

FORTIETH DAY

(CONTINUED)

TUESDAY, MARCH 30, 1999

PROCEEDINGS

AFTER RECESS

The Senate met at 8:30 a.m. and was called to order by Senator Harris.

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 yesterday.

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 or 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 205 (Carona) Relating to the fee associated with the installation or the monitoring of a motor vehicle ignition interlock device required as a condition of bail. (29-1) Wentworth "Nay" (30-0)

SB 401 (Brown) Relating to the requirements for the registration of certain motor vehicles in certain counties. (29-1) Wentworth "Nay" (30-0)

SB 404 (Armbrister) Relating to the eligibility of a retired peace officer for a license to carry a concealed handgun. (29-1) Wentworth "Nay" (30-0)

SB 451 (Armbrister) Relating to sales of cigarettes or tobacco products in package stores. (29-1) Wentworth "Nay" (30-0)

SB 574 (Armbrister) Relating to participation and credit in, contributions to, and benefits and administration of the Texas Municipal Retirement System. (29-1) Wentworth "Nay" (30-0)

SB 735 (Armbrister) Relating to contracts for the repair or maintenance of certain equipment and vehicles of the Texas Department of Transportation. (29-1) Wentworth "Nay" (30-0)

SB 770 (Shapiro) Relating to state agency internal auditing. (29-1) Wentworth "Nay" (30-0)

CSSB 845 (Carona) Relating to disposal of certain motor vehicles. (29-1) Wentworth "Nay" (30-0)

CSSB 873 (Brown) Relating to the regulation of aquaculture. (29-1) Wentworth "Nay" (30-0)

CSSB 996 (Lindsay) Relating to funeral expenses for children in foster care. (29-1) Wentworth "Nay" (30-0)

CSSB 1019 (Shapleigh) Relating to the enforcement of motor carrier regulations. (29-1) Wentworth "Nay" (30-0)

SB 1023 (Ellis) Relating to records of fines and fees collected in criminal cases. (29-1) Wentworth "Nay" (30-0)

SB 1368 (Moncrief on behalf of Harris) Relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes, and to conforming codifications enacted by the 75th Legislature to other Acts of that legislature. (29-1) Wentworth "Nay" (30-0)

SB 1467 (Moncrief on behalf of Harris) Relating to a nonsubstantive revision of statutes relating to the Texas Department of Insurance, the business of insurance, and certain related businesses, including conforming amendments, repeals, and penalties. (29-1) Wentworth "Nay" (30-0)

SB 1551 (Ellis) Relating to a resident agent appointed to accept service of process in a probate proceeding or other action related to a decedent's estate. (29-1) Wentworth "Nay" (30-0)

SB 1552 (Ellis) Relating to removal of personal representatives of decedents' estates. (29-1) Wentworth "Nay" (30-0)

**BILL REMOVED FROM
LOCAL AND UNCONTESTED CALENDAR**

Senator Fraser and Senator Harris requested in writing that **SB 874** be removed from the Local and Uncontested Calendar.

**SESSION CONCLUDED FOR
LOCAL AND UNCONTESTED CALENDAR**

Senator Harris announced that the session to consider bills and resolutions placed on the Local and Uncontested Calendar was concluded.

ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 8:40 a.m. adjourned, in memory of Judge Blair Reeves of San Antonio and Michelle Lima, weekend anchor and reporter for KSAT-TV of San Antonio, until 10:00 a.m. today.

FORTY-FIRST DAY

TUESDAY, MARCH 30, 1999

PROCEEDINGS

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

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

Absent-excused: Luna, Whitmire.

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

Patrick J. Miller, Episcopal Seminary of the Southwest, Waco, offered the invocation as follows:

Most gracious God, who created all things, send Your holy spirit to these distinguished women and men. Instill in them a sense of Your courage, wisdom, and grace; that the work they do in this Senate may bring justice, equality, and hope to a weary world. Bless their work, their time, and their efforts as they debate and decide the future of Texas. We especially pray for the NATO forces and all people in and around the Balkans; that the hostilities may end soon and peace may be restored to that region of our world. Grant all our prayers and petitions we ask, in hope we pray. Amen.

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

LEAVES OF ABSENCE

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

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

CO-AUTHOR OF SENATE BILL 73

On motion of Senator Truan and by unanimous consent, Senator Lucio will be shown as Co-author of **SB 73**.

CO-AUTHOR OF SENATE BILL 330

On motion of Senator Barrientos and by unanimous consent, Senator Fraser will be shown as Co-author of **SB 330**.

CO-AUTHORS OF SENATE BILL 557

On motion of Senator Lucio and by unanimous consent, Senators Haywood and Sibley will be shown as Co-authors of **SB 557**.

CO-AUTHOR OF SENATE BILL 916

On motion of Senator Wentworth and by unanimous consent, Senator Shapleigh will be shown as Co-author of **SB 916**.

**INTRODUCTION OF
BILLS AND RESOLUTIONS POSTPONED**

Senator Truan moved to postpone the introduction of bills and resolutions on first reading until the end of today's session.

The motion prevailed without objection.

SENATE RESOLUTION 515

Senator Sibley offered the following resolution:

WHEREAS, Monday and Tuesday, March 29 and 30, 1999, have been selected by the citizens of Wise County as special days to gather at the State Capitol to recognize and celebrate the contributions of Wise County to the heritage of the State of Texas; and

WHEREAS, Wise County was created in 1856 and named for United States Senator Henry A. Wise, an early settler of the area who favored the annexation of Texas; and

WHEREAS, Decatur, selected as a townsite and county seat in 1856, became an important stop for the Butterfield Overland Mail route shortly thereafter; and

WHEREAS, Still standing on Decatur's town square, the Wise County courthouse, built in 1895 of pink limestone, is considered a perfect architectural example of its type and era; and

WHEREAS, The Wise County Heritage Museum houses archives and mementoes of the county's early history, including Indian artifacts, art, and relics; and

WHEREAS, The county is a leading dairy and cattle region as well as a producer of vegetables, cantaloupes, watermelons, pecans, and grains; and

WHEREAS, Well known for its oil and gas production, Wise County also is an important source of clay, stone, and gravel; and

WHEREAS, Noted for its wonderful recreational areas and natural beauty, Wise County beckons visitors to Lake Bridgeport and Eagle Mountain Lake located in the rugged but scenic county; and

WHEREAS, Wise County is justifiably proud of its history, culture, progressive development, and contributions to the heritage of the State of Texas; and

WHEREAS, These special days are an appropriate occasion for the Texas Senate to recognize the citizens of Wise County and to commend them for their notable endeavors and achievements; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby declare March 29 and 30, 1999, as Wise County Days at the State Capitol and join Wise County residents as they celebrate their county's greatness; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the citizens of Wise County as an expression of the recognition and appreciation of the Texas Senate.

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

GUESTS PRESENTED

Senator Sibley was recognized and introduced to the Senate a delegation of citizens from Wise County.

The Senate welcomed its guests.

CAPITOL PHYSICIAN

The President recognized Senator Barrientos, who presented Dr. C. Mark Chassay of Austin as the "Doctor for the Day."

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

(Senator Ellis in Chair)

GUEST PRESENTED

Senator Truan, joined by Senator Lucio, was recognized and introduced to the Senate Congressman Rubén Hinojosa of Mercedes.

The Senate welcomed Congressman Hinojosa.

GUEST PRESENTED

Senator Madla, joined by Senator Luna in his absence, was recognized and introduced to the Senate Congressman Charles Gonzalez of San Antonio.

The Senate welcomed Congressman Gonzalez.

PERMISSION TO INTRODUCE BILL

On motion of Senator Truan and by unanimous consent, Senate Rule 7.07(b) and Section 5, Article III of the Texas Constitution were suspended to permit the introduction of the following bill: **SB 1842**.

CONCLUSION OF MORNING CALL

The Presiding Officer at 10:28 a.m. announced the conclusion of morning call.

SENATE BILL 411 ON THIRD READING

Senator Duncan asked unanimous consent to suspend the regular order of business to take up for consideration at this time on its third reading and final passage:

SB 411, Relating to the offense of operating a vehicle with a child in an open bed of the vehicle or in the open bed of a trailer being towed by the vehicle.

There was objection.

Senator Duncan then moved to suspend the regular order of business and take up **SB 411** for consideration at this time.

The motion prevailed by the following vote: Yeas 24, Nays 4.

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

Nays: Bivins, Jackson, Nelson, Nixon.

Absent: Gallegos.

Absent-excused: Luna, Whitmire.

SB 411 was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Bivins, Cain, Gallegos, Jackson, Nelson, and Nixon asked to be recorded as voting "Nay" on the final passage of the bill.

SENATE BILL 524 ON SECOND READING

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

SB 524, Relating to the public disclosure of certain disciplinary actions of the State Board of Dental Examiners.

The bill was read second time.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 524** between the enacting clause and SECTION 1 of the bill (Committee Printing page 1, between lines 10 and 11), by inserting the following SECTIONS, appropriately numbered, and renumbering the subsequent SECTIONS accordingly:

SECTION __. Section 2(a), Article 4548h, Revised Statutes, is amended to read as follows:

(a) The Board shall revoke or suspend any license or licenses that may have been issued by such Board, impose a fine on a license holder, place on probation with conditions a person whose license has been suspended, ~~or~~ reprimand a licensee, or issue a warning letter to a licensee if in the opinion of a majority of such Board any person or persons to whom a license has been issued by said Board to practice dentistry or dental hygiene in this State shall have, after the issuance of such license, violated any of the provisions of the Statutes of the State of Texas relating to the practice of dentistry or dental hygiene in this State, or any of the provisions of Chapter 9, Title 71, Revised Statutes, or any amendments that may hereafter be made thereto, or a rule of the Board. All revocations or suspensions of licenses by the Board shall be made in the manner provided by Chapter 2001, Government Code (Administrative Procedure Act).

SECTION ____ . Section 2, Article 4549, Revised Statutes, is amended to read as follows:

Sec. 2. The State Board of Dental Examiners shall have jurisdiction and authority, after notice and hearing, to suspend or revoke a dental license or a dental hygienist license, to impose a fine on a person licensed under this chapter, to place on probation with conditions a person whose license or certificate is suspended, ~~[or]~~ to reprimand a licensee or certificate holder, or to issue a warning letter to a licensee or certificate holder, and in addition to or in lieu of said suspension, revocation, probation, ~~[or]~~ reprimand, or warning, to assess an administrative penalty as provided for in Article 4548j, Revised Statutes, for any one or more of the following causes:

(a) Proof of insanity of the holder of a license or certificate, as adjudged by the regularly constituted authorities.

(b) Proof of conviction of the holder of a license or certificate of any felony or a misdemeanor involving fraud under the laws of this State or any other State or of the United States.

(c) That the holder thereof has been or is guilty of dishonorable conduct, malpractice, gross incompetency, or failure to treat a patient according to the standard of care in the practice of dentistry or dental hygiene.

(d) That the holder thereof has been or is guilty of any deception or misrepresentation for the purpose of soliciting or obtaining patronage.

(e) That the holder thereof procured a license or certificate through fraud or misrepresentation.

(f) That the holder thereof is addicted to habitual intoxication or the use of drugs.

(g) That a dentist employs or permits or has employed or permitted persons to practice dentistry in the office or offices under his control or management, who were not licensed to practice dentistry.

(h) That the holder thereof has failed to use proper diligence in the conduct of his practice or to safeguard his patients against avoidable infections.

(i) That the holder thereof has failed or refused to comply with any State law relating to the regulation of dentists or dental hygienists.

(j) That the holder thereof has failed or refused to comply with the adopted and promulgated rules and regulations of the Board.

(k) That the holder thereof is physically or mentally incapable of practicing with safety to dental patients.

(l) That the holder thereof has been negligent in the performance of dental services which injured or damaged dental patients.

(m) Proof of suspension, revocation, probation, reprimand, or other restriction by another State of a license or certificate to practice dentistry or dental hygiene based upon acts by the licensee or certificate holder enumerated in this section.

(n) That the holder thereof has knowingly provided or agreed to provide dental care in a manner which violates any provision of federal or State law regulating a plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any dental care services or regulating the business of insurance.

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

Senator Nixon offered the following amendment to the bill:

Floor Amendment No. 2

Amend **SB 524** Sec. 2 (5) as follows:

On page 1, line 30, of the bill strike "(5) the issuance of a warning letter to a license holder."

The amendment was read.

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

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

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

RECORD OF VOTE

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

SENATE BILL 524 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 524** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 2.

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

Nays: Madla, Wentworth.

Absent-excused: Luna, Whitmire.

SB 524 was read third time and was passed by the following vote: Yeas 28, Nays 1.

Nays: Madla.

Absent-excused: Luna, Whitmire.

SENATE BILL 753 ON SECOND READING

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

SB 753, Relating to the application of the open meetings law to certain nonprofit health maintenance organizations.

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

SENATE BILL 753 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 753** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Luna, Whitmire.

SB 753 was read third time and was passed by a viva voce vote.

(President in Chair)

SENATE RESOLUTION 524

Senator Moncrief offered the following resolution:

WHEREAS, The Senate of the State of Texas proudly recognizes the Crowley High School boys basketball team for winning the Class 4A boys state basketball championship; and

WHEREAS, The Eagles captured their title with a 34-4 season record after defeating Port Arthur Lincoln High School 60-51 in a championship showdown; and

WHEREAS, Crowley High School forward Jamell Grandberry, named the tournament's most valuable player, deserves exceptional praise for scoring 11 points and catching 13 rebounds; the offense was led by forward Kevin Risher with 13 points and guard Jason Smalls with 12 points; and

WHEREAS, Other team members contributing to the championship victory and outstanding season include Brandon Newton, Terry Shelton, Corey Washington, Brian Harston, Detron Forbes, Brandon Harris, Brandon Harston, Chika Onyekanne, and David Stevens; and

WHEREAS, Throughout the season, the team members have demonstrated remarkable talent and have manifested the fine skills and discipline instilled in them by head coach Gary Surratt; and

WHEREAS, These dedicated basketball players have given the Crowley citizens a renewed sense of pride and have brought excitement to all who follow sports in the Tarrant County area; and

WHEREAS, Exhibiting perseverance, team unity, and respect for the highest ideals of American sportsmanship, team members have brought honor to their school and their community; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby commend the Crowley High School boys basketball team on its great victory and extend congratulations to Coach Surratt and to each of the players; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the team as a token of esteem from the Texas Senate.

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

GUESTS PRESENTED

Senator Moncrief was recognized and introduced to the Senate the Crowley High School boys basketball team, University Interscholastic League Class 4A champions, accompanied by their coaches and principal.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Nelson was recognized and introduced to the Senate a group of eighth-grade students from Midlothian Middle School in Midlothian.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator West was recognized and introduced to the Senate a delegation of business leaders from the Dallas area.

The Senate welcomed its guests.

SENATE RESOLUTION 523

Senator Fraser offered the following resolution:

WHEREAS, The Senate of the State of Texas takes great pleasure in recognizing the Honorable Carlos Lopez Nieves, the Representative from District 7 in the Puerto Rico House of Representatives; and

WHEREAS, Born on September 4, 1948, in Puerto Rico, he attended the public schools in Camuy and earned a bachelor's degree in agricultural science with a major in education and economics from the Agricultural Science College of the University of Puerto Rico; and

WHEREAS, The Honorable Carlos Lopez Nieves married the former Lydia E. Ruiz-Gerena, and they have been blessed with two children, Carlos Alexis Lopez and Axel Emir Lopez; and

WHEREAS, Beginning his political career early in life, he was president of the Youth of the New Progressive Party in Camuy; in 1986, after he had moved to the City of Bayamon, he was elected to the Municipal Assembly of the City of Bayamon; elected to the House of Representatives for District 7 of Bayamon-Toa Alta in 1988, he was elected Alternate Floor Leader of his delegation; and

WHEREAS, Recognizing his outstanding efforts on behalf of the poor and in defense of social justice, he was easily reelected to the House of Representatives in 1992, where the Speaker of the House appointed him Chairman of the powerful Ways and Means Committee; and

WHEREAS, In addition to his superb work in agriculture, Representative Carlos Lopez Nieves has sponsored legislation for the benefit of the elderly and children, teachers, and health professionals; and

WHEREAS, This outstanding gentleman introduced legislation for tax benefits which have helped develop the tourist industry in Puerto Rico; Governor Rosello has designated Carlos Lopez Nieves as Puerto Rico's Ombudsman because of his many contributions to the people of Puerto Rico; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 76th Legislature, hereby extend a hearty Texas welcome to the Honorable Carlos Lopez Nieves and hope that his visit here is a truly enjoyable one; and, be it further

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

The resolution was read.

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

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

GUEST PRESENTED

Senator Fraser was recognized and introduced to the Senate the Honorable Carlos Lopez Nieves of the Puerto Rico House of Representatives.

The Senate welcomed Representative Nieves.

COMMITTEE SUBSTITUTE SENATE BILL 598 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 engrossment:

CSSB 598, Relating to actions regarding certain computer date failures.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 598** as follows:

1. In Section 147.001 of SECTION 2 (Committee Printing page 2, after line 40), insert a new Subdivision (6) to read as follows:

(6) "Good faith" means honesty in fact in the conduct or transaction concerned.

2. Renumber the remaining subdivisions of Section 147.001.

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

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 598** as follows:

Amend Section 147.004(1) in SECTION 2 by striking the word "wrongful" (Committee Printing, page 3 at line 12).

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

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 598** as follows:

Amend Section 147.007 in SECTION 2 by striking the entire section (Committee Printing, page 3, lines 25-27) and replacing it with the following:

Sec. 147.007. INSURANCE COVERAGE NOT AFFECTED. This chapter does not affect the coverage or benefits of parties under a contract of insurance.

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

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSSB 598** as follows:

Amend SECTION 2 by adding a new Section 147.009 (Committee Printing page 3, after line 30) to read as follows:

147.009. MANUFACTURER'S DUTY TO INDEMNIFY. This chapter does not relieve a manufacturer from the obligation, if any, to indemnify a seller for losses arising out of a product liability action for property damage pursuant to Section 82.002, subject to any defenses the manufacturer could have asserted at the time the action was filed.

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

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 5

Amend **CSSB 598** as follows:

Amend Section 147.042(a) of SECTION 2 (Committee Printing, page 3, lines 41-44) by adding to the end of Subsection (a) the following: "If the computer product which caused the computer date failure is a component of another product and if the product and computer product were sold at different times, the 15-year period begins to run on the date the defendant sold the computer product."

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

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 6

Amend **CSSB 598** as follows:

Amend, Section 147.081 of SECTION 2 by striking the words "GOOD FAITH EFFORT" and replacing it with the word "NOTICE" (Committee Printing, page 4, line 48).

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

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 7

Amend **CSSB 598** as follows:

Amend Section 147.081 of SECTION 2 (Committee Printing page 4, line 48 through page 5, line 1) by adding a new Subsection (c) to read as follows:

"(c) If the cure or correction described by Subsection (a) is designed to cure or correct a computer date failure for only a limited period of time, that cure or correction does not entitle a person to a defense to liability for harm caused by the computer date failure after the period of time expires."

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

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 8

Amend **CSSB 598** as follows:

Amend Section 147.123 in SECTION 2 by striking the proposed language and replace it with the following (Committee Printing page 7, lines 9-11):

Sec. 147.123. MITIGATION OF DAMAGES. (a) In an action to which Chapter 33 applies, the court shall instruct the finder of fact regarding the determination of responsibility pursuant to Section 33.003 using the appropriate approved pattern jury charge which may be modified by the court as appropriate to the circumstances.

(b) In all actions not governed by subsection (a), the court shall instruct the finder of fact regarding a claimant's duty to mitigate or avoid damages in a manner appropriate to the action using the appropriate approved pattern jury charge which may be modified by the court as appropriate to the circumstances.

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

Senator Lindsay offered the following amendment to the bill:

Floor Amendment No. 9

Amend **CSSB 598** as follows:

CSSB 598 is amended by adding a new SECTION 4 as follows, and renumbering all following SECTIONS appropriately:

SECTION 4. Chapter 108, Civil Practices and Remedies Code, is amended by adding Section 108.004 to read as follows:

Sec. 108.004. COMPUTER DATE FAILURE. Except in an action arising under the constitution or laws of the United States, a public servant is not personally liable for property damages caused by a computer date failure as described by Section 147.003.

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

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

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

**COMMITTEE SUBSTITUTE
SENATE BILL 598 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 **CSSB 598** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Luna, Whitmire.

CSSB 598 was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Luna, Whitmire.

GUESTS PRESENTED

The President introduced to the Senate a group of fourth-grade students from Casis Elementary School in Austin, accompanied by their teachers.

The Senate welcomed its guests.

SENATE CONCURRENT RESOLUTION 55

Senator Sibley offered the following resolution:

WHEREAS, Tuesday, March 30, 1999, has been selected by the citizens of Waco as a special day to gather at the State Capitol to recognize and celebrate the contributions of Waco to the heritage of the State of Texas; and

WHEREAS, Waco, initially a frontier town and major thoroughfare for cowboys and their herds on the Chisholm Trail, is celebrating its 150th anniversary this year; and

WHEREAS, Rich in tradition and history, the city boasts a number of diverse attractions such as the Texas Ranger Hall of Fame, Texas Sports Hall of Fame, Dr Pepper Museum, Cameron Park, Indian Spring Park, and Helen Marie Taylor Museum; and

WHEREAS, Waco is proud to be the home of Baylor University, the oldest continuously operated university in Texas; and

WHEREAS, Waco is justifiably proud of its history, culture, progressive development, and contributions to the heritage of the State of Texas; and

WHEREAS, This special day is an appropriate occasion for the Texas Senate and House of Representatives to recognize the citizens of Waco and to commend them for their notable endeavors and achievements; now, therefore, be it

RESOLVED, That the 76th Legislature of the State of Texas hereby declare March 30, 1999, as Waco Day at the State Capitol and join Waco residents as they celebrate their city's greatness; and, be it further

RESOLVED, That a copy of this resolution be prepared for the citizens of Waco as an expression of the recognition and appreciation of the Texas Legislature.

The resolution was read.

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

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

GUESTS PRESENTED

Senator Sibley was recognized and introduced to the Senate a delegation of citizens from the City of Waco.

The Senate welcomed its guests.

(Senator Truan in Chair)

SENATE BILL 460 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 engrossment:

SB 460, Relating to the admissibility in a criminal proceeding of an oral or sign language statement made by the accused.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Committee Amendment No. 1

Amends **SB 460**, SECTION 1, page 1, by striking in line 6, An, and reinstating the current language in lieu thereof:

No

Amends **SB 460**, SECTION 1, page 1, by striking lines 9 through 11, and substituting the following in lieu thereof:

accused was given the warning in Subsection (a) of Section 2 above or its fully effective equivalent.

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

(President in Chair)

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 460** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 3, Article 38.22, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

(a) Except as provided by Subsections (c) and (f), no ~~[No]~~ oral or sign language statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless:

(1) an electronic aural recording or an electronic visual recording, which may include motion picture, video tape, or other ~~[visual]~~ recording, is made of the statement;

(2) prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) the recording device was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;

(4) all voices on the recording are identified; and

(5) not later than the 20th day before the date of the proceeding, the attorney representing the defendant is provided with a true, complete, and accurate copy of all recordings of the defendant made under this article.

(f) An oral or sign language statement that does not comply with all requirements of Subsection (a) is nonetheless admissible in a criminal proceeding for the purpose of impeachment of the testimony of:

(1) the accused, but only if before making the statement the accused was provided a warning that satisfied the requirements of Section 2(a) or its fully effective equivalent and knowingly, intelligently, and voluntarily waived the rights set out in the warning; or

(2) an alibi witness, but only if the accused was provided a warning and waived rights as described by Subdivision (1) and:

(A) the attorney for the accused does not earlier than the 10th day before the commencement of voir dire serve written notice to the state of an intent to offer an alibi defense; or

(B) the attorney for the accused serves notice of an intent to offer an alibi defense within the period required by Paragraph (A) but the attorney representing the state, not later than the fifth day after receiving notice, serves written notice of the contents of any statement the state intends to use to impeach the testimony of the alibi witness.

SECTION 2. The change in law made by this Act applies only to an oral or sign language statement made on or after the effective date of this Act. A statement made before the effective date of this Act is covered by the law in effect when the statement was made, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1999.

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.

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

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

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

RECORD OF VOTES

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

SENATE BILL 460 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 **SB 460** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 4.

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

Nays: Barrientos, Gallegos, Truan, Wentworth.

Absent-excused: Luna, Whitmire.

SB 460 was read third time and was passed by a viva voce vote.

RECORD OF VOTES

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

(Senator Wentworth in Chair)

(President in Chair)

**COMMITTEE SUBSTITUTE
SENATE BILL 188 ON SECOND READING**

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

CSSB 188, Relating to the consequences of causing injury to a pregnant woman; creating certain offenses.

The motion prevailed by the following vote: Yeas 23, Nays 6.

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

Nays: Barrientos, Bernsen, Ellis, Gallegos, Moncrief, Shapleigh.

Absent-excused: Luna, Whitmire.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 188** (Senate Committee Printing) on page 2, line 43, between "person" and "is" by inserting "who is not the mother".

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

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

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

RECORD OF VOTE

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

**MOTION TO PLACE
COMMITTEE SUBSTITUTE
SENATE BILL 188 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 **CSSB 188** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 22, Nays 7. (Not receiving four-fifths vote of Members present)

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

Nays: Barrientos, Bernsen, Ellis, Gallegos, Moncrief, Shapleigh, Wentworth.

Absent-excused: Luna, Whitmire.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

March 30, 1999

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 114, Declaring April 10, 1999, Senior Citizens' Day in Texas.

SB 216, Relating to the disqualification of a person convicted of theft from selection or service as a grand juror.

(Amended)

SCR 53, Declaring March 25, 1999, as Comanche County Day.

SCR 57, Declaring that all state departments and agencies be closed for a half day, beginning at noon on Friday, April 2, 1999.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

GUESTS PRESENTED

Senator Madla was recognized and introduced to the Senate a group of students from Saint Philip's College and Sam Houston High School in San Antonio.

The Senate welcomed its guests.

SENATE RULE 11.18 SUSPENDED**(Posting Rule)**

On motion of Senator Sibley and by unanimous consent, Senate Rule 11.18 was suspended in order that the Committee on Economic Development might consider **SB 274** today.

MOTION TO ADJOURN

On motion of Senator Truan and by unanimous consent, the Senate at 12:00 noon agreed to adjourn, upon completion of the introduction of bills and resolutions on first reading, in memory of Bruce Angel of La Porte, until 10:00 a.m. tomorrow.

(Senator Zaffirini in Chair)

SENATE BILL AND RESOLUTION ON FIRST READING

The following bill and resolution were introduced, read first time, and referred to the committees indicated:

SB 1842 by Cain, Wentworth
Relating to the regulation of pari-mutuel racing.
To Committee on State Affairs.

SCR 59 by Sibley
Conferring the Texas Legislative Medal of Honor on First Lieutenant Jack Llewellyn Knight.
To Committee on Veteran Affairs and Military Installations.

HOUSE BILLS AND RESOLUTION ON FIRST READING

The following bills and resolution received from the House were read first time and referred to the committees indicated:

HB 57 to Committee on State Affairs.
HB 88 to Committee on Criminal Justice.
HB 127 to Committee on Criminal Justice.
HB 128 to Committee on Criminal Justice.
HB 165 to Committee on Border Affairs - Special.
HB 236 to Subcommittee on Infrastructure.
HB 244 to Committee on Criminal Justice.
HB 264 to Committee on State Affairs.
HB 368 to Subcommittee on Higher Education.
HB 427 to Committee on Intergovernmental Relations.
HB 510 to Committee on State Affairs.
HB 592 to Committee on Criminal Justice.
HB 614 to Committee on Intergovernmental Relations.
HB 664 to Committee on Natural Resources.
HB 665 to Committee on Natural Resources.
HB 670 to Committee on Veteran Affairs and Military Installations.
HB 774 to Committee on Intergovernmental Relations.
HB 777 to Committee on Jurisprudence.
HB 794 to Committee on Natural Resources.
HB 836 to Committee on State Affairs.
HB 846 to Committee on Natural Resources.
HB 869 to Committee on Jurisprudence.
HB 923 to Committee on Health Services.
HB 952 to Committee on Natural Resources.
HB 963 to Committee on Intergovernmental Relations.
HB 985 to Committee on State Affairs.
HB 986 to Committee on Intergovernmental Relations.
HB 1031 to Committee on State Affairs.
HB 1049 to Committee on Education.
HB 1063 to Committee on Criminal Justice.
HB 1069 to Committee on Natural Resources.
HB 1110 to Committee on Intergovernmental Relations.
HB 1136 to Committee on Jurisprudence.
HB 1142 to Committee on Jurisprudence.
HB 1145 to Committee on Human Services.
HB 1149 to Committee on Intergovernmental Relations.
HB 1174 to Committee on Jurisprudence.
HB 1177 to Committee on Intergovernmental Relations.

HB 1189 to Committee on Intergovernmental Relations.
HB 1209 to Committee on Jurisprudence.
HB 1269 to Committee on Criminal Justice.
HB 1303 to Committee on Natural Resources.
HB 1304 to Committee on Natural Resources.
HB 1314 to Committee on Education.
HB 1342 to Committee on Health Services.
HB 1350 to Committee on Intergovernmental Relations.
HB 1351 to Committee on State Affairs.
HB 1356 to Committee on Jurisprudence.
HB 1362 to Committee on Intergovernmental Relations.
HB 1380 to Subcommittee on Infrastructure.
HB 1396 to Committee on Human Services.
HB 1413 to Committee on Intergovernmental Relations.
HB 1477 to Committee on Intergovernmental Relations.
HB 1488 to Committee on Education.
HB 1494 to Committee on Natural Resources.
HB 1495 to Committee on Intergovernmental Relations.
HB 1539 to Committee on State Affairs.
HB 1605 to Committee on Jurisprudence.
HB 1848 to Committee on Natural Resources.
HB 1889 to Committee on Intergovernmental Relations.
HB 2085 to Committee on Health Services.
HCR 80 to Committee on Administration.

MEMORIAL RESOLUTION

SR 529 - by Luna: In memory of Felix R. Solis of San Antonio.

CONGRATULATORY RESOLUTIONS

SR 528 - by Luna: Congratulating Colonel James M. "Marc" Enger of the United States Air Force.

SR 530 - by Luna: Congratulating Chief Master Sergeant Lerue Warren Hinton, Jr., of the United States Air Force.

SR 531 - by Cain: Congratulating Mr. and Mrs. Joe Ridgell of the Dallas area.

MISCELLANEOUS RESOLUTIONS

SR 525 - by Zaffirini: Proclaiming May 9-15, 1999, as Texas Nursing Home Week.

SR 526 - by Jackson: Recognizing April as Confederate History and Heritage Month in the State of Texas.

SR 527 - by Jackson: Declaring March 31, 1999, as Jack A. Johnson Day.

HCR 57 - (Bernsen): Declaring October 18-22, 1999, as Children's Firearm Safety Week.

ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 12:05 p.m. adjourned, in memory of Bruce Angel of La Porte, until 10:00 a.m. tomorrow.