

On motion of Senator Brown and by unanimous consent, the Senate conferees on **SJR 17** were discharged.

Question—Shall the Senate concur in the House amendment to **SJR 17**?

Senator Brown moved to concur in the House amendment to **SJR 17**.

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

MOTION TO ADJOURN

On motion of Senator Truan and by unanimous consent, the Senate at 12:29 p.m. agreed to adjourn, upon conclusion of the Local and Uncontested Calendar Session, until 9:30 a.m. tomorrow.

RECESS

On motion of Senator Truan and by unanimous consent, the Senate at 12:30 p.m. recessed until 12:50 p.m. today.

AFTER RECESS

The Senate met at 12:50 p.m. and was called to order by Senator Moncrief.

SESSION HELD FOR LOCAL AND UNCONTESTED CALENDAR

The Presiding Officer announced that the time had arrived to consider bills and resolutions placed on the Local and Uncontested Calendar. Notice of consideration of the local calendar was given by Senator Harris Saturday, May 24, 1997.

Pursuant to Senate Rule 9.03(d), the following bills and resolutions in the order listed were laid before the Senate, read second time, amended where applicable, passed to engrossment/third reading, read third time, and passed. The votes on suspension of the Constitutional Three-day Rule and final passage are indicated after each caption.

CSSB 1866 (Wentworth) Relating to changes in the property tax calendar. (31-0) (31-0)

HB 51 (Shapiro) Relating to requiring a declaration of write-in candidacy in an election for the members of the governing body of a junior college district or the board of a hospital district. (31-0) (31-0)

Senator Shapiro offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 51** by adding an appropriately numbered section to read as follows and by renumbering the existing sections as appropriate:

SECTION ____. Subchapter C, Chapter 63, Water Code, is amended by adding Section 63.0945 to read as follows:

Sec. 63.0945. WRITE-IN CANDIDATES. (a) In an election to elect a commissioner, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates.

(b) To be entitled to a place on the list of write-in candidates, a candidate must make a declaration of write-in candidacy.

(c) A declaration of write-in candidacy must be filed with the authority with whom an application for a place on the ballot is required to be filed in the election.

(d) A declaration of write-in candidacy must be filed not later than 5 p.m. of the 45th day before election day. However, if a candidate whose name is to appear on the ballot dies or is declared ineligible after the 48th day before election day, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 42nd day before election day.

(e) Subchapter B, Chapter 146, Election Code, applies to write-in voting in an election to elect a commissioner except to the extent of a conflict with this subchapter.

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

Senator Shapiro offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **HB 51** as follows:

Delete SECTION 3 and SECTION 4 of the bill and insert the following:

"SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."

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

HB 163 (Gallegos) Relating to accelerated payment or assignment of life insurance benefits under the Texas Employees Uniform Group Insurance Benefits Act. (31-0) (31-0)

HB 220 (Gallegos) Relating to discrimination in employment based on certain perceived disabilities. (31-0) (31-0)

CSHB 251 (Gallegos) Relating to creating a license for the storage of imported beer, ale, and malt liquor. (31-0) (31-0)

HB 425 (Ellis) Relating to the policies of state agencies regarding work and family issues. (31-0) (31-0)

HB 438 (Whitmire) Relating to the implementation of a controlled substances testing program to be administered to inmates housed in facilities operated by or under contract with the Texas Department of Criminal Justice. (31-0) (31-0)

Senator Whitmire offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 438** as engrossed as follows:

1) On page 1, line 9, strike "board" and substitute "department".
2) On page 1, line 10, strike "by rule".

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

HB 462 (Nixon) Relating to the application of the professional prosecutors law to the district attorney for the 88th Judicial District. (31-0) (31-0)

HB 500 (Haywood) Relating to application of the professional prosecutors law to the district attorney of the 50th Judicial District. (31-0) (31-0)

HB 607 (Madla) Relating to the creation of a durable medical equipment and assistive technology listing. (31-0) (31-0)

Senator Madla offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 607** in Section 116.002, Human Resources Code, as added by SECTION 1 of the bill, by inserting after Subsection (f) (page 2, between lines 12 and 13, engrossed version) the following:

(g) Subsection (e) does not apply to orthotic or prosthetic devices. A retailer of orthotic or prosthetic devices shall prominently display in the retailer's place of business the information to be included on the sticker described by Subsection (c).

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

Senator Madla offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **HB 607** as follows:

(1) After Section 116.005, Human Resources Code, as added by SECTION 1 of the bill (page 3, between lines 2 and 3, engrossed version), insert the following:

Sec. 116.006. LISTING AVAILABILITY ON THE INTERNET. The commission shall make the durable medical equipment and assistive technology listing available to the public through the Internet.

(2) Renumber Section 116.006, Human Resources Code, as added by SECTION 1 of the bill (page 3, line 3, engrossed version), as Section 116.007.

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

HB 640 (Cain) Relating to exempting peace officers disabled in the line of duty from tuition and fees charged by a public institution of higher education. (31-0) (31-0)

CSHB 723 (Wentworth) Relating to informed consent before the performance of a hysterectomy. (31-0) (31-0)

HB 814 (Ellis) Relating to the title of certain persons licensed to sell real estate. (31-0) (31-0)

HB 826 (Wentworth) Relating to the tax rate of the Sutton County Hospital District. (31-0) (31-0)

HB 839 (Cain) Relating to prohibiting discrimination by insurers in issuing health or life insurance policies to certain persons who are victims of family violence. (31-0) (31-0)

HB 841 (Brown) Relating to voting procedures for persons on a space flight. (31-0) (31-0)

HB 889 (Bivins) Relating to disclosure of certain health care information by a hospital employee to a patient's clergyperson. (31-0) (31-0)

HB 891 (Harris) Relating to the age of a person who may be married without formalities. (31-0) (31-0)

CSHB 970 (Madla) Relating to the transportation of hazardous materials in certain municipalities. (31-0) (31-0)

HB 1062 (Shapiro) Relating to access to criminal history record information by the Texas State Library and Archives Commission. (31-0) (31-0)

CSHB 1107 (Harris on behalf of Moncrief) Relating to the continuation and functions of the State Preservation Board. (31-0) (31-0)

HB 1161 (Shapiro) Relating to uniform competitive bidding requirements for municipalities. (31-0) (31-0)

Senator Shapiro offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1161** by adding a new appropriately numbered section to read as follows, and renumbering existing sections accordingly:

SECTION ___. Section 252.043(a), Local Government Code, is amended to read as follows:

(a) If the competitive sealed bidding requirement applies to the contract, the contract must be awarded to the lowest responsible bidder.

The governing body may reject any and all bids. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. This chapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

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

HB 1176 (Brown) Relating to public access to conviction and deferred adjudication information and to certain sex offender registration information maintained by the Department of Public Safety. (31-0) (31-0)

HB 1192 (Armbrister) Relating to the duties of law enforcement agencies to enforce protective orders. (31-0) (31-0)

HB 1310 (Bivins) Relating to the extension or reimposition of the sales and use tax by certain industrial development corporations. (31-0) (31-0)

HB 1317 (Wentworth) Relating to the guardianship of missing persons and receiverships for the estate of certain missing persons. (31-0) (31-0)

HB 1384 (Ratliff) Relating to the tuition charged to certain nonresident students registered at certain upper-level public institutions of higher education. (31-0) (31-0)

CSHB 1468 (Bivins) Relating to the Ector County Independent School District model career-targeted transition program. (31-0) (31-0)

CSHB 1476 (Sibley) Relating to actions and records of the receiver and the priorities of distribution of certain assets of insurance companies in receivership. (31-0) (31-0)

HB 1483 (Armbrister) Relating to certain early voting processes and procedures; providing a criminal penalty. (31-0) (31-0)

HB 1489 (Wentworth) Relating to the regulation of certain animals. (31-0) (31-0)

HB 1516 (Harris) Relating to the creation of a record keeping system for assisting law enforcement in the location of missing children. (31-0) (31-0)

Senator Harris offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend the engrossed version of **HB 1516**, on page 1, line 13, after the word "tuition" and before the ".", by adding "and has more than 25 students enrolled and attending courses at a single location".

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

HB 1603 (Shapiro) Relating to changing terminology involving gender in the Election Code to gender-neutral terminology. (31-0) (31-0)

HB 1606 (Harris) Relating to truant conduct or conduct resulting in a failure to attend school. (31-0) (31-0)

HB 1653 (Gallegos) Relating to the dating of state publications. (31-0) (31-0)

HB 1667 (Wentworth) Relating to the confidentiality of documents evaluating the performance of certain officers of community supervision and corrections departments. (31-0) (31-0)

HB 1672 (Ellis) Relating to the requirements of a price list and a memorandum for funeral merchandise and services. (31-0) (31-0)

HB 1706 (Fraser) Relating to the terms of court of the 42nd District Court. (31-0) (31-0)

HB 1723 (Ratliff) Relating to appraisal for property tax purposes of open-space land that is converted to production of timber. (31-0) (31-0)

HB 1780 (Armbrister) Relating to the purchase of service credit in the Employees Retirement System of Texas and the Teacher Retirement System of Texas. (31-0) (31-0)

HB 1843 (Sibley) Relating to funeral merchandise and services and other funeral benefits. (31-0) (31-0)

Senator Sibley offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1843** in SECTION 1, Section 1(b)(9) (page 1, line 10), by striking "[~~or cemetery~~]" and substitute "or cemetery".

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

CSHB 1891 (Ratliff) Relating to the Lamar County Juvenile Board. (31-0) (31-0)

HB 1937 (Lucio) Relating to notice to an owner or operator of a motor vehicle of security required following an accident. (31-0) (31-0)

CSHB 1941 (Armbrister) Relating to poaching; providing a penalty. (31-0) (31-0)

HB 1960 (Brown) Relating to abolishing the pollution prevention council. (31-0) (31-0)

HB 2018 (Ellis) Relating to the allocation of space to state agencies. (31-0) (31-0)

HB 2078 (Barrientos) Relating to the disposition of a person's remains. (31-0) (31-0)

HB 2082 (West) Relating to the authority of the Texas Youth Commission to sell or license the right to use a treatment program developed by the commission. (31-0) (31-0)

HB 2096 (Patterson) Relating to the selection of depositories by navigation districts and port authorities. (31-0) (31-0)

HB 2115 (Bivins) Relating to the designation of certain highways as the future route of La Entrada al Pacifico Corridor. (31-0) (31-0)

HB 2157 (Wentworth) Relating to reporting under the sales and use tax the value of certain tickets to an amusement service purchased for resale. (31-0) (31-0)

HB 2203 (Lucio) Relating to a requirement that a municipality maintain a public record of its extraterritorial jurisdiction. (31-0) (31-0)

HB 2213 (Armbrister) Relating to municipal and county policies regarding enforcement of certain drug laws. (31-0) (31-0)

HB 2221 (Ratliff) Relating to limitations on the amount of life insurance risk that may be written by certain agents of or assumed by a stipulated premium insurance company. (31-0) (31-0)

HB 2227 (Harris) Relating to additional periods of possession or access to a child. (31-0) (31-0)

HB 2257 (Brown) Relating to the audit required for forfeited property and proceeds received by a law enforcement agency or an attorney representing the state. (31-0) (31-0)

HB 2309 (Ellis) Relating to fees charged by a justice of the peace. (31-0) (31-0)

HB 2332 (Lucio) Relating to permitting the Board of Regents of The University of Texas System to convey certain real property to a political subdivision located in Hidalgo County. (31-0) (31-0)

Senator Lucio offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 2332** as follows:

(1) On page 1, line 9, after "subdivision" after before "real property" insert "an interest in."

(2) On page 1, line 12, strike "the" and substitute "a".

(3) On page 1, line 13, after "Act" and before ", the" insert "to establish a special events center".

(4) On page 2, between lines 6 and 7, insert the following:

(f) Section 31.159, Natural Resources Code, shall not apply to a contract entered into under this section.

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

HB 2397 (Fraser) Relating to certain agreements to provide health care services under the Indigent Health Care and Treatment Act. (31-0) (31-0)

HB 2424 (Wentworth) Relating to deductions from lottery winnings and compensation of the amount of certain child support, taxes, and other payments. (31-0) (31-0)

CSHB 2437 (Sibley) Relating to the Texas Property and Casualty Insurance Guaranty Association. (31-0) (31-0)

HB 2438 (Bivins) Relating to the fire insurance rates and fire suppression ratings of a municipality at or near the state's borders. (31-0) (31-0)

HB 2469 (Ratliff) Relating to the operation of vehicles transporting timber or timber products and to the operation of vehicles transporting poles or pipe. (31-0) (31-0)

HB 2506 (Ellis) Relating to interest charged on late payment made by certain political subdivisions under a contract for goods or services. (31-0) (31-0)

HB 2512 (Shapiro) Relating to the authority of the Texas State Library and Archives Commission to accept donations and services from certain sources. (31-0) (31-0)

HB 2573 (Armbrister) Relating to fees assessed for the regulation of athletic trainers and the audit of certain financial transactions regarding that regulation. (31-0) (31-0)

HB 2587 (Sibley) Relating to the collection of delinquent property taxes and the foreclosure of tax liens. (31-0) (31-0)

HB 2606 (Ogden) Relating to the appraisal and ad valorem taxation of a retail manufactured housing inventory; providing penalties. (31-0) (31-0)

HB 2622 (Brown) Relating to liability for postjudgment taxes, penalties, and interest in a suit to collect a delinquent ad valorem tax. (31-0) (31-0)

HB 2634 (Patterson) Relating to administrative fees collected by community supervision and corrections departments. (31-0) (31-0)

HB 2671 (Harris) Relating to acceptance of an insurance binder by certain lenders. (31-0) (31-0)

HB 2731 (Armbrister) Relating to the creation of the First Colony Management District. (31-0) (31-0)

HB 2745 (Whitmire) Relating to the location of certain hearings affecting the status of alcoholic beverage permits. (31-0) (31-0)

HB 2779 (Shapiro) Relating to requiring the office of the attorney general to defend local community supervision and corrections departments in certain suits brought against them. (31-0) (31-0)

HB 2856 (Gallegos) Relating to the protection of women's health with respect to services performed at an abortion facility and the right to access certain information relating to abortion facilities. (31-0) (31-0)

HB 2866 (Harris) Relating to the completion, filing, and registration of certain death records. (31-0) (31-0)

Senator Harris offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend the engrossed version of **HB 2866**, on page 2, lines 6 and 24, by striking "three" and inserting the word "five".

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

HB 2868 (Patterson) Relating to a master drainage plan for certain counties. (31-0) (31-0)

HB 2873 (Ellis) Relating to the policy forms for certain large risk insurance policies. (31-0) (31-0)

(Senator Shapiro in Chair)

HB 2875 (Nelson on behalf of Shapiro) Relating to minimum training standards for an employee of a regulated child-care facility. (31-0) (31-0)

HB 3027 (Cain) Relating to recoupment of certain professional liability discounts in lieu of reimbursement under Chapter 110, Civil Practice and Remedies Code; and declaring an emergency. (31-0) (31-0)

HB 3037 (Armbrister) Relating to cost-of-service studies for electric cooperative corporations exempt from rate regulation. (31-0) (31-0)

HB 3062 (Whitmire) Relating to comprehensive revisions to Subchapter B, Chapter 56, Code of Criminal Procedure, the Crime Victims' Compensation Act. (31-0) (31-0)

Senator Whitmire offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 3062** as follows:

(1) Insert at Subdivision (9) of SECTION 1 of the bill (engrossed printing page 5, line 12) "and necessary travel expenses" between "earnings" and "because".

(2) Add at Subdivision (9) of SECTION 1 of the bill (engrossed printing page 5, line 20) "and participation in or attendance at any post conviction or post adjudication proceeding relating to criminally injurious conduct" after "conduct".

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

HB 3074 (Armbrister) Relating to the mitigation of, preparedness for, response to, and recovery from disasters. (31-0) (31-0)

CSHB 3088 (Wentworth) Relating to the notice required to be given in a proceeding to determine heirship. (31-0) (31-0)

HB 3106 (Brown) Relating to the regulation of the practice of physical therapy; providing administrative penalties. (31-0) (31-0)

HB 3116 (Ellis) Relating to work supplementation programs for certain welfare recipients. (31-0) (31-0)

Senator Ellis offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 3116** as follows:

In SECTION 1 of the bill, in proposed Section 2308.314, (engrossed version, between page 2, line 27 and page 3, line 1), insert new Subsections (f) and (g) to read as follows:

(f) Not later than December 15, 1998, the commission shall prepare and issue to the governor, the lieutenant governor, and the speaker of the house of representatives an assessment of the impact of this section on the ability of recipients of public assistance to obtain employment.

(g) This section expires September 1, 2003.

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

Senator Ellis offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **HB 3116** as follows:

(1) In SECTION 1 of the bill, in proposed Section 2308.314(a)(1)(B), Government Code (engrossed version, page 1, line 15), strike "90" and substitute "30".

(2) In SECTION 1 of the bill, in proposed Section 2308.314(b), Government Code (engrossed version, page 1, lines 20-23 and page 2, line 3), strike Subdivision (2) and renumber current Subdivisions (3) and (4) as (2) and (3), respectively.

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

HB 3158 (Madla) Relating to certain bonds executed by sureties. (31-0) (31-0)

HB 3194 (Cain) Relating to the construction and operation of certain sour gas pipeline facilities. (31-0) (31-0)

Senator Cain offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 3194**, as follows:

(1) On page 1, line 16, insert "initial" between "the" and "construction".

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

Senator Cain offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **HB 3194**, as follows:

(1) On page 1, line 22, insert the following new subsection (4), and renumber the subsequent subsections accordingly:

(4) "Low pressure gathering system" means a pipeline which operates at a working pressure of less than fifty (50) pounds per square inch.

(2) On page 2, line 14, insert the following new subsection (2), and renumber the subsequent subsections accordingly:

(2) a new or an extension of a low pressure gathering system.

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

HB 3224 (Patterson) Relating to the dissolution of a beach park board of trustees. (31-0) (31-0)

HB 3266 (Bivins) Relating to the Midland County Hospital District. (31-0) (31-0)

HB 3330 (Patterson) Relating to ownership of a drainage outfall ditch in Harris County. (31-0) (31-0)

HB 3345 (Harris) Relating to the investigation of a report of child abuse or neglect during the pendency of a suit affecting the parent-child relationship. (31-0) (31-0)

CSHB 3370 (Armbrister) Relating to a gift, political contribution or activity of an officer or employee of the Texas Lottery Commission or a former officer or employee of the Texas Lottery Commission. (31-0) (31-0)

HB 3436 (Whitmire) Relating to reports required by certain retailers of alcoholic beverages. (31-0) (31-0)

HB 3517 (Harris) Relating to approval of monuments on the grounds of the state capitol. (31-0) (31-0)

HB 3530 (Cain) Relating to energy savings projects for school districts, institutions of higher education, and state agencies. (31-0) (31-0)

HB 3538 (Ratliff) Relating to the jurisdiction of the County Court at Law of Rusk County. (31-0) (31-0)

HB 3550 (Fraser) Relating to the creation of the juvenile board of Concho County. (31-0) (31-0)

HB 3556 (Lucio) Relating to the county courts at law of Hidalgo County. (31-0) (31-0)

HB 3557 (Fraser) Relating to the creation of a statutory county court in Burnet County. (31-0) (31-0)

HB 3566 (Armbrister) Relating to the Gonzales County Hospital District. (31-0) (31-0)

HB 3574 (Galloway) Relating to the election and terms of office of directors of the Jefferson County Water Control and Improvement District No. 10. (31-0) (31-0)

HB 3586 (Patterson) Relating to the election of the board of supervisors of the Clear Creek Drainage District of Galveston County. (31-0) (31-0)

HB 3588 (Harris) Relating to criminal law magistrates in Tarrant County. (31-0) (31-0)

HB 3589 (Wentworth) Relating to authorizing Lakeway Municipal Utility District to exclude land from its boundaries, providing notice of the exclusion, and adding other related provisions. (31-0) (31-0)

HB 3591 (Ratliff) Relating to the authority of the Smith County Juvenile Board to accept gifts and grants. (31-0) (31-0)

HB 3592 (Nelson on behalf of Shapiro) Relating to the terms of the directors of the Seis Lagos Utility District. (31-0) (31-0)

HB 3597 (Sibley) Relating to the creation, administration, powers, duties, operation, and financing of the Parker County Utility District No. 1; granting the power of eminent domain. (31-0) (31-0)

HB 3602 (Zaffirini) Relating to the creation, administration, powers, duties, operation, and financing of the Wintergarden Groundwater Conservation District. (31-0) (31-0)

Senator Zaffirini offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 3602** as follows:

In SECTION 5 of the bill, add a new subsection (c) to read as follows:

(c) Notwithstanding Subsection (a) of this Section, the following provisions prevail over a conflicting or inconsistent provision in this Act:

(1) Sections 36.107-36.108, Water Code;

(2) Sections 36.159-36.161, Water Code; and

(3) Subchapter I, Water Code.

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

HCR 23 (Barrientos) Designating the guitar as the official State Musical Instrument of Texas. (viva voce vote)

HCR 82 (Moncrief) Declaring the chiltepin the official State Native Pepper of Texas. (viva voce vote)

HCR 85 (Ogden) Granting Dan Beto and Donna Beto permission to be buried in the Texas State Cemetery. (viva voce vote)

HCR 116 (Ogden) Designating the Chappell Hill Bluebonnet Festival as the official Bluebonnet Festival of Texas. (viva voce vote)

HCR 143 (Wentworth) Establishing procedures for the nomination and selection of recipients of the Governor's Awards for Excellence in the Arts, Humanities, and Sciences. (viva voce vote)

HCR 149 (Lucio) Designating the City of Weslaco as the Citrus Capital of Texas. (viva voce vote)

HCR 209 (Bivins) Supporting the desire of the board of regents of The Texas A&M University System to combine the Baylor College of Dentistry, the Texas A&M University College of Medicine, the Texas A&M University Institute of Biosciences and Biotechnology, and the Texas A&M University School of Rural Public Health into a unified administrative structure to be named The Texas A&M University System Health Science Center. (viva voce vote)

HCR 212 (Harris) Authorizing the lieutenant governor and speaker to appoint interim joint committees. (viva voce vote)

HCR 232 (Moncrief) Designating May 8, 1997, Clinical Nutrition Day in Texas. (viva voce vote)

HCR 235 (Moncrief) Honoring the Texas Association of African American Chambers of Commerce and declaring May 5-9, 1997, as Chamber of Commerce Week in Texas. (viva voce vote)

SCR 93 (Wentworth) Designating the first week of April, 1997, as Texas Natural Resources Week. (viva voce vote)

SCR 94 (Wentworth) Commending the Natural Resources Foundation of Texas for its work in establishing the Natural Resources Academies. (viva voce vote)

HB 17 (Bivins) Relating to posting signs along roadsides to promote traffic safety. (31-0) (31-0)

HB 102 (Nelson on behalf of Shapiro) Relating to minimum coverage under certain health benefit plans for inpatient stays and postdelivery care following the birth of a child. (31-0) (31-0)

HB 126 (Patterson) Relating to the time of the day at which a defendant confined on conviction of a misdemeanor discharges the sentence of confinement. (31-0) (31-0)

HB 242 (Ellis) Relating to the signature of a notary public on behalf of an individual with a disability. (31-0) (31-0)

Senator Ellis offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 242** (Engrossed version) by adding the following at the end of SECTION 1 of the bill (page 1, line 2-3):

"(d) In this section, "disability" means a physical impairment that impedes the ability to sign or make a mark on a document."

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

HB 273 (Cain) Relating to excepting certain personal information about the identity of and personal information relating to participants in a neighborhood crime watch organization from required public disclosure under the open records law. (31-0) (31-0)

HB 293 (Haywood) Relating to the application of the professional prosecutors law to the district attorney for the 100th Judicial District. (31-0) (31-0)

(Senator Carona in Chair)

CSHB 318 (Bivins) Relating to the public education grant program. (31-0) (31-0)

CSHB 330 (Shapiro) Relating to the form of the ballot and related procedures in connection with certain voters voting on an affidavit; providing criminal penalties. (31-0) (31-0)

CSHB 677 (Haywood) Relating to the punishment for certain persons who sell, manufacture, distribute, or possess a document that is deceptively similar to a driver's license. (31-0) (31-0)

HB 790 (West) Relating to payment of compensation to employees of the Department of Public Safety. (31-0) (31-0)

HB 881 (Wentworth) Relating to the priority of payment of claims against a decedent's estate. (31-0) (31-0)

HB 882 (Nelson) Relating to designating property as a homestead. (31-0) (31-0)

HB 920 (Duncan) Relating to the width of certain vehicles transporting seed cotton modules. (31-0) (31-0)

HB 981 (Cain) Relating to fines for traffic offenses in highway or street construction or maintenance work zones. (31-0) (31-0)

HB 1001 (Cain) Relating to eligibility requirements for voting by persons convicted of a felony. (31-0) (31-0)

HB 1048 (Armbrister) Relating to the civil and criminal consequences of a conviction for certain offenses involving a fictitious motor vehicle license plate, registration insignia, or safety inspection certificate. (31-0) (31-0)

HB 1142 (Cain) Relating to the determination of the inmate population of a county jail. (31-0) (31-0)

Senator Cain offered the following committee amendment to the bill:

Committee Amendment No. 1

HB 1142 is amended by striking Section 1 of the bill and substituting the following:

SECTION 1. Section 511.0101(b), Government Code, is amended to read as follows:

(b) The commission shall prescribe a form for the report required by this section. <u>If the report establishes that a county jail has been operated in excess of its total capacity for three consecutive months, the commission may consider adoption of an order to prohibit confinement of prisoners in the county jail under Section 511.012.</u>

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

HB 1238 (Duncan) Relating to the appointment of a public defender by the Commissioners Court of Tom Green County. (31-0) (31-0)

HB 1287 (Duncan) Relating to the refund of assessments and the transfer of funds among accounts of the Texas Title Insurance Guaranty Association. (31-0) (31-0)

HB 1314 (Wentworth) Relating to a trust created for the management of a ward's assets. (31-0) (31-0)

CSHB 1324 (Cain) Relating to the administration and financing of emergency communications. (31-0) (31-0)

HB 1362 (Nelson) Relating to exemptions from regulation as a food manufacturer or wholesaler. (31-0) (31-0)

Senator Nelson offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1362** by striking Section 431.221(5)(A), Health and Safety Code, as added by SECTION 1 of the bill (page 1, lines 8-11, House engrossed version) and substituting the following:

(A) who is not affiliated with a permanent retail establishment and who engages in the business of:

(i) in-person sales of prepackaged nonperishable foods, including dietary supplements, to a buyer on a buy-sell basis, a deposit-commission basis, or a similar basis for resale in a home; or

(ii) sales of prepackaged nonperishable foods, including dietary supplements, in a home;

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

HB 1370 (Shapiro) Relating to the punishment for the offense of criminal mischief. (31-0) (31-0)

Senator Shapiro offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1370** in SECTION 1 of the bill, in amended Section 28.03(b), Penal Code (house engrossment, page 2, lines 1-8), by striking Subdivisions (4) and (5) and substituting the following:

"(4) a state jail felony if the amount of pecuniary loss is:

(A) $1,500 or more but less than $20,000; or

(B) less than $1,500, if the property damaged or destroyed is a habitation and if the damage or destruction is caused by a firearm or explosive weapon;

(5) a felony of the third degree if the amount of the pecuniary loss is $20,000 or more but less than $100,000;".

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

HB 1473 (Cain) Relating to the licensing and regulation of certain motor vehicle dealers. (31-0) (31-0)

HB 1572 (Luna) Relating to disposal of certain property by a charitable organization. (31-0) (31-0)

HB 1665 (Lucio) Relating to disclosure of the location of certain subsurface conditions by a person who is selling unimproved real property to be used for residential purposes. (31-0) (31-0)

HB 1668 (Cain) Relating to the fees imposed to fund 9-1-1 services and regional poison control centers and to the oversight of the collection and use of those fees. (31-0) (31-0)

HB 1688 (Wentworth) Relating to the jurisdiction and administration of the Guadalupe County Court at Law. (31-0) (31-0)

HB 1703 (Cain) Relating to altering the form of a business entity that is the holder of an alcoholic beverage permit or license. (31-0) (31-0)

CSHB 1716 (Zaffirini) Relating to the membership and duties of the statewide health coordinating council. (31-0) (31-0)

HB 1751 (Bivins) Relating to certain individuals who may bring a suit to contest the paternity of a child. (31-0) (31-0)

HB 1756 (Harris) Relating to the liability of Texas Youth Commission volunteers. (31-0) (31-0)

HB 1790 (Cain) Relating to the licensing and regulation of certain motor vehicle dealers. (31-0) (31-0)

HB 1868 (Zaffirini) Relating to certain exceptions to the definition of dentistry. (31-0) (31-0)

Senator Zaffirini offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 1868** as follows:

In SECTION 1, page 1, line 10, after the word "dental" and before the word "college", insert the words "or dental hygiene".

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

HB 1899 (Gallegos) Relating to public participation in alcoholic beverage licensing or permitting hearings. (31-0) (31-0)

HB 1912 (Lucio) Relating to the reporting of certain information to the national crime information center. (31-0) (31-0)

HB 2005 (Duncan) Relating to the possession of and access to grandchildren by grandparents. (31-0) (31-0)

HB 2067 (Bivins) Relating to temporary vehicle registration. (31-0) (31-0)

HB 2084 (Nelson) Relating to the establishment of a pilot project in which vouchers are used for payment of certain health care services. (31-0) (31-0)

CSHB 2088 (Zaffirini) Relating to the regulation of certain midwives; providing administrative penalties. (31-0) (31-0)

CSHB 2098 (Cain) Relating to the licensing of certain franchised dealers who engage in the leasing of motor vehicles. (31-0) (31-0)

HB 2099 (Patterson) Relating to student loan reimbursements for physician assistants practicing in certain areas. (31-0) (31-0)

HB 2169 (Armbrister) Relating to the liability of certain persons and organizations that provide emergency services. (31-0) (31-0)

CSHB 2189 (Wentworth) Relating to the payment of claims by guardians and certain reports and accounts submitted by guardians or personal representatives of estates. (31-0) (31-0)

HB 2202 (Duncan) Relating to the regulation of vehicle storage facilities; providing a penalty. (31-0) (31-0)

HB 2222 (Armbrister) Relating to the bond and oath requirements applicable to a sheriff. (31-0) (31-0)

HB 2273 (Ellis) Relating to certain duties of court clerks. (31-0) (31-0)

HB 2462 (Nelson) Relating to authorizing a single county to create a rural rail transportation district. (31-0) (31-0)

CSHB 2491 (Ratliff) Relating to participation by community colleges in the state employee charitable contribution program. (31-0) (31-0)

HB 2502 (Patterson) Relating to the venue for prosecution of the offense of failing or refusing to pay the toll imposed for the operation of a motor vehicle on a toll project of certain counties. (31-0) (31-0)

HB 2555 (Nelson) Relating to the creation of two county criminal courts in Denton County. (31-0) (31-0)

HB 2564 (Lucio) Relating to authorizing the Board of Regents of The University of Texas System to acquire by purchase, exchange, gift, or otherwise certain properties to be used for campus expansion and university purposes in The University of Texas System. (31-0) (31-0)

HB 2584 (Gallegos) Relating to the contents of certain retail alcoholic beverage permits and licenses. (31-0) (31-0)

HB 2633 (Harris) Relating to attorney compensation in certain matters; providing civil and criminal penalties. (31-0) (31-0)

CSHB 2705 (Brown) Relating to the program for the voluntary cleanup of contaminants. (31-0) (31-0)

HB 2747 (Lucio) Relating to allowing students at public junior colleges to pay tuition and fees in installments. (31-0) (31-0)

HB 2749 (West) Relating to standards adopted for and registry of juvenile pre-adjudication and post-adjudication secure detention and correctional facilities by the Texas Juvenile Probation Commission. (31-0) (31-0)

HB 2750 (Lucio) Relating to certain municipal firefighters and police officers entitled to additional wages; providing a civil penalty. (31-0) (31-0)

HB 2795 (Duncan) Relating to the composition and powers of the Texas Health Benefits Purchasing Cooperative; amending Chapter 26, Insurance Code; and declaring an emergency. (31-0) (31-0)

HB 2807 (Lucio) Relating to the administration of the citrus budwood certification program; providing a penalty. (31-0) (31-0)

CSHB 2816 (Whitmire) Relating to the expiration of secondary alcoholic beverage permits and licenses. (31-0) (31-0)

HB 2887 (Whitmire) Relating to promotional or educational activities of title insurance entities. (31-0) (31-0)

HB 2899 (Whitmire) Relating to the development of information to identify missing children or persons. (31-0) (31-0)

HB 2919 (Galloway) Relating to the powers and the board of directors of the Lower Neches Valley Authority. (31-0) (31-0)

HB 2982 (Duncan) Relating to the authority of certain counties to borrow money. (31-0) (31-0)

HB 2984 (Zaffirini) Relating to the establishment of a pilot program regarding the care, rehabilitation, and education of medically fragile children and their families. (31-0) (31-0)

Senator Zaffirini offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 2984** by striking SECTION 3 of the bill and substituting the following:

SECTION 3. This Act takes effect September 1, 1997, but only if the 75th Legislature appropriates money to fund the pilot program to assist medically fragile children and their families as required by Section 35.015, Health and Safety Code, as added by this Act. The Texas Board of Health shall select an entity to run the pilot program required under Section 35.017, Health and Safety Code, as added by this Act, not later than January 1, 1998.

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

HB 2997 (Duncan) Relating to the regulation of outdoor advertising in certain dry areas. (31-0) (31-0)

HB 3048 (Cain) Relating to the application of certain laws prohibiting employment discrimination. (31-0) (31-0)

HB 3063 (Haywood) Relating to the registration of certain golf carts. (31-0) (31-0)

HB 3075 (Zaffirini) Relating to the possession of dangerous drugs by a home and community support services agency. (31-0) (31-0)

HB 3076 (Sibley) Relating to the terms of the board of directors of a savings bank. (31-0) (31-0)

HB 3077 (Sibley) Relating to the merger, consolidation, or conversion of a federal savings bank or savings association into a domestic or foreign savings bank or savings association. (31-0) (31-0)

HB 3078 (Sibley) Relating to an incorporation requirement of a state savings bank. (31-0) (31-0)

HB 3092 (Cain) Relating to equipment requirements for certain buses. (31-0) (31-0)

HB 3104 (Bivins) Relating to appointment of a bailiff for the 385th district court in Midland County. (31-0) (31-0)

HB 3105 (Bivins) Relating to the supplemental salaries of judges of the district courts having jurisdiction in Midland County. (31-0) (31-0)

HB 3176 (Duncan) Relating to the sampling of wine on the premises of a holder of a winery permit. (31-0) (31-0)

HB 3368 (Shapiro) Relating to the acquisition of real property by the General Services Commission as an alternative to leasing space. (31-0) (31-0)

HB 3437 (Cain) Relating to the cancellation or suspension of an alcoholic beverage private club registration permit. (31-0) (31-0)

HB 3440 (Cain) Relating to the cancellation or suspension of certain alcoholic beverage licenses. (31-0) (31-0)

HB 3441 (Cain) Relating to the offense of purchase or possession of alcohol by a minor. (31-0) (31-0)

HB 3513 (Sibley) Relating to the position classification plan for state employees. (31-0) (31-0)

CSHB 3540 (Galloway) Relating to the election of commissioners of the Port of Beaumont Navigation District of Jefferson County. (31-0) (31-0)

HB 3545 (Lucio) Relating to the statutory county courts in Cameron County. (31-0) (31-0)

Senator Lucio offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **HB 3545** as follows:
Strike Section 3 and replace as follows:
Section 3. This Act takes effect September 1, 1997.

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

HB 3569 (Shapiro) Relating to bank accounts in the name of candidates for public office. (31-0) (31-0)

HB 3570 (Duncan) Relating to the length limitation for a vehicle or vehicle combination transporting a combine. (31-0) (31-0)

HB 3576 (Armbrister) Relating to state agencies' use of special mail services. (31-0) (31-0)

HB 3603 (Duncan) Relating to fees to finance capital improvements in certain municipalities. (31-0) (31-0)

HB 3605 (Fraser) Relating to the assignment of the judge of the County Court at Law of Nolan County. (31-0) (31-0)

HB 3609 (Sibley) Relating to the boundaries, powers, administration, duties, finances, contracts, and terms of directors of the Upper Leon River Municipal Water District. (31-0) (31-0)

HCR 2 (Shapiro on behalf of Carona) Requesting that the governor consider including a veterans' representative on various boards and commissions. (viva voce vote)

HCR 14 (Nelson) Designating the city of Waxahachie the Crape Myrtle Capital of Texas. (viva voce vote)

HCR 26 (Ratliff) Granting the Burnett Companies, doing business as Burnett Personnel Services, permission to sue the State of Texas and the Texas Department of Banking. (viva voce vote)

HCR 67 (Shapiro on behalf of Carona) Requesting the Texas Department of Transportation to erect highway signs indicating exits and directions to federal and state veterans' hospitals, clinics, and cemeteries. (viva voce vote)

HCR 80 (Duncan) Designating Wyman Meinzer as Texas State Photographer. (viva voce vote)

HCR 151 (Shapiro on behalf of Carona) Directing TDHS to take steps to expand community options for long-term care. (viva voce vote)

HCR 156 (West) Directing the Texas Department of Health to develop a comprehensive plan to control the spread of Hepatitis A in Texas. (viva voce vote)

HCR 168 (Lucio) Urging Congress to oversee the audit of teaching hospitals. (viva voce vote)

HCR 202 (Duncan) Memorializing congress to allocate funds for road expansion in Texas to the Waste Isolation Pilot Plant project in New Mexico. (viva voce vote)

HCR 211 (Wentworth) Memorializing congress to pass legislation to increase volume caps and index them to inflation. (viva voce vote)

HCR 215 (Ratliff) Directing the Health and Human Services Commission to implement cost-saving measures in the Medicaid prescription drug program. (viva voce vote)

Senator Ratliff offered the following committee amendment to the resolution:

Committee Amendment No. 1

Amend **HCR 215** as follows:

In the fourth resolving clause (page 2, lines 12-14) strike "in its design of the pilot program" and substitute "unless prohibited by federal law (P: 101-508, Omnibus Budget Reconciliation Act of 1990)".

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

HCR 228 (Duncan) Designating cotton the Official State Fiber and Fabric of Texas. (viva voce vote)

HCR 230 (Bivins) Commemorating the 100th anniversary of the dedication of Saint Ann's Catholic Church in Midland. (viva voce vote)

HCR 236 (Ellis) Honoring Judge Jodie E. Stavinoha. (viva voce vote)

HCR 242 (Lucio) In memory of Glenn Hopkins. (viva voce vote)

HCR 265 (Armbrister) Recognizing the Texas Czech Heritage and Cultural Center. (viva voce vote)

BILLS AND RESOLUTION REMOVED FROM LOCAL AND UNCONTESTED CALENDAR

Senator Wentworth requested in writing that **HB 1542** be removed from the Local and Uncontested Calendar.

Senator Armbrister requested in writing that **HB 2094** be removed from the Local and Uncontested Calendar.

Senator Ogden and Senator Harris requested in writing that **HB 2915** be removed from the Local and Uncontested Calendar.

Senator Ogden and Senator Harris requested in writing that **HCR 118** be removed from the Local and Uncontested Calendar.

SESSION CONCLUDED FOR LOCAL AND UNCONTESTED CALENDAR

The Presiding Officer, Senator Carona in Chair, announced that the session to consider bills and resolutions placed on the Local and Uncontested Calendar was concluded.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
Monday, May 26, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

SB 247, Relating to compulsory attendance in public schools. (Amended)

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

MEMORIAL RESOLUTIONS

SR 860 - by Truan: In memory of Texas Department of Public Safety Trooper Roel Garcia of Falfurrias.

SR 862 - by Luna: In memory of Raul Alderete of San Antonio.

SR 872 - by Galloway: In memory of Meghan Christine Manning of The Woodlands.

CONGRATULATORY RESOLUTIONS

SR 861 - by Lindsay: Congratulating Stephen Beattie of Houston.

SR 863 - by Moncrief: Congratulating the City of River Oaks Police Department.

SR 865 - by Barrientos: Congratulating the Carlos V. and Victoria G. Garza family.

SR 866 - by Ogden: Congratulating Winston and Velma West of Floresville.

SR 867 - by Nelson: Congratulating Lindsey Burton of Duncanville.

SR 868 - by Nelson: Congratulating Tazeen Lalani of Carrollton.

SR 869 - by Nelson: Congratulating Valerie Monda of Duncanville.

SR 870 - by Nelson: Congratulating Doug Killough of Lewisville.

SR 871 - by Nelson: Congratulating Catherine Holt de Toledo of Fort Worth.

MISCELLANEOUS RESOLUTION

SR 864 - by Moncrief: Encouraging all Texans to observe Management Week in Texas June 2 through 7.

ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 2:30 p.m. adjourned until 9:30 a.m. tomorrow.

APPENDIX

SIGNED BY GOVERNOR

May 20, 1997

SB 123, SB 249, SB 263, SB 290, SB 655, SB 667, SB 699, SB 753, SB 1697, SB 1712, SB 1879, SCR 24, SCR 32, SCR 36

May 21, 1997

SB 251, SB 898, SB 1751

FILED WITHOUT SIGNATURE OF GOVERNOR

May 22, 1997

SB 386

SIGNED BY GOVERNOR

May 23, 1997

SB 1044, SB 1113, SB 1490, SB 1125, SB 1174, SB 1422, SB 1826, SB 63, SB 126, SB 191, SB 330, SB 372, SB 452, SB 515, SB 526, SB 611, SB 614, SB 652, SB 715, SB 754, SB 884, SB 887, SB 900, SB 908, SB 927, SB 952, SB 1012, SCR 82, SCR 87

SENT TO GOVERNOR

May 26, 1997

SB 11, SB 15, SB 16, SB 48, SB 57, SB 58, SB 60, SB 68, SB 224, SB 397, SB 467, SB 531, SB 550, SB 612, SB 660, SB 758, SB 759, SB 899, SB 913, SB 938, SB 961, SB 1041, SB 1050, SB 1297, SB 1316, SB 1478, SB 1579, SB 1594, SB 1676, SB 1728, SB 1805, SB 1811, SB 1827, SB 1835, SB 1925, SB 1936, SB 1938, SCR 99