The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 180).

Present — Mr. Speaker; Agnich; Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Bomer; Buchanan; Burnett; Bush; Cain; Carriker; Cary; Cavazos; Clark; Clemons; Colbert; Collazo; Connelly; Coody; Craddock; Criss; Crockett; Danburg; Davis; DeLay; Delco; Denton; Eckels; Edwards; Eikenburg; Emmett; English; Evans, C.; Evans, L.; Finnell; Fox; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley; Glossbrenner; Granoff; Green; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Harrison, W.; Heffin; Hightower; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Hollowell; Horn; Hudson, D.; Hudson, S.; Hury; Jackson; Jones; Keller; Kemp; Khoury; Kubiak; Kuempel; Laney; Lee, D.; Lee, E. F.; Leonard; Luna; McKenna; Madla; Mankins; Martinez, R.; Martinez, W.; Messer; Millsap; Moreno, A.; Moreno, P.; Oliveira; Parker; Patrick; Patronella; Patterson; Pennington; Pierce; Polk; Polumbo; Presnal; Price; Ragsdale; Rangel; Robinson; Robnett; Rudd; Russell; Salinas; Saunders; Schlueter; Schoolcraft; Shaw; Shea; Short; Simpson; Smith, A.; Smith, C.; Smith, T.; Staniswalis; Stiles; Sutton; Tejeda; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Uher; Valles; Vowell; Waldrop; Wallace; Watson; Whaley; Wieting; Willis; Wilson; Wolens; Word; Wright.

Absent, Excused — Hackney; McWilliams.

Absent — Blanton; Ceverha; Hernandez; Oliver; Peveto.

The invocation was offered by Reverend Gary Kirksey, First Baptist Church, Hurst, Texas.

LEAVES OF ABSENCE GRANTED

The following member was granted leave of absence for today because of important business:

Hackney on motion of Patronella.

The following member was granted leave of absence for today because of illness:

McWilliams on motion of Mankins.

(Peveto, Blanton, and Oliver now present)
The Honorable Speaker of the House of Representatives
House Chamber
The Honorable
Mr. Speaker:

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

SB 82 by Brooks, relating to a requirement that a dental hygienist receive training in cardiopulmonary resuscitation except under certain circumstances.
SB 199 by Santiesteban, relating to the regulation of the practice of dentistry by regulating the use of a trade name.
SB 255 by Vale, relating to the authority of an insurer to designate a particular practitioner or practitioners of the healing arts in a policy of accident and sickness insurance.
SB 410 by Parker, relating to student centers and fees for student centers at Lamar University at Orange and Lamar University at Port Arthur.
SB 557 by Sarpalius, relating to prohibiting instigation, encouragement, promotion, training, and all acts in furtherance of dogfighting.
SB 653 by Glasgow, relating to the licensing and regulation of chiropractors and their employees.
SB 718 by Williams, relating to the regulation of real estate brokers and salesmen.
SB 761 by Traeger, relating to conforming the Agriculture Code, Texas Education Code, Family Code, Human Resources Code, Natural Resources Code, Parks and Wildlife Code, Tax Code, Water Code and related statutes to the laws from which those codes are derived.
SB 1141 by Brown, relating to the regulation of motor vehicle manufacturers.

Respectfully,
Betty King
Secretary of the Senate

REGULAR ORDER OF BUSINESS SUSPENDED

By unanimous consent, the reading and referral of bills was postponed until just prior to adjournment.

RESOLUTION SIGNED BY THE SPEAKER

The speaker signed in the presence of the house, after giving due notice thereof, the following enrolled resolution:

HCR 145

HB 2381 - PERMISSION TO INTRODUCE

Representative Eckels moved to suspend the constitutional rule for permission to introduce and have placed on first reading HB 2381.

The motion prevailed by (Record 181): 132 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Buchanan; Burnett; Cain; Carriker; Cary; Cavazos; Clark; Colbert; Collazo; Connelly; Coody; Criss; Crockett; Danburg; Davis; DeLay; Delco; Denton;
Representative Delco moved that all necessary rules be suspended to take up and consider at this time, HR 258.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Delco;

**HR 258**, Honoring Elspeth Davies Rostow.

The resolution was adopted without objection.

On motion of Representative Emmett, the names of all the members of the house were added to **HR 258** as signers thereof.

**HB 1121 ON SECOND READING**

The speaker laid before the house on its second reading and passage to engrossment, the complete committee substitute for **HB 1121**.

**CSHB 1121**

A BILL TO BE ENTITLED

AN ACT

relating to the tabulation of unofficial returns in certain races by the secretary of state.

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

SECTION 1. Chapter 1, Texas Election Code, is amended by adding Section 3a to read as follows:

3a. TABULATION OF UNOFFICIAL RETURNS BY SECRETARY OF STATE

Subdiv. 1. For each primary election and general election for state and county officers, the secretary of state shall tabulate the unofficial returns as provided by this section, for contested races for nomination or election to a federal or statewide office as listed by Section 6lc of this code (Article 6.05c, Vernon's Texas Election Code); the office of state senator; state representative; and member, State Board of
Education: and for constitutional amendments, if any. The secretary of state may include other contested races, political party referenda, and any special elections ordered by the governor.

Subdiv. 2. (a) Not later than February 1 of each odd-numbered year, the lieutenant governor, speaker of the house of representatives, and secretary of state shall each appoint for a two-year term six persons to serve on an elections advisory task force in connection with the tabulation and reporting of election results under this section. Appointments to the Advisory Task Force shall be made without regard to race, creed, sex, religion, and national origin. Instead of making one of the required appointments, each appointing officer or his designee may serve on the task force. Each appointing officer shall allocate at least four of his appointments among members of the various media organizations covering elections in this state. The president, or his designee, Texas Association of Broadcasters; president, or his designee, Texas Press Association; president, or his designee, Texas Daily Newspaper Association; and the chief state executive officer, or his designee, of the Associated Press and United Press International, shall also serve on the task force.

(b) The secretary of state shall designate a chairman and vice-chairman from among the media organization membership on the task force. Meetings of the task force shall be held on the call of the chairman.

(c) Not later than the 90th day before each election covered by this section, the secretary of state shall prepare an operations manual that explains the procedures to be used by the secretary in tabulating the returns. The task force shall review the manual and make any recommendations it considers appropriate.

(d) One or more members chosen by the task force shall be present during the tabulation of the returns at each election.

(e) After the election, the task force shall submit a written report to the secretary of state, governor, lieutenant governor, and speaker of the house of representatives evaluating the tabulation process and making any recommendations it considers appropriate.

Subdiv. 3. (a) During the tabulation, the secretary of state shall provide a sufficient number of display terminals for media representatives to monitor the tabulation.

(b) The secretary shall provide, if practicable, computer-to-computer direct lines as determined by rules prescribed by the secretary of state for the use of the media.

(c) The secretary shall charge reasonable fees which shall approximate actual costs, to defray the costs of providing media access to the tabulation system. Funds collected under this Act shall be reappropriated to the secretary of state. Any unexpended balance is appropriated for use by the secretary of state during the succeeding fiscal year.

(d) The secretary shall provide without charge a display terminal to the governor, lieutenant governor, and speaker of the house of representatives in their capitol offices for monitoring the tabulation. The news media may not have access to data from these locations.

Subdiv. 4. (a) Periodically during the tabulation, the secretary of state shall publish reports covering the various races required to be tabulated under Subdivision 1 of this section to be distributed to the subscribing media. The reports may include:

1. vote totals for all contested races covered by Subdivision 1 of this section;
2. vote totals by county for statewide and federal offices; and
3. vote totals for statewide and federal offices in each of the six most populous counties, the total for the next 19 most populous counties, and the total for the remaining 229 counties; and
(4) any other information the secretary of state determines to be relevant.

(b) One copy of the reports published under Paragraph (a)(1) of this subdivision shall be posted periodically for public inspection.

Subdiv. 5. (a) After completion of the tabulation, the secretary of state shall publish and distribute final reports for the various races required to be tabulated under Subdivision 1 of this section to the subscribing media. These reports may include:

1. vote totals for all contested races covered by Subdivision 1 of this section;
2. vote totals by county for statewide and federal offices;
3. vote totals for statewide and federal offices in each of the six most populous counties, the total for the next 19 most populous counties, and the total for the remaining 229 counties;
4. vote totals by county for all races; and
5. any other information the secretary of state determines to be relevant.

(b) The secretary of state shall also publish a report indicating the times the first and last reports of results from each county were received by the secretary.

(c) The secretary of state shall also distribute reports under Subdivision 5(a) of this section to the governor, lieutenant governor, speaker of the house of representatives, and members of the advisory task force. The reports shall also be furnished to other persons on payment of a reasonable charge prescribed by the secretary of state which shall be used to defray the costs of preparing and furnishing the reports.

Subdiv. 6. The secretary of state shall provide a back-up system for the tabulation of the returns.

Subdiv. 7. (a) This subdivision applies to each election covered by Subdivision 1 of this section in addition to and notwithstanding other provisions of this code.

(b) In precincts using paper ballots, voting machines, or electronic voting systems ballot counters, the copy of the returns required to be delivered to the county clerk shall be delivered not later than two hours, or as soon thereafter as practicable, after the official closing of the polls or after the last person voted at the precinct, whichever is later.

(c) In a precinct using electronic voting system ballots to be counted at a central counting station, the ballots shall be delivered to the station not later than two hours, or as soon thereafter as practicable, after the official closing of the polls or after the last person voted at the precinct, whichever is later. The copy of the returns required to be delivered to the county clerk shall be delivered by the presiding judge of the counting station immediately on completion of the preparation of the returns.

(d) The county clerk shall transmit periodically, by telephone or other electronic means, to the secretary of state the results for the races covered by Subdivision 1 of this section. The results shall be transmitted continuously until complete. Costs of transmission of the results of the races may be paid by the state.

(e) The absentee ballots shall be counted periodically throughout the day by the special canvassing board. The county clerk shall transmit, by telephone or other electronic means, to the secretary of state the complete or partial results of the absentee voting for the races covered by Subdivision 1 of this section at 7 p.m. on election day. If only partial results are available, the results shall be transmitted periodically until complete.

Subdiv. 8. The secretary of state shall prescribe by rule any additional procedures necessary to implement this section.
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.

CSHB 1121 was read second time.

Representative Schlueter offered the following amendment to CSHB 1121:

Amend CSHB 1121 as follows:

1. On page 3, strike lines 12 through 16 and substitute the following:

   (d) For monitoring the tabulations, the secretary shall provide without charge display terminals with printing capability to the governor, lieutenant governor, speaker of the house of representatives, and entities of the legislative branch of state government specified by the lieutenant governor or speaker of the house of representatives.

2. On page 5, line 2, after "representatives," insert "entities of the legislative branch of state government specified by the lieutenant governor or speaker of the house of representatives."

3. Renumber Section 2 as Section 3 and insert a new Section 2 to read as follows:

   SECTION 2. Section 212(e), Texas Election Code (Article 13.34, Vernon’s Texas Election Code), is amended to read as follows:

   (e) The county executive committee in its meeting on the third Monday in March preceding the general primary, provided for in Section 195 of this code (Article 13.17, Vernon’s Texas Election Code), or, upon its failure to act, the county chairman shall determine the hour and place at which the precinct conventions shall be held on primary election day. The committee shall set the time for convening [the] precinct convention in each precinct [must be set] between the hours of seven [two] o’clock p.m. and nine o’clock p.m., but the precinct convention may not convene until the ballots in the precinct have been counted. The county chairman shall then be required to post a copy of this order on a bulletin board at the county courthouse and file a copy of the same in the office of the county clerk, where it shall be open to public inspection. This notice shall be posted and filed by the county chairman at least ten days prior to the holding of the precinct conventions. Also at this meeting the county executive committee, or, upon its failure to act, the county chairman, shall decide the hour and place at which the convention shall be held, and the county chairman shall post this order on the bulletin board at the county courthouse and also file a copy of this notice with the county clerk, at least ten days prior to the date of the convention. When senatorial district conventions are to be held in a county in lieu of the county convention, at this meeting the precinct chairman for the election precincts which will select delegates to each senatorial district convention, or upon their failure to act, the temporary chairman of the convention, shall decide the hour and place at which each respective senatorial district convention shall be held, and each temporary chairman shall post this order on the bulletin board at the county courthouse and also file a copy of this notice with the county clerk, at least ten days prior to the date of the convention. Should the above-designated persons fail to post such orders and file such notices, then any member of the county executive committee who was entitled to participate in the decision may post such orders and file such notices and such shall constitute the orders and notices required herein. Should more than one member of the county executive committee post such orders and file such notices, then the first posting and filing in point of time shall prevail.

   The amendment was adopted without objection.
CSHB 1121, as amended, was passed to engrossment.

SJR 20 ON SECOND READING
(Tejeda - House Sponsor)

The speaker laid before the house on its second reading and passage to third reading.

SJR 20, A joint resolution proposing a constitutional amendment to abolish the office of county treasurer in Bexar and Collin counties.

A record vote was requested.

The resolution was read second time and was adopted by (Record 182): 125 Yeas, 10 Nays, 4 Present, not voting.

YeaS — Agnich; Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Bomer; Buchanan; Burnett; Bush; Cain; Carrker; Cary; Cavazos; Ceverha; Clark; Clemens; Colbert; Collazo; Connelly; Coody; Craddock; Criss; Crockett; Danburg; Davis; DeLay; Delco; Denton; Edwards; Eikenburg; Emmett; English; Evans, L.; Finnell; Fox; Gamez; Gandy; Garcia, A.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley; Granoff; Green; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Heflin; Hightower; Hilbert; Hill, G.; Hill, P.; Hinojosa; Hollowell; Horn; Hudson, D.; Hury; Jackson; Keller; Kemp; Khoury; Kubiak; Laney; Lee, D.; Lee, E. F.; Leonard; Luna; McKenna; Madia; Mankins; Martinez, R.; Martinez, W.; Messer; Millsap; Moreno, A.; Moreno, P.; Oliveira; Parker; Patronella; Pennington; Peveto; Pierce; Polk; Polumbo; Prensal; Price; Robinson; Robnett; Russell; Salinas; Saunders; Schluter; Schoolcraft; Shaw; Shea; Short; Simpson; Smith, C.; Smith, T.; Stiles; Sutton; Tejeda; Thompson, G.; Thompson, S.; Uher; Valles; Vowell; Waldrop; Wallace; Watson; Whaley; Wieting; Willis; Wilson; Wolens; Word.

Nays — Eckels; Glossbrenner; Jones; Kuempel; Patterson; Smith, A.; Staniswalis; Toomey; Tow; Turner.

Present, not voting — Mr. Speaker(C); Harrison, W.; Rangel; Rudd.

Absent, Excused — Hackney; McWilliams.

Absent — Evans, C.; Garcia, M.; Hernandez; Hill, A.; Hudson, S.; Oliver; Patrick; Ragsdale; Wright.

STATEMENT BY REPRESENTATIVE KUEMPEL

On SJR 20, I inadvertently voted no when I wanted to vote yes on SJR 20.

Kuempel

(Hernandez now present)

HB 1474 ON THIRD READING

The speaker laid before the house on its third reading and final passage.

HB 1474, A bill to be entitled An Act relating to the provision of dangerous drugs by licensed physicians who practice in rural areas.

The bill was read third time and was passed. (Cavazos and Denton recorded voting no)
HB 382 ON THIRD READING

The speaker laid before the house on its third reading and final passage,

HB 382, A bill to be entitled An Act relating to the payment by the state of certain expenses arising from the prosecution of an inmate or employee of the department of corrections and from investigation of offenses under Section 39.021, Penal Code.

The bill was read third time and was passed.

HB 2018 ON THIRD READING

The speaker laid before the house on its third reading and final passage,

HB 2018, A bill to be entitled An Act relating to the administration and provision of drugs by a licensed veterinarian or by a person designated by a licensed veterinarian.

A record vote was requested.

The bill was read third time and was passed by (Record 183): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Agnich; Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Bomer; Buchanan; Burnett; Bush; Cain; Carriker; Cary; Cavazos; Cervera; Clark; Clemens; Colbert; Collazo; Connelly; Coody; Craddick; Criss; Crockett; Danburg; Davis; DeLay; DeLeo; Denton; Eckels; Edwards; Eikenburg; Emmett; English; Evans, C.; Evans, L.; Fennell; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Geistwild; Gibson, B.; Gibson, J.; Gilley; Glossbrenner; Granoff; Green; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Harrison, W.; Heflin; Hernandez; Hightower; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Hollowell; Horn; Hudson, D.; Hudson, S.; Hury; Jackson; Jones; Keller; Kemp; Khoury; Kubiak; Kuempel; Laney; Lee, D.; Lee, E. F.; Leonard; Luna; McKenna; Madal; Mankins; Martinez, R.; Martinez, W.; Messer; Millsap; Moreno, A.; Moreno, P.; Oliveira; Oliver; Parker; Patrick; Patronella; Patterson; Pennington; Peveto; Pierce; Polk; Polombo; Presnal; Ragdale; Rangel; Robinson; Robnett; Rudd; Russell; Sahas; Saunders; Schoolcraft; Shaw; Shea; Short; Simpson; Smith, A.; Smith, C.; Smith, T.; Staniswalis; Stiles; Sutton; Tejeda; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Uher; Valles; Vowell; Waldrop; Wallace; Watson; Whaley; Wieting; Willis; Wilson; Wolens; Word; Wright.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hackney; McWilliams.

Absent — Fox; Price; Schlueter.

HB 1507 ON THIRD READING

The speaker laid before the house on its third reading and final passage,

HB 1507, A bill to be entitled An Act relating to the requirement that a municipal court juror live within the municipality in which the court is established.

The bill was read third time and was passed.

HB 559 ON THIRD READING

The speaker laid before the house on its third reading and final passage,

HB 559, A bill to be entitled An Act relating to the contents of an appellate record in a criminal case.
The bill was read third time and was passed. (D. Lee and Heflin recorded voting no)

HB 1426 ON THIRD READING

The speaker laid before the house on its third reading and final passage,

HB 1426, A bill to be entitled An Act relating to structure and operation of lawyer referral services.

The bill was read third time and was passed.

HB 637 ON THIRD READING

The speaker laid before the house on its third reading and final passage,

HB 637, A bill to be entitled An Act relating to the statewide assignment of judges of the statutory probate courts.

The bill was read third time and was passed.

HB 1064 ON THIRD READING

The speaker laid before the house on its third reading and final passage,

HB 1064, A bill to be entitled An Act relating to the establishment and use of the special nongame and endangered species conservation fund.

A record vote was requested.

The bill was read third time and was passed by (Record 184): 144 Yeas, 1 Nay, 2 Present, not voting.

Yeas — Agnich; Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Bomer; Buchanan; Burnett; Bush; Cain; Cary; Cavazos; Ceverha; Clark; Clemens; Colbert; Connelly; Coody; Craddick; Criss; Crockett; Danburg; Davis; DeLay; Delco; Denton; Eckels; Edwards; Eikenburg; Emmett; English; Evans, C.; Evans, L.; Finnell; Fox; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley; Glossbrenner; Granoff; Green; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Harrison, W.; Heflin; Hernandez; Hightower; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Hollowell; Horn; Hudson, D.; Hudson, S.; Hury; Jackson; Jones; Keller; Kemp; Khoury; Kubiak; Kuempel; Laney; Lee, D.; Lee, E. F.; Leonard; Luna; McKenna; Madla; Mankins; Martinez, R.; Martinez, W.; Messer; Millsap; Moreno, A.; Moreno, P.; Oliveira; Oliver; Parker; Patrick; Patronella; Patterson; Pennington; Petveto; Pierce; Polk; Polumbo; Presnal; Price; Ragsdale; Rangel; Robinson; Robnett; Rudd; Russell; Salinas; Saunders; Schlueter; Schoolcraft; Shaw; Shea; Short; Simpson; Smith, A.; Smith, C.; Smith, T.; Staniszwalis; Stiles; Sutton; Tejeda; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Valles; Vowell; Waldrop; Wallace; Watson; Whaley; Wieting; Willis; Wilson; Wolens; Word; Wright.

Nay — Uher.

Present, not voting — Mr. Speaker(C); Carriker.

Absent, Excused — Hackney; McWilliams.

Absent — Collazo.

HB 603 ON THIRD READING

The speaker laid before the house on its third reading and final passage,
HB 603, A bill to be entitled An Act relating to the destruction of an industrial die, mold, or form.

The bill was read third time and was passed.

HB 729 ON THIRD READING

The speaker laid before the house on its third reading and final passage,

HB 729, A bill to be entitled An Act relating to the limitations period for filing an application for compensation under the Crime Victims Compensation Act.

The bill was read third time and was passed.

HB 2194 ON THIRD READING

The speaker laid before the house on its third reading and final passage,

HB 2194, A bill to be entitled An Act relating to the power of the railroad commission to review and approve, for purposes of the Outer Continental Shelf Lands Act Amendments of 1978 and any other federal authorities, applications for the purchase of natural gas by public utilities subject to the authority of the railroad commission, and to the price paid by gas utilities to affiliated interests for certain natural gas.

The bill was read third time and was passed. (Bush recorded voting no)

HB 1848 ON THIRD READING

The speaker laid before the house on its third reading and final passage,

HB 1848, A bill to be entitled An Act relating to authorizing the governing body of any independent school district to sell surplus real property of such district and, additionally, at its option, to issue revenue obligations payable from the proceeds of any such sale; enacting other provisions relating to the subject; and declaring an emergency.

The bill was read third time.

Representative Ceverha offered the following amendment to the bill:

Amend the second reading engrossment of HB 1848 as follows:

(1) Strike the introductory phrase of Section 2 through the colon and substitute the following: “The board of a district may sell real property owned by the district and issue revenue bonds payable from the proceeds of the sale subject to the following requirements:”.

(2) Strike Section 7 and substitute the following:

SECTION 7. This Act does not restrict the power of a school district to sell property or issue bonds as provided by other law.

The amendment was adopted without objection.

A record vote was requested.

The bill, as amended, was passed by (Record 185): 141 Yeas, 1 Nay, 1 Present, not voting.

Yeas — Agnich; Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Bomer; Buchanan; Burnett; Bush; Cain; Carriker; Cary; Cavazos; Ceverha; Clark; Clemons; Colbert; Collazo; Connelly; Coody; Craddick; Criss; Crockett; Danburg; Davis; DeLay; Delco; Denton; Eckels; Edwards; Eikenburg; Emmett; English; Evans, C.; Evans, L.; Finnell; Fox; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley;
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Glossbrenner; Granoff; Green; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Harrison, W.; Hernandez; Hightower; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Hollowell; Horn; Hudson, D.; Hudson, S.; Hur; Jackson; Jones; Keller; Kemp; Khoury; Kubiak; Kuempel; Lacy; Lee, D.; Lee, E. F.; Leonard; Luna; McKenna; Madla; Mankin; Martinez, R.; Martinez, W.; Messer; Moreno, A.; Moreno, P.; Oliveira; Oliver; Patrick; Patronella; Patterson; Pennington; Peveto; Pierce; Polk; Polumbo; Presnal; Price; Ragsdale; Rangel; Robinson; Robnett; Rudd; Russell; Salinas; Saunders; Schoo; Shea; Short; Simpson; Smith, A.; Smith, C.; Smith, T.; Staniswalis; Stiles; Sutton; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Uher; Vales; Vowell; Waldrop; Wallace; Watson; Whaley; Wieting; Willis; Wilson; Wolens; Word.

Nay — Heflin.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hackney; McWilliams.

Absent — Millsap; Parker; Schlueter; Tejeda; Wright.

HB 897 ON THIRD READING

The speaker laid before the house on its third reading and final passage, HB 897, A bill to be entitled An Act relating to the protection of consumers and regulation of manufactured housing.

The bill was read third time and was passed.

HB 103 ON SECOND READING

The speaker laid before the house on its second reading and passage to engrossment,

HB 103, A bill to be entitled An Act relating to a repeal of the requirement that state agencies adopt a code of conduct for agency employees who inspect and survey health care facilities.

The bill was read second time and was passed to engrossment.

HB 171 ON SECOND READING

The speaker laid before the house on its second reading and passage to engrossment,

HB 171, A bill to be entitled An Act relating to the elements and punishment of offenses relating to oil and gas equipment and the inspection of businesses dealing in used oil and gas equipment.

The bill was read second time.

Representative Burnett offered the following committee amendment to the bill:

COMMITTEE AMENDMENT: NO. 1

Amend HB 171 as follows:

(1) On page 2, strike lines 12 and 13, and substitute the following:

“(iii) equipment designed for use in remedial or diagnostic operations on gas or crude petroleum oil wells;”

(2) On page 2, strike lines 26 and 27 and substitute “person commits an offense if[without the effective consent of the owner]”.

(3) On page 3, strike lines 8 through 13 and substitute the following:
“(b) A person commits an offense if:

(1) he knowingly or intentionally removes, alters, or obliterates the serial number or other permanent identification marking on equipment designed for use in exploration for or production of natural gas or crude petroleum oil or equipment designed for use in remedial or diagnostic operations on gas or crude petroleum oil wells; or

(2) he possesses equipment designed for use in exploration for or production of natural gas or crude petroleum oil or equipment designed for use in remedial or diagnostic operations on gas or crude petroleum oil wells knowing that the serial number or other permanent marking has been removed, altered, or obliterated.”

(4) On page 3, strike line 22 and substitute the following:

“(a) Any Texas Ranger or other officer commissioned of the”.

Representative Hanna offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 171 by reinstating the stricken language on page 3, lines 9 and 10.

The amendment was adopted without objection.

Committee Amendment No. 1, as amended, was adopted without objection.

HB 171, as amended, was passed to engrossment.

HB 675 ON SECOND READING

The speaker laid before the house on its second reading and passage to engrossment, HB 675, A bill to be entitled An Act relating to the use of rest areas; providing a penalty.

The bill was read second time.

Representative DeLay offered the following committee amendment to the bill:

COMMITTEE AMENDMENT NO. 1

Amend HB 675 by striking the word “free” line 22, page 1 Subsection (c).

(C. Evans in the chair)

Committee Amendment No. 1 was adopted without objection.

Representative DeLay offered the following committee amendment to the bill:

COMMITTEE AMENDMENT NO. 2

Amend HB 675 by adding the following to Subsection (c) before the period “provided that the State Department of Highways and Public Transportation has found that such services would constitute a public service for the benefit of the traveling public and has issued a permit to such organization.”

Committee Amendment No. 2 was adopted without objection.

Representative Toomey offered the following amendment to the bill:

Amend HB 675 in the following manner:

In Section 1, Subsection (2), after the word “within” on line 14, delete the phrase “the shortest reasonable period of time” and substitute in lieu thereof the phrase “eight (8) hours after receiving notice.”
The amendment was adopted without objection.

HB 675, as amended, was passed to engrossment. (Collazo, Watson, Delco, Criss, and Heightower recorded voting no)

**HB 860 ON SECOND READING**

The chair laid before the house on its second reading and passage to engrossment, the complete committee substitute for HB 860.

CSHB 860

**A BILL TO BE ENTITLED**

**AN ACT**

relating to the height restriction on a motor vehicle used to transport seed cotton modules.

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

SECTION 1. Section 3B, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) Except as provided by Subsection (d) of this section, a single motor vehicle used exclusively to transport seed cotton modules may exceed the limitation on height provided for a single vehicle by Subsection (b) of Section 3 of this Act but may not exceed a height of fourteen (14) feet, six (6) inches.

SECTION 2. This Act takes effect September 1, 1983. A violation of the height restriction in Subsection (b), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), before the effective date of this Act by a vehicle used to transport seed cotton modules is subject to the law in effect when the violation occurred, and the former law is continued in effect for that purpose. For purposes of this section, a violation occurs on or after the effective date of this Act if any element of the violation occurs on or after that date.

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.

CSHB 860 was read second time and was passed to engrossment.

**HB 886 ON SECOND READING**

The chair laid before the house on its second reading and passage to engrossment, the complete committee substitute for HB 886.

CSHB 886

**A BILL TO BE ENTITLED**

**AN ACT**

relating to a dealer's return of farm and industrial equipment to a supplier after the termination of certain franchises.

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

SECTION 1. Chapter 35, Business & Commerce Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. TERMINATION OF FARM AND INDUSTRIAL EQUIPMENT FRANCHISE

Sec. 35.61. DEFINITIONS. In this subchapter:
(1) “Current price” means an amount equal to the price listed in the supplier’s printed price list in effect when the franchise is terminated, less applicable trade and cash discounts.

(2) “Dealer cost” means an amount equal to the sum of the original invoice price that the dealer paid for inventory and the cost to the dealer of its delivery from the supplier to the dealer, less applicable discounts.

(3) “Dealer” means a person in the business of the retail sale of farm tractors, farm implements, or the attachments to or repair parts for farm tractors or farm implements.

(4) “Franchise” means a written or oral contract or agreement between a supplier and a dealer, that may be called a “dealership” or by any other name, by which the dealer is authorized to engage in the business of the retail sale of inventory according to methods and procedures prescribed by the supplier.

(5) “Inventory” means farm tractors, farm implements, utility tractors, industrial tractors, attachments, and repair parts that are provided by a supplier to a dealer under a franchise agreement and that were purchased within 30 months of the termination of the franchise or were listed in the supplier’s current sales manual at the time of termination.

(6) “Supplier” means a manufacturer, wholesaler, or distributor of farm tractors, farm implements, utility tractors, or industrial tractors or the attachments to or repair parts for that equipment.

Sec. 35.62. RETURN OF INVENTORY. (a) If on termination of a franchise, the dealer delivers to the supplier the inventory that was purchased from the supplier and that is held by the dealer on the date of the termination, the supplier shall pay to the dealer:

(1) the dealer cost of new, unsold, undamaged, and complete farm tractors, farm implements, utility tractors, industrial tractors, and attachments returned by the dealer;

(2) an amount equal to 85 percent of the current price of new, undamaged repair parts returned by the dealer;

(3) an amount equal to an additional five percent of the current price of new, undamaged repair parts returned by the dealer, unless the supplier performs the handling, packing, and loading of the parts, in which case no additional amount is required under this subdivision; and

(b) The supplier may subtract from the sum due under Subsection (a) of this section the amount of debts owed by the dealer to the supplier. The supplier and dealer are each responsible for one-half of the cost of delivering the inventory to the supplier.

(c) The supplier shall pay the amount due under this section before the 61st day after the day that the supplier receives inventory from the dealer.

(d) On payment of the amount due under this section, title to the inventory is transferred to the supplier.

Sec. 35.63. EXCEPTIONS. A supplier is not required to repurchase:

(1) inventory:

(A) that the dealer orders after the dealer receives notice of the termination of the franchise from the supplier; or

(B) for which the dealer cannot furnish evidence of clear title that is satisfactory to the supplier; or

(2) a repair part that:

(A) has a limited storage life;

(B) is in a broken or damaged package;

(C) is usually sold as part of a set, if the part is separated from the set; or
(D) cannot be sold without reconditioning or repackaging.

Sec. 35.64. WARRANTY CLAIM. If after the termination of a franchise the dealer submits a warranty claim to the supplier for work performed prior to the effective date of the termination the supplier shall accept or reject the claim not later than the 45th day after the day that the supplier receives the claim. A claim not rejected before that deadline is deemed accepted. The supplier shall pay an accepted claim not later than the 60th day after the day that the supplier receives the claim.

Sec. 35.65. LATE PAYMENT. If a supplier does not make the payment required by this subchapter before the 61st day after the day that the supplier received the final shipment of the inventory from the dealer, the supplier is liable to the dealer for:

1. the greater of the dealer cost or current price of the inventory;
2. the expenses incurred by the dealer in returning the inventory to the supplier;
3. interest on the greater of the dealer cost or current price of the inventory, at the rate applicable to a judgment of a court of this state, for the period beginning on the 61st day after the day the supplier received the inventory;
4. reasonable attorney's fees; and
5. costs.

Sec. 35.66. VIOLATION. A person injured by a violation of this subchapter may bring an action for:

1. an injunction to prevent further violation;
2. damages;
3. reasonable attorney's fees; and
4. costs.

Sec. 35.67. SECURITY INTEREST. This subchapter does not affect a supplier's security interest in inventory.

Sec. 35.68. APPLICATION OF BULK TRANSFER LAW. Chapter 6 of this code does not apply to a transaction between a supplier and dealer that is required by this subchapter.

SECTION 2. This Act applies only to a termination of a franchise occurring on or after the effective date of this Act. A termination occurring before the effective date of this Act is governed by the law in effect when the termination occurred.

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.

CSHB 886 was read second time.

Representative Laney offered the following amendment to CSHB 886:

Amend CSHB 886 — by deleting "or oral" on line 20 page 1.

The amendment was adopted without objection.

CSHB 886, as amended, was passed to engrossment. (Jackson and A. Smith recorded voting no)

HB 1849 ON SECOND READING

The chair laid before the house on its second reading and passage to engrossment,

HB 1849, A bill to be entitled An Act relating to fraud in a transaction involving real estate or stock in a corporation or joint stock company.
The bill was read second time.

Representative Leonard offered the following committee amendment to the bill:

COMMITTEE AMENDMENT NO. 1

Amend HB 1849 by adding a new Section 4 immediately following Section 3 to read as follows and renumber the succeeding Sections in consecutive numerical sequence:

SECTION 4. The provisions of Section 27.01, Business & Commerce Code, as amended, and this Act do not abrogate or repeal any other laws relating to the rights, duties, obligations, or liabilities of principals and agents to one another or to third parties.

Committee Amendment No. 1 was adopted without objection.

Representative Denton offered the following committee amendment to the bill:

COMMITTEE AMENDMENT NO. 2

Amend Section 2 of HB 1849 to read as follows:

SECTION 2. Section 27.01, Business & Commerce Code is amended by adding Subsection (d) to read as follows:

(d) A person who (1) has actual awareness of the falsity of a representation or promise made by another person and (2) fails to disclose the falsity of the representation or promise to the person defrauded, and (3) benefits from the false representation or promise commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for exemplary damages. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

Committee Amendment No. 2 was adopted without objection.

Representative Bush offered the following amendment to the bill:

Amend HB 1849 by inserting a period after the word "damages" on line 19 of page 1 and striking the words "not to exceed twice the amount of actual damages."

The amendment was adopted without objection.

Representative Bush offered the following amendment to the bill:

Amend HB 1849 by adding a new subsection (e) to read as follows:

(e) any person who violates the provision of this Act shall be liable to the person defrauded for reasonable attorney's fees and costs of court.

The amendment was adopted without objection.

Representative P. Hill offered the following amendment to the bill:

Amend HB 1849 by deleting the following beginning p. 1, line 11 and continuing as follows - "the measure of actual damages is the difference between the value of the real estate or stock as represented or promised, and its actual value in the condition in which it is delivered at the time of the contract."

The amendment was adopted without objection.
LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business:

Leonard on motion of Cary.

HB 1849 - (consideration continued)

HB 1849, as amended, was passed to engrossment. (Bush, C. Smith, P. Moreno, Willis, Fox, and Delco recorded voting no)

HB 1970 ON SECOND READING

The speaker laid before the house on its second reading and passage to engrossment, the complete committee substitute for HB 1970.

CSHB 1970

A BILL TO BE ENTITLED

AN ACT

relating to the regulatory and enforcement procedures and authority of the Railroad Commission of Texas; providing penalties.

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

SECTION 1. Sections 85.381, 85.382, 86.222, 86.223, 88.131, 89.081, 89.083, 89.121, and 91.143, Natural Resources Code, are amended to read as follows:

Sec. 85.381. PENALTY FOR VIOLATION OF LAWS, RULES, AND ORDERS. (a) In addition to being subject to any forfeiture provided by law and to any penalty imposed by the commission for contempt for violation of its rules or orders, any person who violates the provisions of Sections 85.045 and 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission promulgated under those laws is [shall be] subject to a penalty of not more than:

(1) $10,000 when the provision, rule, or order pertains to safety or the prevention or control of pollution; or
(2) $1,000 when the provision, rule, or order does not pertain to safety or the prevention or control of pollution.

(b) The applicable maximum penalty may be assessed [$1,000] for each and every day of violation and for each and every act of violation.

Sec. 85.382. VENUE. The penalty provided in Section 85.381 of this code shall be recovered in a court of competent jurisdiction in Travis County, in the county in which the violation occurred, or in the county of the residence of the defendant [or in the county of the residence of any of the defendants or in the county in which the violation is alleged to have occurred].

Sec. 86.222. PENALTIES [PENALTY]. (a) Any person who violates a provision of this chapter or a rule or order adopted under this chapter is liable for a penalty of not more than:

(1) $10,000 [$1,000] for each offense when the provision, rule, or order pertains to safety or the prevention or control of pollution; or
(2) $1,000 for each offense when the provision, rule, or order does not pertain to safety or the prevention or control of pollution.

(b) Each day a violation occurs constitutes a separate offense.

Sec. 86.223. SUIT FOR PENALTY. The penalty may be recovered with the cost of suit by the State of Texas through the attorney general or the county or district attorney when joined by the attorney general in a civil action instituted in
Travis County, [or] in the county in which the violation occurred, or in the county of residence of the defendant.

Sec. 88.131. VENUE. The courts of the county in which the oil property or any part of the oil property is located and with respect to which a violation of the provisions of this chapter is charged, the courts of Travis County, or the courts of the county of the residence of any defendant, have jurisdiction of all prosecutions for violations of the provisions of this chapter.

Sec. 89.081. CAUSE OF ACTION FOR DISPROPORTIONATE SHARE OF COST. If an operator or nonoperator owns only a partial interest in the well or oil and gas and the operator or nonoperator pays a larger proportion of the cost of plugging the well than his proportionate interest in the well or oil and gas, he has a cause of action against the other operators and nonoperators for their proportionate shares of the cost of plugging.

Sec. 89.083. CAUSE OF ACTION IF COMMISSION PLUGS. (a) If the commission plugs a well under [the provisions of] Sections 89.043 through 89.044 of this code, the state has a cause of action for all reasonable expenses incurred in plugging or replugging the well according to the rules of the commission in effect at the time the well is plugged or replugged.

(b) The cause of action is:

(1) first, against the operator, to be secured by a lien on his interest in the oil and gas in the land and his fixtures, machinery, and equipment found or used on the land where the well is located; and

(2) second, against the nonoperator at the time the well should have been plugged, to be secured by a lien on his interest in the oil and gas in the land;

and

(3) third, against the landowner, to be secured by a lien on his interest in the land.

(c) The commission shall seek reimbursement for all reasonable expenses incurred in plugging any well through an action instituted by the attorney general.

(d) Money collected in a suit under this section shall be deposited in the state well plugging fund.

(e) A civil action for reimbursement under this section may be brought in Travis County, the county in which the plugged well is located, or the county in which any defendant resides.

Sec. 89.121. ENFORCEMENT BY COMMISSION. (a) In addition to the powers specifically granted to the commission under [the provisions of] this chapter, the commission may enforce [the provisions of] this chapter or any rule or order of the commission adopted under [the provisions of] this chapter in the same manner and on the same conditions as provided in the other chapters of Title 3 of this code.

(b) Civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code shall be deposited in the state well plugging fund.

Sec. 91.143. FALSE APPLICATIONS, REPORTS, AND DOCUMENTS AND TAMPERING WITH GAUGES. (a) A person is guilty of a felony and on conviction shall be punished by imprisonment in the state penitentiary for not less than two years but not more than five years or by a fine of not more than $10,000 ($10,000) or by both if:

(1) he makes or subscribes any application, report, or other document required or permitted to be filed with the commission by the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, knowing that the application, report, or other document is false or untrue in a material fact;
(2) he aids or assists in, or procures, counsels, or advises the preparation or presentation of any of these applications, reports, or other documents that are fraudulent, false, or incorrect in any material matter;

(3) he knowingly simulates or falsely or fraudulently executes or signs such an application, report, or other document; or

(4) he knowingly procures these applications, reports, or other documents to be falsely or fraudulently executed, or advises, aids in, or connives at this execution; or

(5) he knowingly renders inaccurate any monitoring device required to be maintained by a commission rule, order, or permit.

(b) If other penalties prescribed in Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, overlap offenses that are also punishable under this section, the penalties prescribed in this section shall be in addition to other penalties.

(c) No application, report, or other document required or permitted to be filed with the commission under Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, may be required to be under oath, verification, acknowledgment, or affirmation.

SECTION 2. Subsection (b), Section 85.351, Natural Resources Code, is amended to read as follows:

(b) The suit shall be brought against the person violating or threatening to violate the law, rule, or order in a court of competent jurisdiction in Travis County in the county in which the violation occurred, or in the county of residence of the defendant. [If there is more than one defendant, the suit to attain the violation of the law, rule, or order or part of it may be brought in the county of residence of any of the defendants or in the county in which the violation is alleged to have occurred.]

SECTION 3. Subsections (a) and (c), Section 87.241, Natural Resources Code, are amended to read as follows:

(a) A person who violates a provision of this chapter is liable to a penalty of not more than $1,000 for each offense.

(c) The penalty may be recovered by the State of Texas, with costs of suit, in a civil action instituted by the attorney general in Travis County, or in the county in which the violation occurred, or in the county of residence of the defendant.

SECTION 4. Subsection (a), Section 89.002, Natural Resources Code, is amended to read as follows:

(a) In this chapter:

(1) “Well” means a hole drilled for the purpose of:

(A) producing oil or gas;

(B) injecting fluid or gas in the ground in connection with the exploration or production of oil or gas; or

(C) obtaining geological information by taking cores or through seismic operations.

(2) “Operator” means a person who is responsible for the physical operation and control of a well at the time the well is about to be abandoned or ceases operation.

(3) “Nonoperator” means a person who owns a working interest in a well at the time the well is about to be abandoned or ceases operation and is not an operator as defined in Subdivision (2) of this subsection.

(4) “Landowner” means the owner of the land on which the well is located at the time the well is abandoned and one who holds a mineral interest therein:
"Commission" means the Railroad Commission of Texas.

SECTION 5. Subchapter C, Chapter 89, Natural Resources Code, is amended to read as follows:

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION

Sec. 89.041. DETERMINING PROPER PLUGGING. If it comes to the attention of the commission that a well that has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well, the commission may determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011 or Section 89.012 of this code.

Sec. 89.042. COMMISSION ORDER TO PLUG. (a) If the commission finds that the well was not properly plugged, it shall order the operator to plug the well according to the rules of the commission in effect at the time the order is issued.

(b) If the operator cannot be found or is no longer in existence or has no assets with which to properly plug the well, the commission shall order the nonoperators to plug the well according to the rules of the commission in effect at the time the order is issued.

(c) If the nonoperators cannot be found or are no longer in existence or have no assets with which to properly plug the well, the commission shall order the landowners to properly plug the well according to the rules of the commission in effect at the time the order is issued.

Sec. 89.043. PLUGGING BY COMMISSION. (a) If the commission determines at a hearing under Section 89.041 of this code that a well has not been properly plugged or needs replugging, the commission, through its employees or through a person acting as agent for the commission, may plug or replug the well if:

(1) the well was properly plugged according to rules in effect at the time the well was abandoned or ceased to be operated;

(2) neither the operator nor the nonoperator, nor the landowner, properly plugged the well, and

(A) neither the operator nor the nonoperator, nor the landowner, can be found; or

(B) neither the operator nor the nonoperator, nor the landowner, has assets with which to properly plug the well.

(b) If a well is leaking salt water, oil, or gas or is likely to leak salt water, oil, or gas, and the leakage will cause or is likely to cause a serious threat of pollution or injury to the public health, the commission, through its employees or agents, may direct the operator to take remedial action or to plug the well or may plug or replug the well without holding a hearing under Section 89.041 of this code.

Sec. 89.044. RIGHT TO ENTER ON LAND. The commission or its employees or agents, the operator or the nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that the commission has determined, under the provisions of Section 89.041 of this code, has not been properly plugged.

Sec. 89.045. LIABILITY FOR DAMAGES. The commission and its employees and agents, the operator and the nonoperator, and the landowner are not liable for any damages that may occur as a result of acts done or omitted to be done by them or each of them in a good-faith effort to carry out the provisions of this chapter.

Sec. 89.046. PENALTIES AND OTHER RELIEF. The plugging or replugging of a well by the commission does not prevent the commission from seeking penalties or other relief provided by law from any person who is required
SECTION 6. Subchapter D, Chapter 91, Natural Resources Code, is amended to read as follows:

SUBCHAPTER D. PREVENTION OF POLLUTION

Sec. 91.101. RULES AND ORDERS. To prevent pollution of streams and public bodies of surface water in the state, and of strata capable of producing water suitable for domestic or livestock use, irrigation of crops, or industrial use, that would or might result from the escape or release of oil, salt water, or other mineralized water, or other oil and gas waste from any well or operations in connection with any well, the commission shall adopt and enforce rules and orders and may issue permits relating to:

1. the drilling of exploratory wells and oil and gas wells or any purpose in connection with them;
2. the production of oil and gas;
3. the operation, abandonment, and proper plugging of these wells; and
4. the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste.

Sec. 91.102. ADDITIONAL PERSONNEL. The commission is directed to employ additional personnel necessary to administer this subchapter and related laws and rules and orders adopted by the commission.

Sec. 91.103. PERSONS REQUIRED TO EXECUTE BOND. (a) Before approval of an application, the commission may require the following persons to execute and file with the commission a bond:

1. an applicant to drill a new well or redrill or deepen an old well;
2. an operator who has acquired a producing well and who is requesting authorization to connect a producing well or wells to a pipeline or other outlet; and
3. an operator filing a well potential form who has reworked and brought into production a previously nonproducing well, resulting in making an application for an allowable for production of oil and gas from the well.

(b) The commission may require the filing of a bond by any operator seeking an exception to the well plugging requirements established by law or rules and orders of the commission.

Sec. 91.104. AMOUNT OF BOND. The commission may require that the bond be in an amount equal to the cost of plugging each well or in a blanket amount designed to assure the proper plugging of all wells drilled, to be drilled, or to be operated in this state. [NO APPEAL FROM COMMISSION DECISION. The discretion of the commission in requiring a bond under this subchapter is final and may not be appealed:]

[Sec. 91.105. AMOUNT OF BOND. The bond shall be in the penal sum of $5,000 for each well to be drilled or operated or, in lieu of a separate bond for each well, a blanket bond in the penal sum of $10,000 to cover all wells drilled, to be drilled, and to be operated in the state.]}

Sec. 91.105 [91:106]. BOND CONDITIONS. Each bond shall be conditioned that the operator will plug and abandon the well in accordance with the law of the state and the rules and orders of the commission.

Sec. 91.106 [91:107]. EXECUTION OF BOND. Each bond shall be executed by a corporate surety authorized to do business in this state and shall be renewed and be continued in effect until the conditions have been met or release is authorized by the commission.

Sec. 91.107 [91:108]. NEW BOND. If a well covered by a bond is transferred, sold, or assigned by its operator, the commission may require the party acquiring
the well to execute a new bond, and the bond of the prior operator shall remain in effect until the new bond is provided or filing of the bond is waived.

Sec. 91.108. DEPOSIT OF FUNDS. Proceeds from bonds required pursuant to state well plugging requirements shall be deposited in the state well plugging fund.

SECTION 7. Title 3, Natural Resources Code, is amended by adding Sections 85.2021, 88.135, 91.1011, and 91.1012 to read as follows:

Sec. 85.2021. DRILLING PERMIT FEE. (a) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well the applicant shall submit to the commission a fee of $100.

(b) The drilling permit fee may not be refunded.

(c) Drilling permit fees collected under this section shall be deposited in the state well plugging fund.

Sec. 88.135. CIVIL PENALTIES AND INJUNCTIONS. In addition to the powers specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule, order, or permit of the commission adopted under this chapter in the same manner and subject to the same conditions as provided by Chapters 81 and 85 of this code, including recovering civil penalties and seeking injunctive relief as provided by those chapters.

Sec. 91.1011. OIL AND GAS WASTE. In this subchapter, "oil and gas waste" means waste that arises out of or incidental to the drilling for or producing of oil or gas, or waste arising out of or incidental to the underground storage of hydrocarbons other than the storage in artificial tanks or containers and includes salt water, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material.

Sec. 91.1012. ACCESS TO PROPERTY AND RECORDS. Members and employees of the commission, on proper identification, may enter public or private property to inspect and investigate conditions relating to the quality of water in the state, to inspect and investigate conditions relating to development of rules, orders, or permits issuable under Section 91.101 of this code, to monitor compliance with a rule, permit, or other order of the commission, or to examine and copy, during reasonable working hours, those records or memoranda of the business being investigated. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

SECTION 8. Chapter 89, Natural Resources Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. WELL PLUGGING FUND

Sec. 89.151. FUND CREATED; PURPOSE. The state well plugging fund is created in the state treasury and money in the fund shall be used by the commission or its employees or agents for the purpose of plugging abandoned wells and for administration and enforcement of laws or rules relating to the commission's authority to prevent pollution.

Sec. 89.152. COMPOSITION OF FUND. (a) The well plugging fund shall consist of:

(1) penalties imposed under Section 85.381 of this code for violation of a law, order, or rule relating to well plugging requirements;

(2) proceeds from bonds and other financial assurances relating to the proper plugging of wells in accordance with state law and commission rules and orders;

(3) private contributions made under Section 89.084 of this code;

(4) expenses collected under Section 89.083 of this code;

(5) drilling permit fees imposed under Section 85.202 of this code;

(6) civil penalties collected for violations of this chapter or of rules or orders relating to plugging that are adopted under this code; and
(7) interest earned on the funds deposited in the fund.

(b) The well plugging fund may also include legislative appropriations.

SECTION 9. Chapter 91, Natural Resources Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ENFORCEMENT

Sec. 91.351. CRIMINAL PENALTY. (a) A person who wilfully or with criminal negligence violates Section 91.101 of this code or a rule, order, or permit of the commission issued under that section commits an offense.

(b) An offense under Subsection (a) of this section is punishable by a fine of not more than $10,000 a day for each day a violation is committed.

(c) Venue for prosecution of an alleged violation of this section is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.

Sec. 91.352. ADDITIONAL ENFORCEMENT AUTHORITY. In addition to other authority specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule, order, or permit of the commission adopted under this chapter in the manner and subject to the conditions provided in Chapters 81 and 85 of this code, including the authority to seek and obtain civil penalties and injunctive relief as provided by those chapters.

SECTION 10. Chapter 141, Natural Resources Code, is amended by adding Section 141.013 to read as follows:

Sec. 141.013. ACCESS TO PROPERTY. Members and employees of the commission, on proper identification, may enter public or private property to inspect and investigate conditions relating to the exploration, development, and production of geothermal energy, to monitor compliance with a rule, permit, or other order of the commission, or to examine and copy, during reasonable working hours, those records or memoranda of the business being investigated. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

SECTION 11. Chapter 141, Natural Resources Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. ENFORCEMENT

Sec. 141.101. GENERAL ENFORCEMENT AUTHORITY. In addition to other authority specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule, order, or permit of the commission adopted under this chapter in the same manner and subject to the same conditions provided by Chapters 81 and 85 of this code, including the authority to seek and obtain civil penalties and injunctive relief under those chapters.

Sec. 141.102. CRIMINAL PENALTY. (a) A person who knowingly, wilfully, or with criminal negligence violates Subchapter B of this chapter or a rule, order, or permit of the commission issued under that subchapter commits an offense.

(b) An offense under Subsection (a) of this section is punishable by a fine of not more than $10,000 a day for each day a violation is committed.

(c) Venue for prosecution of an alleged violation of this section is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.

SECTION 12. Subchapter C, Chapter 29, Water Code, is amended to read as follows:

SUBCHAPTER C. COMMISSION AUTHORITY (RULES)

Sec. 29.031. RULEMAKING POWER. The railroad commission shall adopt rules to effectuate the provisions of this chapter.
Sec. 29.032. COPIES OF RULES. The railroad commission shall print the rules and provide copies to persons who apply for them.

Sec. 29.033. EFFECTIVE DATE OF RULES. No rule or amendment to a rule is effective until after the 30-day period immediately following the day on which a copy of the rule is filed with the Secretary of State.

Sec. 29.034. ACCESS TO PROPERTY. Members and employees of the railroad commission, on proper identification, may enter public or private property to inspect and investigate conditions relating to the hauling of salt water, to monitor compliance with a rule, permit, or other order of the railroad commission, or to examining and copy, during reasonable working hours, those records or memoranda of the business being investigated. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment’s safety, internal security, and fire protection rules.

SECTION 13. Chapter 29, Water Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. CIVIL ENFORCEMENT

Sec. 29.051. CIVIL PENALTIES. (a) A person who violates this chapter, a rule or order of the railroad commission adopted under this chapter, or a term, condition, or provision of a permit issued under this chapter, is subject to a civil penalty of not to exceed $10,000 for each offense. Each day a violation is committed is a separate offense.

(b) An action to recover the penalty under Subsection (a) of this section may be brought by the railroad commission in any court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.

Sec. 29.052. INJUNCTION. The railroad commission may enforce this chapter, a valid rule or order made under this chapter, or a term or condition of a permit issued by the railroad commission under this chapter by injunction or other appropriate remedy. The action may be brought in a court of competent jurisdiction in the county in which the offending activity has occurred, in which the defendant resides, or in Travis County.

Sec. 29.053. PROCEDURE. (a) At the request of the railroad commission, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief or other appropriate remedy or to recover a civil penalty as provided by Section 29.051 or 29.052 of this code or for both injunctive relief or other appropriate remedy and recovery of a civil penalty.

(b) A party to a suit may appeal from a final judgment as in other civil cases.

SECTION 14. Subsection (a), Section 27.051, Water Code, is amended to read as follows:

(a) The commission or railroad commission may grant an application in whole or part and may issue the permit if it finds:

(1) that the use or installation of the injection well is in the public interest;

(2) that the use or installation of the injection well will not endanger or injure any oil, gas, or other mineral formation [no existing rights, including, but not limited to, mineral rights, will be impaired];

(3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution; and

(4) that the applicant has made a satisfactory showing of financial responsibility if required by Section 27.073 of this code.

SECTION 15. Section 29.018, Water Code, is amended to read as follows:

Sec. 29.018. SUSPENSION; REFUSAL TO RENEW. The railroad commission may [shall] suspend or refuse to renew a permit for a period not to exceed one year if the permittee:
(1) violates the provisions of this chapter; 
(2) violates reasonable rules promulgated under Section 29.031 of this code; or 
(3) does not maintain his operation at the standards that entitled him to a permit under Section 29.013 of this code.

SECTION 16. Sections 89.013, 89.082, 91.060, and 91.208-91.210, Natural Resources Code, and Sections 29.016 and 29.017, Water Code, are repealed.

SECTION 17. For the fiscal biennium September 1, 1983, through August 31, 1985, there is appropriated to the Railroad Commission of Texas all receipts and balances accruing to the well plugging fund for the purposes for which the fund is created.

SECTION 18. This Act takes effect September 1, 1983, and applies only to offenses and violations committed on or after that date. Offenses or violations committed before the effective date of this Act are subject to prosecution under that law as it existed when the offense or violation occurred, and that law is continued in effect for that purpose. For the purpose of this Act, an offense or violation is committed before the effective date of this Act if any element of the offense or violation occurs before that effective date.

SECTION 19. 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.

CSHB 1970 was read second time.

Representative Geistweidt offered the following amendment to CSHB 1970:

Amend the committee substitute for HB 1970, on page 13, by striking lines 20 through 25 and substituting the following:

Sec. 89.151. FUND CREATED; PURPOSE. The state well plugging fund is created in the state treasury and money in the fund shall be used by the commission or its employees or agents for the purpose of plugging abandoned wells and for enforcement of laws or rules relating to the commission’s authority to prevent pollution. The commission shall submit a report biennially to the legislature relating to the categories and amounts of disbursement of money from the fund.

The amendment was adopted without objection.

Representative Geistweidt offered the following amendment to CSHB 1970:

Amend the Committee Substitute for HB 1970, by striking Section 14 and substituting the following:

SECTION 14. Section 27.051, Water Code, is amended to read as follows:

Sec. 27.051. ISSUANCE OF PERMIT. (a) The commission [or railroad commission] may grant an application in whole or part and may issue the permit if it finds:

(1) that the use or installation of the injection well is in the public interest;
(2) that no existing rights, including, but not limited to, mineral rights, will be impaired;
(3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution; and
(4) that the applicant has made a satisfactory showing of financial responsibility if required by Section 27.073 of this code.

(b) The railroad commission may grant an application in whole or part and may issue the permit if it finds:
In the permit, the commission or railroad commission shall impose terms and conditions reasonably necessary to protect fresh water from pollution, including the necessary casing.

The amendment was adopted without objection.

CSHB 1970, as amended, was passed to engrossment. (Craddick recorded voting no)

HB 279 ON SECOND READING

The speaker laid before the house on its second reading and passage to engrossment,

HB 279, A bill to be entitled An Act relating to duties and powers of the Texas Commission for the Deaf.

The bill was read second time.

Representative Tow offered the following committee amendment to the bill:

COMMITTEE AMENDMENT NO. 1

Amend Section 4 of HB 279 on page 6, lines 11-13, to read as follows:

(b) [69th] Unless the pilot programs are continued in existence by the 70th Legislature, the programs are abolished and this section expires effective September 1, 1987 [1985].

Committee Amendment No. 1 was adopted without objection.

HB 279, as amended, was passed to engrossment.

HB 1032 ON SECOND READING

The speaker laid before the house on its second reading and passage to engrossment, the complete committee substitute for HB 1032.

CSHB 1032

A BILL TO BE ENTITLED AN ACT

relating to regulation of the practice of dentistry, to fees established by the State Board of Dental Examiners, and to compensation for travel expenses incurred by members of that Board.

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

SECTION 1. Amend Article 4548e, Vernon's Texas Revised Civil Statutes, as amended, to read as follows:

Article 4548e. USE OF TRADE NAME. It shall be unlawful for any person or persons to practice dentistry in this State under the name of a corporation, company, association, or trade name unless included as a prominent portion of such name is the proper name used on the license, as issued by the State Board of Dental Examiners, of the owner dentist or owner dentists practicing under such corporate, company, association, or trade name. Provided, however, any corporate, company,
association, or trade name used by a group of dentists in a nonprint medium shall only be required to include prominently the name of one owner dentist practicing under such name. Each day of violation of this Article shall constitute a separate offense. Any person or persons practicing dentistry in this State under the name of a corporation, company, association, or trade name shall notify in writing the Texas State Board of Dental Examiners of the name of such entity.

SECTION 2. Amend Article 4548f, Vernon's Texas Revised Civil Statutes, as amended, by adding a new Section 3 to read as follows:

Section 3. REFERRAL SERVICES. It shall be unlawful for any person, firm, or corporation to use the term "referral service" or words of similar import in advertising arising out of or in connection with the practice of dentistry unless:

(a) the referral service is offered primarily for the benefit of the public; and

(b) the referral service is provided by a governmental entity or an organization exempt from federal taxation pursuant to Section 501 of the United States Internal Revenue Code; and

(c) any dentist licensed by this state is eligible to participate in said referral service and receive the referral of patients provided the dentist complies with reasonable requirements for participation.

SECTION 3. Amend Chapter Nine, Vernon's Texas Revised Civil Statutes, as amended, by adding a new Article 4548j to read as follows:

Article 4548j. SOLICITATION PROHIBITED. No dentist shall pay or promise to pay, or reward or promise to reward any person, firm, association of persons, partnership or corporation for soliciting patients. No dentist shall accept or agree to accept any payment, fee, or award, or anything of value for soliciting patients for any dentist. Nothing in this Article shall be construed to prohibit the provision of factually accurate information regarding dental service, rates, location, and hours of service to prospective patients.

Notwithstanding the provisions of this Act, it shall not be unlawful for a dentist or any other person to participate in or operate a group dental advertising service whereby patients responding to said advertising are referred to a participating dentist provided:

(1) The patient referrals result from patient initiated responses to service advertising; and

(2) The advertising service engages in lawful advertising as provided in Chapter Nine, Vernon's Texas Civil Statutes, as amended, or any other applicable law, and

(3) The advertising service does not employ or use solicitors. For the purpose of this Article, a solicitor is any person paid by a dentist, or any other person, for the primary purpose of initiating individual contact, either in person or by telephone, with prospective patients and attempting thereby to secure the patronage of those persons for that dentist; and

(4) The advertising service does not impose a fee on the participating dentists dependent upon the number of referrals or amount of professional fees paid by the patient to the dentist; and

(5) Participating dentists charge no more than their usual and customary fees to any referred patient; and

(6) If the group dental advertising service is paid for, or participation in the group is limited, the advertising discloses same on its face.

SECTION 4. Amend Article 4551, Vernon's Texas Revised Civil Statutes, as amended, to read as follows:

(a) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member is also entitled to [may not receive any] compensation for travel expenses, including actual expenses for meals, [and] lodging, and [other-than]
transportation expenses other than mileage for use of the member's personal car. A member is entitled to compensation for mileage when the member's personal car is used (transportation expenses) as prescribed by the General Appropriations Act.

(b) The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

1. dental examination fee: $150;
2. dental hygiene examination fee: $75;
3. annual renewal fees:
   - dentists: $75;
   - dental hygienists: $50;
   - dental labs: $100;
4. reciprocal registration fee: $150;
5. duplicate license fee: $15;
6. duplicate registration certificates: $15.

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

SECTION 5. Article 4551b, Vernon's Texas Civil Statutes, as amended, is amended to read as follows:

EXCEPTIONS. The definition of dentistry as contained in Chapter 9, of Title 71, of the Revised Civil Statutes of Texas as amended, shall not apply to: (1) members of the faculty of a reputable dental college or school where such faculty members perform their services for the sole benefit of such school or college; or to (2) students of a reputable dental college who perform their operations without pay except for actual cost of materials, in the presence of and under the direct personal supervision of a demonstrator or teacher who is a member of the faculty of a reputable dental college; or to (3) persons doing laboratory work on inert matter only, and who do not solicit or obtain work, by any means, from a person or persons not a licensed dentist actually engaged in the practice of dentistry and who do not act as the agents or solicitors of, or have any interest whatsoever in, any dental office, practice or the receipts therefrom; or to (4) physicians and surgeons legally authorized to practice medicine as defined by the law of this State; or to (5) dental hygienists legally authorized to practice dental hygiene in this State and who practice dental hygiene in strict conformity with the laws of Texas regulating the practice of dental hygiene; or to (6) those persons who as members of an established church practice healing by prayer only; or to (7) employees of a dentist who make X-rays in the dental office and under the supervision of such dentist or dentists legally engaged in the practice of dentistry in this State; or to (8) Dental Health Service Corporations legally chartered under Subsection (1) of Article 2.01, of the Texas Nonprofit Corporation Act; or to (9) dental interns[;] and dental residents[;] and dental assistants as defined and regulated by the Texas State Board of Dental Examiners in its rules and regulations[;] or to (10) students of a reputable dental hygiene school who practice dental hygiene without pay in strict conformity with the laws of Texas regulating the practice of dental hygiene; or to (11) dental assistants who perform the duties permitted by Article 4551c-1 in strict conformity with the laws of this State. Nothing in this Act applies to one legally engaged in the practice of dentistry in this State at the time of passage of this law, except as hereinbefore provided.

SECTION 6. The effective date of this legislation shall be September 1, 1983.

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.

CSHB 1032 was read second time and was passed to engrossment.
HB 1133 ON SECOND READING

The speaker laid before the house on its second reading and passage to engrossment,

HB 1133, A bill to be entitled An Act relating to the repeal of the state law requiring that certain businesses maintain and make public certain personal information about their customers.

The bill was read second time and was passed to engrossment.

SB 435 ON SECOND READING
(DeLay - House Sponsor)

The speaker laid before the house on its second reading and passage to third reading, the complete committee substitute for SB 435.

CSSB 435

A BILL TO BE ENTITLED
AN ACT
revising the Texas Mental Health Code; providing penalties.

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

SECTION 1. The Texas Mental Health Code is revised to read as follows:

"CHAPTER 1. GENERAL PROVISIONS

"Section 1. Short Title. This Act shall be known and may be cited as the Texas Mental Health Code.

"Section 2. Purpose. It is the purpose of this code to provide access to humane care and treatment for all persons who suffer from severe mental illness by:

"(1) facilitating treatment in an appropriate setting;
"(2) enabling them to obtain needed evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to themselves and their families;
"(3) eliminating, if so requested, the traumatic effect on the patient’s mental health of public trial and criminal-like procedures;
"(4) protecting each person’s right to a judicial determination of their need for involuntary treatment;
"(5) defining the criteria which must be met for the state to order care and treatment on an involuntary basis;
"(6) establishing procedures by which facts may be obtained, examinations carried out, and decisions made promptly and fairly;
"(7) safeguarding the legal rights of patients in such a manner as to advance and not impede the therapeutic and protective purposes of involuntary mental health care; and
"(8) safeguarding the rights of those who voluntarily seek in-patient care.

"Section 3. Applicability of Standard Rules of Construction and Definitions. Unless specifically supplanted by this code or unless the context otherwise requires, the provisions of Articles 10, 11, 12, 14, 22, and 23, Revised Statutes, and Chapter 359, Acts of the 50th Legislature, 1947 (Article 23a, Vernon’s Texas Civil Statutes), apply to this code.

"Section 4. Definitions. As used in this code, unless the context otherwise requires:

"(1) ‘Department’ means the Texas Department of Mental Health and Mental Retardation.
"(2) ‘Person’ includes an individual, firm, partnership, joint-stock company, joint venture, association, and corporation.
“(3) ‘Political subdivision’ includes a county, city, town, village, or hospital district in this state but does not include the department or any other department, board, or agency of the state having statewide authority and responsibility.

“(4) ‘Physician’ means a person licensed to practice medicine in the State of Texas or a person employed by any agency of the United States having a license to practice medicine in any state of the United States.

“(5) ‘Non-physician mental health professional’ means a psychologist licensed to practice in Texas and also designated as a health-service provider, a registered nurse with a master’s or doctoral degree in psychiatric nursing, or a certified social worker with a master’s or doctoral degree and advanced clinical practitioner recognition.

“(6) ‘Head of hospital’ means the individual in charge of a hospital.

“(7) ‘General hospital’ means a hospital operated primarily for the diagnosis, care, and treatment of the physically ill.

“(8) ‘Mental illness’ means an illness, disease, or condition which either:

“(A) substantially impairs the person’s thought, perception of reality, emotional process, or judgment; or

“(B) grossly impairs behavior as manifested by recent disturbed behavior.

“(9) ‘Mentally ill person’ means a person who is mentally ill. For purposes of this code the term ‘mentally ill person’ includes a person who is suffering from the mental conditions referred to in Article 1, Section 15-a, of the Constitution of the State of Texas.

“(10) ‘Mental hospital’ means a hospital operated for the primary purpose of providing in-patient care and treatment for the mentally ill. A hospital operated by an agency of the United States and equipped to provide in-patient care and treatment for the mentally ill shall be considered a mental hospital.

“(11) ‘State mental hospital’ means a mental hospital operated by the department.

“(12) ‘Private mental hospital’ means a mental hospital operated by any person or political subdivision.

“(13) ‘Mental health facility’ means an in-patient or out-patient mental health facility operated by the department, by any person or political subdivision, or by an agency of the United States; a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon’s Texas Civil Statutes), which provides mental health services; and that identifiable part of a general hospital that provides diagnosis, treatment, and care for mentally ill persons.

“(14) ‘Head of a facility’ means the individual in charge of a mental health facility.

“(15) ‘Patient’ means any person who is receiving voluntary or involuntary mental health services pursuant to this code.

“(16) ‘Least restrictive appropriate setting for treatment’ means that available treatment setting which provides the patient with the highest likelihood of improvement or cure and which is no more restrictive of the patient’s physical or social liberties than is necessary for the most effective treatment of the patient and for adequate protection against any dangers which the patient poses to himself or others.

“(17) ‘Commitment order’ means a court order for involuntary in-patient treatment pursuant to this code.

Section 5. Admission Not Affected by Certain Conditions. ‘Mental illness’ as used in this code does not include epilepsy, senility, alcoholism, or mental deficiency. However, no person who is mentally ill shall be barred from admission or commitment to a mental health facility because he is also suffering from epilepsy, senility, alcoholism, or mental deficiency.
"Section 6. Notice. Except as specifically provided herein, notice required by this code may be given in any manner reasonably calculated to give actual knowledge to the person to be notified.

"Section 7. Section Headings. Section headings are not a part of this code. The section headings are mere catchwords designed to give some indication of the contents of the sections to which they are attached.

"Section 8. Additional Powers of the Department. In addition to the specific authority granted by other provisions of law, the department is authorized to prescribe the form of applications, certificates, records, and reports provided for under this code and the information required to be contained therein; to require reports from the head of any mental health facility relating to the admission, examination, diagnosis, release, or discharge of any patient; to visit each facility regularly to review the commitment procedures of all new patients admitted between visits; to investigate by personal visit complaints made by any patient or by any person on behalf of a patient; and to adopt such rules and regulations not inconsistent with the provisions of this code as may be necessary for proper and efficient treatment of the mentally ill.

"Section 9. Delegation of Powers and Duties. (a) Unless otherwise expressly provided in this code, a power granted to or a duty imposed upon the department may be exercised or performed by an authorized, qualified employee, but the delegation of a duty does not relieve the department from its responsibility.

"(b) Unless otherwise expressly provided in this code, a power granted to or a duty imposed upon the head of a facility may be exercised or performed by an authorized, qualified designee, but the delegation of a duty does not relieve the head of a facility from his responsibility.

"Section 10. County Court, Probate Court: Open at all Times. The term 'county court' is used in this code to mean the 'probate court' or the court having probate jurisdiction, and the term 'county judge' means the judge of such court. The county court shall be open at all times for proceedings under this code.

"Section 11. Papers to be Filed with Clerk. All applications, petitions, certificates, and all other papers permitted or required to be filed in the county court by this code shall be filed with the county clerk of the proper county who shall file the same and endorse on each paper the date filed and the docket number and his official signature.

"Section 12. Inspection of Records in Mentally Ill Dockets of County Clerks. Each and every statement of facts, together with each and every other writing which discloses intimate details of the personal and private life of the accused or the patient or which discloses intimate details of the personal life of any and all members of the family of the accused or the patient, in a mentally ill docket in the office of the county clerk are hereby declared to be public records of a private nature which may be used, inspected, or copied only by a written order of the county judge, a probate judge, a court of domestic relations judge, or a district judge of the county in which the docket is located, and no such order shall issue until the issuing judge has determined informally to his satisfaction that said use, inspection, or copying is justified and in the public interest.

"Section 13. County Attorney to Represent State. The county attorney or the district attorney in counties having no county attorney shall represent the state in hearings on court-ordered mental health services pursuant to this code.

"Section 14. Costs. (a) The county which entered an Order for Temporary Mental Health Services shall pay the costs of any proceedings for Court-Ordered Mental Health Services, including attorney fees and physician examination fees, compensation for language interpreters, sign interpreters, and masters appointed by the court pursuant to Section 15 of this code, and expenses of transportation to a state mental health facility or to an agency of the United
States. If a patient under an Order for Temporary Mental Health Services requires extended treatment, the court which entered the temporary order shall arrange with the appropriate court of the county in which the patient is being treated for a hearing on Court-Ordered Extended Mental Health Services to be held before the date of expiration of the Order for Temporary Mental Health Services, or the county of the court which entered the original Order for Temporary Mental Health Services shall pay the expenses of transportation of the patient back to that county for such hearing.

"(b) For the amounts of these costs actually paid, the county is entitled to reimbursement by the patient or any person or estate liable for his support in a state mental health facility.

"(c) The county which accepts an Application for Court-Ordered Mental Health Services and issues an Order for Protective Custody shall pay the costs of a probable cause hearing pursuant to that order and any attendant expenses including transportation of the patient for such hearing.

"(d) Unless the patient or someone responsible for him is able to do so, the state shall pay the cost of transportation home of a discharged or furloughed patient and the return of a patient absent without authority.

"(e) Neither the county nor the state shall pay any costs for a patient committed to a private hospital.

Section 15. Compensation for Court-Appointed Personnel. The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and masters appointed under this code. The compensation paid shall be taxed as costs in the case.

Section 16. Return of Committed Patient to State of Residence. (a) The department may return a nonresident patient committed to a mental health facility operated by the department in this state to the proper agency of the state of his residence.

"(b) The department may permit the return of any resident of this state who is committed to a mental health facility operated by the department in another state.

"(c) The head of a mental health facility operated by the department may detain a patient returned to this state from the state of his commitment for a period not to exceed 96 hours pending order of the court in commitment proceedings in this state.

"(d) All expenses incurred in returning committed patients to other states shall be paid by this state. The expense of returning residents of this state shall be borne by the states making the return.

Section 17. Reciprocal Agreements. The department is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the states of their residence of patients committed to mental health facilities in this or other states.

Section 18. Liability. All persons acting in good faith, reasonably, and without negligence in connection with examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this code shall be free from all liability, civil or criminal, by reason of such action. Provided, however, that physicians performing medical examinations and providing information to courts in any court proceeding held pursuant to the code shall be considered an officer of the court and shall not be held liable for such examination or testimony when acting without malice.

Section 19. Penalties for Unwarranted Commitment. Any person who willfully causes or conspires with or assists another to cause the unwarranted commitment of any individual to a mental health facility is guilty of a misdemeanor
and upon conviction shall be punished by a fine not exceeding $5,000 or by imprisonment in the county jail not exceeding two years or by both.

"Section 20. Penalties for Violation of this Code. Any person who knowingly violates any provision of this code is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $5,000 or by imprisonment in the county jail not exceeding one year or by both.

"Section 21. Enforcement Officers. The attorney general and the district attorneys and county attorneys, within their respective jurisdictions, shall prosecute violations of this code.

"CHAPTER 2. VOLUNTARY IN-PATIENT MENTAL HEALTH SERVICES

"Section 22. Voluntary Admission. (a) The head of a facility or his authorized, qualified designee may admit to in-patient mental health services on a voluntary basis any person for whom a proper request for admission is filed, if he determines upon the basis of a preliminary examination that the person has symptoms of mental illness and will benefit from the services. Further, the head of the facility must determine that the person has been informed about the rights of voluntary patients, as provided in Section 25 of this code, and that the person, or the parent, managing conservator, or guardian, if the person is under the age of 16, as provided in Section 23 of the code, voluntarily agrees to admission.

(b) A minor 16 years of age or older may be admitted to voluntary in-patient mental health services without the consent of the parent, managing conservator, or guardian.

"Section 23. Request for Voluntary Admission for In-Patient Care. (a) Request for Voluntary Admission of a person to a facility as a voluntary patient shall be in writing and filed with the head of the mental health facility to which admission is sought and:

(1) shall be signed by the person, if the person is 16 years of age or older; or

(2) shall, if the person is under the age of 16 years be signed by the parent, or by the managing conservator if one has been appointed, or by the guardian if one has been appointed; and

(3) shall state that the person will submit himself to the custody of the in-patient mental health facility for diagnosis, observation, care, and treatment until he is discharged or until the expiration of 96 hours after written request for his release is filed with the head of the mental health facility.

(b) A person or agency appointed as a guardian or managing conservator, in its capacity as an employee or agent of the State of Texas or a political subdivision thereof may request voluntary admission of a minor under the age of 16 years only with that minor’s consent.

(c) If sufficient time is available prior to a person’s release from voluntary in-patient mental health services, a plan for continuing care shall be developed in the same manner as provided in Section 67 of this code for involuntary patients.

"Section 24. Application for Court-Ordered Mental Health Services During Voluntary In-Patient Care. No Application for Court-Ordered Mental Health Services may be filed for the commitment of a voluntary patient unless a request for his release has been filed with the head of the facility or unless in the opinion of the head of the facility he meets the criteria for court-ordered mental health services and:

(1) he is absent without authorization; or

(2) he refuses or is unable to consent to appropriate and necessary psychiatric treatment.

"Section 25. Rights of Voluntary Patients Admitted for In-Patient Care. Every voluntary patient in a mental health facility has the following rights:
(1) the right to leave the mental health facility within 96 hours, after filing with the head of the mental health facility or his designee a written request for release, signed by the patient or someone on his behalf and with his consent, unless prior to the expiration of the 96-hour period:

(A) written withdrawal of the request for release is filed; or

(B) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with the provisions of this code;

(2) the right of habeas corpus, which is not affected by admission to a mental health facility as a voluntary patient;

(3) the right to retain civil rights and legal capacity, which are not affected by admission to a mental health facility as a voluntary patient;

(4) the right to periodic review of his need for continued in-patient treatment;

(5) the right not to have an application for court-ordered mental health services filed while he is a voluntary patient unless in the opinion of the head of the facility he meets the criteria for court-ordered services and he is either absent without authorization or he refuses or is unable to consent to appropriate and necessary psychiatric treatment;

(6) the rights of patients set forth in Sections 80 and 81 of this code; and

(7) the right, within 24 hours of admission, to be informed verbally and in writing, in the person's primary language, in simple, nontechnical terms, of these above-listed rights. The same explanation shall be given to the parent, guardian, or managing conservator of a minor.

CHAPTER 3. INVOLUNTARY MENTAL HEALTH SERVICES

Subchapter A. Emergency Detention

Section 26. Apprehension by Peace Officer without Warrant. (a) Any peace officer, who has reason to believe and does believe upon the representation of a credible person, or upon the basis of the conduct of a person, or the circumstances under which the person is found, that the person is mentally ill and because of such mental illness represents a substantial risk of serious harm to himself or others unless immediately restrained, and who believes there is not sufficient time to obtain a warrant, may, without first obtaining a warrant, take such person into custody and immediately transport the person to the nearest appropriate in-patient mental health facility or other suitable detention facility and shall immediately file application with the facility for the person's detention. In no case shall a jail or similar detention facility be deemed suitable except in an extreme emergency. Persons detained in a jail or other nonmedical facility shall be kept separate from those persons charged with or convicted of a crime.

(b) Such application shall contain the following information:

(1) that the officer has reason to believe and does believe that the person evidences mental illness;

(2) that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

(3) that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(4) that the officer's beliefs are based on specific recent behavior, overt acts, attempts, or threats, observed by or reliably reported to the officer, which behavior, acts, attempts, or threats shall be described in specific detail; and

(5) the names and relationship to the person, if any, of persons reporting or observing such recent behavior, acts, attempts, or threats.

(c) Upon presentation of the application, the facility shall temporarily accept the person for the purpose of conducting a preliminary examination by a physician.
The preliminary examination shall be conducted as soon as possible within 24 hours of the time of apprehension. Upon completion of the preliminary examination, the person shall be released unless the examining physician provides the written statement required in Section 27 of this code.

"(d) The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

"(e) If the person is not admitted after the preliminary examination, arrangements shall be made for the immediate return of the person to the location of his apprehension or to his place of residence in the state or other suitable place, unless the person is arrested or objects to the return. The cost of his return shall be paid by the county in which the person was apprehended.

"(f) Such persons so apprehended may be detained in custody for a period which shall not exceed 24 hours from the time the person is presented to the facility, unless a written order for further detention is obtained; provided, however, that should the person be taken into custody after 12 noon on Friday or on a Saturday or Sunday or a legal holiday, then the 24-hour period allowed for obtaining the order permitting further detention shall begin at 9 a.m. on the first succeeding business day.

"Section 27. Emergency Admission and Detention. (a) No person shall be admitted to any facility for emergency detention unless such admission is supported by a written statement of an examining physician acceptable to the facility that after a preliminary examination it is his opinion that:

"(1) the person is mentally ill, the nature of which disorder shall be described;

"(2) the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

"(3) the described risk of harm is imminent unless the person is immediately restrained; and

"(4) emergency detention is the least restrictive means by which necessary restraint may be effected.

"(b) The statement shall contain specific detailed information on which the physician’s opinion stated in Subdivisions (1), (2), (3), and (4) of Subsection (a) of this section are based.

"Section 28. Magistrate’s Order for Emergency Apprehension and Detention. (a) Any adult person may execute an application for emergency apprehension of another. The application shall be in writing and shall state:

"(1) that the applicant has reason to believe and does believe that the person evidences mental illness;

"(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

"(3) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

"(4) that the applicant’s beliefs are based on specific recent behavior, overt acts, attempts, or threats, which behavior, acts, attempts, or threats shall be described in specific detail; and

"(5) the relationship, if any, of the applicant to the person sought to be detained.

"(b) The application may be accompanied by any relevant information.

"(c) The application shall be presented personally to any magistrate, who shall examine it and may interview the applicant.
"(d) The magistrate shall deny the application unless he finds there is reasonable cause to believe:

(1) that the person evidences mental illness;

(2) that the person evidences a substantial risk of serious harm to himself or others;

(3) that the risk of harm is imminent unless the person is immediately restrained; and

(4) that necessary restraint cannot be accomplished without emergency detention.

(e) If the magistrate finds that the person meets all four criteria for emergency detention in Subsection (a) of Section 27 of this code, he shall issue a warrant for the immediate apprehension and transportation of the person to the nearest appropriate in-patient mental health facility for a preliminary examination in accordance with the provisions of Subsection (c) of Section 26 of this code. For purposes of this section, the warrant shall serve as the application required in Subsection (b) of Section 26 of this code. Copies of the application for warrant and the warrant itself shall be immediately transmitted to the facility.

(f) Upon completion of the preliminary examination, the person shall be released unless the examining physician provides the written statement required in Section 27 of this code. A person not admitted following the preliminary examination shall be entitled to reasonably prompt return to the location of his apprehension or his place of residence in the state or other suitable place, unless the person is arrested or objects to the return. The cost of his return shall be paid by the county in which the person was apprehended.

(g) Such persons so apprehended may be detained in custody for a period which shall not exceed 24 hours from the time the person is presented to the facility, unless a written order for further detention is obtained; provided, however, that should the person be taken into custody after 12 noon on Friday or on a Saturday or Sunday or a legal holiday, then the 24-hour period allowed for obtaining an order permitting further detention shall begin at 9 a.m. on the first succeeding business day.

"Section 29. Release from Emergency Detention. If during the emergency detention period it is determined by the head of the facility that the conditions set out in Subdivisions (1), (2), (3), or (4) of Subsection (a) of Section 27 of this code no longer apply, the person shall be released. Arrangements shall be made for his return to the location of his apprehension or his place of residence in the state or other suitable place, unless the person is arrested or objects to the return. The cost of his return shall be paid by the county in which the person was apprehended.

"Section 30. Rights of Persons Apprehended for Emergency Detention. (a) Each person apprehended or detained under this subchapter of the code shall have the following rights:

(1) the right to be advised of the location of detention, the reasons for his detention, and the fact that his detention could result in a longer period of involuntary commitment;

(2) the right to contact an attorney of his own choosing, with a reasonable opportunity to contact that attorney;

(3) the right to be transported back to the location of apprehension or to his place of residence in the state or other suitable place if not admitted for emergency detention, unless he is arrested or objects to the return;

(4) the right to be released if the head of the facility determines that the four criteria for emergency detention set out in Subsection (a) of Section 27 of this code no longer apply; and

(5) the right to be advised that communications to a mental health professional may be used in proceedings for further detention.
“(b) Each person apprehended or detained under this code shall be advised within 24 hours of admission, orally and in writing, in simple, nontechnical language of the rights provided in this section.

“Subchapter B. Prerequisites to Court-Ordered Mental Health Services

“Section 31. Court-Ordered Mental Health Services. (a) Pursuant to the provisions of this code and upon a proper application, a judge may enter an Order for Temporary Mental Health Services or an Order for Extended Mental Health Services.

“(b) An Order for Temporary Mental Health Services authorizes treatment for a period of time not to exceed 90 days, but the order may not specify any shorter period of time. The Order for Temporary Mental Health Services may be entered only upon compliance with the provisions of Section 50 of this code.

“(c) An Order for Extended Mental Health Services authorizes treatment for a period of time not to exceed 12 months and may be entered only if the person has, for at least 60 consecutive days within the immediately preceding 12 months, received mental health services under a court order pursuant to this code or pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended. The Order for Extended Mental Health Services may be entered only upon compliance with the provisions of Section 51 of this code.

“Section 32. Application for Court-Ordered Mental Health Services. (a) A sworn Application for Court-Ordered Mental Health Services may be filed by any adult person, or the county or district attorney, with the county clerk in the county in which the person resides or in which the person is found or in which the person is receiving mental health services by court order. However, upon request of the person or his attorney, the court may in its discretion for good cause shown transfer the application to the county of the person’s residence, if not initially filed there.

“(b) The application shall state whether Court-Ordered Temporary Mental Health Services or Court-Ordered Extended Mental Health Services are being sought.

“(c) The application shall be in writing and shall state the following upon information and belief of the applicant:

“(1) the name and address of the proposed patient, including the county of his residence in this state;

“(2) that the person is mentally ill and meets the criteria in either Section 50 or 51 of this code for court-ordered mental health services; and

“(3) that the person is not charged with a criminal offense.

“(d) If the application is for Court-Ordered Extended Mental Health Services, the application shall further state that the person has, for at least 60 consecutive days, within the immediately preceding 12 months, received mental health services under a court order pursuant to this code or pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended.

“(e) An order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on court-ordered commitment pursuant to Section 7, Article 46.02, Code of Criminal Procedure, 1965, as amended, shall state that all such charges have been dismissed, and the order shall serve as the Application for Court-Ordered Mental Health Services under the terms of this section.

“(f) The application shall be styled using the person’s initials and not his full name.

“Section 33. Certificate of Medical Examination for Mental Illness. (a) A sworn Certificate of Medical Examination for Mental Illness shall be dated and signed by the examining physician and shall state:
"(1) the name and address of the examining physician;
"(2) the name and address of the person examined;
"(3) the date and place of the examination;
"(4) a brief diagnosis of the physical and mental condition of the person examined;
"(5) the period of time, if any, that the person examined has been under the care of the examining physician;
"(6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and
"(7) the opinion of the examining physician and the detailed basis for that opinion that:
"(A) the person examined is mentally ill; and
"(B) as a result of that illness the person:
"(i) is likely to cause serious harm to himself;
"(ii) is likely to cause serious harm to others; or
"(iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed decision as to whether or not to submit to treatment.
"(b) If the certificate is to be offered in support of an Application for Court-Ordered Extended Mental Health Services, the certificate shall include in addition to the requirements of Subsection (a) of this section the opinion of the examining physician and the detailed basis for that opinion that the condition of the person is expected to continue for more than 90 days.
"(c) If the certificate is to be offered in support of a Motion for an Order of Protective Custody, the certificate shall include in addition to the requirements of Subsection (a) of this section the opinion of the examining physician and the detailed basis for that opinion that the person presents a substantial risk of serious harm to himself or others if not immediately restrained.

"Section 34. Recommendation for Treatment. (a) The Commissioner of Mental Health and Mental Retardation shall designate a facility or provider in the county in which an Application for Court-Ordered Mental Health Services is filed to file with the court a recommendation for the most appropriate treatment alternative for the proposed patient. The commissioner may designate a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 554-2, Vernon’s Texas Civil Statutes), or any other appropriate facility or provider in the county to make the recommendation.
"(b) The court shall direct the designated facility or provider to file its recommendation with the court before the date set for the hearing.
"(c) Except in an emergency as determined by the court, a hearing on an application may not be held before the recommendation required by this section is filed.
"(d) This section does not relieve a county of any of its responsibilities under other provisions of this code for the diagnosis, cure, or treatment of the mentally ill.
"(e) The extent to which a designated facility must comply with the provisions of this section shall be based on the commissioner’s determination that the facility has sufficient resources to perform the necessary services.
"(f) This section does not apply to a person for whom treatment in a private mental health facility is proposed.

"Subchapter C. Prehearing Liberty or Protective Custody

"Section 35. Liberty Pending Hearing. Pending the hearing on an Application for Court-Ordered Mental Health Services, the person shall remain at liberty, unless he is legally detained under an appropriate provision of this code.
"Section 36. Protective Custody. (a) A Motion for an Order of Protective Custody may be filed only in the court in which an Application for Court-Ordered Mental Health Services is pending. The motion may be filed by the county or district attorney or on the court's own motion. The motion shall state that the judge or the county or district attorney has reason to believe and does believe upon the representations of a credible person, or upon the basis of the conduct of the person, or the circumstances under which the person is found that the person meets the criteria set forth in Subsection (b) of this section. The motion shall be accompanied by a Certificate of Medical Examination for Mental Illness by a physician who has examined the person within five days of the filing of the motion.

"(b) The judge may issue an Order of Protective Custody if the judge determines:

"(1) that a physician has stated his opinion and the detailed basis for his opinion that the person is mentally ill; and

"(2) the person presents a substantial risk of serious harm to himself or others if not immediately restrained pending the hearing.

"This determination may be made on the basis of the application and the certificate. If the judge concludes that a fair determination of the matter cannot be made on this information, the judge may take further evidence. If the determination is made on the basis of the application and the certificate, the judge must determine that the conclusions of the applicant and the certifying physician are adequately supported by the information presented.

"(c) The Order of Protective Custody shall direct a peace officer or other designated person to take the person into protective custody and immediately transport him to a designated in-patient mental health facility or other suitable place and detain him pending a probable cause hearing. The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

"Section 37. Appointment of Attorney; Notice of Probable Cause Hearing. (a) When an Order for Protective Custody is signed, the presiding judge shall simultaneously appoint an attorney, if there is no attorney representing the proposed patient.

"(b) The proposed patient and his attorney shall be served within a reasonable period of time prior to the time of the probable cause hearing with written notice that the patient has been placed under an order of protective custody, the reasons why such order was issued, and the time and place of a hearing to establish probable cause to believe that the patient is mentally ill and presents a substantial risk of serious harm to himself or others such that he cannot be at liberty pending the hearing on court-ordered mental health services. Such notice shall be provided by the court ordering protective custody.

"Section 38. Probable Cause Hearing on Protective Custody. (a) A probable cause hearing shall be held within 72 hours of the time detention begins pursuant to the order for protective custody; provided, however, that if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the probable cause hearing shall be held on the first succeeding business day. The hearing shall be before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. The master shall receive reasonable compensation. At the hearing, the patient and his attorney shall have an opportunity to appear and present evidence to challenge the allegation that the patient presents a substantial risk of serious harm to himself or others. The magistrate or master may consider evidence including letters, affidavits, and other material that may not be admissible
or sufficient in a subsequent commitment hearing. The state may prove its case on
the physician's certificate filed in support of the initial detention.

"(b) If after the hearing the magistrate or master determines that no probable
cause exists to believe that the proposed patient presents a substantial risk of serious
harm to himself or others, he shall order the patient's release. Arrangements shall
be made for the return of the patient to the location of his apprehension or to his
place of residence within the state or some other suitable place. If after the hearing
the magistrate or master determines that an adequate factual basis exists for
probable cause to believe that the proposed patient presents a substantial risk of
serious harm to himself or others such that he cannot be at liberty pending the
commitment hearing, the patient's detention in protective custody shall continue
subject to the provisions of Section 39 of this code. If the protective custody is to
continue, the magistrate or master shall arrange for the patient to be returned to the
mental health facility or other suitable place along with copies of the certificate,
affidavits, and other material submitted as evidence and a Notification of Probable
Cause Hearing which shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the ___ day of ___, 19__, the undersigned hearing
officer heard evidence concerning the need for protective custody of

(proposed patient) ___________. The proposed patient

(name of proposed patient) ____________________________ was given the opportunity to challenge the
allegations that (s)he presents a substantial risk of serious harm to self or others.

(proposed patient) ____________________________ and his attorney ____________________________ have
been given written notice that ____________________________ was placed under an
order of protective custody and the reasons for such order on

(date of notice)

I have examined the certificate of medical examination for mental illness and

(other evidence considered) Based upon this evidence, I find that there is
probable cause to believe that ____________________________ presents a substantial risk of
serious harm to himself (yes _ or no _) or others (yes _ or no _) such that
(s)he cannot be at liberty pending final hearing because ____________________________

(reasons for finding; type of risk found)

A copy of the Notification of Probable Cause Hearing and the supporting evidence
shall also be filed with the county court which entered the original Order of
Protective Custody.

"Section 39. Detention in Protective Custody; Release From
Custody. (a) The head of a facility in which a person is detained pursuant to an
Order for Protective Custody or his designee shall detain the person pending an
Order for Court-Ordered Mental Health Services issued pursuant to Section 50 or
51 of this code, except as provided in this section.

(b) The person detained in protective custody shall be detained in an
appropriate in-patient mental health facility or other facility deemed suitable by
the county health officer. No person may be detained in protective custody in a
nonmedical facility used for the detention of persons charged with or convicted of
a crime except because of and during an extreme emergency and in no case for a
period of more than 72 hours; provided, however, that if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the person may be detained in such a facility until the first succeeding business day. Persons detained in a nonmedical facility shall be kept separate from those persons charged with or convicted of a crime.

"(c) If the person is detained during an emergency in a nonmedical facility, the county health officer shall see that proper care and medical attention are made available to the person held in protective custody.

"(d) If the head of the facility in which the person is detained does not receive notice that a probable cause hearing has been held within 72 hours of the time detention begins pursuant to the order of protective custody, excepting weekends and holidays, authorizing the protective custody to continue, the head of the facility shall immediately release the patient from custody. Patients for whom probable cause has been established to justify continued protective custody following the probable cause hearing and pending a hearing on Court-Ordered Mental Health Services shall be discharged by the head of the facility in which he has been detained if:

"(1) a final Order for Court-Ordered Mental Health Services has not been entered by the court before the expiration of 14 days or before the expiration of 21 days if an order of continuance has been granted pursuant to Section 42 or Subsection (d) of Section 49 of this code; or

"(2) the head of the facility or his designee determines that such patient no longer meets the criteria for protective custody as specified in Section 36 of this code.

"Subchapter D. Proceedings for Court-Ordered Mental Health Services

"Section 40. Court in Which Proceedings to be Held. A proceeding pursuant to this subchapter shall be held in the statutory court of the county exercising the jurisdiction of a probate court in mental illness matters. If there is no such court in a county, the proceedings shall be heard in the county court.

"Section 41. Transfer of Proceeding from County Court. Where a proceeding is to be held in the county court under Section 40 of this code and the county judge of that court is not a licensed attorney, the person or his attorney may request that such proceeding be transferred to a court with a judge that is an attorney licensed to practice law in this state. The proceeding shall then be transferred by the county judge to such court and be heard as if originally filed in such court.

"Section 42. Setting on Application for Court-Ordered Mental Health Services. When an Application for Court-Ordered Mental Health Services is filed, the judge shall set a date for a hearing to be held within 14 days of the filing of the application. If the proposed patient or his attorney objects, the hearing shall not be held within the first three days following the filing of the application. Upon good cause shown or upon agreement of the parties, the court may grant a single continuance of the hearing for a period not to exceed seven days.

"Section 43. Notice. (a) Immediately after the judge sets the date for the hearing, the person shall be personally served with a copy of the application and written notice of the time and place of hearing thereon. A copy of the application and notice shall be sent by certified mail to the parent if the person is a minor or to the duly appointed guardian if the person is the subject of a guardianship or to the managing conservator if one has been appointed.

"(b) Within a reasonable time before the hearing on the application the county or district attorney shall provide the person's attorney with a statement including the following information, provided that the person's attorney has been unable to obtain such information and has requested such information from the county or district attorney prior to 48 hours before the time set for the hearing:
"(1) the provisions of this code which will be relied upon at the hearing to establish that the person requires temporary or extended mental health services;
"(2) the names, addresses, and telephone numbers of the witnesses who may testify at the hearing;
"(3) a brief description of the reasons why court-ordered temporary or extended mental health services are required; and
"(4) a list of any acts of the person which the applicant will attempt to prove at the hearing.
"(c) At the hearing, the judge may in his discretion admit evidence and testimony relating to matters not disclosed under the provisions of Subsection (b) of this section, upon a determination that such admission would not deprive the person of a fair opportunity to contest such evidence or testimony.
"Section 44. Appointment of Attorney. (a) Within 24 hours after the filing of an Application for Court-Ordered Mental Health Services, the judge shall appoint an attorney to represent the person if he does not already have an attorney representing him.
"(b) At the time of appointment of an attorney, the judge shall also appoint a language interpreter or a sign interpreter if the person is hearing impaired as required to ensure effective communication with the attorney in the person’s primary language.
"(c) The person’s attorney shall be furnished with all records and papers in said cause and shall have access to all hospital and doctors’ records in said cause.
"Section 45. Duties of Attorney. An attorney representing a person who is the subject of proceedings for court-ordered mental health services under this code shall fulfill at least the following duties:
"(a) The attorney shall, within a reasonable time prior to the hearing, interview the person. The attorney shall thoroughly discuss with the person the law and facts of the case, the person’s options, and the grounds upon which court-ordered mental health services are being sought. He shall, if court-appointed, further explain to the person that the person may obtain his own counsel at his own expense, rather than accept representation by court-appointed counsel. The attorney may advise the person concerning the wisdom of agreeing to or resisting efforts to provide mental health services. Whether or not to resist such efforts, however, is a decision to be made by the person. If the person expresses a desire to avoid court-ordered mental health services, the attorney has the duty to use all reasonable efforts within the bounds of law to advocate the person’s right to avoid court-ordered mental health services, without regard to the attorney’s personal view.
"(b) After interviewing the person, if the attorney wishes to withdraw from the case, he shall file a motion with the court. Such a motion shall be acted upon as soon as possible. In no event may the attorney withdraw from the case unless authorized to do so by court order.
"(c) Prior to the hearing, the attorney shall:
"(1) review the application, the certificates of medical examination for mental illness, and relevant medical records of the person;
"(2) interview supporting witnesses and other witnesses who will testify at the hearing; and
"(3) explore the possibility of alternatives to court-ordered in-patient mental health services.
"(d) The attorney shall discuss with the person the procedures for appeal, release, and discharge if the court orders participation in mental health services and other rights the person may have during the period of the court’s order.
"(e) The attorney shall maintain responsibility for the person’s legal representation until the application is dismissed, appeal from an order directing
treatment is taken, the time for giving notice of appeal has expired by operation of law, or another attorney assumes responsibility for the matter, whichever is later.

Section 46. Examination Required; Appointment of Examiners; Dismissal of Application. (a) Before a hearing may be held on an Application for Court-Ordered Mental Health Services, there must be filed with the court Certificates of Medical Examination for Mental Illness by two physicians, at least one of whom shall be a psychiatrist if one is available in the county, who have each examined the person within the preceding 30 days.

(b) If the certificates are not filed with the application, the judge shall appoint the necessary physicians, at least one of whom shall be a psychiatrist if one is available in the county, to examine the person and file certificates with the court. The judge may order the proposed patient to submit to the examination and may issue a warrant under which a peace officer may take the person into custody for the purpose of the examinations.

(c) Unless at the time set for hearing on the application there are on file with the court two Certificates of Medical Examination for Mental Illness based on examinations conducted within the preceding 30 days, the judge shall dismiss the application and order the immediate release of the person if he is not at liberty.

Section 47. Medical or Psychiatric Testimony. (a) At the hearing on an Application for Court-Ordered Temporary Mental Health Services, the person and his attorney may waive in writing the right to cross-examine witnesses. If such a waiver is made and filed with the court, the court may admit into evidence the Certificates of Medical Examination for Mental Illness and make its findings on the basis of the certificates. If so admitted, the certificates shall constitute competent medical or psychiatric testimony and the court may make its findings on the basis of these certificates.

(b) At a hearing on an Application for Court-Ordered Extended Mental Health Services, the court may not make its findings solely on the basis of the certificates of mental illness. The court shall proceed to hear testimony. No order for extended mental health services shall be entered unless appropriate findings are made and supported by testimony taken at the hearing. The testimony shall include competent medical or psychiatric testimony.

(c) Nothing in this section shall preclude the court from considering the testimony of a nonphysician mental health professional, as defined in Section 4 of this code in addition to medical or psychiatric testimony.

Section 48. Hearing on Court-Ordered Mental Health Services. (a) The judge may hold the hearing on an Application for Court-Ordered Mental Health Services at any suitable place within the county. The hearing should be held in a physical setting not likely to have a harmful effect on the person. Upon demand of the person or his attorney, the hearing shall be held in the courthouse of the county.

(b) The person shall have the right to be present, but his presence may be waived by the person or his attorney.

(c) The hearing shall be public unless the person or his attorney requests that the hearing be closed and the court determines there is good cause for closing the hearing.

(d) The Rules of Evidence applicable in civil litigation shall govern the proceedings except where inconsistent with this code.

(e) The hearing shall be on the record, and the state's burden of proof shall be to prove each element of the applicable criteria by clear and convincing evidence.

Section 49. Hearing Before Jury. (a) The hearing for Court-Ordered Temporary Mental Health Services shall be before the court unless a trial by jury is requested by the person or his attorney. The hearing for Court-Ordered Extended Mental Health Services shall be before a jury unless a jury trial has been waived pursuant to Subsection (c) of this section. In no case shall a jury fee be required.
"(b) In a hearing before a jury, the jury shall determine whether or not the person is mentally ill and meets the criteria for court-ordered mental health services but shall make no finding about the type of services to be provided.

"(c) Waiver of trial by jury shall be in writing under oath and shall be signed and sworn to by the proposed patient and by his attorney. A waiver of this right shall be filed at least 48 hours prior to the scheduled time of the hearing.

"(d) Upon good cause shown, the court may permit a waiver of jury trial properly made and filed to be withdrawn. If a waiver is withdrawn within 48 hours of the scheduled time of the hearing, the court may order a continuance for a reasonable period, not to exceed 72 hours, in order to permit a hearing before a jury. If the person is detained pending the hearing under an Order of Protective Custody, that order may be extended to authorize detention for an additional period not to exceed the period of a continuance granted pursuant to this section.

"Section 50. Order Upon Hearing on Application for Temporary Mental Health Services. (a) If upon the hearing on an Application for Court-Ordered Temporary Mental Health Services the judge or jury fails to find, on the basis of clear and convincing evidence, that the person is mentally ill and meets the criteria for court-ordered mental health services, the court shall enter its order denying the application and shall order the immediate release of the person if he is not at liberty.

"(b) Upon the hearing, the judge or the jury, if one has been requested, shall determine that the person requires court-ordered mental health services only if it finds, on the basis of clear and convincing evidence, that:

"(1) the person is mentally ill; and

"(2) as a result of that mental illness the person:

"(i) is likely to cause serious harm to himself; or

"(ii) is likely to cause serious harm to others; or

"(iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed decision as to whether or not to submit to treatment.

"(c) The clear and convincing evidence must include expert testimony and, unless waived, evidence of either a recent overt act or a continuing pattern of behavior in either case tending to confirm the likelihood of serious harm to the person or others or the person's distress and deterioration of ability to function.

"(d) If upon the hearing the jury or judge determines that the person is mentally ill and meets the criteria for court-ordered mental health services, the judge shall then dismiss the jury, if any. The judge may hear additional evidence regarding alternative settings for care and shall enter an order providing for one of the following:

"(1) The judge may enter an order committing the person to a mental health facility for in-patient care.

"(2) The judge may enter an order requiring the person to participate in mental health services other than in-patient care, including but not limited to programs of community mental health and mental retardation centers and services provided by a private psychiatrist or psychologist.

"(e) In determining the setting for care, the judge shall consider the recommendation for the most appropriate treatment alternative filed pursuant to Section 34 of this code. Mental health services shall be ordered in the least restrictive appropriate setting available.

"(f) An order entered pursuant to this section shall specify a period not to exceed 90 days but shall not specify any shorter period of time.

"Section 51. Order Upon Hearing on Application for Extended Mental Health Services. (a) If upon the hearing on an Application for Court-Ordered Extended Mental Health Services the judge or jury fails to find, on the basis of clear
and convincing evidence, that the person is mentally ill and meets the criteria for
court-ordered mental health services, the court shall enter its order denying the
application and shall order the immediate release of the person if he is not at liberty.

"(b) Upon the hearing, the jury or the judge, if jury trial has been waived, shall
determine that the person requires court-ordered mental health services only if it
finds, on the basis of clear and convincing evidence, that:

"(1) the person is mentally ill; and
"(2) as a result of that mental illness the person:
"(i) is likely to cause serious harm to himself; or
"(ii) is likely to cause serious harm to others; or
"(iii) will, if not treated, continue to suffer severe and abnormal mental,
       emotional, or physical distress and will continue to experience deterioration of his
       ability to function independently and is unable to make a rational and informed
       choice as to whether or not to submit to treatment; and,

"(3) the condition of the person is expected to continue for more than 90
days; and,

"(4) the person has either:
"(i) received in-patient mental health services under court order pursuant
to this code for at least 60 consecutive days within the 12 months immediately
preceding the hearing; or
"(ii) received in-patient mental health services under court order pursuant
to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, as amended, for
at least 60 consecutive days within the 12 months immediately preceding the
hearing.

"(c) The clear and convincing evidence must include expert testimony and
evidence of either a recent overt act or a continuing pattern of behavior in either
case tending to confirm the likelihood of serious harm to the person or others or
the person's distress and deterioration of ability to function.

"(d) If upon the hearing the judge or jury determines that the person is
mentally ill and meets the criteria for court-ordered mental health services for an
extended period, the judge shall then dismiss the jury, if any. The judge may hear
additional evidence regarding alternative settings for care and shall enter an order
providing for one of the following:

"(1) The judge may enter an order committing the person to a mental health
facility for in-patient care.

"(2) The judge may enter an order requiring the person to participate in
mental health services other than in-patient care, including but not limited to
programs of community mental health and mental retardation centers and services
provided by a private psychiatrist or psychologist.

"(e) In determining the setting for care, the judge shall consider the
recommendation for the most appropriate treatment alternative filed pursuant to
Section 34 of this code. Mental health services shall be ordered in the least restrictive
appropriate setting available.

"(f) An order entered pursuant to this section shall specify a period not to
exceed 12 months but shall not specify any shorter period of time.

"Section 52. Court-Ordered Out-Patient Mental Health Services and
Individual Responsible. (a) An order directing that a person participate in
out-patient mental health services shall identify an individual to be responsible for
those services. This individual shall be the head of a mental health facility or an
individual involved in providing the services in which the patient is to participate
under the order. No individual shall be designated as responsible for the services
ordered for a particular person without the individual's consent unless that
individual is the head of a facility operated by the department or is the head of a
community mental health and mental retardation center established pursuant to
Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 to 5547-204, Vernon’s Texas Civil Statutes), which provides mental health services.

"(b) An individual responsible for court-ordered out-patient services shall submit to the court within two weeks of the entering of an order a general program of treatment to be incorporated in the court’s order.

"(c) If the person ordered to participate in out-patient mental health services fails to comply with the terms of the court’s order, the individual responsible shall inform the court of such failure to comply. The individual responsible shall also inform the court of any substantial changes in the general program of treatment which may occur prior to the expiration of the order.

"(d) An order requiring a person to participate in mental health services at a community mental health and mental retardation center shall specify a center serving a region in which the court is located.

"(e) The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.

"Section 53. Modification of Order for Out-Patient Mental Health Services. (a) On its own motion or at the request of the individual responsible or any other interested individual, the court which entered an order directing a person to participate in out-patient mental health services may set a hearing to determine whether the order should be modified. This section shall only apply to changes in the general program of treatment which are substantial deviations in the original program incorporated in the court’s order.

"(b) If a hearing is scheduled to determine whether such an order should be modified, the court shall appoint an attorney to represent the person. The person shall be given notice concerning matters to be considered at the hearing that complies with the requirements set out in Section 43 of this code for notice preceding a hearing on an application for court-ordered mental health services.

"(c) If a hearing on modification is set, the court may order protective custody pending the hearing provided the requirements of Subchapter C of this code are met.

"(d) A hearing on a request for modification of an order for out-patient mental health services shall be before the court without a jury. The person shall be represented by an attorney and receive proper notice, and the hearing shall be held pursuant to the requirements of Section 48 of this code.

"(e) At the hearing, the court may modify the order if it determines either that:

"(1) the person has not complied with the court’s order; or

"(2) the person’s condition has so deteriorated that out-patient mental health services are no longer appropriate.

"(f) If the findings required by Subsection (e) of this section are made, the court may:

"(1) decline to modify the order and direct that the person continue to participate in out-patient mental health services pursuant to the terms of the order; or

"(2) if a revised general program of treatment has been submitted to and accepted by the court, modify the order so as to incorporate that revised treatment program and to provide for continued out-patient mental health services pursuant to the modified order; or

"(3) modify the order to provide for the commitment of the person to a facility for in-patient care.
"(g) In no case may the modified order extend beyond the time period of the original order.

"Section 54. Modification of Order for In-Patient Mental Health Services. (a) At the request of the head of the facility to which a person has been committed for in-patient mental health services, the court which entered the order may consider whether the order should be modified to provide for out-patient care. The request shall explain in detail why modification of the order is being requested and shall be accompanied by a Certificate of Medical Examination for Mental Illness by a physician based upon an examination conducted within the seven days immediately preceding the request.

"(b) The person shall be given notice of a request for modification of the order made pursuant to this section. If the person or any other interested individual demands a hearing on the request, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the person at the hearing. Such hearing shall be before the court without a jury. The person shall be represented by an attorney and receive proper notice, and the hearing shall be held pursuant to the requirements of Section 48 of this code.

"(c) If no hearing is demanded, the court may consider and make its decision on the basis of the request and the supporting certificate.

"(d) If the court determines that the order should be modified, it shall identify an individual responsible for the out-patient services pursuant to Section 52 of this code. The individual responsible shall submit to the court within two weeks of the entering of the modified order a general program of treatment to be incorporated in that order.

"(e) In no case may the modified order extend beyond the time period of the original order.

"Section 55. Renewal of Order for Extended Mental Health Services. (a) The court may renew and modify an original order for extended mental health services or an order pursuant to this section.

"(b) An Application for Renewal of an Order for Extended Mental Health Services may be filed by any adult person, or the county or district attorney, as appropriate. An application shall be accompanied by two Certificates of Medical Examination for Mental Illness based on examinations conducted within 30 days of the date of the application. The application shall explain in detail why renewal of the order is being requested. If the application requests renewal of an order committing the person to extended in-patient mental health services, it shall further explain in detail why a less restrictive setting is not appropriate.

"(c) When an application is filed, the court shall appoint an attorney to represent the person.

"(d) The person, his attorney, any other individual, or the court on its own motion may request a hearing on the application. If such a hearing is requested, the application shall be treated as an original Application for Court-Ordered Extended Mental Health Services.

"(e) If no hearing is requested on the application, the court may admit the Certificates of Medical Examination for Mental Illness into evidence and enter an order based on the certificates and the detailed request for renewal. In such cases, the certificates shall constitute competent medical or psychiatric testimony.

"(f) Before entering an Order Renewing an Order for Extended Mental Health Services, the court shall make the findings required by Section 51 of this code for an original Order for Court-Ordered Extended Mental Health Services. This shall be done whether or not a hearing is held.

"(g) If the required findings are made, the court may enter an Order Renewing an Order for Court-Ordered Extended Mental Health Services for a period not to exceed 12 months.
"(h) If the preceding order provided for extended in-patient mental health services, the court, after renewing the order, may modify the order to provide for out-patient mental health services pursuant to the requirements of Section 52 of this code.

"Section 56. Rehearing; Reexamination and Hearing. (a) For good cause shown, the court may set aside any order requiring court-ordered mental health services and grant a motion for rehearing. The court may, pending any rehearing, stay the court-ordered mental health services and release the proposed patient from custody if the court is satisfied that the proposed patient does not meet the criteria for protective custody pursuant to Section 36 of this code. The judge may require an appearance bond in an amount to be determined by the court.

"(b) Any patient who is receiving court-ordered extended mental health services or any interested person on his behalf and with his consent may file a request in the court in the county in which the patient is receiving those services for reexamination and hearing to determine whether the patient continues to meet the criteria for such court-ordered services. Upon the filing of a Request for Reexamination and Hearing, the court may upon good cause shown require a reexamination of the patient and schedule a hearing pursuant to the following procedures:

"(1) Upon the filing of a Request for Reexamination and Hearing, the judge may upon good cause shown notify the head of the facility providing mental health services to the patient.

"(2) Upon receipt of notice, the head of the facility shall cause the patient to be examined. If he or his qualified authorized designee determines that the patient no longer meets the criteria for court-ordered extended mental health services, the head of the facility or his designee shall immediately discharge the patient. If the head of the facility or his designee determines that the patient continues to meet the criteria for court-ordered extended mental health services, he shall file a Certificate of Medical Examination for Mental Illness with the court within 10 days after the filing of the Request for Reexamination and Hearing.

"(3) At the expiration of the 10-day period, if a certificate has been filed stating that the patient continues to meet the criteria for court-ordered extended mental health services or if no certificate has been filed and the patient has not been discharged, the judge may set a time and place for a hearing on the request. At the time the hearing is set, the judge shall also appoint an attorney to represent the patient, if he is not already represented by counsel, and give notice thereof to the patient and his attorney and to the head of the facility providing court-ordered mental health services. The judge shall appoint a physician, who must be a psychiatrist if one is available in the county and who is not on the staff of the mental health facility providing court-ordered services to the patient, to examine the patient and file a Certificate of Medical Examination for Mental Illness with the court. The court shall enter the necessary orders to ensure that the patient may, if he desires, be examined by a physician of his own choosing at his own expense.

"(4) The hearing shall be before the court without a jury. Such hearing shall comply with the requirements applicable to a hearing on an application for court-ordered mental health services.

"(5) If at the hearing the court finds by clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services, as specified in Section 51 of this code, the court shall dismiss the request; otherwise, he shall order the head of the facility to discharge the patient.

"(6) When a Request for Reexamination and Hearing is filed before the expiration of six months after an Order for Extended Mental Health Services or before the expiration of six months after the filing of a similar request, the judge is not required to order such reexamination or hearing.
“Section 57. Appeal. (a) All appeals from orders requiring court-ordered mental health services, including renewals or modifications of such orders, shall be filed in the court of appeals for the county in which the order was entered.

(b) Notice of appeal shall be filed within 10 days from the date any such order is signed.

(c) When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may stay the order and release the person from custody if the judge is satisfied that the person does not meet the criteria for protective custody pursuant to Section 36 of this code. The judge may require an appearance bond in an amount to be determined by the court.

(e) Such cases shall be advanced on the docket and given a preference setting over all other cases in the court of appeals and the supreme court. The courts may suspend all rules concerning the time for filing briefs and the docketing of cases.

“Subchapter E. Designation of Facility and Transportation

Section 58. Designation of In-Patient Mental Health Facility. In the Order for Temporary Mental Health Services or Order for Extended Mental Health Services specifying in-patient care, the court shall commit the patient to a designated mental health facility.

Section 59. Commitment to a Private Mental Hospital. The court may order a patient committed to a private mental hospital at no expense to the state upon:

(1) application signed by the patient or by his guardian or friend requesting that the patient be placed in a designated private mental hospital at the expense of the patient or the applicant; and

(2) agreement in writing by the head of the private mental hospital to admit the patient and to accept responsibility for him in accordance with the provisions of this code.

Section 60. Commitment to an Agency of the United States. (a) Upon receiving written notice from an agency of the United States operating a mental hospital stating that facilities are available and that the patient is eligible for care or treatment therein, the court may order a patient committed to the agency and may place the patient in the custody of the agency for transportation to the mental hospital.

(b) Any patient admitted pursuant to order of a court to any hospital operated by an agency of the United States within or without the state shall be subject to the rules and regulations of the agency.

(c) The head of the hospital operated by such agency shall have the same authority and responsibility with respect to the patient as the head of a state mental hospital.

(d) The appropriate courts of this state retain jurisdiction at any time to inquire into the mental condition of the patient so committed and the necessity of his continued hospitalization.

Section 61. Person Authorized to Transport Patient. (a) The court may authorize a relative or other responsible person having a proper interest in the welfare of the patient to transport him to the designated mental health facility.

(b) If the head of the designated facility advises the court that facility personnel are available for the purpose, the court may authorize the head of the facility to transport the patient to the designated mental health facility.

(c) Otherwise, the court may authorize the sheriff or constable to transport the patient to the designated mental health facility.

Section 62. Writ of Commitment. The court shall direct the clerk of the court to issue a writ of commitment in duplicate directed to the person authorized
to transport the patient, commanding him to take charge of the patient and to transport the patient to the designated mental health facility.

"Section 63. Transcript. The clerk of the county court shall prepare one certified transcript of the proceedings in the hearing on Court-Ordered Mental Health Services. Such transcript shall accompany the patient to the designated mental health facility and shall be delivered to the facility personnel in charge of admissions by the person authorized by the court to transport the patient. The clerk shall send with the transcript any available information concerning the medical, social, and economic status and history of the patient and his family.

"Section 64. Transportation of Patients. (a) Friends and relatives of the patient at their own expense may accompany him to the mental health facility.

"(b) Every female patient shall be accompanied by a female attendant unless accompanied by her father, husband, or adult brother or son during conveyance to the mental health facility.

"(c) The patient shall not be transported in a marked police or sheriff's car or accompanied by officers in uniform if other means are available.

"Section 65. Acceptance of Patient Acknowledged. The head of the mental health facility, upon receiving a copy of the writ of commitment and admitting a patient, shall give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to him and shall file a copy of the statement with the clerk of the committing court.

"Subchapter F. Furlough, Discharge, and Termination of Orders

"Section 66. Periodic Examination Required. The head of a mental health facility shall cause every patient to be examined as frequently as practicable, but not less often than each six months.

"Section 67. Plan for Continuing Care. (a) Before the furlough or discharge of a patient, the head of the mental health facility shall, in consultation with the patient and in accordance with department rules, develop a plan for continuing care for a patient for whom he determines the care is required. The plan will address the mental health and physical needs of the client. A patient to be discharged may refuse the services provided for by this section.

"(b) If the county in which the patient will reside is served by a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), that has been designated by the commissioner to perform continuing care services or if a patient seeks continuing care from a provider other than a facility or other provider designated by the commissioner, and if continuing care by that facility or by another provider that agrees to accept the referral is appropriate, the head of the mental health facility shall deliver the plan and other appropriate records to the community center or provider.

"(c) A community mental health and mental retardation center's involvement in discharge planning and continuing care services shall be to the extent that the center's resources have been determined by the commissioner to be available for those purposes.

"Section 68. Persons Charged with Criminal Offense. The sections of this code concerning the discharge, furlough, and transfer of a patient are not applicable to a person charged with a criminal offense who is admitted in accordance with Section 5, Article 46.02, Code of Criminal Procedure, 1965, as amended.

"Section 69. Pass or Furlough from In-Patient Care. (a) The head of a facility to which a patient has been admitted pursuant to an Order for Temporary or Extended In-Patient Mental Health Services may permit a patient to leave the facility for a period not to exceed 72 hours pursuant to a pass or for a longer period pursuant to a furlough. A pass or furlough may be subject to specified conditions.
“(b) A patient permitted to leave the facility pursuant to a pass or furlough may be taken into custody, detained, and returned to the facility if the patient violates the conditions of the pass or furlough or if his condition so deteriorates that his continued absence from the facility is no longer appropriate.

“(c) If the head of a facility has reason to believe that a person permitted to leave the facility pursuant to a pass or furlough should be taken into custody, detained, and returned to the facility, the head of the facility may secure the person’s detention and return to the facility pursuant to Section 70 of this code.

“(d) A furlough may be revoked only after an administrative hearing held within 72 hours of the person’s return to the facility, pursuant to rules and regulations adopted by the department. The hearing shall be before a hearing officer, who may be a mental health professional so long as the professional is not directly involved in the treatment of the patient. The hearing shall be informal, but the patient shall be entitled to present information and argument. After the hearing, the hearing officer shall determine whether the requirements of Subsection (b) of this section have been met. If the hearing officer determines that the furlough should be revoked, that decision and an explanation of the reasons for it and the information relied upon shall be made in writing and placed in the patient’s file. If the hearing officer determines that the furlough should not be revoked, the patient shall again be permitted to leave the facility pursuant to the furlough.

“(e) Upon the furlough of a patient pursuant to this section, the head of the facility shall notify the court which issued the commitment order.

“Section 70. Return to In-Patient Care. (a) A peace or health officer shall take into custody, detain, and return to the facility as rapidly as possible a patient whose return is authorized either by a certificate prepared under Subsection (b) of this section or a court order issued under Subsection (c) of this section.

“(b) The head of a facility to which a patient was admitted for court-ordered in-patient mental health services may sign a certificate authorizing the return of an identified patient to the facility, if he reasonably believes that:

“(1) the patient is absent from the facility without authority; or

“(2) the patient was permitted to leave the facility pursuant to a pass or furlough and either:

“(A) the patient has violated conditions imposed upon the pass or furlough; or

“(B) the patient’s condition has so deteriorated as to render his continued absence from the facility inappropriate.

“(c) A magistrate may issue an order directing any peace or health officer to take a patient into custody upon the filing with the magistrate of a certificate by the head of the facility to which the patient was admitted that meets the requirements of Subsection (b) of this section.

“(d) A peace or health officer may take a patient into custody pursuant to this section without having in his possession at the time the certificate or court order authorizing this action.

“Section 71. Discharge from Court-Ordered In-Patient Mental Health Services. (a) The head of a facility to which a person has been committed for temporary or extended in-patient mental health services shall discharge the person upon expiration of the court order.

“(b) The head of a facility may, at any time prior to the expiration of an order for temporary or extended mental health services, discharge the person upon his determination that the person no longer meets the criteria for court-ordered mental health services. A discharge under this subsection terminates the court order. Any person discharged under this subsection shall not again be compelled to submit to involuntary mental health services except pursuant to a new order entered in accordance with the provisions of this code.
“(c) Before determining to discharge a person under Subsection (b) of this section, the head of a facility shall consider whether further court-ordered mental health services on an out-patient basis would be appropriate on a furlough pursuant to Section 69 of this code or a modified order directing the person to participate in out-patient mental health services pursuant to Section 54 of this code.

“(d) Upon discharging a person under this section, the head of the facility shall prepare a Certificate of Discharge and file it with the court that entered the order.

“Section 72. Termination of an Order for Out-Patient Mental Health Services. At any time prior to the expiration of an order for out-patient mental health services, the individual responsible for those services shall request that the order be terminated if he determines that the person no longer meets the criteria for court-ordered mental health services. At the request of an individual responsible for court-ordered out-patient mental health services, the court which entered an order directing a person to participate in out-patient care may consider whether the order should be terminated. The request shall specify the reasons why termination is requested. Upon a determination that the person no longer meets the criteria for court-ordered mental health services, the court may terminate the order.

“CHAPTER 4. GENERAL ADMISSION AND TRANSFER PROCEDURES FOR IN-PATIENT SERVICES

“Section 73. Authorization for Admission and Detention. (a) The head of a mental health facility is authorized to admit and detain any patient in accordance with the following procedures provided in this code:

“(1) Voluntary Admission
“(2) Emergency Detention or Protective Custody
“(3) Court-Ordered Temporary Mental Health Services
“(4) Court-Ordered Extended Mental Health Services

“(b) Nothing in this code prohibits the admission of voluntary patients to private mental hospitals in any lawful manner.

“(c) This code does not affect the admission to a state mental health facility of an alcoholic admitted in accordance with Chapter 411, Acts of the 53rd Legislature, 1953, as amended (Article 5561c, Vernon’s Texas Civil Statutes), nor the admission of a person charged with a criminal offense admitted in accordance with Section 5, Article 46.02, Code of Criminal Procedure, 1965, as amended.

“Section 74. Service of Process for Patients. The head of an in-patient mental health facility or the superintendent, supervisor, or manager of an in-patient mental health facility in which a patient is confined is the agent for service of process on the patient. The person receiving process directed to a patient shall certify that he is aware of the provisions of this Act and shall sign the certificate with his name and title. The certificate shall be attached to the citation and be returned by the serving officer. The person receiving process directed to a patient shall within three days either forward it by registered mail to the patient’s legal guardian or deliver it to the patient personally, whichever appears to be in the best interest of the patient.

“Section 75. Transfer to State Mental Hospital. (a) The department may transfer a patient from one state mental hospital to another whenever such transfer is deemed advisable, except that a voluntary patient may not be transferred without his consent.

“(b) The head of a private mental hospital, upon notice to the committing court and to the department, may for any reason transfer an involuntary patient to a state mental hospital designated by the department.

“Section 76. Transfer to Private Mental Hospital. The department may transfer an involuntary patient to a private mental hospital, or the head of a private mental hospital may transfer an involuntary patient to another private mental hospital, at no expense to the state, upon:
"(1) application signed by the patient or by his guardian or friend requesting such transfer to a private mental hospital at the expense of the patient or applicant; and

"(2) agreement in writing by the head of the private mental hospital to admit the patient and to accept responsibility for him in accordance with the provisions of this code; and

"(3) notice in writing of the transfer to the committing court.

"Section 77. Transfer to an Agency of the United States. The department or the head of a private mental hospital may transfer an involuntary patient to an agency of the United States upon notice to the committing court and notification by the agency that facilities are available and that the patient is eligible for care or treatment therein; provided, however, that the transfer of any involuntary patient to an agency of the United States shall be made only after an order approving the same has been entered by the county judge of the county of residence of the patient.

"Section 78. Transfer to Schools for Mentally Retarded. The head of a mental hospital under the control and management of the Texas Department of Mental Health and Mental Retardation may transfer persons under involuntary commitment to the mental hospital of which he is head to a state school for the mentally retarded under control and management of the department when an examination of such person indicates symptoms of mental retardation to the extent that training, education, rehabilitation, care, treatment, and supervision in a state school for the mentally retarded would be in the best interest of such person. A certificate evidencing the diagnosis of mental retardation and containing the recommendation of the head of the mental hospital that such person be transferred to a designated state school for the mentally retarded shall be furnished the committing court. No transfer shall be made until the judge of the committing court has entered an order approving the transfer.

"Section 79. Transfer of Records. The head of the mental hospital from which a patient is transferred shall send the patient's appropriate hospital records or copy thereof to the head of the mental hospital to which the patient is transferred.

"CHAPTER 5. RIGHTS OF PATIENTS

"Section 80. Rights and Responsibilities of Mentally Ill Persons. (a) Every mentally ill person in this state shall have the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and the constitution and laws of the State of Texas. Absent specific provisions of law to the contrary presented under special procedures, every patient shall have the right to register and vote at elections; the right to acquire, use, and dispose of property including contractual rights; the right to sue and be sued; all rights relating to the granting, use, and revocation of licenses, permits, privileges, and benefits under law; the right to religious freedom; and rights concerning domestic relations.

"(b) All patients receiving mental health services pursuant to the provisions of this code have the following rights:

"(1) to appropriate treatment for their mental illness in the least restrictive appropriate setting available consistent with the protection of the patients and the community;

"(2) to be free from unnecessary or excessive medication;

"(3) to refuse to participate in research programs;

"(4) to individualized treatment plans and to participate in such planning; and

"(5) a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such persons with regard to personal needs.

"(c) All patients receiving involuntary in-patient mental health services have the right to be informed verbally and in writing within 24 hours of admission, in
the person's primary language, in simple nontechnical terms, of the rights included in Sections 80 and 81 of this code.

"Section 81. Additional Rights of Patients Receiving In-Patient Mental Health Services. (a) Subject to the general rules and regulations of the in-patient mental health facility and except to the extent that the head of the facility determines that it is necessary for the welfare of the patient to impose restrictions, every patient in an in-patient mental health facility has the following rights:

"(1) to receive visitors;
"(2) to communicate with persons outside the facility; and
"(3) to communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the attorney general of the state.

"(b) Any restriction imposed by the head of the facility on the exercise of these rights for the welfare of a particular patient and the reasons for the restriction shall be made a part of the clinical record of the patient. There shall be no restriction of communication between the patient and an attorney, where the attorney-client relationship is established.

"Section 82. Care and Treatment of Patients. The head of an in-patient mental health facility shall provide adequate medical and psychiatric care and treatment for every patient in accordance with the highest standards accepted in medical practice. The head of an in-patient mental health facility may give the patient accepted psychiatric treatment and therapy.

"Section 83. Right to Presumption of Competency. Court-ordered mental health services or emergency detention under this code or receipt of voluntary mental health services shall not constitute a determination or adjudication of mental incompetency and shall not abridge the person's rights as a citizen or the person's property rights or legal capacity. Mental competency is presumed in the absence of a contrary judicial determination under the provisions of the Texas Probate Code.

"Section 84. No Effect on Guardianship. No action taken or determination made under this code and no provision of this code shall affect any guardianship established in accordance with law.

"Section 85. Writ of Habeas Corpus. Nothing herein shall be construed to abridge the right of any person to a writ of habeas corpus.

"Section 86. Physical Restraints. No physical restraint shall be applied to the person of a patient unless prescribed by a physician, and if applied the restraint shall be removed as soon as possible. Every use of physical restraint and the reasons therefor shall be made a part of the clinical record of the patient under the signature of the physician who prescribed the restraint.

"Section 87. Disclosure of Information. Mental health facility records which directly or indirectly identify a patient, former patient, or proposed patient shall be kept confidential except where disclosure is permitted by other state law.

"CHAPTER 6. PRIVATE MENTAL HOSPITALS

"Section 88. License Required. Ninety days after the effective date of this code, no person or political subdivision may operate a mental hospital unless licensed to do so by the department.

"Section 89. Physician in Charge. Every licensed private mental hospital shall be in the charge of a physician who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology or who has had at least three years experience as a physician in psychiatry in a mental hospital.

"Section 90. Application for License. (a) Application for license to operate a private mental hospital shall be made on forms prescribed by the department. The department shall prepare the application forms and make them available upon request. The application shall be sworn to and shall set forth:
"(1) the name and location of the mental hospital;
(2) the name and address of the physician to be in charge of hospital care and treatment of mental patients;
(3) the names and addresses of the owners of the hospital, including the officers, directors, and principal stockholders if the owner is a corporation or other association;
(4) the bed capacity to be authorized by the license;
(5) the number, duties, and qualifications of the professional staff;
(6) a description of the equipment and facilities of the hospital;
(7) such other information as the department may require, which may include affirmative evidence of ability to comply with such standards, rules, and regulations as the department may prescribe.

(b) The applicant shall submit a plan of the premises to be occupied as a mental hospital, describing the buildings and grounds and the uses intended to be made of the various portions of the premises.

Section 91. License Issuance. (a) After receipt of proper application for license and the required fees, the department shall make such investigation as it deems desirable. If the department finds that the premises are suitable and that the applicant is qualified to operate a mental hospital in accordance with the requirements and standards established by law and by the department, the department shall issue a license authorizing the designated licensee to operate a mental hospital on the premises described and for the bed capacity specified in the license. However, if operation of the mental hospital involves acquisition, construction, or modification of a facility, a change in bed capacity, provision of new services, or expansion of existing services for which a certificate of need or an exemption certificate is required under the Texas Health Planning and Development Act, the department shall not issue the license unless and until the certificate of need or the exemption certificate has been granted to the applicant under that Act.

(b) Subject to the applicable provisions of the Texas Health Planning and Development Act, the authorized bed capacity may be increased at any time upon the approval of the department and may be reduced at any time by notifying the department.

(c) A license issued by the department is not transferable or assignable.

(d) A license remains in effect until suspended or revoked by the department or surrendered by the licensee.

Section 92. Application and License Fees. (a) An application fee and a license fee shall accompany the application for a license. If the department denies the license, only the license fee shall be returned. The application fee is $25. The annual license fee payable on August 31 of each year is $50.

(b) All application fees and license fees received by the State Health Department under this chapter shall be deposited in the State Treasury and there set apart, subject to appropriations by the legislature, for the uses and purposes prescribed by this Act, including salaries, maintenance, travel expense, repairs, printing, and postage.

Section 93. Denial, Suspension, or Revocation of License. (a) After giving an applicant or licensee opportunity to demonstrate or achieve compliance and after notice and opportunity for hearing, the department may deny, suspend, or revoke a license, if it finds substantial failure by the applicant or licensee to comply with the rules or regulations established by the department or the provisions of this code or with applicable provisions of the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon’s Texas Civil Statutes).

(b) If, after investigation, the department finds that there is immediate threat to health or safety of patients or employees of a private mental hospital, the
department may temporarily suspend a license for 10 days pending a hearing on the suspension order and may issue orders necessary for the welfare of the patients.

(c) The department shall prescribe the procedure for hearings under this chapter.

(d) The legal staff of the department may participate in the hearings.

(e) The proceedings of the hearing shall be recorded in such form that the record can be transcribed if notice of appeal is filed.

(f) The department shall send a copy of the decision by registered mail to the applicant or licensee notifying him of the action taken by the department. A decision denying, suspending, or revoking a license shall contain findings and conclusions upon which the decision is based.

Section 94. Judicial Review. (a) Any applicant or licensee may appeal from the decision of the department by filing notice of appeal in the District Court of Travis County and with the department within 30 days after receiving a copy of the decision of the department.

(b) Upon receiving notice of appeal, the department shall certify and file with the court a transcript of the proceedings in the case. By stipulation the transcript may be limited.

(c) The court shall hear the case upon the record and may consider such other evidence as in its discretion may be necessary to properly determine the issues involved. The substantial evidence rule shall not apply.

(d) The court may affirm or set aside the decision of the department or may remand the case for further proceedings before the department.

(e) If the court affirms the decision of the department, the applicant or licensee shall pay the cost of the appeal; otherwise the department shall pay the cost of the appeal.

Section 95. Rules, Regulations, and Standards. (a) The department may prescribe such rules, regulations, and standards not inconsistent with the constitution and the laws of this state, as it considers necessary and appropriate to ensure proper care and treatment of patients in private mental hospitals.

(b) Before any rule, regulation, or standard is adopted the department shall give notice and opportunity to interested persons to participate in the rule making.

(c) The rules, regulations, and standards adopted by the department under this chapter shall be filed with the secretary of state and shall be published and available on request from the secretary of state.

(d) A copy of these rules shall be sent to each licensed private mental hospital.

Section 96. Records and Reports. The department may require every licensee to make annual, periodic, and special reports and to keep such records as it considers necessary to ensure compliance with the provisions of this code and the rules, regulations, and standards of the department.

Section 97. Powers of Investigation. (a) The department may make such investigations as it deems necessary and proper to obtain compliance with the provisions of this code and such rules, regulations, and standards as the department prescribes.

(b) Any duly authorized agent of the department may at any reasonable time enter upon the premises of any private mental hospital to inspect the facilities and conditions, to observe the program for care and treatment, and to question employees of the hospital and may have access for the purpose of examination and transcription to such records and documents as are relevant to the investigation.

Section 98. Administration of Oaths; Examination of Witnesses; Subpoenas. (a) For the purpose of any investigation or other proceedings under this chapter, the department or its duly authorized agent is empowered to administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas.
to require the attendance and testimony of witnesses and the production of all documents or records relating to any matter under inquiry. The attendance of witnesses and the production of any such records may be required from any place within the State of Texas.

"(b) In case of refusal to obey a subpoena, the department may apply to the District Court of Travis County for an order requiring obedience to the subpoena.

"Section 99. Injunction. (a) For cause shown, the District Court of Travis County shall have jurisdiction to restrain violation of this chapter.

"(b) The department may maintain an action in the name of the State of Texas for injunction or other process against any person or political subdivision to restrain the unlicensed operation of a mental hospital.

"Section 100. Applicability of this Code. This code applies to any conduct, transaction, or proceeding within its terms which occurs after the effective date of this code, whether the patient concerned in the conduct, transaction, or proceeding was admitted or committed before or after the effective date of this code. In particular, the discharge under this code of any patient committed to a mental hospital under the prior law terminates any presumption that he is mentally incompetent. However, a proceeding for the commitment of a person to a state mental hospital begun before the effective date of this code is governed by the law existing at the time the proceeding was begun and for this purpose the law shall be treated as still remaining in force. Unless these proceedings are completed within nine months after the effective date of this code they shall be governed by the provisions of this code."

SECTION 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which 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. This Act takes effect September 1, 1983.

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.

CSSB 435 was read second time.

Representative Wolens offered the following amendment to CSSB 435:

Amend CSSB 435 as follows (section numbers refer to sections in the Texas Mental Health Code as revised by the bill):

(1) On pages 2 and 3, strike Subdivision (5) of Section 4 and substitute the following:

"(5) "Other qualified mental health professional" means a registered nurse with a master's or doctoral degree in psychiatric nursing or a certified social worker with a master's or doctoral degree and advanced clinical practitioner recognition."

(2) On page 4, insert in Section 4 a new Subdivision (18) to read as follows:

"(18) "Psychologist" means a person with a doctoral degree who is licensed in this state as a psychologist and who is designated as a health service provider."

(3) On page 7, line 12, insert "or psychologist" after "physician."

(4) On page 8, line 15, insert "psychologists," after "physicians."

(5) On page 9, line 17, insert "or psychologists" after "physicians" and strike "medical."

(6) On page 21, lines 23 and 24, strike "Medical."

(7) On page 21, line 25, insert "or psychologist" after "physician."

(8) On page 21, line 27, insert "or psychologist" after "physician."

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(9) On page 22, strike Subdivision (4) of Section 33(a) and substitute the following:

"(4) a brief evaluation of the mental condition of the person examined, and if the examiner is a physician, a brief evaluation of the physical condition of the person examined;"

(10) On page 22, lines 6, 9, 10, and 25, insert "or psychologist" after "physician".

(11) On page 24, line 21, strike "Medical".

(12) On page 28, line 11, strike "medical".

(13) On page 33, line 18, strike "medical".

(14) On page 34, lines 10 and 22, strike "Medical".

(15) On page 34, line 12, insert "or by one physician and one psychologist," after "county,"

(16) On page 34, line 16, insert "or one physician and one psychologist," after "county,"

(17) On page 34, line 27, strike "Medical or Psychiatric" and substitute "Required".

(18) On page 35, line 5, strike "Medical".

(19) On page 35, lines 6-9, strike the last sentence of Section 47(a) and substitute the following:

"If a physician or psychiatrist prepared one of the certificates, that certificate shall constitute competent medical or psychiatric testimony."

(20) On page 35, line 16, insert "by at least one physician or psychiatrist" after "psychiatric testimony."

(21) On page 35, lines 18 and 19, strike "a nonphysician mental health professional" and substitute "other qualified mental health professionals."

(22) On page 35, line 20, strike "medical or psychiatric" and substitute "medical, psychiatric, or psychological".

(23) On page 44, line 9, strike "Medical".

(24) On page 45, line 12, strike "two" and "Medical".

(25) On page 45, line 13, insert "by two physicians or by one physician and one psychologist" after "examinations,"

(26) On page 46, line 1, strike "Medical".

(27) On page 46, lines 3 and 4, strike "In such cases, the certificates" and substitute "If at least one of the certificates is prepared by a physician or psychologist, that certificate."

(28) On page 47, line 20, strike "Medical".

(29) On page 48, line 9, strike "Medical,"

(30) On page 48, line 12, insert "or psychologist" after "physician."

Representative DeLay moved to table the Wolens amendment.

The motion to table prevailed.

CSSB 435 was passed to third reading.

BILLS SIGNED BY THE SPEAKER

The speaker signed in the presence of the house, after giving due notice thereof, the following enrolled bills:

SB 86, SB 139, SB 164, SB 210, SB 211, SB 235, SB 347, SB 422, SB 486, SB 508
The speaker laid before the house on its second reading and passage to third reading, the complete committee substitute for SB 228.

CSSB 228

A BILL TO BE ENTITLED
AN ACT
relating to the exemptions from identification requirements for state-owned vehicles.

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

SECTION 1. Article 6701m-1, Revised Statutes, is amended to read as follows:

Art. 6701m-1. INSRIPTION ON STATE VEHICLE. There shall be printed upon each side of every automobile, truck or other motor vehicle owned by the State of Texas the word “Texas,” followed in letters of not less than two (2) inches high by the title of the department, bureau, board, commission or official having the custody of such car, and such inscription shall be in a color sufficiently different from the body of the car so that the lettering shall be plainly legible at a distance of not less than one hundred (100) feet, and the official having control thereof shall have such wording placed thereon as prescribed herein, and whoever drives any automobile, truck or other motor vehicle belonging to the State upon the streets of any town or city or upon a highway without such inscription printed thereon shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00). Provided, however, State-owned vehicles under control and custody of the State Board of Pharmacy, Texas Department of Mental Health and Mental Retardation, the Department of Public Safety, the Texas Department of Corrections, the [Texas] Parks and Wildlife Department, the Railroad Commission of Texas, the Texas Alcoholic Beverage Commission, the Texas Juvenile Probation Commission, Agencies and Branches of Government for whom appropriations are made under the article of the General Appropriations Act that appropriates money to the legislature, and the Texas Youth Council may be exempt from the requirements of this Act by rule and regulation of the governing bodies of these State agencies. Such rules and regulations shall specify the primary use to which vehicles exempt from the requirements of this Act are devoted, the purpose to be served by not printing on them the inscriptions required by this Act and such rules and regulations shall not be effective until filed with the Secretary of State. Whoever drives a vehicle exempted from the requirements of this Act as authorized by this provision shall not be subject to the penalties prescribed in this Act.

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.

CSSB 228 was read second time and was passed to third reading.

SB 739 ON SECOND READING
(Craddick - House Sponsor)

The speaker laid before the house on its second reading and passage to third reading,

SB 739. A bill to be entitled An Act relating to the method of sale and bonus and royalty bids for oil and gas leases on Permanent University Fund lands by the
board for Lease of University Lands; amending Subsections (b) and (c) of Section 66.64 and Subsections (a), (b), (c), and (e) of Section 66.65, Texas Education Code, as amended; and declaring an emergency.

The bill was read second time and was passed to third reading.

**HB 2383 - PERMISSION TO INTRODUCE**

Representative Armbrister moved to suspend the constitutional rule for permission to introduce and have placed on first reading HB 2383.

The motion prevailed by (Record 186): 136 Yeas, 1 Nay, 1 Present, not voting.

Yea — Agnich; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Bomer; Buchanan; Burnett; Cain; Carriker; Cary; Cavazos; Ceverha; Clark; Clemens; Colbert; Collazo; Connelly; Coody; Craddick; Crockett; Danburg; Davis; DeLay; Delco; Denton; Eckels; Edwards; English; Evans, L.; Finnell; Fox; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley; Glossbrenner; Granoff; Green; Grisham; Haley; Hall, L.; Hall, W.; Hammond; Hanna; Harrison, D.; Harrison, W.; Heflin; Hernandez; Hightower; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Hollowell; Horn; Hudson, D.; Hudson, S.; Hury; Jackson; Jones; Keller; Kemp; Khoury; Kubaiak; Kuempel; Laney; Lee, D.; Lee, E. F.; Luna; McKenna; Madla; Mankins; Martinez, R.; Martinez, W.; Messer; Moreno, A.; Moreno, P.; Oliveira; Oliver; Parker; Patrick; Patronella; Patterson; Pennington; Pevec; Pierce; Polk; Polunbo; Presnal; Price; Ragsdale; Rangel; Robnett; Rudd; Russell; Salinas; Saunders; Schlueter; Schoolcraft; Shaw; Shea; Short; Simpson; Smith, A.; Smith, C.; Smith, T.; Staniswalis; Stiles; Sutton; Tejeda; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Uher; Valles; Vowell; Waldrop; Wallace; Watson; Whaley; Wieting; Wilson; Wolens; Word; Wright.

Nay — Armbrister.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Hackney; Leonard; McWilliams.

Absent — Bush; Criss; Eikenburg; Emmett; Evans, C.; Hall, T.; Millsap; Robinson; Willis.

**STATEMENT BY REPRESENTATIVE ARMBRISTER**

I wish to state on Permission to Introduce I voted yes but my machine registered no.

Armbrister

**HB 1956 - RULES SUSPENDED**

Representative Hanna moved to suspend the 48-hour subcommittee report rule to allow the Committee on Energy to consider HB 1956.

The motion prevailed without objection.

**RULES SUSPENDED**

Representative Pierce moved to suspend the 48-hour subcommittee report rule to allow the Committee on Urban Affairs to consider HB 594, HB 1524, HB 1383, and HB 1563.

The motion prevailed without objection.
RULES SUSPENDED

Representative Waldrop moved to suspend the 48-hour subcommittee report rule to allow the Committee on Criminal Jurisprudence to consider HB 1099, HB 1713, HJR 63, and HJR 95.

The motion prevailed without objection.

SENATE BILL ON FIRST READING

The following senate bill was today laid before the house, read first time and referred to committee:

SB 671 to Committee on State Affairs.

HOUSE BILLS ON FIRST READING

The following house bills were today laid before the house, read first time and referred to committees:

By Schlueter:

HB 2351, A bill to be entitled An Act repealing the Lower Colorado River Authority Act, Chapter 7, Acts of the 43rd Legislature, 4th Called Session, 1934, as last amended by Acts 1975, 64th Legislature, Chapter 74, page 179; creating a new conservation and reclamation district to be known as the Lower Colorado River Electric and Water Authority; pursuant to and for the purposes set forth in Section 59 of Article 16 of the Constitution of the State of Texas, and to be a governmental agency, body politic and corporate, without power to mortgage or encumber any of its property or to alienate any property necessary to its business, or to levy taxes or to create any indebtedness payable out of taxes or to pledge the credit of the state; fixing the boundaries thereof, conferring thereon all powers, rights, privileges and functions conferred by general law upon districts created pursuant to said Section 59 of Article 16, except as expressly limited; transferring all properties and all obligations of the Lower Colorado River Authority to the Lower Colorado River Electric and Water Authority; conferring certain other powers thereon including the power to construct and operate dams and other structures; to control, store, preserve, use, distribute, and sell the waters of the Colorado River and its tributaries within the district and the lands of the district; to develop, generate, distribute, and sell water power and electric power and energy and steam-generated electric power and energy; to collect fees for its services; to acquire property by condemnation or otherwise; to enter into sales, purchase, repurchase, and joint ownership of property with the City of Austin and to make contracts and agreements with the City of Austin and to make contracts and agreements with the City of Austin; to sell electrical power to the state; to sell, lease, or otherwise dispose of certain district property to an electric cooperative, municipality, or other governmental agency or body politic and corporate of the State of Texas; to enter into agreements with regard to electric power and generating facilities in joint ownership with others and to sell any or all of such interest; to acquire, install, construct, enlarge, make additions to, and operate steam generating plants within certain counties with limitation as to capacity; to own an interest in steam generating plants in or out of the district in conjunction with others for serving certain areas with electric power and energy; to make contracts, to borrow money, to create and issue according to certain procedures negotiable bonds for cash, exchange for property, or refunding purposes on stated terms and conditions, and in amounts adequate for its legal purposes, and in connection therewith to pledge all or any part of its revenues; providing the characteristics of the bonds issued and for their eligibility for investment and security for deposits of public funds; providing rights and powers of bondholders
in case of default; providing for pollution control and sewage and waste disposal at actual cost; providing for the development of parks and recreational facilities and charging reasonable entrance, gate, or use fees for such development and maintenance, and for the control of the waters of any lake or lakes and the land within the district created by it including the levy of a charge for use of the surface of such lakes for commercial purposes; preserving to the public certain rights to the use of lands, waters, and rights-of-way for recreational purposes; providing for the preservation of fish and wildlife; vesting the powers of the district in a board of directors, and prescribing their qualifications, their terms of office, the manner of their appointment and removal, and their powers, responsibilities, and duties; providing for the appointment of officers, agents, and employees; providing for the fiscal management of the district; preserving existing, and protecting future, water rights, to the extent provided; prescribing all necessary details; defining certain conduct of directors or other personnel as a felony and providing penalties; stating relationship of this Act to other laws and to Section 14, formerly Section 11 of the Lower Colorado River Authority Act as it existed prior to the passage of this Act; providing a severability clause and excepting pending litigation from being affected by this Act; designating a short title; and declaring an emergency.

To Committee on Natural Resources.

By Laney:
   HB 2369, A bill to be entitled An Act relating to establishment of a juvenile board in Lamb County.
   To Committee on County Affairs.

By Eckels:
   HB 2381, A bill to be entitled An Act relating to bid procedures for county contracts.
   To Committee on County Affairs.

CORRECTIONS IN REFERRALS

HB 979, relating to express warranties applicable to passenger cars was inadvertently referred to the Committee on Business and Commerce. The chair, after consultation with author and chairmen of the respective committees, now corrects the referral of HB 979 to the Committee on Transportation.

HB 823, relating to the authority of commissioners courts to enact certain ordinances was inadvertently referred to the Committee on State Affairs. The chair, after consultation with author and chairmen of the respective committees, now corrects the referral of HB 823 to the Committee on County Affairs.

HB 2300, relating to the setting of the amount of per diem to which members of state boards and commissions are entitled was inadvertently referred to the Committee on State Affairs. The chair, after consultation with author and chairmen of the respective committees, now corrects the referral of HB 2300 to the Committee on Appropriations.

HB 922 AND HCR 159 - RULES SUSPENDED

Representative Tejeda moved to suspend the 5-day posting rule to allow the Committee on Judicial Affairs to consider HB 922 and HCR 159.

The motion prevailed without objection.

HB 979 - RULES SUSPENDED

Representative Jackson moved to suspend the 5-day posting rule to allow the Committee on Transportation to consider HB 979.
The motion prevailed without objection.

**HOUSE BILL 593: LEGISLATIVE INTENT OF MESSER AMENDMENT**

The following is entered in the journal at the request of Mr. Messer as evidence of legislative intent relative to the Messer amendment to HB 593:

**RAILROAD COMMISSION OF TEXAS**

April 12, 1983

The Honorable Bill Messer
Texas House of Representatives
Capitol Building, Room G14-A1
Austin, Texas 78701

Dear Bill:

Pursuant to your request of April 12, 1983, I have asked the staff of the Railroad Commission's Transportation Division to prepare an interpretation of the language contained in the Messer amendment which substitutes Sections 14A, 14B, 15, 16 and 17 for the Agnish amendment to House Bill 593. The result of the Division's effort is attached for your consideration. I hope you will find the analysis responsive to your request. I must point out, however, that the precise meaning of the change contained in the substitute cannot be known in the absence of judicial interpretation.

Should you have any questions, or if I can be of some other assistance, please contact me.

Sincerely,
Mack Wallace
Chairman

**Summary**

- The Messer amendment shifts the burden of proof in authority applications to the protestants, once the applicant has made a prima facie case showing that it has shipper support and is fit, willing and able to handle the traffic.
- Whereas current law places the burden on the applicant to prove the inadequacy of existing carriers, the Messer amendment shifts the burden to the protestant to defeat the application by showing that existing services are adequate and the additional services are not needed.
- The Messer amendment materially reduces the burden on an applicant by limiting the number and kinds of carriers which may protest an application for authority.
- Barriers to entry are reduced by the changes in the burden of proof.

**Shifting the burden of proof**

**Current law**

The Texas Motor Carrier Act requires that, before the Railroad Commission may issue new operation authority, it must consider the effect that issuance of the new authority would have on the public convenience and necessity (PC&N).

The constituent elements of PC&N are set forth in Sections 5a, 6, 8, and 10 of the statute. These sections require that applicants for new authority prove that: (1) a need exists for transportation service; (2) existing carriers are not
adequately meeting the need; and (3) applicant is willing and able to meet the need. These three elements are referred to in common parlance as "need," "inadequacy," and "fitness."

Applicants for authority now bear the burden of proving all elements of PC&N. In practice, this means that applicants have the burden of making a prima facie case, since, by definition, a prima facie case is one which would prevail in the absence of rebuttal. Protestants are then given an opportunity to rebut applicant's prima facie case.

**Messer amendment**

Section 15 would materially change entry requirements by removing the primary obstacle to entry — the requirement that an applicant prove the inadequacy of existing carriers. The service provided by existing carriers would be considered only if protestants prove, as an affirmative defense, that they are adequately meeting existing service needs.

**Standing to protest**

**Current law**

The Texas Motor Carrier Act currently requires that applicants for authority prove the inadequacy of all existing carriers' services. The Texas Supreme Court, in Railroad Commission v. Charlie Phillips Trucking Company, 508 S.W. 2d 341 (1979), held that the applicant's burden of proof extends even to carriers which did not protest the application or appear at hearing.

**Messer amendment**

Section 14B of the Messer amendment would redefine "existing carriers" by directing that no consideration be given to carriers which do not protest the application. In addition, a carrier would have standing to protest an application only if it: (1) is authorized to handle the traffic; (2) is willing and able to handle the traffic; and (3) has previously transported the traffic or aggressively solicited the traffic. Thus, only a fraction of those persons who could now protest an application would have standing to do so under the Messer amendment.

**COMMITTEE MEETING ANNOUNCEMENTS**

The following committee meetings were announced:

- Criminal Jurisprudence, Subcommittee on HB 70, 2 p.m. today, Old Supreme Court room, to consider HB 70.
- State Affairs, Subcommittee on Blue Laws, on adjournment today, back hall, to consider HB 55, HB 73, HB 185, HB 311, HB 1320.
- County Affairs, Subcommittee on HB 764, on adjournment today, Desk 100, to consider HB 764.
- State Affairs, Subcommittee on HB 180, on adjournment today, back hall, to consider HB 180.
- State Affairs, Subcommittee on HB 330, on adjournment today, back hall, to consider HB 330.
- Business and Commerce, Subcommittee on Workers Compensation, scheduled to meet at 2 p.m. today, will meet at 8 a.m. Thursday, Room D, Reagan Building, to consider HB 1581, HB 1852, HB 2106, and HB 2107.
- Judiciary, on adjournment today, Desk 79, to consider SB 663.
Criminal Jurisprudence, Subcommittee on HB 765, on adjournment today, Desk 4, to consider HB 765.

Criminal Jurisprudence, Subcommittee on HB 1355, on adjournment today, Desk 4, to consider HB 1355.

Criminal Jurisprudence, Subcommittee on HB 592, on adjournment today, Desk 33, to consider HB 592.

Elections, Subcommittee on HB 192, on adjournment of full committee today, Room G-A, Reagan Building.

Elections, Subcommittee on HB 157, on adjournment of the full committee today, Room G-A, Reagan Building.

Insurance, Subcommittee on Property and Casualty, on adjournment today, Desk 18, to consider HB 848.

State Affairs, Subcommittee on HB 371, on adjournment today, back hall, to consider HB 371.

Appropriations, 2 p.m. today, Room 309, Capitol, to consider HB 409.

ADJOURNMENT

Representative W. Hall moved that the house adjourn until 10 a.m. tomorrow in memory of Sam Yates.

The motion prevailed without objection.

The house accordingly, at 12:20 p.m., adjourned until 10 a.m. tomorrow.

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees on bills, as follows:

County Affairs - SB 499
Judiciary - HB 427, HB 1169, HB 2006
Law Enforcement - HB 299
State Affairs - HB 137, HB 661, SB 319

ENGROSSED

April 18 - HB 242, HB 706, HB 894, HB 1487

ENROLLED

April 18 - HCR 145

SENT TO THE GOVERNOR

April 19 - HCR 145
COAUTHORS AUTHORIZED

The following members were granted permission by the authors to sign bills as coauthors:

HB 632 - Haley
HB 1184 - Barrientos, A. Hill
HB 1841 - Danburg
HB 1843 - Danburg
HB 2154 - Danburg