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 403).

Present — Mr. Speaker; Agnish; Arambister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Bomer; Buchanan; Burnett; Bush; Cain; Carriker; Cary; Cavazos; Ceovera; Clark; Clemons; Colbert; Collazo; Connelly; Coody; Craddick; Criss; Crockett; Danburg; Davis; DeLay; Delco; Denton; Eccles; 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; Hackney; 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.; Hurty; Jackson; Jones; Keller; Kemp; Khoury; Kubiak; Kuempel; Laney; Lee, D.; Lee, E. F.; Leonard; Luna; McKenna; McWilliams; Madla; Mankins; Martinez, R.; Martinez, W.; Messer; Millsap; Moreno, A.; Moreno, P.; Oliveira; Oliver; Parker; Patrick; Patronella; Patterson; Pennington; Peveto; Polk; Polumbo; Presnal; Price; Ragland; Rangel; Robinson; Robnett; Rudd; Russell; Salinas; Saunders; Schluter; 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 — Pierce; Schoolcraft.

The invocation was offered by Ron Durham, pastor, Columbus Avenue Baptist Church, Waco, Texas, as follows:

Our Father in Heaven,

We bow before you because you are our God and it is you that has made us and not we ourselves.

We thank you for this day of life and recognize that this is the day the Lord has made; we are to rejoice and be glad in it.

Father, we pray for your guidance this day. Help us to remember the words in your Holy Word, "Trust in the Lord with all your heart, lean not upon your own understanding, acknowledge you in all our ways and you shall direct our paths."

In our Lord's name we pray. Amen.

(Pierce now present)

**HR 416 - ADOPTED**

Representative Eikenburg moved that all necessary rules be suspended to take up and consider at this time, **HR 416**.

The motion prevailed without objection.
The speaker laid before the house the following resolution:

By Eikenburg:

**HR 416**

**WHEREAS.** On this day, May 17, 1983, the Honorable C. K. (Chock) Word, our distinguished and hardworking colleague from Bosque County, is celebrating his 51st birthday; and

**WHEREAS,** This outstanding Texan is serving his first term in the house, representing District 57, which is comprised of Bosque, Coryell, and Hill counties; and

**WHEREAS,** Although Representative Word's tenure is a short one, he has earned the respect of his colleagues for diligently working to enact legislation beneficial to all Texans, both on the chamber floor and as a member of the county affairs and law enforcement committees; and

**WHEREAS,** In honor of the commendable record of achievement he has established, his fellow legislators wish to acknowledge this special day in his life; now, therefore, be it

RESOLVED. That the House of Representatives of the 68th Legislature of the State of Texas hereby wish the Honorable C. K. (Chock) Word a Happy Birthday; and,

RESOLVED. That an official copy of this resolution be prepared for Representative Word as a memento of this day and as a token of the good wishes of the members of the Texas House of Representatives.

The resolution was read and was adopted without objection.

On motion of Representative Russell, the names of all the members of the house were added to HR 416 as signers thereof.

**MESSAGE FROM THE SENATE**

Austin, Texas, May 17, 1983

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 1094** by Harris, relating to certificates of contribution, tax liability, policy limits and guaranty fund provisions.

**SB 1184** by Caperton, relating to recovery of actual costs and attorney's fees by the attorney general in certain charitable trust suits and to the venue of such charitable trust suits.

**SB 1185** by Caperton, relating to fees to which the attorney general is entitled.

**SB 1355** by Jones, relating to the creation of a public authority to issue bonds for certain state building, communications, and data processing projects.

**SCR 121** by Blake, expressing thanks for and appreciation to the Texas Academy of Family Physicians, the Texas Medical Association, the Texas Department of Human Resources, L. W. Snider, M.D., Nurse Betty Lindeman and the participating physicians of the Texas Academy of Family Physicians.

Respectfully,
Betty King
Secretary of the Senate
HR 402 - ADOPTED

Representative Luna moved that all necessary rules be suspended to take up and consider at this time, HR 402.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Luna:
HR 402, Welcoming the Heritage Hall Senior Citizens of Jacinto City.

The resolution was adopted without objection.

On motion of Representative Polumbo, the names of all the members of the house were added to HR 402 as signers thereof.

(Speaker pro tempore in the chair)

HR 417 - ADOPTED

Representative Emmett moved that all necessary rules be suspended to take up and consider at this time, HR 417.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Emmett:
HR 417, In memory of Jess Neely.

The resolution was unanimously adopted by a rising vote.

On motion of Representative Polumbo, the names of all the members of the house were added to HR 417 as signers thereof.

(Schoolcraft now present)

HR 413 - ADOPTED

Representative C. Evans moved that all necessary rules be suspended to take up and consider at this time, HR 413.

The motion prevailed without objection.

The chair laid before the house the following resolution:

By Berlanga:
HR 413

WHEREAS, For more than a century, the Texas House of Representatives has set aside a day on which to honor its presiding officer; and
WHEREAS, Speaker's Day presents an opportunity to recognize the outstanding achievements, as well as the noteworthy personal effort and commitment, of one of Texas' most important public officials; and
WHEREAS, The Honorable Gibson D. (Gib) Lewis, the state's 67th speaker, is a 12-year veteran of the Texas Legislature who has served with distinction throughout his career and who quickly achieved the lasting high regard of his colleagues; and
WHEREAS, First elected to the house in 1971, he served for three sessions as chairman of the House Committee on Intergovernmental Affairs and as chairman of the Tarrant County house delegation; he was also chairman of the House Select Committee on Natural Resources in the 63rd Legislature; and
WHEREAS, The first urban speaker in 36 years and the first speaker ever from Fort Worth, Mr. Lewis has been named one of the 10 best members of the Texas house by "Texas Business" magazine and "Outstanding Legislator of the Year" by the Texas Municipal League, and he was cited as one of the best committee chairmen in the house by "Texas Monthly" magazine; and

WHEREAS, He has been influential in gaining the passage of legislation establishing the Fort Worth State School and the Texas College of Osteopathic Medicine at Fort Worth, revising the Texas Municipal Annexation Act, creating the Texas Surface Coal Mining and Reclamation Act, and providing a funding mechanism for the training of physicians; and

WHEREAS, The president of Lewis Label Products, Inc., this hardworking and public-spirited Texan is also an avid outdoorsman and conservationist; he has received the Southern Region State Official Award from Safari Club International and has been named "Sportsman of the Year" by the Sportsmen Club of Fort Worth and "Outstanding State Representative" by the Texas Game Warden's Association for his efforts to encourage conservation; and

WHEREAS, Speaker's Day presents an opportunity not only to honor Speaker Lewis for his illustrious public service and impressive career record but also to recognize the hard work and dedication of the employees of the house of representatives and of the legislative support personnel of other state agencies; and

WHEREAS, The Speaker's Day celebration will be held on Tuesday night, May 17, 1983, at the Frank Erwin Special Events Center, and Speaker Lewis has invited all former members of the house who served with him between 1971 and 1982 to attend; he has also indicated that any contributions received in connection with the event will be accepted to support volunteer programs at the 31 community mental health and mental retardation centers throughout the state; and

WHEREAS, Gib Lewis is an exemplary community, business, and governmental leader, and his countless contributions to the well-being of the citizens of this state merit wide acclaim; now, therefore, be it

RESOLVED, That the House of Representatives of the 68th Legislature of the State of Texas hereby designate Tuesday, May 17, 1983, as Speaker's Day in honor of Speaker Gibson D. (Gib) Lewis; and, be it further

RESOLVED, That the House of Representatives set aside a portion of the day on May 17 for appropriate ceremonies in honor of Speaker Lewis and also as an expression of high regard for the speaker's family: his wife, Sandra Majors Lewis; and his daughters, Cammie Lewis Morvan and Cathy Lewis.

The resolution was adopted without objection.

On motion of Representatives Wieting and G. Thompson, the names of all the members of the house were added to HR 413 as signers thereof.

(Speaker in the chair)

**SB 578 ON SECOND READING**  
(Presnal - House Sponsor)

The speaker laid before the house, in lieu of HB 512, on its second reading and passage to third reading.

**SB 578**, A bill to be entitled An Act relating to the authority of the Board of Regents of The Texas A&M University System to grant, sell, lease, or otherwise dispose of certain Texas A&M University System property; amending Section 85.25, Texas Education Code.

The bill was read second time and was passed to third reading.
HB 512 - LAID ON THE TABLE SUBJECT TO CALL

Representative Presnal moved that HB 512 be laid on the table subject to call.
The motion prevailed without objection.

SB 244 - REQUEST OF SENATE GRANTED

On motion of Representative Tejeda, the house granted the request of the senate for the appointment of a conference committee on SB 244.

SB 244 - APPOINTMENT OF CONFERENCE COMMITTEE

The speaker announced the appointment of the following conference committee, on the part of the house, on SB 244: Tejeda, chair; Rudd, Turner, Madla, and Messer.

HB 2227 ON THIRD READING

The speaker laid before the house on its third reading and final passage, HB 2227, A bill to be entitled An Act relating to the authority of any general law city, town or village to annex up to 5,280 feet gulfward of the coastline.

The bill was read second time, amended, and was passed to engrossment. The bill was then postponed until 10 a.m. today.

The bill was read third time.

Representative Fury offered the following amendment to the bill:

Amend HB 2227 on line 8 and line 12 by removing the number “5,280” and reinserting the number “15,840.”

A record vote was requested.

The amendment was adopted by (Record 404): 100 Yeas, 36 Nays, 2 Present, not voting.

Yea - Armbrister; Barrientos; Barton, B.; Barton, E.; Berlanga; Bomer; Burnett; Bush; Cain; Carricker; Cary; Cavazos; Clark; Collazo; Crockett; Danburg; Davis; Delco; Denton; Edwards; Evans, C.; Evans, L.; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Gibson, B.; Gibson, J.; Gilley; Glossbrenner; Granoff; Green; Hackney; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, W.; Hernandez; Hightower; Hill, A.; Hill, G.; Hinojosa; Hollowell; Hudson, D.; Hudson, S.; Hury; Jones; Kemp; Kuebpel; Lacy; Lee, D.; Lee, E. F.; Luna; Madla; Martinez, R.; Martinez, W.; Messer; Moreno, A.; Moreno, P.; Oliveira; Oliver; Patrick; Patronella; Patterson; Peveto; Pierce; Polk; Presnal; Price; Ragsdale; Rangel; Robnett; Rudd; Russell; Salinas; Schoolcraft; Shaw; Short; Simpson; Smith, T.; Stiles; Sutton; Tejeda; Thompson, S.; Tow; Turner; Uher; Vowell; Waldrop; Wallace; Watson; Wieting; Willis; Wilson; Word.

Nay - Agnich; Blanton; Buchanan; Ceverha; Connelly; Coody; Craddick; DeLay; Eckels; Eikenburg; Emmett; Finnells; Fox; Geistweidt; Grisham; Hellin; Hilbert; Hill, P.; Horn; Keller; Khoury; Leonard; McKenna; Mankins; Pennington; Polumbo; Robinson; Saunders; Shea; Smith, A.; Smith, C.; Staniswalis; Thompson, G.; Toomey; Whaley; Wright.

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

Absent — Arnold; Clemons; Criss; English; Harrison, D.; Jackson; McWilliams; Millsap; Parker; Schluter; Valles; Wolens.
A record vote was requested.

HB 2227, as amended, was passed by (Record 405): 100 Yeas, 37 Nays, 1 Present, not voting.

Yeas — Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Burnett; Cain; Carriker; Cary; Cavazos; Colbert; Collazo; Criss; Danburg; Davis; Delco; Denton; Edwards; Evans, C.; Evans, L.; Finnell; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Gibson, B.; Gibson, J.; Gilley; Glossbrenner; Green; Hackney; Hall, L.; Hall, T.; Hall, W.; Hammond; Harrison D.; Harrison, W.; Hernandez; Hightower; Hill, A.; Hill, G.; Hill, P.; Hinjosa; Hollowell; Hudson, D.; Hudson, S.; Hury; Kemp; Lee, D.; Lee, E. F.; Luna; McWilliams; Madla; Mankins; Martinez, R.; Martinez, W.; Mesker; Millsap; Moreno, A.; Moreno, P.; Oliveira; Oliver; Parker; Patrick; Patronella; Patterson; Peveto; Pierce; Polk; Presnal; Price; Ragsdale; Rangel; Robinson; Robnett; Rudd; Russell; Salinas; Sanders; Schoolcraft; Shaw, Short; Simpson; Smith, T.; Stiles; Sutton; Tejeda; Thompson, S.; Tow; Turner; Uher; Valles; Waldrop; Wallace; Watson; Wieting; Willis; Wilson.

Nays — Agnich; Blanton; Buchanan; Ceverha; Clark; Connelly; Coody; Craddick; DeLay; Eckels; Eikenburg; Emmett; Fox; Geisweidt; Grisham; Hanna; Heflin; Hilbert; Horn; Jones; Keller; Khoury; Kubiak; Kuempel; Leonard; McKenna; Pennington; Polumbo; Schlueter; Shea; Smith, A.; Smith, C.; Staniswalis; Thompson, G.; Toomey; Vowell; Whaley.

Present, not voting — Mr. Speaker(C).

Absent — Bomer; Bush; Clemons; Crockett; English; Granoff; Haley; Jackson; Laney; Wolens; Word; Wright.

SB 232 ON THIRD READING
(Turner - House Sponsor)

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

SB 232, A bill to be entitled An Act relating to the continuation of the Public Utility Commission of Texas and the regulation of utilities.

The bill was read third time.

Representative Green offered the following amendment to the bill:

Amend Section 24(b) on page 32 by adding the following:

"(b) Municipalities shall have standing in all cases before the commission, provided that the commission shall determine standing in cases involving retail service area disputes involving two or more utilities, subject to the right of the commission to consolidate such municipalities on issues of common interest regarding utilities serving within their corporate limits and shall be entitled to judicial review of orders regarding said proceedings in accordance with Section 69 of this Act."

The amendment was adopted without objection.

Representative Collazo offered the following amendment to the bill:

Amend SB 232 as follows:

Page 34, line 1, delete the word de novo.

Representative Bomer moved to table the Collazo amendment.

A record vote was requested.
The motion to table prevailed by (Record 406): 114 Yeas, 25 Nays, 1 Present, not voting.

Yeas — Agnich; Armbrister; Barton, E.; Berlanga; Blanton; Bomar; Buchanan; Burnett; Cain; Cary; Cervera; Clark; Connelly; Coody; Craddick; Criss; Danburg; Delay; Denton; Eckels; Edwards; Eikenburg; Emmett; English; Evans, C.; Evans, L.; Finnell; Fox; Gamez; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley; Glossbrenner; Granoff; Green; Grisham; Hackney; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Harrison, W.; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hollowell; Horn; Hudson, S.; Hur; Jackson; Keller; Kemp; Khoury; Kubiak; Kuempel; Laney; Lee, D.; Lee, E. F.; Leonard; Luna; McKenna; McWilliams; Madla; Mankins; Martinez, R.; Messor; Millsap; Parker; Patric; Patronella; Patterson; Pennington; Peveto; Pierce; Polumbo; Presnal; Price; Robinson; Robnett; Rudd; Salinas; Saunders; Schlueter; Schueller; Shaw; Shea; Short; Simpson; Smith, A.; Smith, T.; Staniswalis; Stiles; Tejeda; Thompson, G.; Toomney; Tow; Turner; Uher; Valles; Waldrop; Wallace; Watson; Whaley; Wieting; Wolens; Word.

Nays — Barrientos; Barton, B.; Carriker; Cavazos; Clemens; Collazo; Crocket; Delco; Helin; Hernandez; Hightower; Hinojosa; Jones; Martinez, W.; Moreno, A.; Oliveira; Oliver; Polk; Range; Russell; Smith, C.; Sutton; Thompson, S.; Vowell; Willis.

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

Absent — Arnold; Bush; Colbert; Davis; Gandy; Hudson, D.; Moreno, P.; Ragsdale; Wilson; Wright.

SB 232, as amended, was passed. (C. Smith, Green, Uher, Craddick, and Collazo recorded voting no)

On motion of Representative Turner and by unanimous consent, the caption of SB 232 was ordered amended to conform to the body of the bill.

Reason for Vote

I voted no on SB 232 because this bill does not properly allow evidence from cities, nor does it properly fund Utility Council to properly intervene in behalf of consumers.

Collazo

LEAVE OF ABSENCE GRANTED

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

Valles on motion of Ragsdale.

SB 928 ON SECOND READING

(Simpson - House Sponsor)

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

SB 928, A bill to be entitled An Act relating to continuation of the State Board of Insurance and to the regulation of the business of insurance; to the powers and duties of the State Board of Insurance and the Commissioner of Insurance, the State Fire Marshal, and the State Auditor, and to the operations of the board and the qualifications and activities of the commissioner, members of the board, and personnel; authorizing certain fees and other charges and creating the State Board
of insurance operating fund; providing for its sources, administration, and uses; providing for audits by the State Auditor; providing notice of complaint procedures to insureds; providing for payment of premium taxes under protest and a limitation period for filing suits for refund.

The bill was read second time.

Representative D. Lee offered the following committee amendment to the bill:

**COMMITTEE AMENDMENT NO. 1**

Amend SB 928 on the following pages and lines by deleting "commissioner of insurance" and inserting in lieu thereof "State Fire Marshal":

- page 79, line 18
- page 82, line 25

Committee Amendment No. 1 was adopted without objection.

Representative D. Lee offered the following committee amendment to the bill:

**COMMITTEE AMENDMENT NO. 2**

Amend SB 928 on the following pages and lines by striking "thirty (30)" and inserting in lieu thereof "sixty (60)":

- page 6, line 9
- page 15, line 7
- and by striking "30" and inserting in lieu thereof "60" on page 7, line 25.

Committee Amendment No. 2 was adopted without objection.

Representative D. Lee offered the following committee amendment to the bill:

**COMMITTEE AMENDMENT NO. 3**

Amend SB 928 on page 3, line 1 by striking the words "any public posting" and inserting in lieu thereof the following: "the position is filled".

Committee Amendment No. 3 was adopted without objection.

Representative Gavin offered the following committee amendment to the bill:

**COMMITTEE AMENDMENT NO. 4**

Amend SB 928 as follows:

1. Add a new Section 89 to read as follows:

   **SECTION 89.** Chapter 9, Insurance Code, is amended by adding Article 9.57 to read as follows:

   **Article 9.57. TITLE INSURANCE POLICY PROVISIONS**

   Each policy of title insurance insuring an owner of real property delivered or issued for delivery in this state shall include certain provisions, the form, substance and content of which shall be promulgated by the State Board of Insurance, in accordance with the following:

   (i) if after the policy of title insurance has been issued, the insured reports to the title insurance company that a lien or encumbrance exists which is not excepted under the policy or excluded from coverage, or that there is a defect in the title likewise not excepted under the policy or excluded from coverage, then

   (ii) if the title insurance company concludes that a valid lien or encumbrance, not barred by law or statute, exists or that a title defect exists, such title insurance company will take one of the following actions:
(a) institute all necessary legal proceedings to clear the title to the property; 
(b) indemnify the insured pursuant to the terms of the policy; (c) reinsure at 
current value the title to the property without making exception to said lien, 
encumbrance or defect or indemnify another insurer for reinsuring said title without 
making exception to said lien, encumbrance or defect; (d) secure a release of the 
encumbrance, lien or defect, or (e) effect a combination of alternatives (a) through 
(d) herein.

The provisions of this Art. 9.57 shall be effective from and after January 1, 
1984.

(iv) The State Board of Insurance is authorized and empowered to 
proclaim, by amendment to the Owner Policy of Title Insurance or by separate 
endorsement thereto, language to effectuate this Article 9.57 in a manner not 
inconsistent with the terms, provisions, conditions and stipulations of the Policy or 
the exceptions to coverage contained in the Schedules to said Policy. Nothing in this 
Article shall prohibit the State Board of Insurance from adopting for use in this State 
a policy or policies in simplified, generally more understandable and usable form

(2) Renumber the following sections accordingly.

Representative Messer offered the following amendment to Committee 
Amendment No. 4:

Amend SB 928 as follows:
(1) Add new Sections 89 through 99 to read as follows:
SECTION 89. Chapter 9, Insurance Code, is amended by adding Article 9.57 
to read as follows:
Article 9.57. TITLE INSURANCE POLICY PROVISIONS

"Each policy of title insurance insuring an owner of real property delivered or 
issued for delivery in this state shall include certain provisions, the form, substance 
and content of which shall be promulgated by the State Board of Insurance, in 
accordance with the following:

"(i) if after the policy of title insurance has been issued, the insured 
reports to the title insurance company that a lien or encumbrance exists which is 
not excepted under the policy or excluded from coverage, or that there is a defect in 
the title likewise not excepted under the policy or excluded from coverage; then 

(ii) the title insurance company will promptly investigate to 
determine if such lien or encumbrance is valid and not barred by law or statute and 

(iii) if the title insurance company concludes that a valid lien or 
encumbrance, not barred by law or statute, exists or that a title defect exists, such 
title insurance company will take one of the following actions:

(a) institute all necessary legal proceedings to clear 
the title to the property; (b) indemnify the insured pursuant to the terms of the policy; 
(c) reinsure at current value the title to the property without making 
exception to said lien, encumbrance or defect or indemnify another insurer for 
reinsuring said title without making exception to said lien, encumbrance or defect; 
(d) secure a release of the encumbrance, lien or defect, or (e) effect a combination of 
alternatives (a) through (d) herein.

The provisions of this Art. 9.57 shall be effective from and after January 1, 
1984.

(iv) The State Board of Insurance is authorized and empowered to 
proclaim, by amendment to the Owner Policy of Title Insurance or by separate 
endorsement thereto, language to effectuate this Article 9.57 in a manner not 
inconsistent with the terms, provisions, conditions and stipulations of the Policy or 
the exceptions to coverage contained in the Schedules to said Policy. Nothing in this 
Article shall prohibit the State Board of Insurance from adopting for use in this State 
a policy or policies in simplified, generally more understandable and usable form."
SECTION 90. Articles 5.75 and 9.34, Insurance Code, are amended to read as follows:

"Art. 5.75. SCOPE OF SUBCHAPTER. This subchapter applies to the kinds of insurance and to the insurers subject to Subchapters A, B, C, and D of Chapter 5 and to Chapter 9 of this code."

"Art. 9.34. DETERMINATION OF INSURABILITY. No policy or contract of title insurance shall be written unless and until the title insurance company (a) has caused a search of title to be made from the title evidence prepared from an abstract plant as herein defined, or if no such abstract plant of the county exists, or the owner of such plant refuses to furnish to the title insurance company desiring to insure, such title evidence at such [its regular] charge and within such [a] reasonable period of time as determined by the Board, then such policy or contract of title insurance shall be based upon the best title evidence available, and (b) has caused to be made a determination of insurability of title in accordance with sound title underwriting practices. Evidence thereof shall be preserved and retained in the files of the title insurance company or its agent for a period of not less than fifteen (15) years after the policy or contract of title insurance has been issued. In lieu of retaining the original copy, the title insurance company or the agent of the title insurance company, may in the regular course of business establish a system whereby all or part of these writings are recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original. This Article shall not apply to (a) a company assuming no primary liability in a contract of reinsurance, or (b) a company acting as a co-insurer if one of the other co-insuring companies has complied with this Article."

SECTION 91. Section 2, Article 9.47, Insurance Code, is amended to read as follows:

"Sec. 2. Regardless of Section 1 of this Article, where applicable to title insurance companies, Article 1.01 through 1.25; Article 2.01; Article 2.02, Section 1, 2, and 3; Article 2.03, except Section 5; Article 2.04; Article 2.05; Article 2.06; Article 3.01, Section 10(a), (b) and (c); Article 3.12, except Section (c); Article 3.13; Article 3.14; Article 21.21; Article 21.21-1; Article 21.25; Article 21.26; Article 21.31; Article 21.36; Article 21.37; Article 21.43; Article 21.46; and Article 21.47 and Subchapter F of Chapter 5 of this code shall apply to and govern title insurance companies where applicable thereto. In case of conflict between provisions of any of the foregoing articles and the provisions of this Chapter Nine, the latter shall govern."

SECTION 92. Article 9.36, Insurance Code, is hereby amended to read as follows:

"Sec. 1. REQUIREMENT TO OBTAIN LICENSE. The State Board of Insurance is authorized and empowered to issue licenses for title insurance agents, as defined in Art. 9.02 of this Chapter 9, to persons that first satisfy and qualify under all requirements provided in this Art. 9.36 and Art. 9.02.

"No person shall act as a title insurance agent unless such person holds a license as a title insurance agent issued by the Board."

"Sec. 2. APPOINTMENTS. A. As a condition to granting a title insurance agent’s license, the applicant for such license must first be appointed to act as a title insurance agent by one or more title insurance companies authorized to do the business of title insurance in this state. Such appointment shall specify the county or counties in which the title insurance agent shall be authorized to act for the title insurance company.

"B. Each title insurance company making an appointment shall immediately notify the Board of the appointment on a form promulgated by the Board for such
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The title insurance company shall pay a fee of not more than $50.00 for each appointment. The fee shall accompany the notice of appointment.

C. Each appointment by a title insurance company shall be continuous and remain in force until the appointing title insurance company delivers to the Board written notice of its termination of such prior appointment.

D. A licensed title insurance agent may hold more than one appointment.

Sec. 3. APPLICATION FOR LICENSE. A. As a condition precedent to the granting of a title insurance agent's license, each person shall file with the Board the following:

(1) An application for license on such form and including therein such information as may be prescribed by the Board.

(2) Application fees of not more than $50.00.

(3) The bond required by Art. 9.38 of this Chapter 9.

(4) Proof of compliance with the geographical abstract plant requirements contained in Art. 9.02 of this Chapter 9.

(5) Appointment of applicant by one or more title insurance companies authorized to do business in the State of Texas.

B. (1) A public hearing on the application for initial title insurance agent's license shall be held by the Board and shall be not less than ten (10) nor more than sixty (60) days after the date of issuance of notice of hearing. The Board shall notify in writing the person or persons submitting such application of the date of hearing and shall furnish (at the expense of the applicant) a copy of such notice to all title insurance companies authorized to do business in the State of Texas and all title insurance agents licensed for each county in which applicant seeks a license. Any other interested person may obtain a copy of any application or notice of hearing for a title insurance agent's license upon payment to the Board the reasonable charge established therefor. The Board shall, at the expense of the applicant, at least ten (10) days prior to hearing, publish a copy of such notice one time in any newspaper of general circulation in each county in which the applicant seeks to act as a title insurance agent. In each public hearing on such applications, a record shall be made of the proceedings, and no application shall be granted except when the application is adequately supported by competent evidence.

(2) Any interested party shall have a right to request a public hearing, oppose or support the granting or denial of any application for initial title insurance agent's license and may intervene and participate fully in all respects in any proceeding held on any such application. Any intervenor shall have and enjoy all the rights and privileges of a proper and necessary party in such application hearing as would an intervenor have and enjoy in a civil suit in the courts of this state, including the right to be represented by counsel.

C. In considering any application for initial title insurance agent's license, the Board shall, within thirty (30) days after the date of the public hearing, determine whether or not:

(1) The applicant is possessed of sufficient net worth so as to render success of the proposed title insurance agency probable;

(2) The persons, if other than a corporation, and in the case of an application by a corporation, the officers and directors, taken as a whole, have sufficient title insurance experience, ability, standing, character and trustworthiness to render success of the proposed title agency probable;

(3) The applicant will actively engage in and solicit the business of title insurance from the public generally; and

(4) The applicant is acting in good faith.

D. If the Board shall determine by an affirmative finding any of the above issues adversely to the applicant, it shall reject the application in writing giving the
reasons therefor; otherwise, the Board shall approve the application and issue the title insurance agent's license.

"E. Despite any other provision in this Sec. 3 of this Art. 9.36 to the contrary notwithstanding, the Board may waive the public hearing provided that no person has intervened in such application hearing and no written protest to the granting of such license has been filed with the Board at least five (5) days prior to the scheduled hearing upon the application for license.

"Sec. 4. EXEMPTIONS. The provisions of Sec. 3B, 3C, 3D, and 3E of this Art. 9.36 shall not apply to the granting of a new license to a title insurance agent under any of the following limited circumstances:

"A. The name of an existing title insurance agent is changed;

"B. An existing title insurance agent is changed from an individual or partnership to an incorporated title insurance agency if such incorporated title agency is owned by the same individual(s) and in the same proportion as was owned in the prior licensed title insurance agent;

"C. Two or more existing licensed title insurance agencies licensed in the same county or counties are consolidated, merged, or a new partnership consisting of the same partners is created;

"D. Any change in the ownership of the shares of an incorporated title insurance agency provided no new or additional shareholders are added or as provided in Subsection 5B hereof; or

"E. Any change in the ownership of a title insurance agency, whether an individual, corporation, association, partnership or trust caused by: (i) devise, descent or distribution of such ownership caused by death, or (ii) gift or sale in a plan whereby the individual owner, regardless of the type of ownership, transfers all or a part of his ownership to another individual or to a trust whose beneficiaries are related to such transferring owner within the second degree of consanguinity.

"Sec. 5. EXPIRATION AND RENEWAL OF LICENSE. A. Each license issued to a title insurance agent prior to or after April 1, 1983, shall expire two years from the date it is issued unless an application to qualify for the renewal of the license is filed and the fee is paid as provided in Sec. 3 of Art. 9.36.

"B. It is the public policy of this state that each license issued prior to April 1, 1983 shall be renewed, subject to the Board's right of revocation under Art. 9.37, by applicant for renewal having to show compliance only with Subsections A(3), A(4) and A(5) of Section 3 of Art. 9.36. An affirmative showing of compliance with Subsection 3C(3) of Art. 9.36 shall not be a prerequisite for renewal of such license unless: (i) in the case of an incorporated title insurance agent one hundred percent (100%) of any class of stock ownership as owned on April 1, 1983, is transferred to another person or persons; or (ii) in the case of a person other than a corporation acting as a title insurance agent, one hundred percent (100%) of the total ownership as owned on April 1, 1983, is transferred to another person or persons. Upon the occurrence of an event described in this (i), (ii) or (iii), any such license may be renewed thereafter only under the provisions of Sec. 5C herein.

"C. As to all other renewal applications, each applicant for renewal of a title insurance agent's license must show compliance with the provisions of Subsections A(3), A(4), A(5) and C(3) of Sec. 3 of Art. 9.36.

"D. The State Board of Insurance shall promulgate the form of the application for renewal that will demonstrate the applicant's compliance herewith.
basis so that only that portion of the license fee that is allocable to the number of months during which the license is valid will be paid. On each subsequent renewal of the license, the total license renewal fee is payable.

"An unexpired license may be renewed by paying the required renewal fee to the Board before the expiration date of the license. If a license has been expired for not longer than ninety (90) days, the license may be renewed by paying to the Board the required renewal fee and a fee that is one-half of the original fee for the license. If a license has been expired for longer than ninety (90) days but not less than two years, the license may be renewed by paying to the Board all unpaid renewal fees and a fee that is equal to the original fee for the license. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least thirty (30) days before the expiration of a license, the Commissioner of Insurance shall send written notice of the impending license expiration to the licensee at his last known address and to the appointing title insurance company or companies. This section may not be construed to prevent the Board from denying or refusing to renew a license under applicable law or rules of the Board.

[A. Before an initial license is issued to any person, firm, association or corporation to act as agent within the State of Texas for any title insurance company, there shall first be filed by the title insurance company with the Board an application for agent's license, on forms to be provided by the Board, accompanied by a license fee of Twenty-Five Dollars ($25), which fee including license renewal fees shall be paid into the state treasury to the credit of the title insurance fund to be used by the State Board of Insurance to enforce the provisions of this article and all laws of this state governing and regulating title agents for such insurance companies. On initial application if an applicant fails to qualify for, or is refused a license, the license fee shall be refunded. The application shall be signed and duly sworn to by the title insurance company and the proposed agent. Such application shall contain the following:

"[(1) That the proposed agent, if an individual, is a bona fide resident of Texas, or if a firm or association, that it is composed wholly of Texas residents, or if a corporation, that it is a Texas corporation or a foreign corporation which has been authorized to do business in Texas, and]

"[(2) That the proposed agent (and if a corporation, its managerial personnel) has reasonable experience or instruction in the field of title insurance, and]

"[(3) That the proposed agent is known to the title insurance company to have a good business reputation and is worthy of the public trust and said title insurance company knows of no fact or condition which would disqualify him from receiving a license, and]

"[(4) That the proposed agent qualified as a title insurance agent as defined in this Act.]

"[The Board shall grant such license if it determines from the application and its own investigation that the foregoing requirements have been met.]

[B. On or before the first day of June of each year, every title insurance company, domestic or foreign, operating under the provisions of this Act, shall certify to the Board, on forms provided by the Board, the names and addresses of every title insurance agent of said company within the state whose license is to be renewed, and shall apply for and pay a license renewal fee of Twenty-Five Dollars ($25) for an annual license in the name of each such agent included in said list; if any such company shall terminate any licensed agent, it shall immediately notify the Board in writing of such act and request cancellation of such license; notifying the agent of such action. No such title insurance company shall permit any agent appointed by it to write, sign, or deliver title insurance within the state until the
forgoing conditions have been complied with; and the Board has granted said license. The Board shall deliver such license to the title insurance company for transmission to the Agent."

"[A license shall continue in force until the second June first following its issuance, unless previously cancelled; provided, however, that if any title insurance company surrenders or has its certificate of authority revoked by the Board, all existing licenses of its title insurance agents shall automatically terminate without notice."

"[Any title insurance agent may be licensed to represent one or more such title insurance companies, with a separate license granted for each."

"[The Board shall keep a record of the names and addresses of all licensed agents in such manner that the agents appointed by any company authorized to transact title insurance business within the State of Texas may be conveniently ascertained and inspected by any person upon request."

"(C) A licensed title insurance agent may be licensed to represent additional title insurance companies upon application by such additional title insurance company for agent's license, on forms to be provided by the Board, and upon payment of a license fee. The application shall be signed and duly sworn to by such additional title insurance company. Such application shall contain the following:"

"[(1) That the proposed agent, if an individual, is a bona fide resident of Texas; or if a firm or association, that it is composed wholly of Texas residents; or if a corporation, that it is a Texas corporation or a foreign corporation which has been authorized to do business in Texas; and]"

"[(2) That the proposed agent (and if a corporation, its managerial personnel) has reasonable experience or instruction in the field of title insurance; and]"

"[(3) That the proposed agent is known to the title insurance company to have a good business reputation and is worthy of the public trust; and]"

"[(4) That the proposed agent, its title insurance company knows of no fact or condition which would disqualify him from receiving a license; and]"

"[(5) That the proposed agent qualified as a title insurance agent as defined in this Act; and]"

"[(D) If a title insurance company terminates its contract with a title insurance agent or given notice of termination to the title insurance agent, such agent may, within thirty (30) days after such occurrence, apply to the Board for continuation of his license with an amendment thereto showing the name of another title insurance company for whom he is or will be authorized to act.]"

SECTION 93. Article 9.30, Insurance Code, is hereby amended to read as follows:

"Art. 9.30. REBATES, DISCOUNTS AND PROHIBITED ACTIVITIES.

"A. No title insurance company nor any officer, director, employee, agent or attorney of or for a title insurance company, nor any title insurance agent nor any officer, director, employee, agent or attorney of or for a title insurance agent shall directly or indirectly pay, allow, give, or offer to pay, allow, or give, any rebate of any title insurance premium, any commission, any paid employment or contract for service of any kind, any thing of value, or any valuable consideration or inducement to any person, for doing the business of title insurance as defined in Article 9.02 herein, including but not limited to procuring or soliciting title insurance. [No commission, rebate, discount, or other thing of value shall be paid, allowed or permitted by any title insurance company, domestic or foreign, or by any title insurance agent doing the business of title insurance provided for in this Chapter, relating to title policies or underwriting contracts and no portion of any premium shall be paid to any person for soliciting or referring title insurance.
business,] provided this Article 9.30 shall not prevent any title insurance company, domestic or foreign, doing business under this Chapter, from appointing as its title insurance agent in any county any person, firm or corporation owning and operating an abstract plant of such county as its title insurance agent and making such arrangements for division of premiums as may be approved by the Board. The provisions of this Subsection A shall not prohibit a title insurance company or title insurance agent from making reasonable expenditures for marketing or advertising programs as defined and established in rules promulgated by the Board.

"B. No person shall give and no person shall accept any portion, split or percentage of any charge made or received for the rendering of a real estate settlement or closing in connection with a transaction involving the conveyance or mortgaging of real estate located in the State of Texas other than for services actually performed.

"C. Every person who directly or beneficially owns an interest of ten percent (10%) or more in a title insurance company or a title insurance agent shall disclose the fact of such ownership interest to all parties to a real estate transaction in which said title insurance company or title insurance agent participates or is asked to participate by issuing a title insurance policy or other promulgated form or to perform other title-related services, if (i) such person owns any type of interest in the real property which is a subject of such real estate transaction, or (ii) such person receives any type of fee other than title insurance premium or escrow closing fee from such real estate transaction. If a title insurance company or title insurance agent is a publicly held company whose stock is traded on a stock exchange or in the over-the-counter market or is part of an insurance holding company system the holding company of which is so publicly held, such disclosure requirement shall apply to an ownership interest in the company or agent, or affiliates thereof. "Holding company," "holding company system" and "affiliate" shall have the same meaning as provided in Article 21.49-1 of this Code. The State Board of Insurance shall adopt rules which define and establish the time, method, and promulgated form of disclosure. [Nothing in this Article 9.30 shall, however, be construed as prohibiting (a) the payment of a fee to attorneys at law for services actually rendered or (b) the payment to any person of a bona fide salary, compensation or other payment for goods or facilities actually furnished or for services actually performed.]"  

"D. Nothing in this Section shall prohibit: (i) the payment of a fee to attorneys at law for services actually rendered for title examination or title escrow closing, or (ii) the payment to any person of a bona fide salary or compensation or other reasonable payment for goods or facilities actually furnished or for services actually performed. Notwithstanding the above, an attorney at law must actually render services to the title insurance agent or the title insurance company in connection with the transaction for which he is receiving a fee, and evidence of such service must be retained in the files of the title insurance agent or title insurance company for a period of at least three years. No title insurance company nor any title insurance agent may pay nor may any attorney at law or any other person accept a fee, commission, rebate or discount for the referral of title insurance business."  

SECTION 94. Article 9.38, Insurance Code, is hereby amended to read as follows:

"Art. 9.38. Bonds for Agents

"(a) Every person, firm, association or corporation which has been licensed as a title insurance agent shall make, file, and pay for a surety bond with a corporate surety company authorized to write surety bonds in this state, payable to the State Board of Insurance in the sum of: [Seven Thousand Five Hundred Dollars ($7,500)] (i) Fifteen Thousand Dollars ($15,000.00) for title insurance agents writing less than Two Hundred Fifty Thousand Dollars ($250,000.00) in gross
annual premiums, (ii) One Hundred Thousand Dollars ($100,000.00) for title insurance agents writing Two Hundred Fifty Thousand Dollars ($250,000.00) or more but less than Five Hundred Thousand Dollars ($500,000.00) in gross annual premiums, and (iii) One Hundred Fifty Thousand Dollars ($150,000.00) for title insurance agents writing Five Hundred Thousand Dollars ($500,000.00) or more in gross annual premiums, which bond shall obligate the principal and surety to pay such pecuniary losses as may result to any participant or his assigns in an insured real estate transaction which shall be sustained through acts of fraud, dishonesty, theft, embezzlement, or willful misapplication on the part of any title insurance agent. In lieu of such bond any title insurance agent may deposit with the Board cash (or securities or letter of credit approved by the Board) which cash, [and] securities or a letter of credit shall be in the amount of [Seven Thousand Five Hundred Dollars ($7,500)] (i) Fifteen Thousand Dollars ($15,000) for title insurance agents writing less than Two Hundred Fifty Thousand Dollars ($250,000.00) in gross annual premiums; (ii) One Hundred Thousand Dollars ($100,000.00) for title insurance agents writing Two Hundred Fifty Thousand Dollars ($250,000.00) or more but less than Five Hundred Thousand Dollars ($500,000.00) in gross annual premiums; and (iii) One Hundred Fifty Thousand Dollars ($150,000.00) for title insurance agents writing in excess of Five Hundred Thousand Dollars ($500,000.00) in gross annual premiums and subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the Board that the terms of any agent's bond may have been violated, the Board may require the agent to appear in Travis County with such records as the Board deems proper on a named date not earlier than ten (10) days nor later than fifteen (15) days from service of notice, and there conduct an examination into the matter. If upon such examination the Board is satisfied that the terms of said bond have been violated, the Board shall immediately notify the surety and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that the terms of said bond have been violated, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the Board for the benefit of all parties who have suffered any loss because of breach of the terms of said bond.

SECTION 95. Article 9.11, Insurance Code, is amended to read as follows:

"Article 9.11 REVOCATION OF RIGHT TO DO BUSINESS.
"Any title insurance company [foreign or domestic corporations] which issues [issuing] any form of title insurance policy or other promulgated or approved forms, or which charges [charging] any premium rates on an owner, mortgagee, or other title insurance policy, or on other promulgated or approved forms, except for the premium rates charged for reinsurance, on Texas real property other than forms and premium rates prescribed by the Board, under the provisions of this Chapter or which does not actively engage in and solicit directly or through title insurance agents either (i) the business of title insurance from the public generally or (ii) reinsurance from other title insurance companies generally (which reinsurance is not designed to circumvent the provisions of Art. 9.30) shall forfeit its right to do business in this state. The provisions of this Article 9.11 shall not, however, be applicable to premium rates charged in connection with reinsurance transactions between or among title insurance companies doing business under the provisions of this Chapter, provided any such reinsurance contract complies with the provisions of Article 9.19 of this Chapter."

SECTION 96. Section 9 of Article 9.56, Insurance Code, is amended to read as follows:

"Section 9. Bonds for Title Attorneys. (a) Every attorney who has been licensed as a title attorney shall make, file, and pay for a surety bond in like manner
as is required for title insurance agents as provided in Art. 9.38 of this Chapter 9. (with a corporate surety company authorized to write surety bonds in this state, payable to the State Board of Insurance in the sum of $7,500, which bond shall obligate the principal and surety to (1) pay such pecuniary losses as may result to any participant in a real estate settlement or closing where an attorney’s title insurance policy is issued by such title attorney which shall be sustained through acts of fraud, dishonesty, theft, embezzlement, or willful misapplication on the part of any title attorney; (2) to pay such pecuniary loss as any party to an escrow agreement in which the title attorney is escrowee shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, or willful misapplication on the part of such title attorney, either directly and alone, or in connivance with others. In lieu of such bond any title attorney may deposit with the board cash or securities approved by the board which cash and securities shall be in the amount of $7,500 subject to the same conditions as provided for in said bond.)

“(b) If at any time it appears to the board that the terms of any title attorney’s bond may have been violated, the board may require the title attorney to appear in Travis County with such records as the board deems proper on a named date not earlier than 10 days nor later than 15 days from service of notice and there conduct an examination into the matter. If upon such examination the board is satisfied that the terms of said bond have been violated, the board shall immediately notify the surety and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that the terms of said bond have been violated, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the board for the benefit of all parties who have suffered any loss because of breach of the terms of said bond.”

SECTION 97. Section 7, Article 9.56, Texas Insurance Code, is hereby amended by adding a new subsection (e) as follows:

“(c) (1) No attorney’s title insurance company nor any title attorney nor any employee of an attorney’s title insurance company nor any employee of a title attorney shall directly or indirectly pay, allow, give, or offer to pay, allow or give, any rebate of any title insurance premiums, any commission, any paid employment or contract for service of any kind, anything of value, or any valuable consideration or inducement to any person not licensed as a title attorney.

“(2) If a title attorney, in the conducting of the business of attorney’s title insurance, is called upon to issue title insurance policies or other promulgated forms, he shall disclose to all parties to the transaction, the persons that he is representing in addition to the insurer in that transaction.

“(3) Nothing herein shall prohibit (i) the payment of a fee to attorneys at law for services actually rendered, or (ii) the payment to any person of a bona fide salary, compensation or other payment for goods or facilities actually furnished or for services actually performed. No attorney’s title insurance company nor any title attorney may pay, allow or give nor may any attorney at law or any other person accept a fee, payment or anything of value for the referral of attorney’s title insurance business.

SECTION 98. Section 12, Article 9.56, Texas Insurance Code, is hereby amended to read as follows:

“Sec. 12. The business of attorney’s title insurance shall only be conducted by attorney’s title insurance companies, as defined herein, and no title insurance company, foreign or domestic, or title insurance agent or escrow officer of a title insurance agent presently or hereafter licensed to transact a title insurance business in the State of Texas, pursuant to the provisions of this Chapter 9 of this Insurance Code, may operate as an attorney’s title insurance company or a title attorney under the provisions of this chapter without first tendering for cancellation any presently
existing title insurance agent or escrow officer license or presently existing title insurance company certificate of authority.

SECTION 99. Amend Chapter 9 of the Insurance Code by adding thereto a new Article 9.58 reading as follows:

"Art. 9.58. Applicability of Art. 9.34 to Title Insurance Agents.

"The provisions of Art. 9.34 of this Chapter 9 as it relates to division of premium and time of response shall be applicable to all transactions of the business of title insurance between or among title insurance agents."

(2) Renumber the following sections accordingly.

The amendment was adopted without objection.

Committee Amendment No. 4, as amended, was adopted without objection.

Representative Green offered the following committee amendment to the bill:

COMMITTEE AMENDMENT NO. 5

Amend SB 928 by adding the following language to Article 1.34 in SECTION 8, page 5, after the period on line 13:

"The State Board of Insurance shall provide a toll-free telephone line for use by consumers in making inquiries to the board."

Committee Amendment No. 5 was adopted without objection.

Representative Gavin offered the following committee amendment to the bill:

COMMITTEE AMENDMENT NO. 6

Amend SB 928 on page 5, line 21, by deleting "or" and inserting in lieu thereof a comma and by adding after "14" the following: "or 22".

Committee Amendment No. 6 was adopted without objection.

Representative Oliver offered the following committee amendment to the bill:

COMMITTEE AMENDMENT NO. 7

Amend SB 928, page 1, SECTION 1, by adding Subsection (j) to Article 1.02, Insurance Code.

"(j) The Board shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plan shall include:

(1) a comprehensive analysis of all employees by race, sex, ethnic origin, class of position, and salary or wage;

(2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;

(3) steps reasonably designed to overcome any identified underutilization of minorities and women in the Board's workforce;

(4) and objectives and goals, timetables for the achievement of those objectives and goals and assignments of responsibility for their achievement.

The plan shall be filed with the Governor's office within sixty days after the effective date of this Act, cover an annual period, and be updated at least annually. Progress reports shall be submitted to the Governor's office within thirty days of November 1 and April 1 of each year and shall include the steps the Board has taken within the reporting period to comply with these requirements."

Committee Amendment No. 7 was adopted without objection.

Representative Green offered the following committee amendment to the bill:
COMMITTEE AMENDMENT NO. 8

Amend SB 928 as follows:
(1) Strike line 11 on page 2 and substitute the following:
"Article 1.06A. CONFLICT OF INTEREST. (a) A member of the State"
(2) Insert the following language between lines 14 and 15 on page 2:
"(b) After the effective date of this Act, a person may not be appointed as a member of the State Board of Insurance or as the Commissioner of Insurance or may not be employed by the State Board of Insurance who at the time of his appointment or employment is related within the first degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant in the insurance industry."

Representative Green offered the following amendment to Committee Amendment No. 8:

Amend SB 928, Committee Amendment No. 8, by substituting the following:
(b) Any person whose employment commences after the effective date of this Act may not be appointed as a member of the State Board of Insurance or employed in an exempt salary position as defined by the General Appropriations Act who at the time of his appointment or employment is related within the first degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant in the insurance industry.

The amendment was adopted without objection.

Committee Amendment No. 8, as amended, was adopted without objection.

Representatives Green and C. Smith offered the following amendment to the bill:

Amend SB 928 by adding the following Article 1.35 after Article 1.34 in SECTION 8, page 5:
"Art. 1.35. NOTICE OF POLICYHOLDER COMPLAINT PROCEDURES. (a) Each insurance policy delivered or issued for delivery in this state on or after September 1, 1984, shall be accompanied by a brief written notice of suggested procedure to be followed by the policyholder in the event of a dispute concerning a policyholder's claim or premium.
(b) The notice must include the address and appropriate telephone number of the State Board of Insurance.
(c) The State Board of Insurance shall promulgate the proper wording for the written notice."

Representative Simpson moved to table the Green-C. Smith amendment.

(Y. Smith in the chair)

A record vote was requested.

The motion to table was lost by (Record 407): 30 Yeas, 113 Nays, 1 Present, not voting.

Yeas — Aguich; Arnold; Bomer; Buchanan; Clark; Connelly; Gavin; Gibson, B.; Hall, T.; Kuempel; Lancy; Lee, D.; Mankins; Parker; Patnick; Presnal; Robnett; Russell; Shea; Short; Simpson; Smith, A.(C); Thompson, S.; Toomey; Turner; Uher; Waldrop; Whaley; Wieting; Word.

Nays — Armbrister; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Burnett; Bush; Cain; Carriker; Cary; Cavazos; Ceverha; Clemons; Colbert; Collazo; Coody; Craddock; Criss; Crockett; Danburg; Davis; DeLay; Delco; Denton; Eckels;
Representative Simpson offered the following amendment to the Green-C. Smith amendment:

Amend SB 928 by adding the following Article 1.35 to SECTION 8, page 5:

"Art. 1.35. NOTICE OF POLICYHOLDER COMPLAINT PROCEDURES. (a) Each insurance policy delivered or issued for delivery in this state on or after September 1, 1984, shall be accompanied by a written notice of suggested procedure to be followed by the policyholder in the event of a dispute concerning a policyholder's claim or premium.

(b) The notice must include the address of the State Board of Insurance.

(c) The State Board of Insurance shall promulgate the proper wording for the written notice."

And by adding "and 1.35" following "1.34" on page 5, line 6.

(Speaker in the chair)

Representative Green moved to table the Simpson amendment.

A record vote was requested.

The motion to table was lost by (Record 408): 59 Yeas, 79 Nays, 1 Present, not voting.

Yeas — Barrientos; Barton, B.; Barton, E.; Bush; Carriker; Ceverha; Clark; Clemons; Colbert; Crockett; Davis; Edwards; English; Evans, C.; Evans, L.; Fox; Gamez; Gandy; Garcia, A.; Garcia, M.; Geistweidt; Gibson, J.; Gilley; Glossbrenner; Granoff, Green; Hackney; Haley; Hall, L.; Hall, W.; Hammond; Hanna; Harrison, D.; Harrison, W.; Heflin; Hernandez; Hightower; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hollowell; Horn; Hudson, D.; Hudson, S.; Jackson; Jones; Keller; Kemp; Khourey; Kubiak; Lee, E. F.; Leonard; Luna; McKenna; McWilliams; Madia; Martinez, R.; Martinez, W.; Messer; Millsap; Moreno, A.; Moreno, P.; Oliveira; Oliver; Patronella; Patterson; Pennington; Peveto; Pierce; Polk; Polumbo; Price; Ragsdale; Rangel; Robinson; Saunders; Schlueter; Schoolcraft; Shaw; Smith, C.; Smith, T.; Staniswalis; Stiles; Sutton; Tejeda; Thompson, G.; Tow; Vowell; Wallace; Watson; Willis; Wilson; Wolens; Wright.

Nays — Armbrister; Arnold; Blanton; Bomer; Buchanan; Burnett; Cain; Cary; Cavazos; Collazo; Connelly; Coody; Craddick; Criss; Danburg; DeLay; Delco; Denton; Eckels; Eikenburg; Evans, C.; Finnell; Garcia, A.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Grisham; Haley; Hall, T.; Hall, W.; Hanna; Harrison, D.; Hilbert; Hill, A.; Hill, G.; Hill, P.; Horn; Hudson, D.; Jackson; Jones; Keller; Khourey; Kuepfe; Lane; Leonard; McKenna; Mankins; Millsap; Moreno, A.; Parker; Patrick; Patronella; Patterson; Pierce; Polk; Presnal; Robnett; Rudd; Russell; Saunders; Schlueter; Schoolcraft; Shea; Short; Smith, T.; Staniswalis; Toomey; Tow; Turner; Uher; Vowell; Wallace; Whaley; Wieting; Willis; Wilson; Wolens; Word.
Present, not voting — Mr. Speaker(C).

Absent, Excused — Valles.

Absent — Agnich; Berlanga; Emmett; Hinojosa; Lee, D.; Messer; Simpson; Smith, A.; Stiles; Waldrop.

The amendment was adopted without objection.

The Green-C. Smith amendment, as amended, was adopted without objection.

MESSAGE FROM THE SENATE

Austin, Texas, May 17, 1983

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 concurred in House Amendments to SB 109 by 15 yeas, 7 nays; SB 295 by viva voce vote; SB 387 by viva voce vote; SB 436 by viva voce vote; SB 471 by 26 yeas, 0 nays; SB 1269 by viva voce vote.

I am directed by the Senate to inform the House that the Senate has adopted the Conference Committee Report on SB 612 by the following vote: viva voce vote.

I am directed by the Senate to inform the House that the Senate has refused to concur in House Amendments to SB 149 and requests the appointment of a Conference Committee to adjust the differences between the two Houses.

The following have been appointed on the part of the Senate: Senators Henderson, Howard, Caperton, McFarland, Edwards.

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

HCR 246 by Lewis, directing the Department of Human Resources to seek a waiver of Medicaid restrictions relating to Ashley Bailey.

HB 2437 by Lewis, relating to a pilot program for experimental liver transplants for infants and small children.

SCR 118 by Caperton, designating May 29, 1983, as Texas Crawfish Day.

HCR 215 by Evans, designating May as American Airlines Month.

HCR 245 by Crockett, honoring Ted Flores.

Respectfully,
Betty King
Secretary of the Senate

SPEAKER'S DAY OBSERVANCE

Speaker Lewis introduced former members of the house present for Speaker's Day observances.
MESSAGE FROM THE SENATE
Austin, Texas. May 17, 1983

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:

HB 1438 by Messer, relating to the removal of certain businesses from treatment as a consumer under the Deceptive Trade Practices-Consumer Protection Act. (amended)

Respectfully,
Betty King
Secretary of the Senate

RULES SUSPENDED

Representative Tejeda moved to suspend the 5-day posting rule to allow the Committee on Judicial Affairs to consider HCR 104, HCR 107, HCR 189, HCR 217, HCR 214, HCR 227, HCR 232, HCR 238, SCR 65, SCR 24, and SCR 31.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:
State Affairs, Subcommittee on HB 1903, on noon recess today, Desk 47, to consider HB 1903.

RECESS

Representative Jackson moved that the house recess until 2 p.m. today.

The motion prevailed without objection.

The house accordingly, at 12:14 p.m., recessed until 2 p.m. today.

AFTERNOON SESSION

The house met at 2 p.m. and was called to order by the speaker.

SB 928 - (consideration continued)

The house resumed consideration of SB 928.

Representative C. Smith offered the following amendment to the bill:

Amend SB 928 by adding a new Section to be numbered appropriately. Chapter 21, Insurance Code, as amended, is amended by adding Article 21.21-3 to read as follows:

Art. 21.21-3. Discrimination Against the Handicapped Prohibited

An insurer who delivers or issues for delivery or renews any insurance in this state may not refuse to insure, refuse to continue to insure, limit the amount, extent or kind of coverage available to an individual, or charge an individual a different rate for the same coverage solely because of handicap or partial handicap, except where the refusal, limitation or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.
Representatives C. Evans and Green offered the following amendment to the bill:

Amend SB 928 as follows:

- Insert a new Section 92 of the bill to read as follows:
  
  "SECTION 92. (a) The division of Ratepayer Insurance Counsel is established in the Independent Office of the Public Utility Counsel created by the Public Utility Regulatory Act.
  
  "(b) The chief executive officer of the division of Ratepayer Insurance Counsel is the Director. The Director shall be an attorney licensed to practice in Texas. He may not be related directly or indirectly to the insurance industry or to any agent or employee of the State Board of Insurance or the Commissioner of Insurance.
  
  "(c) The Director of the Division of Ratepayer Insurance Counsel shall represent the interest of the insurance consumer in all deliberations and policy determination proceedings of the State Board of Insurance and the Commissioner of Insurance, including rate-making and rule-making proceedings. In performing his duties, the Director may:
  
  "(1) participate actively in all public or contested case hearings of the State Board of Insurance;
  
  "(2) provide information to the Commissioner of Insurance and participate in the regulatory activities of the Commissioner of Insurance;
  
  "(3) insure that the insurance consumer of Texas is represented and protected in all proceedings before the State Board of Insurance and in all regulatory decisions of the Commissioner of Insurance, and
  
  "(4) initiate or intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising out of an action taken by an administrative agency in a proceeding in which the Director is authorized to appear.
  
  "(d) The State Board of Insurance and the Commissioner of Insurance shall provide the Director access to all records and data not personal or confidential of the Commissioner of Insurance and the State Board of Insurance. The State Board of Insurance and the Commissioner of Insurance shall consider the position of the Director in all rate and rule-making proceedings."

- Renumber present Sections 92 and 93 of the bill as Sections 93 and 94, respectively.

Representative Simpson moved to table the C. Evans-Green amendment.

A record vote was requested.

The motion to table prevailed by (Record 409): 88 Yeas, 55 Nays, 1 Present, not voting.

Yeas — Agnich; Armbrister; Arnold; Barton, B.; Barton, E.; Blanton; Bomer; Buchanan; Burnett; Cain; Carriker; Cary; Ceverha; Clark; Clemons; Connolly; Coody; Craddick; Davis; DeLay; Denton; Eckels; Eikenburg; Gamez; Gandy; Garcia, A.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Grisham; Haley; Hall, W.; Hanna; Harrison, D.; Heflin; Hightower; Hilbert; Hill, A.; Hill, G.; Hill, P.; Horn; Hudson, D.; Jackson; Jones; Keller; Khoury; Kubiak; Kucmpek; Laney; McKenna; McWilliams; Madia; Mankins; Messer; Parker; Patrick; Patronella; Patterson; Pennington; Peveto; Pierce; Polk; Presnal; Robinson; Rudd; Russell.
Representative Green offered the following amendment to the bill:

Amend SB 928 as follows:
(1) Add new Sections 89 through 92 to read as follows:

SECTION 89. Article 5.01, Insurance Code, is amended to read as follows:

Art. 5.01. FIXING RATE OF AUTOMOBILE INSURANCE. Every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyd's or other insurer, hereinafter called insurer, writing any form of motor vehicle insurance in this State, shall annually file with the Board of Insurance Commissioners, hereinafter called Board, on forms prescribed by the Board, a report showing its premiums and losses on each classification of motor vehicle risks written in this State.

The Board shall have the sole and exclusive power and authority, and it shall be its duty to determine, fix, prescribe, and promulgate just, reasonable and adequate rates of premiums to be charged and collected by all insurers writing any form of insurance on motor vehicles in this State, including fleet or other rating plans designed to discourage losses from fire and theft and similar hazards and any rating plans designed to encourage the prevention of accidents. In promulgating any such rating plans the Board shall give due consideration to the peculiar hazards and experience of individual risks, past and prospective, within and outside the State and to all other relevant factors as provided by Article 5.01-1 of this code, within and outside the State. The Board shall have the authority also to alter or amend any and all of such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same or any part thereof.

Said Board shall have authority to employ clerical help, inspectors, experts, and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law; provided, however, that the number of employees and salary of each shall be fixed in the General Appropriation Bill passed by the Legislature. The Board shall ascertain as soon as practicable the annual insurance losses incurred under all policies on motor vehicles in this State, make and maintain a record thereof, and collect such data as will enable said Board to classify the various motor vehicles of the State according to the risk and usage made thereof, and to classify and assign the losses according to the various classes of risks to which they are applicable; the Board shall also ascertain the amount of premiums on all such policies for each class of risks, and maintain a permanent record thereof in such manner as will aid in determining just, reasonable and adequate rates of premiums.

Motor vehicle or automobile insurance as referred to in this subchapter shall be taken and construed to mean every form of insurance on any automobile or other vehicle hereinafter enumerated and its operating equipment or necessitated by
reason of the liability imposed by law for damages arising out of the ownership, operation, maintenance, or use in this State of any automobile, motorcycle, motorbicycle, truck, truck-tractor, tractor, traction engine, or any other self-propelled vehicle, and including also every vehicle, trailer or semi-trailer pulled or towed by a motor vehicle, but excluding every motor vehicle running only upon fixed rails or tracks. Workmen's Compensation Insurance is excluded from the foregoing definition.

SECTION 90. Article 5.01-1, Insurance Code, is amended to read as follows:

Art. 5.01-1. PREMIUM RATING PLANS FOR PASSENGER AUTOMOBILE INSURANCE. (a) In this article:

(1) “Driving experience” includes:
   (A) the number of years an insured has been licensed to drive;
   (B) the number of convictions of the insured for traffic law violations of the type most directly related to motor vehicle accidents as determined by the Department of Public Safety statistics, and
   (C) the number of accidents in which an accident report form must be filed as required by the Texas Motor Vehicle Safety-Responsibility Act (Article 670th, Vernon’s Texas Civil Statutes), and in which the driver was convicted of a traffic law violation; a judgment of fault was rendered against the driver by a court, the driver or a person on the driver’s behalf assumes liability for damage to property other than the driver’s vehicle, or a person not occupying the driver’s vehicle was injured.

(2) “Passenger car” means a motor vehicle, except motorcycles and motor driven cycles, designed for carrying 10 passengers or less that is not:
   (A) written on a fleet plan;
   (B) used in the business of driver training;
   (C) used as a taxicab or public livery vehicle;
   (D) used as a police or fire department vehicle; or
   (E) used for business or commercial purposes other than farming or ranching.

(3) “Vehicle characteristics” include make and model of the vehicle, vehicle model year, and special equipment or modifications to the vehicle that would affect the frequency or amount of losses.

(4) “Vehicle use” includes the territory of principal use, particularly as it relates to traffic density, annual mileage, and type of driving, including pleasure, business, farming, and commuting.

(b) The State Board of Insurance in setting rates for passenger car insurance under Article 5.01 of this code shall develop classifications based only on driving experience, vehicle characteristics, and vehicle use.

(c) Only moving violations and accidents that occur within the 36-month period ending three months before the effective date of the issuance or renewal of a passenger car insurance policy may be considered in determining driving experience.

[A rating plan promulgated by the State Board of Insurance respecting the writing of motor vehicle insurance, other than insurance written pursuant to Section 35 of the Texas Motor Vehicle Safety-Responsibility Act (Article 670th, Vernon's Texas Civil Statutes), may not assign any rate consequence to a charge or conviction, or otherwise cause premiums for motor vehicle insurance to be increased because of a charge or conviction for a violation of the Uniform Act Regulating Traffic on Highways; as amended (Article 670th, Vernon's Texas Civil Statutes).]

SECTION 91. Chapter 5, Insurance Code, is amended by adding Article 5.01-2 to read as follows:

Art. 5.01-2. PROHIBITED CONDITIONS. An insurer delivering or issuing for delivery in this state insurance policies covering passenger cars, as that term is
defined in Article 5.01-1(a)(2) of this code, may not refuse to issue, refuse to renew, or cancel a passenger car insurance policy for an applicant or an insured because of the age, sex, marital status, race, national origin, physical handicap, or place of residence of the applicant or insured.

SECTION 92. Article 5.03(a), Insurance Code, is amended to read as follows:

(a) On and after the filing and effective date of such classification of such risks and rates, no such insurer, except as otherwise provided herein, shall issue or renew any such insurance at premium rates which are greater or lesser than those promulgated by the Board as just, reasonable, adequate and not excessive for the risks to which they respectively apply, and not confiscatory as to any class of insurance carriers authorized by law to write such insurance after taking into consideration the deviation provisions of this Article. Any insurer desiring to write insurance at rates different from those promulgated by the Board shall make a written application to the Board for permission to file a uniform percentage deviation for a lesser or greater rate, on a statewide basis unless otherwise ordered by the Board, from the class rates or classes of rates promulgated by the Board. Any insurer desiring to write insurance under a classification plan different from that promulgated by the Board shall make written application to the Board for permission to do so; provided, however, the Board shall approve the use of only such additions or refinements in its classification plan as will produce subclassifications that, when combined, will enable consideration of the insurer’s experience under both the Board classification plan and its own classification plan and that comply with Article 5.01-1 of this code. Such application shall be approved in whole or in part by the Board, provided the Board finds that the resulting premiums will be just, adequate, reasonable, not excessive and not unfairly discriminatory, taking into consideration the following: (1) the financial condition of the insurer; (2) the method of operation and expenses of such insurer; (3) the actual paid and incurred loss experience of the insurer; (4) earnings of the insurer from investments together with a projection of prospective earnings from investments during the period for which the application is made; and (5) such application meets the reasonable conditions, limitations, and restrictions deemed necessary by the Board.

In considering all matters set forth in such application the Board shall give consideration to the composite effect of items (2), (3), and (4) above and the Board shall deny such application if it finds that the resulting premiums would be inadequate, excessive, or unfairly discriminatory. Any original or renewal policy of insurance issued pursuant to an approved plan of deviation shall have attached to or imprinted on the face of such policy the following notice: “The premium charged for this policy is greater than the premium rates promulgated by the State Board of Insurance.” The notice shall be in 10-point or larger prominent typesize.

Except as the Board may authorize, the deviation provisions in this Article shall not apply to insurance written pursuant to other provisions of this Chapter in which a deviation from standard rates is authorized, including, but not limited to, automobile liability experience rating and fleet rating plans.

(2) On page 133, insert between lines 13 and 14 the following:

(d) Sections 89 through 92 of this Act take effect January 1, 1984, and apply to setting rates for passenger car insurance and to the denial, nonrenewal, or cancellation of passenger car insurance on or after that date. The setting of rates for passenger car insurance and the denial, nonrenewal, or cancellation of passenger car insurance before that date is covered by the law as it existed at the time of the rate setting, denial, nonrenewal, or cancellation, and that law is continued in effect for that purpose.
May 17, 1983

The Honorable Speaker of the House of Representatives

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

HB 658 by Laney, et al., relating to the establishment of a restitution center program as an alternative to traditional methods of sentencing defendants. (amended)

Respectfully,

Betty King
Secretary of the Senate

Representative C. Smith offered the following amendment to the bill:
Amend SB 928 by adding a new section to be numbered appropriately:

SECTION 2. Article 21.49-2, Insurance Code, as amended, is amended to read as follows:

Art. 21.49-2. DECLINATION, CANCELLATION AND NONRENEWAL OF CERTAIN POLICIES. The State Board of Insurance is authorized and directed to prescribe, adopt, promulgate, and enforce reasonable rules and regulations as to the cancellation and the nonrenewal of family automobile and residential fire insurance and homeowners policies, including notice requirements thereof, applicable to all insurance companies writing the above-mentioned policies. The State Board of Insurance is also authorized, as it finds necessary, to prescribe, adopt, promulgate, and enforce reasonable rules and regulations as to the cancellation and the nonrenewal of all other policies of insurance regulated by the Board pursuant to Chapter 5, Texas Insurance Code, including notice requirements thereof, applicable to all such companies. The Board shall require a written statement of the reason or reasons for declination, cancellation or the nonrenewal of any above-mentioned policy to be given by the insurer to the policyholder or applicant upon request by the policyholder or applicant. There shall be no liability on the part of, and no cause of action shall arise against, any insurer or agent or employees of such insurer or agent, for any statements, disclosures, or communications made in good faith by them pursuant to this Act; except there shall be no immunity under this section for a disclosure of information known to be false or a disclosure with malice or willful intent to injure any person. In prescribing and adopting such rules and regulations, the Board will give consideration to the reasonable needs of the public and to the operations of the insurance companies. The Board shall have authority to alter or amend, as it deems necessary, any and all of the rules and regulations prescribed and adopted by it.

Representative C. Smith offered the following amendment to the C. Smith amendment:

Amend SB 928 by adding a new section to be numbered appropriately:

SECTION 2. Article 21.49-2, Insurance Code, as amended, is amended to read as follows:

Art. 21.49-2. DECLINATION, CANCELLATION AND NONRENEWAL OF CERTAIN POLICIES. The State Board of Insurance is authorized and directed to prescribe, adopt, promulgate, and enforce reasonable rules and regulations as to the cancellation and the nonrenewal of family automobile and residential fire insurance and homeowners policies, including notice requirements thereof, applicable to all insurance companies writing the above-mentioned policies. The State Board of Insurance is also authorized, as it finds necessary, to prescribe, adopt, promulgate, and enforce reasonable rules and regulations as to the cancellation and the nonrenewal of all other policies of insurance regulated by the Board pursuant to Chapter 5, Texas Insurance Code, including notice requirements thereof, applicable to all such companies. The Board shall require a written statement of the reason or reasons for declination, cancellation or the nonrenewal of any above-mentioned policy to be given by the insurer to the policyholder or applicant upon request by the policyholder or applicant. There shall be no liability on the part of, and no cause of action shall arise against, any insurer or agent or employees of such insurer or agent, for any statements, disclosures, or communications made in good faith by them pursuant to this Act; except there shall be no immunity under this section for a disclosure of information known to be false or a disclosure with malice or willful intent to injure any person. In prescribing and adopting such rules and regulations, the Board will give consideration to the reasonable needs of the public and to the operations of the insurance companies. The Board shall have
authority to alter or amend, as it deems necessary, any and all of the rules and regulations prescribed and adopted by it.

The amendment was adopted without objection.

The C. Smith amendment, as amended, was adopted without objection.

Representative C. Smith offered the following amendment to the bill:

Amend SB 928 by adding a new section to be numbered appropriately. Section 6, Article 21.21-2, Insurance Code, as amended, is amended by adding Section 7, to read as follows, and the remaining sections of Article 21.21-2 shall be renumbered accordingly:

Sec. 7. (a) In connection with the issuance of a cease and desist order as provided in Section 6 of this Article or upon application of any aggrieved person, the Board may, after notice and hearing as provided in Section 5 of this Article, in connection with the issuance of a cease and desist order resulting from a finding that an insurer has engaged in an unfair claim settlement practice, or upon finding by the Board that the aggrieved person and persons similarly situated were injured as a result of the insurer engaging in an unfair claim settlement practice in violation of this Article or rules or regulations issued under this Article, the Board may require the insurer to account for all claims settled during the immediately preceding two years in connection with such acts in violation of this Article and require: (i) such insurer to give notice to all persons so injured, and (ii) to readjust the claim settlement in an equitable fashion, under the direction and to the satisfaction of the Board. The Board shall specify a reasonable time within which the insurer shall be required to make such equitable claim settlement.

(b) If an insurer fails to comply with the Board's requirement to make an equitable claim settlement within the time specified, the Board may, in addition to any other sanctions provided for in the Insurance Code and other applicable laws, report such failure to the Attorney General and request the Attorney General to file a suit to enforce the Board's requirement for an equitable claim settlement. Venue for such suit shall lie in the District Court of Travis County, Texas, and upon finding by the court that such requirement of the Board was lawfully entered and that the insurer has failed to comply with such requirement, the Court shall enter an appropriate order to enforce such Board order. The Court may enforce its order through contempt proceedings.

(c) Compliance or attempts to comply with the Board's requirement to make an equitable claim settlement shall be an offer to compromise and shall be inadmissible as evidence. Compliance or attempts to comply with the Board's requirement for an equitable claim settlement shall not be considered as admission of engaging in an unlawful act or practice. Evidence of compliance or attempts to comply with the Board's requirements of an equitable claim settlement may be introduced by the defendant for the purpose of establishing good faith or to show compliance with the Board's requirement.

(Stiles in the chair)

(Speaker pro tempore in the chair)

Representative C. Smith offered the following amendment to the C. Smith amendment:

Amend SB 928 by adding a new section to be numbered appropriately. Section 6, Article 21.21-2, Insurance Code, as amended, is amended by adding Section 7, to read as follows, and the remaining sections of Article 21.21-2 shall be renumbered accordingly:
Sec. 7.  (a) In connection with the issuance of a cease and desist order as provided in Section 6 of this Article or upon application of any aggrieved person, the Board may, after notice and hearing as provided in Section 5 of this Article, in connection with the issuance of a cease and desist order resulting from a finding that an insurer has engaged in an unfair claim settlement practice, or upon finding by the Board that the aggrieved person and persons similarly situated were injured as a result of the insurer engaging in an unfair claim settlement practice in violation of this Article or rules or regulations issued under this Article, the Board may require the insurer to account for all claims settled during the immediately preceding two years in connection with such acts in violation of this Article and require: (i) such insurer to give notice to all persons so injured, and (ii) to readjust the claim settlement in an equitable fashion, under the direction and to the satisfaction of the Board. The Board shall specify a reasonable time within which the insurer shall be required to make such equitable claim settlement.

(b) If an insurer fails to comply with the Board's requirement to make an equitable claim settlement within the time specified, the Board may, in addition to any other sanctions provided for in the Insurance Code and other applicable laws, report such failure to the Attorney General and request the Attorney General to file a suit to enforce the Board's requirement for an equitable claim settlement. Venue for such suit shall lie in the District Court of Travis County, Texas, and upon finding by the court that such requirement of the Board was lawfully entered and that the insurer has failed to comply with such requirement, the Court shall enter an appropriate order to enforce such Board order. The Court may enforce its order through contempt proceedings.

(c) Compliance or attempts to comply with the Board's requirement to make an equitable claim settlement shall be an offer to compromise and shall be inadmissible as evidence. Compliance or attempts to comply with the Board's requirement for an equitable claim settlement shall not be considered as admission of engaging in an unlawful act or practice. Evidence of compliance or attempts to comply with the Board's requirements of an equitable claim settlement may be introduced by the defendant for the purpose of establishing good faith or to show compliance with the Board's requirement.

(d) Notwithstanding anything to the contrary, the provisions above shall not affect any final judgment entered by a District or County Court.

The amendment was adopted without objection.

Representative Simpson moved to table the C. Smith amendment, as amended.

A record vote was requested.

The motion to table prevailed by (Record 411): 108 Yeas, 25 Nays, 1 Present, not voting.

Yeas — Aglich; Armbrister; Arnold; Barton, E.; Berlanga(C); Banton; Bomer; Buchanan; Burnett; Bush; Carriker; Cary; Cavazos; Ceverha; Clark; Colbert; Connelly; Criss; Crockett; Danburg; Davis; DeLay; Delco; Eckels; Elkenburg; Emmett; English; Evans, C.; Finnell; Gamez; Gandy; Garcia, A.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Glossbrenner; Grisham; Haley; Hall, T.; Hall, W.; Hammond; Harrison, D.; Harrison, W.; Herin; Hightower; Hilbert; Hill, A.; Hill, P.; Horn; Hudson, D.; Hury; Jackson; Jones; Keller; Kemp; Khouyr; Kubiai; Kuempel; Laney; Lee, D.; Leonard; McKenna; Madla; Mankins; Messer; Moreno, A.; Oliver; Parker; Patrick; Patronella; Pennington; Peveto; Pierce; Polk; Presnak; Robinson; Rudd; Russell; Salinas; Saunders; Schlueter; Schoolcraft; Shaw; Shea; Short; Simpson; Smith, A.; Smith, T.; Staniswalis; Stiles;
Amend SB 928 by renumbering Section 93 as Section 96 and adding the following as Sections 93, 94, and 95, of SB 928:

SECTION 93. Chapter 3, Insurance Code, as amended, is amended by adding Article 3.39-1 to read as follows:

"Article 3.39-1. Repurchase Agreements. (a) Subject to the limitations and restrictions contained herein an insurer may make loans to or purchases of securities from a solvent bank, savings and loan association, credit union, or securities broker registered under the Securities Exchange Act of 1934 under an agreement (commonly called repurchase agreement), which agreement provides for the purchase by the insurer of securities and which agreement matures in 90 days or less and provides for the repurchase by such entity of the same or similar securities purchased by the insurer provided:

"(1) such loan collateral or securities purchased would otherwise be authorized as investments under Article 3.39, Part I, Subpart A, Subdivision 1, Insurance Code, and provided that the total market value of such securities shall equal or exceed the amount of such loan or purchase when it is made; and

"(2) such loan collateral or securities purchased from any one bank, savings and loan association, credit union, or securities broker may not exceed the greater of five percent of the insurer's assets or five percent of the amount of capital, surplus, and undivided profits of such bank, savings and loan association, credit union, or securities broker.

"(b) The State Board of Insurance may promulgate reasonable rules, regulations, and orders consistent with and implementing the provisions of this article."

SECTION 94. Chapter 3, Insurance Code, as amended, is amended by adding Article 3.39-2 to read as follows:

"Article 3.39-2. Risk-Limiting Provisions. (a) Subject to the rules and regulations promulgated by the State Board of Insurance and the limitations contained in Subsections (b) and (d) of this article with respect to assets owned by an insurer, an insurer may for purposes of protecting such assets against the risk of changing asset values or interest rates and for risk reduction only buy put options or sell call options and terminate the same, buy or sell interest rate futures contracts and options on interest rate futures contracts, or utilize such other instruments or devices as are consistent with this article and are traded on an established exchange regulated by the Securities and Exchange Commission or the Commodities Futures Trading Corporation.

"(b) An insurer may engage in the purchase of put options or sale of call options and terminate such options only with regard to:

"(1) securities owned by the insurer, or

"(2) securities which the insurer may obtain through exercise of warrants or conversion rights held by the insurer."
"(c) Subject to the rules and regulations promulgated by the State Board of Insurance and the limitations contained in Subsection (d) of this article with respect to cash flows reasonably anticipated to be available for investment purposes within the succeeding 12 months, which anticipation cannot exceed an amount equal to 10 percent of such insurer's admitted assets, an insurer may for purposes of protecting such cash flows against the risk of changing asset values or interest rates and for risk reduction only, buy or sell interest rate futures contracts and options on interest rate futures contracts or utilize such other instruments or devices as are consistent with this article and are traded on an established exchange regulated by the Securities and Exchange Commission or the Commodities Futures Trading Corporation.

"(d) An insurer may engage in the practices authorized by this article only if prior thereto the board of directors of such insurer has adopted a written policy which specifies:

"(1) the types of risk-limiting practices approved for such insurer;

"(2) the aggregate maximum limits in such instruments, which maximum limits must be reasonably related to the insurer's business needs and its capacity to fulfill its obligations thereunder;

"(3) the specific assets or class of assets or cash flows for which risk-limiting practices may be employed; and

"(4) that the insurer's accounting or investment records shall specifically identify the assets or cash flows for which each risk-limiting practice is used.

"(e) The State Board of Insurance is hereby authorized to adopt such reasonable rules and regulations, not inconsistent with the provisions of this article, which prescribe reasonable limits, standards, and guidelines with respect to such risk-limiting devices and plans related thereto."

Section 95. The Insurance Code, as amended, is amended by adding new Article 2.10-3 and Article 2.10-4 to read as follows:

"Article 2.10-3. Repurchase Agreements. (a) Subject to the limitations and restrictions contained herein an insurer may make loans to or purchases of securities from a solvent bank, savings and loan association, credit union, or securities broker registered under the Securities Exchange Act of 1934 under an agreement (commonly called repurchase agreement), which agreement provides for the purchase by the insurer of securities and which agreement matures in 90 days or less and provides for the repurchase by such entity of the same or similar securities purchased by the insurer provided:

"(1) such loan collateral or securities purchased are of the type of investments described and authorized by numbered paragraph 3 of Article 2.08 of this Code, and provided that the total market value of such securities shall equal or exceed the amount of such loan or purchase when it is made; and

"(2) such loan collateral or securities purchased from any one bank, savings and loan association, credit union, or securities broker may not exceed the greater of five percent of the insurer's assets or five percent of the amounts of capital, surplus, and undivided profits of such bank, savings and loan association, credit union, or securities broker.

"(b) The State Board of Insurance may promulgate reasonable rules, regulations, and orders consistent with and implementing the provisions of this article."

"Article 2.10-4. Risk-Limiting Provisions. (a) Subject to the rules and regulations promulgated by the State Board of Insurance and the limitations contained in Subsections (b) and (d) of this article with respect to assets owned by an insurer, an insurer may for purposes of protecting such assets against the risk of changing asset values or interest rates and for risk reduction only buy put options or sell call options and terminate the same, buy or sell interest rate futures contracts
and options on interest rate futures contracts, or utilize such other instruments or devices as are consistent with this article and are traded on an established exchange regulated by the Securities and Exchange Commission or the Commodities Futures Trading Corporation.

“(b) An insurer may engage in the purchase of put options or sale of call options and terminate such option, only with regard to:

“(1) securities owned by the insurer; or

“(2) securities which the insurer may obtain through exercise of warrants or conversion rights held by the insurer.

“(c) Subject to the rules and regulations promulgated by the State Board of Insurance and the limitations contained in Subsection (d) of this article with respect to cash flows reasonably anticipated to be available for investment purposes within the succeeding 12 months, which anticipation cannot exceed an amount equal to 10 percent of such insurer’s admitted assets, an insurer may for purposes of protecting such cash flows against the risk of changing asset values or interest rates and for risk reduction only, buy or sell interest rate futures contracts or utilize such other instruments as are consistent with this article and are traded on an established exchange regulated by the Securities and Exchange Commission or the Commodities Futures Trading Corporation.

“(d) An insurer may engage in the practices authorized by this article only if prior thereto the board of directors of such insurer has adopted a written policy which specifies:

“(1) the types of risk-limiting practices approved for such insurer;

“(2) the aggregate maximum limits in such instruments, which maximum limits must be reasonably related to the insurer’s business needs and its capacity to fulfill its obligations thereunder;

“(3) the specific assets or class of assets or cash flows for which risk-limiting practices may be employed; and

“(4) that the insurer’s accounting or investment records shall specifically identify the assets or cash flows for which each risk-limiting practice is used.

“(e) The State Board of Insurance is hereby authorized to adopt such reasonable rules and regulations, not inconsistent with the provisions of this article, which prescribe reasonable limits, standards, and guidelines with respect to such risk-limiting devices and plans related thereto.”

The Simpson amendment was adopted without objection.

SB 928, as amended, was passed to third reading.

SB 180 ON SECOND READING
(B. Gibson - House Sponsor)

The chair laid before the house on its second reading and passage to third reading, the complete committee substitute for SB 180.

CSSB 180

A BILL TO BE ENTITLED
AN ACT

relating to the continuation, administration, membership, powers and duties, and grounds for removal of members of the Industrial Accident Board; providing for confidentiality of certain procedures and records; providing funding and certain regulations concerning the Compensation to Victims of Crime Fund, administered by the board; providing penalties; amending Article 8306, Revised Statutes, as amended, by amending Section 7; amending Article 8307, Revised Statutes, by amending Sections 1, 1a, 2, 4b, and 7 and adding Sections 2a, 3a, 3b, 3c, and 3d;
amending Sections 18a and 20a, Article 8308, Revised Statutes, and Subsections (b), (e), and (f), Section 14, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes).

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

SECTION 1. Sections 1, 1a, 2, 4b, and 7, Article 8307, Revised Statutes, are amended to read as follows:

"Section 1. The Industrial Accident Board shall consist of three members, one to be biennially appointed by the Governor for a term of six years. Appointments to the board shall be made without regard to race, creed, sex, religion, or national origin. Said board shall have the powers, duties and functions hereinafter conferred.

"Section 1a. The Industrial Accident Board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this article expires effective September 1, 1995.

"Section 2. (a) At the time of the initial [each] appointment one member of the Industrial Accident Board shall be an employer of labor in some industry or business covered by this law; one shall be employed in some business industry as a wage earner, and the third member shall be a practicing attorney of recognized ability, and shall act in the capacity of legal adviser to the board, in addition to his other duties as a member thereof, and be chairman of said board.

"(b) A member or employee of the board may not be an executive officer, employee, or paid consultant of an employer-oriented trade association, a labor-oriented trade association, a lawyers' association, a medical association, or an insurance trade association.

"(c) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities for compensation in or on behalf of a profession related to the operation of the board may not serve as a member of the board or act as general counsel to the board.

"Section 4b. (a) Sections 1 through 12 of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) apply to the Industrial Accident Board. However, Section 4(a)(3) and Sections 13 through 20 of the Administrative Procedure and Texas Register Act do not apply, and Section 4(b) of that Act shall not apply to orders and decisions of the Industrial Accident Board.

"(b) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), except that prehearing conferences, hearings, and determinations on workers' compensation claims are not open meetings under that law.

"Section 7. (a) Every subscriber shall [hereafter] keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment. After the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one (1) day, or after the employee notifies the employer of a definite manifestation of an occupational disease, a written report thereof shall be made within eight (8) days following the employee's [said] absence from work and notice thereof to the employer or notice of manifestation of an occupational disease to the Board on blanks to be procured from the Board for that purpose. The subscriber shall deliver a copy of the report to the association. Upon the termination of the incapacity of the injured employee, or if such incapacity extends beyond a period of sixty (60) days, the subscriber shall make a supplemental report upon blanks to be procured for that purpose.

"(b) The [said] report shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employee, and the character of work in which he was engaged at the
time of the injury, and shall state the date and hour of receiving such injury or of the definite manifestation of the occupational disease, and the nature and cause of the injury, and such other information as the Board may require.

d. Any employer shall [wilfully failing or refusing to make any such report within the time herein provided; or wilfully failing or refusing to give the Board any information demanded by the Board relating to any injury to any employee or required by statute, which information is in the possession of or can be ascertained by the employer by the use of reasonable diligence; shall be liable for and shall pay to the State of Texas a penalty of not more than One Thousand ($1,000.00) Dollars for each and every offense, the same to be recovered in a suit to be instituted and prosecuted in Travis County by the Attorney General or by the district or county attorney, under his direction, in a District Court thereof.]

"(d) If any employer fails to comply with any of the requirements of Subsections (a), (b), or (c) of this section, the Board shall give such employer written notice by certified mail return receipt requested that such employer shall file the requested report or information with the Board within ten (10) days or shall request a hearing with the Board. If no hearing is requested and the employer fails to comply with the Board’s request or order, the Board shall impose a civil penalty against such employer of not more than Five Hundred Dollars ($500). If a hearing is requested by an employer, the Board shall set such hearing within ten (10) days at its office in Austin, Texas. If the Board determines by majority vote that such employer is not in compliance with Subsections (a), (b), or (c) of this section, the Board shall impose a civil penalty against such employer of not more than Five Hundred Dollars ($500). Such employer, if dissatisfied with the Board’s determination, may sue the Board to set aside the Board’s ruling by bringing a de novo suit within twenty (20) days thereafter in the district court in Travis County, Texas. The Board shall be represented by the Attorney General of Texas."

SECTION 2. Article 8307, Revised Statutes, is amended by adding Sections 2a, 3a, 3b, 3c, and 3d to read as follows:

"Section 2a. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of initial appointment the qualifications required by Subsection (a) of Section 2 of this article for appointment to the board; or

(2) violates a prohibition established by Subsection (b) or (c) of Section 2 of this article.

(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

"Section 3a. (a) During January of each year, the board shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year.

(b) The executive director or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.

(c) The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tests. All merit pay for board employees must be based on the system established under this subsection.

(d) The board shall prepare information describing the functions of the board and describing the board’s procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies in accordance with Section 9a of Article 8307.

"Section 3b. The board shall provide to its members and employees as often as is necessary information regarding their qualifications under Section 2 of this
article and their responsibilities under applicable laws relating to standards of
conduct for state officers or employees.

"Section 3c. The State Auditor shall audit the financial transactions of the
board during each fiscal year.

"Section 3d. (a) The board shall keep an information file about each written
complaint from a member of the general public that is unrelated to a specific
workers' compensation claim file.

(b) If a member of the general public files such written complaint with the
board, the board, at least as frequently as quarterly and until final disposition of the
complaint, shall notify the parties to the complaint of the status of the complaint
unless the notice would jeopardize an undercover investigation."

SECTION 3. Section 18a, Article 8308, Revised Statutes, is amended to read
as follows:

"Section 18a. (a) Whenever any employer of labor in this State becomes a
subscriber to this law, the insurance company shall immediately notify the
Board of such fact, stating in such notice the subscriber's name and place
of business, and the name of the insurance company (covering his insurance),
and the effective date of the policy. No further notice shall be required except as
provided in Section 20a of this Article. A subscriber shall notify the Board
of a change of name or address [Such subscriber's notice shall be acknowledged
by the insurance company].

(b) If the association fails to comply with any of the
requirements of Subsection (a) of this section, the Board shall give such association
written notice that such association shall file the requested report or information
with the Board within 10 days or shall request a hearing with the Board. If no
hearing is requested and the association fails to comply with the Board's request or
order, the Board shall impose a civil penalty against such association of not more
than $500 for each offense. If a hearing is requested by the association, the Board
shall set such hearing within 10 days at its office in Austin, Texas. If the Board
determines by majority vote that such association is not in compliance with
Subsection (a) of this section, the Board shall impose a civil penalty against such
association of not more than $500 for each offense. If the Board's ruling is adverse to the
association and not appealed as provided above shall be enforced as provided in Section 5a,
Article 8307, Revised Civil Statutes of Texas, as amended."

SECTION 4. Subsection (b), Section 7, Crime Victims Compensation Act
(Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Awards payable to a victim and all other claimants sustaining pecuniary
loss because of injury or death of that victim may not exceed $25,000 in the aggregate.

SECTION 5. Section 12, Crime Victims Compensation Act (Article 8309-1,
Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. ATTORNEY'S FEES. As part of an order, the board shall determine
and award reasonable attorney's fees, commensurate with services rendered, to be
paid by the state to the attorney representing the claimant. Additional attorney's fees
may be awarded by a court in the event of review. Attorney's fees may be denied
on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be included as a part of an award in addition to awards of compensation and shall not exceed 20% of the amount allowed. [It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed.] Attorney's fees may not be paid to an attorney of a claimant unless an award is made to the claimant.

SECTION 6. Subsection (g), Section 14, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(g) The Board shall establish a policy to adjust awards and payments so that the total amount of awards granted in each calendar year does not exceed the amount of money deposited in the fund during that year. [If application is made and an award granted for which no funds or insufficient funds are available, the board shall establish a waiting list of qualified claimants, with payments to be made when funds become available.]

SECTION 7. Section 7, Article 8306, Revised Statutes, as amended, is amended to read as follows:

"Section 7. The employee shall have the sole right to select or choose the persons or facilities to furnish medical aid, chiropractic services, hospital services, and nursing and the association shall be obligated for same or, alternatively, at the employee's option, the association shall furnish such medical aid, hospital services, nursing, chiropractic services, and medicines as may reasonably be required at the time of the injury and at any time thereafter to cure and relieve from the effects naturally resulting from the injury. Such treatment shall include treatments necessary to physical rehabilitation, including proper fitting and training in the use of prosthetic appliances, for such period as the nature of the injury may require or as necessary to reasonably restore the employee to his normal level of physical capacity or as necessary to give reasonable relief from pain, but shall not include any other phase of vocational rehabilitation. The obligation of the association to be responsible for hospital services as herein provided shall not be held to include any obligation on the part of the association to pay for medical, nursing or surgical services not ordinarily provided by hospitals as a part of their services.

"Provided that any physician or chiropractor rendering medical or chiropractic care to any injured worker shall render an initial report as soon as practicable identifying the injured worker and stating the nature and extent of the injury and thereafter shall render subsequent reports reasonably necessary to keep the status of the claimant's condition known.

"Hospitals shall, upon request of either the injured worker, his attorney, or the association, furnish records pertaining to treatment or hospitalization for which compensation is being sought. All reports and records requested hereunder shall be made to the association and the injured worker or his attorney. The failure of the physician or chiropractor to make such reports or of the hospital to furnish
requested records shall relieve the association and the injured worker from any obligation to pay for the services rendered by the physician, chiropractor, or hospital. All charges for the furnishing of reports and records hereunder shall be subject to regulation by the Board in accordance with Section 7b hereof, provided however, such charges shall in no event be less than the fair and reasonable charge for the furnishing of said reports and records. If the furnishing of said reports and records is required under this section, the Association shall pay the fair and reasonable charge for furnishing said reports and records. There shall be no additional charge for furnishing a copy of the required reports and records to the injured worker or his attorney.

"In the event that the association shall contend before the Board that charges for medical aid, hospital services, chiropractic services, nursing services, or medicines are not fair and reasonable, the Board's award shall make an express finding of the amounts which are fair and reasonable charges for the aid or services rendered or the medicines provided. If the amount found is less than those charges submitted by the provider of the aid, services, or medicines, then said provider shall be entitled to appeal the Board's determination as if it were a party to the action. In any subsequent appeal from the award of the Board, if the person or facility providing medical aid, hospital services, chiropractic services, nursing services, or medicines recovers an amount equal to or in excess of the charges submitted to the Board, such person or facility shall be entitled to recover from the association an additional amount equal to 12 percent of the amount unpaid and reasonable attorney's fees. If the amount so recovered is less than the charges submitted to the Board, the association shall be entitled to recover its reasonable attorney's fees from the person or facility providing the medical aid, hospital services, chiropractic services, nursing services, or medicines.

"In order to assist the Board in its regulation of fees and charges under Section 7b of Article 8306, the Board shall cause to be established voluntary arbitration panels to the extent it deems necessary or appropriate. The panels shall be composed of representatives of provider groups and the insurance industry for the purpose of the voluntary arbitration of disputed fees and charges. The Board shall actively supervise the voluntary arbitration panels so established. Nothing herein shall alter the rights of the injured employee under Article 8309a. No finding by any voluntary arbitration panel shall be admissible in evidence in any trial de novo."

SECTION 8. Section 20a, Article 8308, Revised Statutes, as amended, is amended to read as follows:

"Section 20a. If the association cancels a policy or does not renew it on its anniversary date, the association shall send notice of the cancellation or nonrenewal to the subscriber by certified mail at least 10 days prior to the effective date of cancellation or nonrenewal and to the board by certified mail or in person on or before the date of cancellation or nonrenewal. Failure of the association to give the notice as required by this section shall extend the policy until the required notice is given to the subscriber and to the Industrial Accident Board, or until a subsequent notice is filed under the provisions of Section 18a of this article, at which time the subsequent insurance company shall be deemed to be the only insurance company liable under the provisions of this Act from and after the effective date of such subsequent policy of insurance."

SECTION 9. A member of the Industrial Accident Board who was appointed before the effective date of this Act and was eligible to be a member of the board under the law as it existed at the time of his appointment may serve the remainder of the term for which he was appointed. The grounds for removal from the board in Subsection (a) of Section 2a, Article 8307, Revised Statutes, do not apply to a member of the board who was appointed before the effective date of this Act.
SECTION 10. A person who was hired as an employee of the Industrial Accident Board before the effective date of this Act and who, at the time of his hiring, would have been in violation of a prohibition in Subsection (b) or (c), Section 2, Article 8307, Revised Statutes, as added by this Act, had that prohibition existed at that time, may not lose his job with the board if the only reason for termination is the existence of such a violation, provided that such person is not in violation of these subsections at the time they become effective.

SECTION 11. The requirements under Subsections (b) and (c), Section 3a, Article 8307, Revised Statutes, as added by this Act, that the executive director of the Industrial Accident Board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1984. The requirement of Subsection (c) of Section 3a that merit pay be based on the performance evaluation system shall be implemented before September 1, 1985.

SECTION 12. Section 7, Article 8307, Revised Statutes, or Section 18a, Article 8308, Revised Statutes, as they existed before being amended by this Act, are continued in effect for the purpose of the adjudication of offenses that occur before the effective date of this Act. For purposes of this section, an offense occurs before the effective date of this Act if any element of the offense occurs before that date.

SECTION 13. This Act takes effect September 1, 1983.

SECTION 14. Nothing contained in this Act shall in any way change, modify, alter, or amend the confidentiality of claim files as provided in Section 4b and Section 9a of Article 8307.

SECTION 15. 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 180 was read second time.

Representative Jackson offered the following amendment to CSSB 180:

Amend CSSB 180 by striking Section 5 of the bill (which begins on page 8) and renumbering the succeeding sections accordingly.

The amendment was adopted without objection.

Representative Jackson offered the following amendment to CSSB 180:

Amend CSSB 180 on page 9, by inserting a new Subsection (h) in Section 6 of the bill to read as follows:

"(h) If the Board finds that a court is not assessing costs due under this section or is not making a reasonable effort to collect the costs, the board may not make any awards under this Act to residents of the jurisdiction served by the court."

The amendment was adopted without objection.

CSSB 180, as amended, was passed to third reading.

SB 1141 ON SECOND READING
(Schlueter - House Sponsor)

The chair laid before the house on its second reading and passage to third reading, the complete committee substitute for SB 1141.
A BILL TO BE ENTITLED
AN ACT
relating to the regulation of motor vehicle manufacturers, distributors, and sellers of new motor vehicles; to the protection of purchasers of new motor vehicles; to certain related legal actions by consumers; giving the Texas Motor Vehicle Commission certain powers and duties; imposing certain license fees; defining "motor vehicle" and "new motor vehicle"; providing different effective dates; amending Sections 1.03; 5.02; and 5.04; Subsections (b) and (j); Section 3.04; Subsection (a); Section 4.05; Subsections (b) and (c); Section 4.07; and adding Section 6.07, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Section 1.03, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:
“Section 1.03. DEFINITIONS. In this Act, unless the context requires a different definition:
“(1) 'Motor vehicle' means:
“(A) every fully self-propelled vehicle which has as its primary purpose the transport of a person or persons, or property, on a public highway, and having two or more wheels;
“(B) every two or more wheeled fully self-propelled, titled vehicle which has as its primary purpose the transport of a person or persons or property and is not manufactured for use on public streets, roads or highways; or
“(C) an engine, transmission, or rear axle manufactured for installation in a vehicle having as its primary purpose the transport of a person or persons or property on a public highway and having a gross vehicle weight rating of more than 16,000 pounds, whether or not attached to a vehicle chassis.
“(2) 'New motor vehicle' means a motor vehicle which has not been the subject of a 'retail sale' as defined in Subdivision (2), Section 152.001, Tax Code [Article 6.04(10), Title 22A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended].
“(3) 'Person' means every natural person, partnership, corporation, association, trust; estate, or any other legal entity.
“(4) 'Dealer' means any person engaged in the business of buying, selling or exchanging new motor vehicles at an established and permanent place of business pursuant to a franchise in effect with a manufacturer or distributor.
“(5) 'Manufacturer' means any person who manufactures or assembles new motor vehicles either within or without this State.
“(6) 'Distributor' means any person who distributes and/or sells new motor vehicles to dealers and who is not a manufacturer.
“(7) 'Representative' means any person who is or acts as an agent, employee or representative of a manufacturer or distributor who performs any duties in this State relating to promoting the distribution and/or sale of new motor vehicles or contacts dealers in this State on behalf of a manufacturer or distributor.
“(8) 'Franchise' means one or more contracts under which (A) the franchisee is granted the right to sell new motor vehicles manufactured or distributed by the franchisor; (B) the franchisee as an independent business is a component of franchisor's distribution system; (C) the franchisee is substantially associated with franchisor's trademark, tradename and commercial symbol; (D) the franchisee's business is substantially reliant on franchisor for a continued supply of motor vehicles, parts, and accessories for the conduct of its business; or (E) any right, duty, or obligation granted or imposed by this Act is affected.
“(9) ‘Commission’ means the Texas Motor Vehicle Commission created by this Act.

“(10) ‘Broker’ means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

“(A) a dealer or a bona fide agent or employee of a dealer;

“(B) a representative or a bona fide agent or employee of a representative;

“(C) a distributor or a bona fide agent or employee of a distributor; or

“(D) at any point in the transaction the bona fide owner of the vehicle involved in the transaction.”

SECTION 2. Subsections (h) and (j), Section 3.04, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

“(h) The owner [A retail bu5c1] of a [new] motor vehicle may make a complaint concerning defects in a [new] motor vehicle which are covered by the manufacturer’s or distributor’s warranty agreement applicable to the vehicle. Such complaint must be made in writing [by letter] to the dealer and [a copy of which shall be sent] to the applicable manufacturer or distributor, and must specify the defects in the vehicle which are covered by the warranty. The owner may make further complaint by sending to the Commission a copy of the complaint [letter]. The Commission may hold a hearing on all unsatisfied complaints to determine whether there has been a violation of the Act.

“(j) No dealer member of the Commission may participate in, deliberate on, hear, or consider, or decide any matter involving a protest or denial under Section 4.06(c), 5.02(3), 5.02(6), 5.02(11) or 5.02(13) of this Act involving [of an application to establish] a dealership franchised or proposed to be licensed to sell [the same] motor vehicles manufactured or distributed by the same person or a subsidiary or affiliate of the same person for which the dealer member is franchised.”

SECTION 3. Subsection (a), Section 4.05, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

“(a) The annual license fees for licenses issued hereunder shall be as follows:

“(1) For each manufacturer and distributor, $500.00 [$300.00].

“(2) For each dealer who sold [more than] 200 or fewer new motor vehicles during the preceding calendar year, $100.00.

“(3) For each dealer who sold more than 200, but not more than 500, [or less] new motor vehicles during the preceding calendar year, $150.00 [$50.00].

“(4) For each dealer who sold more than 500, but not more than 1,000, new motor vehicles during the preceding calendar year, $200.00 [representative, $25.00].

“(5) For each dealer who sold more than 1,000 new motor vehicles during the preceding calendar year, $250.00.

“(6) For each representative, $50.00.”

SECTION 4. Subsections (b) and (c), Section 4.07, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

“(b) The Commission may require its approval of the contents of notices required by Subsection (a) of this section or may prescribe the contents of required notices. The Commission shall prepare, publish and distribute information concerning an owner’s rights under Section 6.07 of this Act and the retail seller of any new motor vehicle shall conspicuously post a copy of the information in the area where its customers usually make payment for repairs.

“(c) Failure to give the notice required by Subsections [Subsection] (a) and (b) of this section is a ground for suspension or revocation of a dealer’s license.”
SECTION 5. Section 5.02, The Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 5.02. MANUFACTURERS; DISTRIBUTORS; REPRESENTATIVES. It shall be unlawful for any manufacturer, distributor or representative to:

(1) Require or attempt to require any dealer to order, accept delivery of or pay anything of value, directly or indirectly, for any motor vehicle, appliance, part, accessory or any other commodity unless voluntarily ordered or contracted for by such dealer.

(2) Refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order to a dealer having a franchise agreement for the retail sale of any motor vehicles sold or distributed by such manufacturer, distributor, or representative, any new motor vehicle or parts or accessories to new motor vehicles as are covered by such franchise if such vehicle, parts or accessories are publicly advertised as being available for delivery or are actually being delivered, provided, however, this provision is not violated if such failure is caused by acts of God, work stoppage or delays due to strikes or labor disputes, freight embargoes or other causes beyond the control of the manufacturer, distributor, or representative.

(3) Notwithstanding the terms of any franchise agreement, terminate or refuse to continue any franchise with a dealer unless (A) the dealer and the Commission have received written notice sixty days before the effective date thereof setting forth the specific grounds for termination or noncontinuance and (B) if the dealer files a protest with the Commission, it is established by a preponderance of evidence at a hearing called by the Commission that there is good cause for the termination or noncontinuance. The Commission shall consider all the existing circumstances in determining good cause, including without limitation the dealer's sales in relation to the market, the dealer's investment and obligations, injury to public welfare, adequacy of service facilities, equipment, parts and personnel of the dealer and other dealers of new motor vehicles of the same line-make, whether warranties are being honored, and compliance with the franchise agreement. Good cause shall not be shown solely by a desire for further market penetration. If a franchise is terminated or not continued, another franchise in the same line-make will be established within a reasonable time unless it is shown to the Commission that the community or trade area cannot reasonably support such a dealership. If this showing is made, no dealer license shall be thereafter issued in the same area unless a change in circumstances is shown.

(4) Use any false, deceptive or misleading advertising, as defined in Section 17.12 of the Business and Commerce Code, as amended.

(5) Notwithstanding the terms of any franchise agreement, prevent any dealer from changing the capital structure of his dealership or the means by or through which he finances the operation thereof, provided that the dealer meets any reasonable capital requirements agreed to by contract of the parties.

(6) Notwithstanding the terms of any franchise agreement, fail to give effect to or attempt to prevent any sale or transfer of a dealer, dealership or franchise or interest therein or management thereof unless it is shown to the Commission after hearing that the result of such sale, or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

(7) Require or attempt to require that a dealer assign to or act as an agent for any manufacturer, distributor or representative in the securing of promissory notes and security agreements given in connection with the sale or purchase of new motor vehicles or the securing of policies of insurance on or having to do with the operation of vehicles sold.
"(8) Fail, after complaint and hearing, to perform the obligations placed on the manufacturer in connection with the delivery, preparation and warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and delivery agreements on file with the Commission.

"(9) Fail to compensate its dealers for the work and services they are required to perform in connection with the dealer’s delivery and preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty work of like kind. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim in accordance with the requirements of the manufacturer or distributor on file with the Commission. Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer’s delivery, preparation, and warranty obligations as filed with the Commission shall constitute the dealer’s sole responsibility for product liability as between the dealer and manufacturer, and, except for a loss caused by the dealer’s failure to adhere to these obligations, a loss caused by the dealer’s negligence or intentional misconduct, or a loss caused by the dealer’s modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action.

"(10) Operate as a manufacturer, distributor, or representative without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

"(11) Notwithstanding the terms of any franchise agreement, to prevent or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution of this State unless it is shown to the Commission, after notice and hearing, that the result of such succession will be detrimental to the public interest or to the representation of the manufacturer or distributor; provided, however, nothing herein shall prevent a dealer, during his lifetime, from designating any person as his successor dealer, by written instrument filed with the manufacturer or distributor.

"(12) Require that a dealer pay or assume, directly or indirectly, any part of any refund, rebate, discount, or other financial adjustment made by the manufacturer, distributor, or representative to, or in favor of, any customer of a dealer, unless voluntarily agreed to by such dealer.

"(13) Notwithstanding the terms of any franchise agreement, deny or withhold approval of a written application to relocate a franchise unless (A) the applicant has received written notice of the denial or withholding of approval within 90 days after receipt of the application containing information reasonably necessary to enable the manufacturer or distributor to adequately evaluate the application, and (B) if the applicant files a protest with the Commission and establishes by a preponderance of the evidence at a hearing called by the Commission that the grounds for, and distance of, the relocation are reasonable."
SECTION 6. Section 5.04, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 5.04. SALE OF NEW MOTOR VEHICLES. No person may engage [represent to the public, by advertising or other means; that he is engaged] in the business of buying, selling, or exchanging new motor vehicles unless he holds a valid license issued by the Commission for the make or makes of new motor vehicles being bought, sold, or exchanged; or unless such person is acting as a bona fide employee or agent of the licensee; or unless such person is a second stage or allied equipment manufacturer modifying or converting new motor vehicles and offering them for sale with the original manufacturer's warranty unimpaired. In this Section, the term 'engage in the business of buying, selling, or exchanging new motor vehicles' means:

"(1) displaying for sale new motor vehicles on a lot or showroom; or
"(2) advertising for sale new motor vehicles; or
"(3) regularly or actively soliciting buyers for new motor vehicles."

SECTION 7. The Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended by adding Section 6.07 to read as follows:

"Section 6.07. WARRANTY PERFORMANCE OBLIGATIONS. (a) In addition to the other powers and duties provided for in this Act, the Commission shall cause manufacturers and distributors to perform the obligations imposed by this section. For purposes of this section, the term 'owner' means the person so designated on the certificate of title to a motor vehicle issued by the State Department of Highways and Public Transportation, or an equivalent document issued by the duly authorized agency of any other state, or any person to whom such motor vehicle is legally transferred during the duration of a manufacturer's or distributor's express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations thereof.

(b) If a new motor vehicle does not conform to all applicable manufacturer's or distributor's express warranties and the owner reports the nonconformity to the manufacturer or distributor, its agent, or its authorized dealer during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to an owner, whichever is the earlier date, the manufacturer or distributor shall make the repairs as are necessary to conform the vehicle to applicable express warranties, notwithstanding such repairs are made after the expiration of such term or such one-year period. This section does not in any way limit the remedies available to an owner under a new motor vehicle warranty that extends beyond the one-year period covered by this section.

(c) If the manufacturer or distributor is unable to conform the motor vehicle to an applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle after a reasonable number of attempts, the manufacturer or distributor shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the owner and refund to the owner the full purchase price less a reasonable allowance for the owner's use of the vehicle. Refunds shall be made to the owner and lienholder, if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use of the motor vehicle prior to the first report of the nonconformity to the manufacturer or distributor, its agent, or its dealer and during any subsequent period when the vehicle is not out of service for repair. In any hearing before the Commission under this section, a manufacturer or distributor may plead and prove as an affirmative defense to the remedies provided hereunder that (1) the nonconformity is the result of abuse, neglect, or
unauthorized modifications or alterations of the motor vehicle; or (2) the nonconformity does not substantially impair the use or value of the motor vehicle.

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or distributor, its agent, or its authorized dealer, within the express warranty term or during the period of one year following the date of original delivery to an owner, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service for repair for a cumulative total of 30 or more days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period and, such 30-day period shall be extended by any period of time during which repair services are not available to the owner because of a war, invasion, strike or fire, flood, or other natural disaster. In no event shall the presumption herein provided apply against a manufacturer or distributor unless the manufacturer or distributor has received prior direct notification in writing from or on behalf of the owner and an opportunity to cure the alleged defect.

(e) The provisions of Subchapter C of this Act are applicable to this section, and the Commission shall adopt rules and conduct hearings for the enforcement and implementation of this section. The provisions of this section are not available to an owner in an action seeking a refund or replacement based upon the alleged nonconformity of a motor vehicle to an express warranty applicable to the motor vehicle unless the owner has first exhausted the administrative remedies provided herein. The provisions of this section are not available to a party in an action against a seller under Chapter 2 or Chapter 17, Business & Commerce Code, as amended. The provisions of this section are available in an action against a manufacturer or distributor under Chapter 17, Business & Commerce Code, after the owner has exhausted the administrative provisions provided by this section. Any action brought under the provisions of this section shall be by trial de novo.

(f) This section does not limit the rights or remedies otherwise available to an owner under any other law.

(g) In a hearing under this section, the Commission shall make its order with respect to responsibility for payment of the cost of any refund or replacement and no manufacturer or distributor may cause any dealer to pay directly or indirectly any sum not specifically so ordered by the Commission.

(h) A proceeding brought under this section shall be commenced within six months following the earlier of (1) expiration of the express warranty term or (2) one year following the date of original delivery of the motor vehicle to an owner.

(i) Any contracted exclusion or modification of the remedies provided in this section is prohibited and shall be deemed null and void as against public policy.

SECTION 8. Section 7 of this Act applies only to a new motor vehicle, the original purchase of which occurred on or after October 1, 1983. All other sections of this Act take effect immediately upon passage.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

CSSB 1141 was read second time.

Representative Schlueter offered the following amendment to CSSB 1141:

Amend CSSB 1141 by inserting the word "if" between the word "and" and the letter "(B)" on line 20, page 10, and by deleting the word "if" between the letter "(B)" and the word "the" on line 20, page 10.
The amendment was adopted without objection.

Representative Oliveira offered the following amendment to CSSB 1141:

Amend CSSB 1141, page 3, line 27, to read:

“(h) The owner [or retailer] of a [new] motor vehicle or the owner’s designated agent may

Amend CSSB 1141, page 12, line 8, to read:

the owner or the owner’s designated agent reports the nonconformity to the manufacturer or

The amendment was adopted without objection.

Representative Clemons offered the following amendment to CSSB 1141:

Amend CSSB 1141, page 12, line 24 to read:

“motor vehicle with a new comparable motor vehicle or must accept return of”

Representative Schlueter moved to table the Clemons amendment.

A record vote was requested.

The motion to table prevailed by (Record 412): 117 Yeas, 25 Nays, 2 Present, not voting.

Yeas — Aguiar; Armbrister; Arnold; Berlanga(C); Blanton; Bomer; Buchanan; Burnett; Bush; Cain; Cary; Cavazos; Ceveha; Clark; Colbert; Connelly; Coody; Craddock; Danburg; Davis; Delaly; Delco; Denton; Eckels; Eikenburg; Emmett; English; Evans, C.; Finney; Fox; Gamez; Garcia, A.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley; Granoff; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Heflin; Hightower; Hibbert; Hill, A.; Hill, G.; Hill, P.; Horn; Hudson, D.; Hudson, S.; Hury; Jones; Keller; Kemp; Khoury; Kubisak; Kuepker; Lane; Lee, E. F.; Leonard; McKenna; McWilliams; Madla; Mankins; Martinez, W.; Messer; Milhaup; Oliveira; Parker; Patrick; Patronella; Patterson; Pennington; Pevey; Pierce; Polk; Polumbo; Presnal; Ragusdale; Robinson; Robnett; Rudd; Russell; Salinas; Sanders; Schlueter; Schoolcraft; Shea; Short; Simpson; Smith, A.; Smith, T.; Staniswalis; Stiles; Sutton; Tejeda; Thompson; G.; Toomey; Tow; Turner; Uber; Valles; Vowell; Waldrop; Wallace; Whaley; Wething; Willis; Wilson; Wolens; Word; Wright.

Nays — Barrientos; Barton, B.; Barton, E.; Carriker; Clemons; Collazo; Crockett; Edwards; Evans, L.; Gandy; Garcia, M.; Glossbrenner; Green; Hackney; Hernandez; Hinojosa; Luna; Martinez, R.; Moreno, A.; Moreno, P.; Price; Rangel; Shaw; Smith, C.; Watson.

Present, not voting — Mr. Speaker; Harrison, W.

Absent — Criss; Hollowell; Jackson; Lee, D.; Oliver; Thompson, S.

Representatives Hackney and Price offered the following amendment to CSSB 1141:

Amend CSSB 1141 by striking everything below the enacting clause and substituting the following:

SECTION 1. Section 1.03. Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

“Section 1.03. DEFINITIONS. In this Act, unless the context requires a different definition:

“(1) ‘Motor vehicle’ means:
"(A) every fully self-propelled vehicle which has as its primary purpose the transport of a person or persons, or property, on a public highway, and having two or more wheels;

"(B) every two or more wheeled fully self-propelled, titled vehicle which has as its primary purpose the transport of a person or persons or property, on a public highway and having a gross vehicle weight rating of more than 16,000 pounds, whether or not attached to a vehicle chassis.

"(C) an engine, transmission, or rear axle manufactured for installation in a vehicle having as its primary purpose the transport of a person or persons or property on a public highway and not manufactured for use on public streets, roads or highways:

"(D) any engine, transmission, or rear axle manufactured for installation in a vehicle having as its primary purpose the transport of a person or persons or property on a public highway and having a gross vehicle weight rating of more than 16,000 pounds, whether or not attached to a vehicle chassis.

"(2) "New motor vehicle" means a motor vehicle which has not been the subject of a 'retail sale' as defined in Subdivision (2), Section 152.001, Tax Code [Article 6.03(B), Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended].

"(3) 'Person' means every natural person, partnership, corporation, association, trust, estate, or any other legal entity.

"(4) 'Dealer' means any person engaged in the business of buying, selling or exchanging new motor vehicles at an established and permanent place of business pursuant to a franchise in effect with a manufacturer or distributor.

"(5) 'Manufactured' means any person who manufactures or assembles new motor vehicles either within or without this State.

"(6) 'Distributor' means any person who distributes and/or sells new motor vehicles to dealers and who is not a manufacturer.

"(7) 'Representative' means any person who is or acts as an agent, employee or representative of a manufacturer or distributor who performs any duties in this State relating to promoting the distribution and/or sale of new motor vehicles or contacts dealers in this State on behalf of a manufacturer or distributor.

"(8) 'Franchise' means one or more contracts under which (A) the franchisee is granted the right to sell new motor vehicles manufactured or distributed by the franchisor; (B) the franchisee as an independent business is a component of franchisor's distribution system; (C) the franchisee is substantially associated with franchisor's trademark, tradename and commercial symbol; (D) the franchisee's business is substantially reliant on franchisor for a continued supply of motor vehicles, parts, and accessories for the conduct of its business; or (E) any right, duty, or obligation granted or imposed by this Act is affected.

"(9) 'Commission' means the Texas Motor Vehicle Commission created by this Act.

"(10) 'Broker' means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

"(A) a dealer or a bona fide agent or employee of a dealer;

"(B) a representative or a bona fide agent or employee of a representative; or

"(C) a distributor or a bona fide agent or employee of a distributor; or

"(D) at any point in the transaction the bona fide owner of the vehicle involved in the transaction."

SECTION 2. Subsections (h) and (j), Section 3.04, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon's Texas Civil Statutes), is amended to read as follows:

"(h) The owner [or retail buyer] of a [new] motor vehicle or the owner's designated agent may make a complaint concerning defects in a [new] motor vehicle which are covered by the warranty agreement applicable to the vehicle. Such complaint must be made in writing [by letter] to the dealer or, a copy of which shall be sent] to the applicable manufacturer or distributor, and must specify the defects in the vehicle which are covered by the warranty. The owner may make further
complaint by sending to the Commission a copy of the complaint [letter]. The Commission may hold a hearing on all unsatisfied complaints to determine whether there has been a violation of the Act.

"(j) No dealer member of the Commission may participate in, deliberate on, hear, or consider, or decide any matter involving a protest or denial under Section 4.06(c), 5.02(3), 5.02(6), 5.02(11) or 5.02(13) of this Act involving [a] application to establish a dealership franchised or proposed to be licensed to sell [the same] motor vehicles manufactured or distributed by the same person or a subsidiary or affiliate of the same person for which the dealer member is franchised."

SECTION 3. Subsection (a), Section 4.05, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

"(a) The annual license fees for licenses issued hereunder shall be as follows:

"(1) For each manufacturer and distributor, $500.00 ($300.00).

"(2) For each dealer who sold less than 200 new motor vehicles during the preceding calendar year, $100.00.

"(3) For each dealer who sold more than 200, but not more than 500, new motor vehicles during the preceding calendar year, $150.00 ($50.00).

"(4) For each dealer who sold more than 500, but not more than 1,000, new motor vehicles during the preceding calendar year, $200.00 (representative: $25.00).

"(5) For each dealer who sold more than 1,000 new motor vehicles during the preceding calendar year, $250.00.

"(6) For each representative, $50.00."

SECTION 4. Subsections (b) and (c), Section 4.07, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

"(b) The Commission may require its approval of the contents of notices required by Subsection (a) of this section or may prescribe the contents of required notices. The Commission shall prepare, publish and distribute information concerning an owner’s rights under Section 6.07 of this Act and the retail seller of any new motor vehicle shall conspicuously post a copy of the information in the area where its customers usually make payment for repairs.

"(c) Failure to give the notice required by Subsection (a) of this section is a ground for suspension or revocation of a dealer’s license."

SECTION 5. Section 5.02, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

"Section 5.02. MANUFACTURERS; DISTRIBUTORS; REPRESENTATIVES. It shall be unlawful for any manufacturer, distributor or representative to:

"(1) Require or attempt to require any dealer to order, accept delivery of or pay anything of value, directly or indirectly, for any motor vehicle, appliance, part, accessory or any other commodity unless voluntarily ordered or contracted for by such dealer.

"(2) Refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order to a dealer having a franchise agreement for the retail sale of any motor vehicles sold or distributed by such manufacturer, distributor, or representative, any new motor vehicle or parts or accessories to new motor vehicles as are covered by such franchise; if such vehicle, parts or accessories are publicly advertised as being available for delivery or are actually being delivered; provided, however, this provision is not violated if such failure is caused by acts of God, work stoppage or delays due to strikes or labor disputes, freight embargoes or other causes beyond the control of the manufacturer, distributor, or representative.
"(3) Notwithstanding the terms of any franchise agreement, terminate or refuse to continue any franchise with a dealer unless (A) the dealer and the Commission have received written notice sixty days before the effective date thereof setting forth the specific grounds for termination or noncontinuance and (B) if the dealer files a protest with the Commission, it is established by a preponderance of evidence at a hearing called by the Commission that there is good cause for the termination or noncontinuance. The Commission shall consider all the existing circumstances in determining good cause, including without limitation the dealer's sales in relation to the market, the dealer's investment and obligations, injury to public welfare, adequacy of service facilities, equipment, parts and personnel of the dealer and other dealers of new motor vehicles of the same line-make, whether warranties are being honored, and compliance with the franchise agreement. Good cause shall not be shown solely by a desire for further market penetration. If a franchise is terminated or not continued, another franchise in the same line-make will be established within a reasonable time unless it is shown to the Commission that the community or trade area cannot reasonably support such a dealership. If this showing is made, no dealer license shall be thereafter issued in the same area unless a change in circumstances is shown.

"(4) Use any false, deceptive or misleading advertising, as defined in Section 17.12 of the Business and Commerce Code, as amended.

"(5) Notwithstanding the terms of any franchise agreement, prevent any dealer from changing the capital structure of his dealership or the means by or through which he finances the operation thereof, provided that the dealer meets any reasonable capital requirements agreed to by contract of the parties.

"(6) Notwithstanding the terms of any franchise agreement, fail to give effect to or attempt to prevent any sale or transfer of a dealer, dealership or franchise or interest therein or management thereof unless it is shown to the Commission after hearing that the result of such sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

"(7) Require or attempt to require that a dealer assign to or act as an agent for any manufacturer, distributor or representative in the securing of promissory notes and security agreements given in connection with the sale or purchase of new motor vehicles or the securing of policies of insurance on or having to do with the operation of vehicles sold.

"(8) Fail, after complaint and hearing, to perform the obligations placed on the manufacturer in connection with the delivery, preparation and warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and delivery agreements on file with the Commission.

"(9) Fail to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty work of like kind. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim in accordance
with the requirements of the manufacturer or distributor on file with the Commission. Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer's delivery, preparation, and warranty obligations as filed with the Commission shall constitute the dealer's sole responsibility for product liability as between the dealer and manufacturer, and, except for a loss caused by the dealer's failure to adhere to these obligations, a loss caused by the dealer's negligence or intentional misconduct, or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action.

"(10) Operate as a manufacturer, distributor, or representative without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

"(11) Notwithstanding the terms of any franchise agreement, to prevent or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution of this State unless it is shown to the Commission, after notice and hearing, that the result of such succession will be detrimental to the public interest or to the representation of the manufacturer or distributor; provided, however, nothing herein shall prevent a dealer, during his lifetime, from designating any person as his successor dealer, by written instrument filed with the manufacturer or distributor.

"(12) Require that a dealer pay or assume, directly or indirectly, any part of any refund, rebate, discount, or other financial adjustment made by the manufacturer, distributor, or representative to, or in favor of, any customer of a dealer, unless voluntarily agreed to by such dealer.

"(13) Notwithstanding the terms of any franchise agreement, deny or withhold approval of a written application to relocate a franchise unless (A) the applicant has received written notice of the denial or withholding of approval within 90 days after receipt of the application containing information reasonably necessary to enable the manufacturer or distributor to adequately evaluate the application, and (B) if the applicant files a protest with the Commission and establishes by a preponderance of the evidence at a hearing called by the Commission that the grounds for, and distance of, the relocation are reasonable."

SECTION 6. Section 5.04, The Texas Motor Vehicle Commission Code, is amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

"Section 5.04. SALE OF NEW MOTOR VEHICLES. No person may engage [represent to the public, by advertising or other means, that he is engaged] in the business of buying, selling, or exchanging new motor vehicles unless he holds a valid license issued by the Commission for the make or makes of new motor vehicles being bought, sold, or exchanged; or unless such person is acting as a bona fide employee or agent of the licensee; or unless such person is a second stage or allied equipment manufacturer modifying or converting new motor vehicles and offering them for sale with the original manufacturer's warranty unimpaired. In this Section, the term 'engage in the business of buying, selling, or exchanging new motor vehicles' means:

"(1) displaying for sale new motor vehicles on a lot or showroom; or

"(2) advertising for sale new motor vehicles; or

"(3) regularly or actively soliciting buyers for new motor vehicles."

SECTION 7. The Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended by adding Section 6.07 to read as follows:
"Section 6.07. WARRANTY PERFORMANCE OBLIGATIONS. (a) In addition to the other powers and duties provided for in this Act the Commission shall cause manufacturers, distributors, their agents, and authorized dealers to perform the obligations imposed by this section. For purposes of this section, the term 'owner' means the person so designated on the certificate of title to a motor vehicle issued by the State Department of Highways and Public Transportation, or an equivalent document issued by the duly authorized agency of any other state, or any person to whom such motor vehicle is legally transferred during the duration of the express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations thereof.

"(b) If a new motor vehicle does not conform to all applicable express warranties and the owner or the owner's designated agent reports the nonconformity to the manufacturer or distributor, its agent, or its authorized dealer during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to an owner, whichever is the earlier date, the manufacturer, distributor, its agent or its authorized dealer shall make the repairs as are necessary to conform the vehicle to applicable express warranties, notwithstanding such repairs are made after the expiration of such one-year period. This section does not in any way limit the remedies available to an owner under a new motor vehicle warranty that extends beyond the one-year period covered by this section.

"(c) If the manufacturer, distributor, its agent, or its authorized dealer is unable to conform the motor vehicle to an applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle after a reasonable number of attempts, the manufacturer, distributor, its agent, or its authorized dealer shall replace the motor vehicle with a new comparable motor vehicle, in which event the owner must pay a reasonable allowance for the use of the nonconforming vehicle, if any; or at the consumer's option the manufacturer, distributor, its agent, or its authorized dealer must accept return of the vehicle from the owner and refund to the owner the full purchase price, including but not limited to sales tax and dealer preparation charges, less a reasonable allowance for use shall be that amount directly attributable to use of the motor vehicle prior to the first report of the nonconformity to the manufacturer or distributor, its agent, or its dealer and during any subsequent period when the vehicle is not out of service for repair. In any hearing before the Commission under this section, a manufacturer, distributor, its agent or its authorized dealer may plead and prove as an affirmative defense to the remedies provided hereunder that (1) the nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle; or (2) the nonconformity does not substantially impair the use or value of the motor vehicle.

"(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if (1) the same nonconformity has been subject to repair four or more times by the manufacturer, distributor, its agent, or its authorized dealer, within the express warranty term or during the period of one year following the date of original delivery to an owner, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service for repair for a cumulative total of 30 or more days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period and, such 30-day period shall be extended by any period of time during which repair services are not available to the owner because of a war, invasion, strike or fire, flood or other natural disaster. In no event shall the presumption herein provided apply against a manufacturer,
distributor, their agents, and authorized dealers unless the manufacturer, distributor, their agents, or authorized dealers has had an opportunity to cure the alleged defect.

"(c) The provisions of Subchapter C of this Act are applicable to this section, and the Commission shall adopt rules and conduct hearings for the enforcement and implementation of this section. However, a consumer need not exhaust such administrative remedy before filing suit in another available forum. The provisions of this section are available to a party against a person or entity obligated under a warranty in an action under Chapter 2 or Chapter 17, Business and Commerce Code, as amended. Any appeal brought from a decision of the Commission under the provisions of this section shall be by trial de novo.

"(f) This section does not limit the rights or remedies otherwise available to an owner under any other law.

"(g) In a hearing under this section, the Commission shall make its order with respect to responsibility for payment of the cost of any refund or replacement and no manufacturer or distributor may cause any dealer to pay directly or indirectly any sum not specifically so ordered by the Commission.

"(h) A proceeding brought under this section shall be commenced within two years following the earlier of (1) expiration of the express warranty term or (2) one year following the date of original delivery of the motor vehicle to an owner.

"(i) Any contractual exclusion or modification of the remedies provided in this section is prohibited and shall be deemed null and void as against public policy."

SECTION 8. Section 7 of this Act applies only to a new motor vehicle, the original purchase of which occurred on or after October 1, 1983. All other sections of this Act take effect immediately upon passage.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended...and this rule is hereby suspended, and that this act take effect and be in force according to its terms, and it is so enacted.

(Speaker in the chair)

Representative Schlueter moved to table the Hackney-Price amendment.

A record vote was requested.

The motion to table prevailed by (Record 413): 107 Yeas, 35 Nays, 3 Present, not voting.

Yeas — Aglich; Armbrister; Arnold; Bomer; Buchanan; Burnett; Cain; Ceverha; Clark; Colbert; Connelly; Craddick; Criss; Danburg; Davis; DeLay; Denton; Eckels; Edwards; Eikenburg; Emmett; English; Evans, C.; Finnell; Fox; Gamer; García, A.; Gavin; Geistweidt; Gibson, B.; Granoff; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Heflin; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Horn; Hudson, D.; Hudson, S.; Hury; Jackson; Jones, Keller, Khoury, Kubiak; Kuempel; Lane; Lee, D.; Leonard; McKenna; McWilliams; Madla; Mankins; Messer; Millsap; Oliveira; Oliver; Parker; Patrick; Patterson; Pennington; Peveto; Pierce; Polk; Polumbo; Presnal; Ragsdale; Robinson; Robnett; Rudd; Russell; Salinas; Saunders; Schlueter; Schoolcraft; Shea; Short; Simpson; Smith, A.; Smith, T.; Staniswalis; Stiles; Tejeda; Thompson, G.; Toomey; Tow; Turner; Uher; Valles; Vowell; Waldrop; Wallace; Whaley; Wieting; Willis; Wilson; Word; Wright.

Nays — Barrientos; Barton, B.; Barton, E.; Bush; Carriker; Cary; Cavazos; Clemmons; Collazo; Coody; Crockett; Delco; Evans, L.; Gandy; García, M.; Gilley; Glossbrenner; Green; Hackney; Hernandez; Hollowell; Kemp; Lee, E. F.; Luna;
MESSAGE FROM THE SENATE

Austin, Texas, May 17, 1983

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:

HJR 1 by Oliveira, et al., proposing a constitutional amendment to allow for the assignment of income for the enforcement of court-ordered child support payments. (amended)

HB 2 by Oliveira, et al., relating to the enforcement of court-ordered child support. (amended)

Respectfully,
Betty King
Secretary of the Senate

CSSB 1141 - (consideration continued)

Representative Shaw offered the following amendment to CSSB 1141:

Amend CSSB 1141, page 4, line 4-5 to read:

in writing [by letter] to the applicable dealer, [a copy of which shall be sent to the applicable] manufacturer or distributor

The amendment was adopted without objection.

Representative Hackney offered the following amendment to CSSB 1141:

Amend CSSB 1141, page 14, lines 1-4 to read:

against a manufacturer or distributor unless the applicable dealer, manufacturer, or distributor has had an opportunity to cure the alleged defect.

Representative DeLay moved to table the Hackney amendment.

A record vote was requested.

The motion to table prevailed by (Record 414): 102 Yeas, 38 Nays, 3 Present, not voting.

Yeas — Agnich; Armbrister; Arnold; Barton, E.; Bomer; Buchanan; Burnett; Cain; Ceverha; Clark; Connelly; Craddick; Danburg; DeLay; Denton; Eckels; Eikenberg; Emmett; English; Evans, C.; Finnell; Fox; Gamez; Garcia, A.; Gavin; Geistwoldt; Gibson, B.; Glossbrenner; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Heflin; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Horn; Hudson, D.; Hudson, S.; Hury; Jackson; Jones; Keller; Kemp; Khoury; Kubisk; Kuepnel; Laney; Lee, D.; Leonard; McKenna; McWilliams; Madla; Manks; Messer; Millsap; Oliver; Parker; Patrick; Patronella; Patterson; Pennington; Peveto; Pierce; Polk; Polombo; Presnal; Rangel; Robinson; Robnett; Rudd; Russell; Salinas; Saunders; Schlueter; Schoolcraft; Shea; Short; Simpson;
Representative Price offered the following amendment to CSSB 1141:

Amend CSSB 1141, page 12, line 23 to read:

of attempts, the manufacturer or distributor shall, at the consumer's option on return of the nonconforming motor vehicle replace the

Representative DeLay moved to table the Price amendment.

The motion to table prevailed.

Representative Price offered the following amendment to CSSB 1141:

1. Amend CSSB 1141, page 4, line 2 to delete the words "manufacturer's or distributor's"
2. and page 11, line 22 by deleting the words "and distributors" and adding the words "distributors, their agents, and authorized dealers"
3. and page 12, line 2 by deleting the words "a manufacturer's or distributor's" and adding the word "the"
4. and page 12, line 7 by deleting the words "manufacturer's or distributor's"
5. and page 12, line 12 by deleting the words "or distributor" and adding the words "distributor, its agent or its authorized dealer"
6. and page 12, line 19 by deleting the words "or distributor" and adding the words "distributor, its agent or its authorized dealer"
7. and page 12, line 23 by deleting the words "or distributor" and adding the words "distributor, its agent or its authorized dealer"
8. and page 13, line 7 by deleting the words "or distributor" and adding the words "distributor, its agent or its authorized dealer"
9. and page 14, line 1-2 by deleting the words "or distributor unless the manufacturer or distributor" and adding the words "distributor, its agent, or its authorized dealer unless the manufacturer, distributor, its agent, or its authorized dealer"

Representative Schlueter moved to table the Price amendment.

A record vote was requested.

The motion to table prevailed by (Record 415): 115 Yeas, 23 Nays, 3 Present, not voting.

Yea — Aglich; Armbrister; Arnold; Barrientos; Bomer; Buchanan; Burnett; Cain; Ceverha; Clark; Colbert; Connelly; Coody; Craddick; Criss; Danburg; Davis; DeLay; Denton; Eckels; Eikenburg; Emmett; English; Evans, C.; Evans, L.; Finnell; Fox; Gamed; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gilley; Glossbrenner; Granoff; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Hellin; Hildbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Horn; Hudson, D.; Hudson, S.; Hurley; Jackson; Jones; Keller; Kemp;
Representative Luna offered the following amendment to CSSB 1141:

Amend CSSB 1141, page 12, lines 24-27 to read:

motor vehicle with a comparable new motor vehicle, in which event the owner must pay a reasonable allowance for the use of the nonconforming vehicle, if any; or the manufacturer, distributor, its agent, or its authorized dealer must accept return of the vehicle from the owner and refund to the owner the full purchase price, including but not limited to sales tax and dealer preparation charges insurance premiums to the extent that the consumer is entitled to refund upon policy cancellation, the full amount of interest or time price differential charged in the contract for financing and official fees, but that term does not include earned insurance premiums less a reasonable allowance for the owner's use of the vehicle. Refunds shall be made to the owner and lienholder, if

A record vote was requested.

Yeas — Aignich; Armbrister, Arnold; Barton, E.; Berlanga; Bomer; Buchanan; Burnett; Cain; Ceverha; Clark; Colbert; Connelly; Coody; Craddick; Davis; DeLay; Denton; Edick; Eikenburg; English; Evans, C.; Finnell; Fox; Gamez; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gilley; Glossbrenner; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Heflin; Hightower; Hilbert; Hill, A.; Hill, P.; Horn; Hudson, D.; Hudson, S.; Hurst; Jackson; Jones; Keller; Kemp; Khoury; Kubiak; Kuempel; Laney; Lee, D.; Leonard; McKenna; McWilliams; Madla; Messer; Millsap; Parker; Patrick; Patronella; Patterson; Pennington; Peveto; Polk; Polumbo; Presnal; Ragsdale; Rangel; Robinson; Robnett; Rudd; Russell; Salinas; Saunders; Schlueuter; Schoolcraft; Shea; Short; Simpson; Smith, A.; Smith, T.; Staniswalis; Stiles; Tejeda; Thompson, G.; Toomey; Tow; Turner; Uher; Valles; Vowell; Waldrop; Whaley; Wieting; Willis; Wilson; Wolens; Word; Wright.

Nays — Barrientos; Barton, B.; Barton, E.; Bush; Carriker; Cavazos; Clemens; Crockett; Delco; Gandy; Green; Hackney; Hernandez; Hollowell; Luna; Martinez, R.; Martinez, W.; Moreno, A.; Moreno, P.; Price; Shaw; Smith, C.; Wallace; Wallace.

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

Absent — Berlanga; Cary; Collazo; Edwards; Gibson, J.; Hightower; Mankins; Sutton; Thompson, S.

Representative Schlueter moved to table the Luna amendment.

A record vote was requested.

Yeas — Agnich; Armbrister, Arnold; Barton, E.; Berlanga; Bomer; Buchanan; Burnett; Cain; Ceverha; Clark; Colbert; Connelly; Coody; Craddick; Davis; DeLay; Denton; Edick; Eikenburg; English; Evans, C.; Finnell; Fox; Gamez; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gilley; Glossbrenner; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Heflin; Hightower; Hilbert; Hill, A.; Hill, P.; Horn; Hudson, D.; Hudson, S.; Hurst; Jackson; Jones; Keller; Kemp; Khoury; Kubiak; Kuempel; Laney; Lee, D.; Leonard; McKenna; McWilliams; Madla; Messer; Millsap; Parker; Patrick; Patronella; Patterson; Pennington; Peveto; Polk; Polumbo; Presnal; Ragsdale; Rangel; Robinson; Rudd; Russell; Salinas; Saunders; Schlueuter; Shaw; Shea; Short; Simpson; Smith, A.; Smith, T.; Staniswalis; Stiles; Sutton; Tejeda; Toomey; Tow; Turner; Uher; Valles; Vowell; Waldrop; Whaley; Wieting; Willis; Wilson; Wolens; Word; Wright.

Nays — Barrientos; Barton, B.; Bush; Carriker; Cavazos; Clemens; Crockett; Danburg; Delco; Gandy; Granolf; Green; Hackney; Hernandez; Hill, G.; Hinojosa; Hollowell; Luna; Martinez, R.; Martinez, W.; Moreno, A.; Moreno, P.; Oliveira; Price; Smith, C.; Wallace; Watson.

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

Absent — Cary; Collazo; Criss; Edwards; Emmett; Evans, L.; Gibson, J.; Lee, E. F.; Mankins; Oliver; Pierce; Robnett; Schoolcraft; Thompson, G.; Thompson, S.
MESSAGE FROM THE SENATE

Austin, Texas, May 17, 1983

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 161 by Glasgow, relating to public disclosure of certain information obtained by institutions of higher education.

SB 472 by Mauzy, relating to a temporary license or permit to sell beer or beer and wine for on-premises consumption.

Respectfully,

Betty King
Secretary of the Senate

CSSB 1141 - (consideration continued)

Representative Hackney offered the following amendment to CSSB 1141:

Amend CSSB 1141 page 14, subsection (e) by substituting the following:

"(e) The provisions of Subchapter C of this Act are applicable to this section, and the Commission shall adopt rules and conduct hearings for the enforcement and implementation of this section. However, a consumer need not exhaust such administrative remedy before filing suit in any other available forum. The provisions of this section are available to a party against a person or entity obligated under a warranty in an action under Chapter 2 or Chapter 17, Business and Commerce Code, as amended. Any appeal brought from a decision of the Commission under the provisions of this section shall be by trial de novo."

Representative Schlueter moved to table the Hackney amendment.

A record vote was requested.

The motion to table prevailed by (Record 417): 102 Yeas, 41 Nays, 4 Present, not voting.

Yeas — Agnich; Armbrister; Arnold; Bomer; Buchanan; Burnett; Ceverha; Clark; Colbert; Connelly; Coody; Craddock; Criss; Danburg; Davis; DeLay; Denton; Eckels; Ekenburg; Emmett; English; Evans, C.; Evans, L.; Fennell; Fox; Gavin; Geistweidt; Gibson, B.; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Heflin; Hilbert; Hill, A.; Hill, P.; Hollowell; Horn; Hudson, S.; Hury; Jackson; Jones; Keller; Kemp; Khoury; Kubiak; Kuempel; Laney; Lee, D.; Lee, F. L.; Leonard; McKenna; McWilliams; Madia; Mankins; Messer; Millsap; Parker; Patrick; Patronella; Patterson; Pennington; Pierce; Polk; Presnal; Robinson; Robnett; Rudd; Russell; Salinas; Saunders; Schlueter; Schoolcraft; Shea; Short; Simpson; Smith, A.; Smith, T.; Staniswalis; Stiles; Sutton; Tejeda; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Uher; Valles; Vowell; Waldrop; Wallace; Whaley; Wieting; Willis; Wilson; Word; Wright.

Nays — Barrientos; Barton, B.; Barton, E.; Bush; Carriker; Cary; Cavazos; Clemens; Collazo; Crockett; Delco; Edwards; Gamez; Gandy; Garcia, A.; Garcia, M.; Gilley; Gluebnenn; Granoff; Green; Hackney; Hernandez; Hightower; Hill, G.; Hinojosa; Hudson, D.; Luna; Martinez, R.; Martinez, W.;
Moreno, A.; Moreno, P.; Oliver; Peveto; Polumbo; Price; Ragsdale; Rangel; Shaw; Smith, C.; Watson; Wolcns.

Present, not voting — Mr. Speaker(C); Blanton; Harrison, W.; Oliveira.

Absent — Berlanga; Cain; Gibson, J.

Representative Price offered the following amendment to CSSB 1141:

Amend CSSB 1141 by adding a new "SECTION 2" and renumbering the subsequent SECTIONS accordingly. The new "SECTION 2" shall read as follows:

"SECTION 2. Subsection (a), Section 2.03, Texas Motor Vehicle Commission Code, as amended (Article 4413(36), Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 2.03. (a) Each member of the Commission shall be a citizen of the United States and a resident of this State. Three [Five] members shall be dealers, no two of which are franchised to sell the motor vehicles manufactured or distributed by the same person or a subsidiary or affiliate of the same person. Six [Four] members shall be persons from the public who are not licensed hereunder and who do not have, except as consumers, interests in any business that manufactures, distributes, or sells new motor vehicles."

Representative Schlueter raised a point of order against further consideration of the Price amendment on the grounds that the amendment is not germane to CSSB 1141.

The speaker sustained the point of order.

CSSB 1141, as amended, was passed to third reading. (Price recorded voting no; W. Harrison, present-not voting; B. Barton, yes)

SB 1 - POSTPONED

Representative T. Smith moved that consideration of SB 1 be postponed until the conclusion of house bills on third reading today.

The motion prevailed without objection.

HB 1969 ON THIRD READING

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

HB 1969, A bill to be entitled An Act relating to investment securities.

The bill was read third time and was passed.

HB 2380 ON THIRD READING

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

HB 2380, A bill to be entitled An Act relating to the creation of the County Court at Law of Cherokee County.

The bill was read third time and was passed.

HB 784 ON THIRD READING

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

HB 784, A bill to be entitled An Act relating to sick leave for public school teachers.

The bill was read third time and was passed.
HB 1959 ON THIRD READING
The speaker laid before the house on its third reading and final passage,
HB 1959, A bill to be entitled An Act relating to the Development Corporation

The bill was read third time and was passed.

HB 2058 ON THIRD READING
The speaker laid before the house on its third reading and final passage,
HB 2058, A bill to be entitled An Act relating to court-ordered commitment
of a drug-dependent person.

The bill was read third time and was passed.

HB 2375 ON THIRD READING
The speaker laid before the house on its third reading and final passage,
HB 2375, A bill to be entitled An Act relating to benefits for emergency
medical personnel, peace officers, and fire fighters who are exposed to contagious
diseases in the course of their employment.

The bill was read third time and was passed.

HB 1168 ON THIRD READING
The speaker laid before the house on its third reading and final passage,
HB 1168, A bill to be entitled An Act relating to the requirement that smoke
detectors be installed in the state capitol.

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

HB 1206 ON THIRD READING
The speaker laid before the house on its third reading and final passage,
HB 1206, A bill to be entitled An Act relating to monetary limits on state
liability for certain claims against officers and supervisory employees of the Texas
Department of Corrections and the Texas Youth Council.

The bill was read third time and was passed.

HB 793 ON THIRD READING
The speaker laid before the house on its third reading and final passage,
HB 793, A bill to be entitled An Act relating to a junior college district branch
campus maintenance tax.

The bill was read third time and was passed.

HB 1732 ON THIRD READING
The speaker laid before the house on its third reading and final passage,
HB 1732, A bill to be entitled An Act relating to establishment of a temporary
emergency relief program in certain communities.

The bill was read third time and was passed. (Shea, P. Hill, Waldrop, Arnold,
A. Smith, Fox, Eckels, Ceverha, Kuempel, Pennington, Toomey, and Heflin
recorded voting no)
HB 1010 ON THIRD READING

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

HB 1010, A bill to be entitled An Act relating to authority of the State Board of Barber Examiners and the Texas Cosmetology Commission to contract with each other for inspection and enforcement purposes.

The bill was read third time and was passed. (Collazo, Danburg, Denton, Patronella, and McWilliams recorded voting no)

HB 1447 ON THIRD READING

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

HB 1447, A bill to be entitled An Act relating to the delivery of notice to a property owner under the Property Tax Code.

The bill was read third time and was passed.

HB 1017 ON THIRD READING

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

HB 1017, A bill to be entitled An Act relating to the creation and duties of the Texas Cultural Awards Committee.

The bill was read third time and was passed. (C. Smith, Schlueter, Fox, and Toomey recorded voting no)

HB 1023 ON THIRD READING

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

HB 1023, A bill to be entitled An Act relating to issuance, extension, or renewal of permits for certain solid waste facilities used for or to be used for processing, storing, or disposing of hazardous waste.

The bill was read third time and was passed.

HB 350 ON THIRD READING

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

HB 350, A bill to be entitled An Act relating to the placement of signs outside of the entrance of a polling place.

The bill was read third time.

Representative Emmett offered the following amendment to the bill:

Amend HB 350 on line 12 by deleting the word “proscribed,” and replacing it with the word “prescribed.”

The amendment was adopted without objection.

HB 350, as amended, was passed. (Shea, P. Hill, Craddock, Blanton, Pennington, Ceverha, Eckels, Kuempel, and Toomey recorded voting no)

HB 431 ON THIRD READING

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

HB 431, A bill to be entitled An Act relating to utility charges by a housing authority.

The bill was read third time and was passed.
HB 2054 ON THIRD READING

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

HB 2054, A bill to be entitled An Act relating to the taking of commercial or sports fishing boats, fishing equipment, and aquatic resources; providing penalties.

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

HB 1263 ON THIRD READING

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

HB 1263, A bill to be entitled An Act relating to the powers and status of the Tribal Councils and tribal businesses of the Alabama-Coushatta and the Tigua Indian Tribes.

The bill was read third time.

Representative Schlueter offered the following amendment to the bill:

Amend HB 1263 as follows:
1. On page 2, line 7, delete “or by,” the seventh and eighth words on the line.
2. On page 2, line 11, change (b) to (c).
3. On page 2, line 12, change (a) to (b).
4. On page 2, after line 10, add a new Subsection (b) to read as follows:
   (b) A taxable item sold, leased, or rented by a tribal council or a business owned by a tribal council of an Indian tribe for which a reservation is established in this state is exempted from the taxes imposed by this chapter if the item is:
      (1) made by a member of the Indian tribe;
      (2) a cultural artifact of the Indian tribe; and
      (3) sold at a location within the boundaries of the reservation.

The amendment was adopted without objection.

HB 1263, as amended, was passed.

HB 434 ON THIRD READING

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

HB 434, A bill to be entitled An Act relating to adoption of programs by political subdivisions to increase participation by minority business enterprises in contract awards.

The bill was read third time and was passed. (Shea, P. Hill, A. Smith, Fox, Blanton, Pennington, Ceverha, Toomey, and Heflin recorded voting no)

HB 1321 ON THIRD READING

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

HB 1321, A bill to be entitled An Act relating to penalties for violation of shrimping laws.

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

HB 70 ON THIRD READING

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

HB 70, A bill to be entitled An Act relating to the classification of the murder of a child in the course of committing aggravated sexual abuse as a capital offense.
The bill was read third time and was passed. (Danburg recorded voting no)

HB 804 ON THIRD READING

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

HB 804, A bill to be entitled An Act relating to county and precinct officials and employees who are paid wholly from county funds; compensation, expenses and allowances.

The bill was read third time and was passed.

HB 2031 ON THIRD READING

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

HB 2031, A bill to be entitled An Act relating to the registration and certification of persons engaged in the appraisal of property for purposes of ad valorem taxation and in the assessment and collection of ad valorem taxes; providing penalties.

The bill was read third time and was passed.

SB 1 ON SECOND READING
(T. Smith - House Sponsor)

The speaker laid before the house, as postponed business, on its second reading and passage to third reading, the complete committee substitute for SB 1.

The bill was on the calendar earlier today and was postponed until this time.

CSSB 1

A BILL TO BE ENTITLED
AN ACT
relating to driving while intoxicated, involuntary manslaughter involving the use of a motor vehicle, and allowing a dangerous driver to borrow a motor vehicle; providing for visual recording of a person arrested, for tests and trial procedures for dealing with an offender, and for the criminal and civil consequences of conviction of those offenses, including insurance consequences and forfeiture of motor vehicles; and changing penalties.

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

SECTION 1. Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon’s Texas Civil Statutes), is amended by adding Section 4A to read as follows:

“Section 4A. (a) The Department may not issue a license or permit to a person convicted of an offense under Article 67011-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code, unless the period of suspension that would have applied had the person had a license, permit, or privilege at the time of the conviction has expired. The Department may not issue a license or permit to a person the Department has been ordered by a juvenile court under Section 54.042, Family Code, to deny the person a license or permit, unless the period of time specified in the order has expired.

(b) A person does not have a privilege to operate a motor vehicle in this state during the period described in Subsection (a) of this section if the Department is prohibited from issuing a license or permit to that person under this section.”

SECTION 2. Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon’s Texas Civil Statutes), is amended by amending Subsections (a), (b), and (d) and adding Subsections (c), (f), (g), and (h) to read as follows:
“(a) Except as provided by Subsection (n) of this Section, the [The] license of any person shall be automatically suspended upon final conviction of any of the following offenses:

1. An offense under Section 19.07, Penal Code, committed as a result of the person's criminally negligent operation of a motor vehicle, or an offense under Section 19.05(a)(2), Penal Code [Negligent homicide resulting from the operation of a motor vehicle];

2. An offense under Article 67011-1, Revised Statutes [Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs];

3. Any offense punishable as a felony under the motor vehicle laws of this State.

4. A conviction of a driver of a motor vehicle involved in an accident or collision, upon a charge of failure to stop, render aid, and disclose his identity at the scene of said accident or collision;

5. A conviction upon a charge of aggravated assault upon the person by means of motor vehicle, as provided by law.

(b) Except as provided by Subsections (d), (e), (g), and (h) of this Section, the [The] suspension above provided shall in the first instance be for a period of twelve (12) months. In event any license shall be suspended under the provision of this Section for a subsequent time, said subsequent suspension shall be for a period of eighteen (18) months, except as provided by Subsections (d), (e), (g), and (h) of this Section.

(d) Except as provided by Subsections (g) and (h) of this Section, if a person is convicted of an offense under Article 67011-1, Revised Statutes, as amended, the suspension of the person's license shall be for a period determined by the court according to the following schedule:

1. not less than ninety (90) or more than three hundred sixty-five (365) days, if the person is punished under Subsection (c) of this article, whether or not the punishment is increased under Subsection (i) of this article;

2. not less than one hundred eighty (180) days or more than two (2) years, if the person is punished under Subsection (d) or (e) of this article, whether or not the punishment is increased under Subsection (i) of this article.

(e) If a person is convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, the suspension of the person's license shall be for a period determined by the court of not less than one hundred eighty (180) days or more than two (2) years. If a person is convicted of the offense of driving a motor vehicle under the influence of intoxicating liquor, the person's license shall not be automatically suspended if the court places the person on probation and either requires as a condition of probation that the person attend an educational program designed to rehabilitate persons who have driven while intoxicated as provided by Article 42.13, Code of Criminal Procedure, 1965; or waives that requirement, or the jury recommends, under Section 34, Article 42.13, Code of Criminal Procedure, 1965; as amended, probation and no suspension of the person's license. The probation officer shall report to the court whether or not the person has completed the program. If the person fails to complete the program, the person's license shall be automatically suspended as provided by Subdivision (2) of Subsection (a) of this section.

(f) The court shall credit toward the period of suspension of a person's license required by this article a period of suspension imposed on the person for refusal to give a specimen under Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), if the refusal followed an arrest for the same offense for which the court is suspending the person's license under this article.
"(g) (I) Except as provided by Subdivision (2) of this subsection, the Department may not, during the period of probation, suspend the driver’s license, permit, or nonresident operating privilege of a person if the person is required under Section 6c, Article 42.13, Code of Criminal Procedure, 1965, to attend and successfully complete an educational program designed to rehabilitate persons who have driven while intoxicated. The Department also may not suspend the driver’s license, permit, or nonresident operating privilege of a person for whom the jury has recommended, under Section 3a, Article 42.13, Code of Criminal Procedure, 1965, no suspension.

(2) After the date has passed, according to records of the Department, for successful completion of an educational program designed to rehabilitate persons who have driven while intoxicated, if the records do not indicate successful completion of the program, the Director shall suspend the person’s driver’s license, permit, or nonresident operating privilege or, if the person is a resident without a license or permit to operate a motor vehicle in this state, shall issue an order prohibiting the person from obtaining a license or permit. A suspension or prohibition order under this subsection is effective for a period of twelve (12) months.

(3) The Director shall promptly send notice of a suspension or prohibition order issued under this subsection, by certified mail, return receipt requested, to the person at the person’s most recent address as listed in records of the Department. The notice must include the date of the suspension or prohibition order, the reason for the suspension or prohibition, and the beginning and ending dates of the suspension or prohibition. A suspension or prohibition under this subsection may not take effect before the twenty-eighth (28th) day after the date the person receives notice by certified mail or the thirty-first (31st) day after the Director sends notice by certified mail, if the person has not accepted delivery of the notice. The notice must also include a statement that the person has a right to demand in writing that a hearing on the suspension or prohibition be held. If, not later than the twentieth (20th) day after the date on which the person receives notice by certified mail or the twenty-third (23rd) day after the date the Director sent notice by certified mail, if the person has not accepted delivery of the notice, the Department receives a written demand that a hearing be held, the Department shall, not later than the tenth (10th) day after the day of receipt of the demand, request a court to set the hearing for the earliest possible date. If a person demands a hearing as provided by this subsection, the suspension or prohibition does not take effect until resolution of the hearing.

(4) A hearing on suspension or prohibition shall be held in a municipal or justice court in the county of the person’s residence in the manner provided for a hearing on suspension under Section 22(a) of this Act. At a hearing, the issues to be determined are whether the person has successfully completed an educational program that was imposed under Section 6c, Article 42.13, Code of Criminal Procedure, 1965, and whether the period for completion of the program has passed. If the court determines that the educational program imposed has not been completed and the period for completion of the program has passed, the court shall confirm the suspension or prohibition and notify the Department of that fact. If the court finds that the program imposed has been completed or that the period for completion has not passed, the court shall direct the Department to promptly rescind the order and reinstate in the records of the Department any driver’s license, permit, or privilege of the person. The court may modify or revoke an order of suspension or prohibition if the court determines for good cause shown that the person was unable to complete an educational program within the period originally specified by the court. The court shall condition the modification or revocation of the order on the person’s completion of the course within a period specified by the court not to exceed 181 days from the date of the hearing."
“(h) The Department shall suspend the license of a person on receiving an order from a juvenile court under Section 54.042, Family Code, to suspend that person's license. The period of the suspension shall be until the person reaches the age at which he may legally purchase alcoholic beverages or for a period of one year, whichever period is longer.”

SECTION 3. Article 67011-1, Revised Statutes, as amended, is amended to read as follows:

“Article 67011-1. INTOXICATED DRIVER; PENALTY. (a) In this article:

“(1) 'Alcohol concentration' means:
   (A) the number of grams of alcohol per 100 milliliters of blood;
   (B) the number of grams of alcohol per 210 liters of breath; or
   (C) the number of grams of alcohol per 67 milliliters of urine.

“(2) 'Intoxicated' means:
   (A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or
   (B) having an alcohol concentration of 0.10 percent or more.

“(3) 'Serious bodily injury' means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

“(d) 'Public place' has the meaning assigned by Section 1.07(a)(29), Penal Code.

“(5) 'Controlled substance' has the meaning assigned by Subdivision (5), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

“(6) 'Drug' has the meaning assigned by Subdivision (14), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

“(b) A person commits an offense if the person is intoxicated while driving or operating a motor vehicle in a public place. The fact that any person charged with a violation of this section is or has been entitled to use a controlled substance or drug under the laws of this state is not a defense.

“(c) Except as provided by Subsections (d), (e), and (f) of this article, an offense under this article is punishable by:

   (1) a fine of not less than $100 or more than $2,000; and
   (2) confinement in jail for a term of not less than 72 hours or more than two years.

“(d) If it is shown on the trial of an offense under this article that the person has previously been convicted one time of an offense under this article, the offense is punishable by:

   (1) a fine of not less than $300 or more than $2,000; and
   (2) confinement in jail for a term of not less than 15 days or more than two years.

“(e) If it is shown on the trial of an offense under this article that the person has previously been convicted two or more times of an offense under this article, the offense is punishable by:

   (1) a fine of not less than $500 or more than $2,000; and
   (2) confinement in jail for a term of not less than 30 days or more than two years or imprisonment in the state penitentiary for a term of not less than 60 days or more than five years.

“(f) If it is shown on the trial of a person punished for an offense under Subsection (e), (d), or (c) of this article that the person committed the offense and as a direct result of the offense another person suffered serious bodily injury, the minimum term of confinement for the offense is increased by 60 days and the minimum and maximum fines for the offense are increased by $500.
"(g) For the purposes of this article, a conviction for an offense under Article 67011-1 or 67011-2, Revised Statutes, as those laws existed before January 1, 1984, is a conviction of an offense under this article.

"(h) For the purposes of this article, a conviction for an offense that occurs on or after January 1, 1984, is a final conviction, whether or not the sentence for the conviction is probated.

"(i) A conviction may not be used for the purpose of enhancement under Subsection (d) or (e) of this article if:

"(1) the conviction was a final conviction under the provisions of Subsections (g) and (h) of this article and was for an offense committed more than 10 years before the offense for which the person is being tried was committed; and

"(2) the person has not been convicted of an offense under Section 19.05(a)(2), Penal Code, or Article 67011-1, or Article 67011-2, Revised Statutes, committed within 10 years immediately preceding the date on which the offense for which the person is being tried was committed. [Any person who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, on a beach as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon’s Texas Civil Statutes), or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall be guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail for not less than three (3) days nor more than two (2) years, and by a fine of not less than Fifty ($50.00) Dollars nor more than Five Hundred ($500.00) Dollars. Provided, however, that the presiding judge in such cases at his discretion may commute said jail sentence to a probation period of not less than six [(6) months].]

SECTION 4. Sections 1, 2, and 3, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 67011-5, Vernon’s Texas Civil Statutes), are amended to read as follows:

"Section 1. Any person who operates a motor vehicle upon the public highways or upon a public beach in [of] this state shall be deemed to have given consent, subject to the provisions of this Act, to submit to the taking of one or more specimens [a chemical test, or tests] of his breath or blood for the purpose of analysis to determine the alcohol concentration or the presence in his body of a controlled substance or drug [determining the alcoholic content of his blood] if arrested for any offense arising out of acts alleged to have been committed while a person was driving or in actual physical control of a motor vehicle while intoxicated [under the influence of intoxicating liquor]. Any person so arrested may consent to the giving [taking] of any other type of specimen [chemical test, or tests] to determine his alcohol concentration [the alcoholic content of his blood], but he shall not be deemed, solely on the basis of his operation of a motor vehicle upon the public highways or upon a public beach in [of] this state, to have given consent to give any type of specimen [chemical test] other than a specimen [chemical test, or tests] of his breath or blood. The specimen [test], or specimens [tests], shall be taken [administered] at the request [direction] of a peace [law enforcement] officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways or upon a public beach in [of] this state while intoxicated [under the influence of intoxicating liquor].

"Section 2. (a) Except as provided by Subsection (i) of Section 3 of this Act, if [if] a person under arrest refuses, upon the request of a peace [law enforcement] officer, to give [submit to] a specimen [chemical breath test] designated by the peace [law enforcement] officer as provided in Section 1, none shall be taken [given], but the Texas Department of Public Safety, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon
(b) Before requesting a person to give a specimen, the officer shall inform the person orally and in writing that if the person refuses to give the specimen, that refusal may be admissible in a subsequent prosecution, and that the person's license, permit, or privilege to operate a motor vehicle will be automatically suspended for 90 days after the date of adjournment of the hearing provided for in Subsection (f) of this section, whether or not the person is subsequently prosecuted as a result of the arrest. If the officer determines that the person is a resident without a license or permit to operate a motor vehicle in this state, the officer shall inform the person that the Texas Department of Public Safety shall deny to the person the issuance of a license or permit for a period of 90 days after the date of adjournment of the hearing provided for in Subsection (f) of this section, whether or not the person is subsequently prosecuted as a result of the arrest. The officer shall inform the person that the person has a right to a hearing on suspension or denial if, not later than the 20th day after the date on which the notice of suspension or denial is received, the department receives a written demand that the hearing be held.

(c) The officer shall provide the person with a written statement containing the information required by Subsection (b) of this section. If the person refuses the request of the officer to give a specimen, the officer shall request the person to sign a statement that the officer requested that he give a specimen, that he was informed of the consequences of not giving a specimen, and that he refused to give a specimen.

(d) If the person refuses to give a specimen, whether the refusal was express or the result of an intentional failure of the person to give a specimen as designated by the peace officer, the officer before whom the refusal was made shall immediately make a written report of the refusal to the Director of the Texas Department of Public Safety.

(e) The director shall approve the form of the report. The report must show the grounds for the officer's belief that the person had been operating a motor vehicle while intoxicated. The report must also show that the person refused to give a specimen, as evidenced by:

(1) a written refusal to give a specimen, signed by the person; or

(2) a statement signed by the officer stating that the person refused to give a specimen and also refused to sign the statement requested by the officer under Subsection (c) of this article.

(f) When the director receives the report, the director shall suspend the person's license, permit, or nonresident operating privilege, or shall issue an order prohibiting the person from obtaining a license or permit, for 90 days effective 28 days after the date the person receives notice by certified mail or 31 days after the date the director sends notice by certified mail, if the person has not accepted delivery of the notice. If, not later than the 20th day after the date on which the person receives notice by certified mail or the 23rd day after the date the director sent notice by certified mail, if the person has not accepted delivery of the notice, the department receives a written demand that a hearing be held, the department shall, not later than the 10th day after the day of receipt of the demand, request a court to set the hearing for the earliest possible date. The hearing shall be set in the same manner as [matter for a hearing under [as provided in] Section 22(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes),] upon such hearing the court finds (1) that probable cause existed that such person was driving or in actual physical control of a motor vehicle on the highway or upon a public beach while intoxicated [under the influence of intoxicating liquor at the time of the arrest by the officer], (2) that the person was placed under arrest by the officer [at such time] and was offered
(before offering the person) an opportunity to give a specimen [be tested] under the provisions of this Act, and (3) that such person refused to give a specimen [submit to the test] upon request of the officer, then the Director of the Texas Department of Public Safety shall suspend the person’s license or permit to drive, or any nonresident operating privilege for [a] period of 90 days, as ordered by the court[; but not to exceed one (1) year]. If the person is a resident without a license or permit to operate a motor vehicle in this State, the Texas Department of Public Safety shall deny to the person the issuance of a license or permit for 90 days [a period ordered by the court; but not to exceed one (1) year].

(a) If, after the hearing, the court finds in the negative one of the issues required by Subsection (f) of this section, the director shall reinstate any license, permit, or privilege to operate a motor vehicle and shall rescind any order prohibiting the issuance of a license or permit on the basis of the person’s refusal to give a specimen under Subsection (d) of this section. [Provided, however, that should such person be found “not guilty” of the offense of driving while under the influence of intoxicating liquor or if said cause be dismissed, then the Director of the Texas Department of Public Safety shall in no case suspend such person’s driver’s license; or, in the event that proceedings had been instituted resulting in the suspension of such person’s driver’s license, then the Director of the Texas Department of Public Safety shall immediately reinstate such license upon notification of such acquittal or dismissal by the county clerk of the county in which the case was pending; Notification to the Director of the Texas Department of Public Safety shall be made by certified mail.]

“(b) A written report submitted by an officer under Subsection (d) of this article is a governmental record for the purposes of Section 37.10, Penal Code.

Section 3. (a) Upon the trial of any criminal action or proceeding arising out of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 6701-1, Revised Statutes [acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle and while under the influence of intoxicating liquor], evidence of the alcohol concentration or presence of a controlled substance or drug [amount of alcohol in the person’s blood at the time of the act alleged] as shown by [chemical] analysis of a specimen of the person’s [his] blood, breath, urine, or any other bodily substances taken at the request or order of a peace officer [substance], shall be admissible [and if there was at that time 0.10 percent or more by weight of alcohol in the person’s blood, it shall be presumed that the person was under the influence of intoxicating liquor].

(b) Analysis [Chemical analysis] of a specimen of the person’s breath, to be considered valid under the provisions of this section, must be performed according to rules of [method approved by] the Texas Department of Public Safety and by an individual possessing a valid certificate issued by the Texas Department of Public Safety for this purpose. The Texas Department of Public Safety is authorized to establish rules approving [approve] satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analysis, and to issue certificates certifying such fact. These certificates shall be subject to termination or revocation, for cause, at the discretion of the Texas Department of Public Safety.

(c) When a person gives a specimen of blood [shall submit to a blood test] at the request or order of a peace [law enforcement] officer under the provisions of this Act, only a physician, qualified technician, chemist, registered professional nurse, or licensed vocational nurse under the supervision or direction of a licensed physician may withdraw a blood specimen for the purpose of determining the alcohol concentration or presence of a controlled substance or drug [alcoholic content] therein. The sample must be taken by a physician or in a physician’s office
or a hospital licensed by the Texas Department of Health. This limitation shall not apply to the taking of [breath] specimens of breath, urine, or bodily substances other than blood. The person drawing the blood specimen at the request or order of a peace [law enforcement] officer under the provisions of this Act, or the hospital where that person is taken for the purpose of securing the blood specimen, shall not be held liable for damages arising from the request or order of the peace [law enforcement] officer to take the blood specimen as provided herein, provided the blood specimen was withdrawn according to recognized medical procedures, and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood specimen [sample]. Breath specimens taken at the request or order of a peace officer must be taken and analysis made under such conditions as may be prescribed by the Texas Department of Public Safety, and by such persons as the Texas Department of Public Safety has certified to be qualified.

"(d) The person who gave a specimen of breath, blood, urine, or other bodily substances in connection with this Act [tested] may, upon request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse of his own choosing draw a specimen and have an analysis made of his blood [administer a chemical test, or tests] in addition to any specimen taken and analyzed [administered] at the direction of a peace [law enforcement] officer. The failure or inability to obtain an additional specimen or analysis [test] by a person shall not preclude the admission of evidence relating to the analysis of the specimen [test, or tests] taken at the direction of the peace [law enforcement] officer under this Act.

"(e) Upon the request of a person who has given a specimen [submitted to a chemical test, or tests] at the request of a peace [law enforcement] officer, full information concerning the analytical results of the test[s]; or tests of the specimen shall be made available to him or his attorney.

"(f) If for any reason the person’s request to have a chemical test [for intoxication] is refused by the officer or any other person acting for or on behalf of the state, such fact may be introduced into evidence on the trial of such person.

"(g) If the person refuses a request by an officer to give a specimen of breath or blood, whether the refusal was express or the result of an intentional failure of the person to give the specimen, that fact may be introduced into evidence at the person’s trial.

"(h) Any person who is dead, unconscious, or otherwise in a condition rendering the person incapable of refusal, whether the person was arrested or not, shall be deemed not to have withdrawn the consent provided by Section 1 of this Act. If the person is dead, a specimen may be withdrawn by the county medical examiner or the examiner’s designated agent or, if there is no county medical examiner for the county, by a licensed mortician or a person authorized as provided by Subsection (c) of this section. If the person is not dead but is incapable of refusal, a specimen may be withdrawn by a person authorized as provided by Subsection (c) of this section. Evidence of alcohol concentration or the presence of a controlled substance or drug obtained by an analysis authorized by this subsection is admissible in a civil or criminal action.

"(i) A peace officer shall require a person to give a specimen under Section 2 of this Act if:

"(1) the officer arrests the person for an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, as amended;

"(2) the person was the operator of a motor vehicle involved in an accident that the officer reasonably believes occurred as a result of the offense:
"(3) at the time of the arrest the officer reasonably believes that a person has died or will die as a direct result of the accident; and
"(4) the person refuses the officer's request to voluntarily give a specimen.
"(j) In this Act:
"(1) 'Alcohol concentration' means:
"(A) the number of grams of alcohol per 100 milliliters of blood;
"(B) the number of grams of alcohol per 210 liters of breath; or
"(C) the number of grams of alcohol per 67 milliliters of urine.
"(2) 'Controlled substance' has the same meaning as is given that term in Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).
"(3) 'Drug' has the same meaning as is given that term in Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).
"(4) 'Intoxicated' means:
"(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or
"(B) having an alcohol concentration of 0.10 percent or more.
"(5) 'Public beach' has the same meaning as is given that term in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).
"(6) 'Public highway' has the same meaning as is given the term 'highway' in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).
"(7) 'Public place' has the meaning assigned by Subdivision (29), Section 1.07(a), Penal Code.

SECTION 5. Section 4.05, Code of Criminal Procedure, 1965, is amended to read as follows:

"Art. 4.05. JURISDICTION OF DISTRICT COURTS. District courts and criminal district courts shall have original jurisdiction in criminal cases of the grade of felony, [and] of all misdemeanors involving official misconduct, and of misdemeanor cases transferred to the district court under Article 4.17 of this code."

SECTION 6. Chapter 4, Code of Criminal Procedure, 1965, is amended by adding Article 4.17 to read as follows:

"Art. 4.17. TRANSFER OF DRIVING WHILE INTOXICATED CASES. On a plea of not guilty to a misdemeanor offense under Article 6701-1, Revised Statutes, entered in a county court of a judge who is not a licensed attorney, on the motion of the state or the defendant, the judge may transfer the case to a district court having jurisdiction in the county or to a county court at law in the county presided over by a judge who is a licensed attorney. The judge may make the transfer on his own motion."

SECTION 7. Section 1, Article 38.33, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 1. DOCUMENTS FILED. When a person is finally convicted of an offense of driving while intoxicated or of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code [or driving while under the influence of drugs], the clerk of the court shall mail a notice of the conviction to the sheriff of the county in which the offense occurred. The sheriff shall compile and send to the clerk a copy of the defendant's signature, fingerprint, and driver's license number and copies of any photograph, picture, description, [fingerprint] or measurement of the defendant made by a law enforcement agency in connection with that offense. The clerk shall forward to the department of public safety those documents and any complaint, information, indictment, judgment, sentence, mandate, or written waiver or motion in possession of the clerk pertaining to the conviction and the name of the attorney of record in that case."
SECTION 8. Section 3d, Article 42.12, Code of Criminal Procedure, 1965, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

"(a) Except as provided by Subsection (d) of this section, when [When] in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on probation for a period as the court may prescribe, not to exceed 10 years. The court may impose a fine applicable to the offense and require any reasonable terms and conditions of probation, including any of the conditions enumerated in Sections 6 and 6a of this Article. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferral of adjudication, the court shall proceed to final adjudication as in all other cases."

"(d) This section does not apply to a defendant charged with an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67001-1, Revised Statutes, as amended."

SECTION 9. Section 4, Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 4. (a) When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investigation shall include a physical and mental examination of the defendant. Defendant, if not represented by counsel, counsel for defendant and counsel for the state shall be afforded an opportunity to see a copy of the report upon request. If a defendant is committed to any institution the probation officer shall send a report of such investigation to the institution at the time of commitment."

"(b) Except as otherwise provided by this subsection, if a defendant is charged with an offense under Article 67001-1, Revised Statutes, and the offense is punishable under Subsection (c) of that article, the court shall direct a probation officer or other person approved by the probation department for that purpose to conduct an evaluation to determine the appropriateness of alcohol or drug rehabilitation for the defendant and to report that evaluation to the court. The evaluation may be made at any time, except that if the defendant elects to have a jury assess punishment, the court may not order an evaluation until after sentencing. The court is not required to request an evaluation and report if it determines that the resources required to properly conduct the evaluation are not available in the county."

SECTION 10. Section 6, Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 6. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

a. Commit no offense against the laws of this State or of any other State or of the United States;

b. Avoid injurious or vicious habits;

c. Avoid persons or places of disreputable or harmful character;

d. Report to the probation officer as directed by the judge or probation officer and obey all rules and regulations of the probation department;
"e. Permit the probation officer to visit him at his home or elsewhere;
"f. Work faithfully at suitable employment as far as possible;
"g. Remain within a specified place;
"h. Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine;
"i. Support his dependents;
"j. Participate in any community-based program;
"k. Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;
"l. Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;
"m. Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and
"n. Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

"(b) If the court grants probation to a person convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, the court may require as a condition of probation that the person participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Sections 10A(c), (d), (g), and (h) of this article, in a community-service work program designated by the court.

SECTION 11. Section 6b, Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 6b. (a) When the court having jurisdiction of the case grants probation to the defendant, in addition to the conditions imposed under Section 6 of this article, the court may require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of imprisonment not to exceed 30 days or one-third of the sentence whichever is lesser.

"(b) A court granting probation to a defendant convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (d), (e), or (g) of that article shall require as a condition of probation that the defendant submit to:

"(1) 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 67011-1, Revised Statutes, as amended; 10 days of detention in a jail if the defendant was convicted under Subsection (e) of Article 67011-1, Revised Statutes, as amended; or 30 days of detention in a jail if the defendant was convicted under Subsection (f) of Article 67011-1, Revised Statutes, as amended; and

"(2) an evaluation by a probation officer, by a person approved by the probation department, or by a program or facility approved by the Texas Commission on Alcoholism for the purpose of having the facility prescribe a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

"(c) A court granting probation to a defendant convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, shall require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of confinement of not less than 60 days.
“(d) If the director of a facility to which a person is referred under Subdivision (2) of Subsection (b) of this article determines that the person is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the court that referred the person of that fact.

“(e) If a court requires as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant’s drug or alcohol dependence condition, the court shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant’s ability to pay. The court may, in its discretion, credit such cost paid by the defendant against the fine assessed.

“(f) The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.”

SECTION 12. Section 7, Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

“Section 7. At any time, after the defendant has satisfactorily completed one-third of the original probationary period or two years of probation, whichever is the lesser, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation, and the expiration of the period of probation, the court, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere to an offense other than an offense under Section 19.05(a)(2), Penal Code, or an offense under Article 67011-1, Revised Statutes, and the court has discharged the defendant hereunder, such court may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that proof of his said conviction or plea of guilty shall be made known to the court should the defendant again be convicted of any criminal offense.”

SECTION 13. Subsection (a), Section 10A, Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

“(a) Except for a defendant charged with an offense under Article 67011-1, Revised Statutes, as amended, a defendant who pleads guilty or nolo contendere to a first offense felony that does not involve bodily injury or the threat of bodily injury to any person and for which the maximum punishment assessed against the defendant does not exceed 10 years’ imprisonment is eligible for community-service restitution probation.”

SECTION 14. Section 3a, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

“Section 3a. Where there is a conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of the maximum imprisonment applicable to such offense of which the defendant is convicted, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation for a person convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (c) of that article, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated and may recommend that any operator’s, commercial operator’s, or chauffeur’s license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular
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Session, 1941, as amended (Article 6687b, Vernon’s Texas Civil Statutes), not be suspended. When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the defendant, before the trial began, had filed a sworn statement that the defendant has never before been convicted of a felony, and after conviction and before the penalty stage of the trial began, the defendant shall have filed a sworn motion for probation and the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other state. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but the defendant may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict.

If probation is granted by the jury, the court may impose only those conditions which are set out in Section 6, 6a, or 6b[; or 6c] thereof. The court may impose any one or all of those conditions. If probation is granted by the jury for a person convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (c) of that article, the court shall impose as a condition the condition set out in Section 6c of this article.

SECTION 15. Subsection (a), Section 3B, Article 42.13, Code of Criminal Procedure, 1965, as added by Section 1, Chapter 807, Acts of the 66th Legislature, 1979, is amended to read as follows:

“(a) Except for a defendant charged with an offense under Article 67011-1, Revised Statutes, as amended, a defendant who pleads guilty or nolo contendere to a first offense misdemeanor that does not involve bodily injury or the threat of bodily injury to any person and for which the maximum permissible punishment is by confinement in jail or by a fine in excess of $200 or by both a fine and confinement is eligible for community-service probation.”

SECTION 16. Section 3d, Article 42.13, Code of Criminal Procedure, 1965, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

“(a) Except as provided by Subsection (d) of this section, when [When] in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or a plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant’s guilt, defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period as the court may prescribe, not to exceed the maximum period of imprisonment prescribed for the offense for which the defendant is charged. The court may impose a fine applicable to the offense and require any reasonable terms and conditions of probation, including any of the conditions enumerated in Sections 6, 6a, and 6c of this Article. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication as in all other cases.

“(d) This section does not apply to a defendant charged with an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, as amended.”

SECTION 17. Section 4, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

“Section 4. (a) When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investigation shall include a physical and mental examination of the defendant. Defendant, if not represented by counsel, counsel for defendant, and
counsel for the state shall be afforded an opportunity to see a copy of the report upon request. If a defendant is committed to any institution, the probation officer shall send a report of such investigation to the institution at the time of commitment.

"(b) Except as otherwise provided by this subsection, if a defendant is charged with an offense under Article 67011-1, Revised Statutes, and the offense is punishable under Subsection (c) of that article, the court shall direct a probation officer or other person approved by the probation department for that purpose to conduct an evaluation to determine the appropriateness of alcohol or drug rehabilitation for the defendant and to report that evaluation to the court. The evaluation may be made at any time, except that if the defendant elects to have a jury assess punishment, the court may not order an examination until after sentencing. The court is not required to request an evaluation and report if it determines that the resources required to properly conduct the evaluation are not available in the county."

SECTION 18. Section 6, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 6. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may at any time during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer and shall note the date of delivery of such delivery on the docket. Terms and conditions of probation may include but shall not be limited to the conditions that the probationer shall:

“(1) commit no offense against the laws of this state or of any other state or of the United States;
“(2) avoid injurious or vicious habits;
“(3) avoid persons or places of disreputable or harmful character;
“(4) report to the probation officer as directed by the court or probation officer and obey all rules and regulations of the probation department;
“(5) permit the probation officer to visit him at his home or elsewhere;
“(6) work faithfully at suitable employment as far as possible;
“(7) remain within a specified place;
“(8) pay his fine, if one be assessed, and all court costs, whether a fine be assessed or not, in one or several sums and make restitution or reparation in any sum that the court shall determine;
“(9) support his dependents;
“(10) participate in any community-based program or participate in an alcoholic or drug abuse treatment or education program and abstain from the use of alcoholic beverages or specified drugs at all times or under certain circumstances;
“(11) reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;
“(12) remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;
“(13) pay a percentage of his income to his dependents for their support while under custodial supervision in the community-based facility; and
“(14) pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

“(b) If the court grants probation to a person convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under
Article 67011-1, Revised Statutes, the court may require as a condition of probation that the person participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Sections 3B(c), (d), (g), and (h) of this article, in a community-service work program designated by the court.

SECTION 19. Section 6b, Article 42.13, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"Section 6b. (a) When the court having jurisdiction of the case grants probation to the defendant, in addition to the conditions imposed under Section 6 of this article, the court may require as a condition of probation that the defendant submit to a period of detention in jail to serve a term of imprisonment not to exceed 30 days or one-third of the sentence, whichever is lesser.

(b) A court granting probation to a defendant convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (d), (c), or (g) of that article shall require as a condition of probation that the defendant submit to:

1. 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 67011-1, Revised Statutes, as amended; 10 days of detention in a jail if the defendant was convicted under Subsection (c) of Article 67011-1, Revised Statutes, as amended; or 30 days of detention in a jail if the defendant was convicted under Subsection (g) of Article 67011-1, Revised Statutes, as amended; and

2. an evaluation by a probation officer, by a person approved by the probation department, or by a program or facility approved by the Texas Commission on Alcoholism for the purpose of having the facility prescribe a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

(d) If the director of a facility to which a person is referred under Subdivision (2) of Subsection (b) of this article determines that the person is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the court that referred the person of that fact.

(e) If a court requires as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition, the court shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant's ability to pay. The court may, in its discretion, credit such cost paid by the defendant against the fine assessed.

The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.

SECTION 20. Section 6c, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 6c. If a person convicted of an offense under Article 67011-1, Revised Civil Statutes of Texas, 1925, as amended, is punished under Subsection (c) of that article, and is placed on probation, the court shall require, as a condition of the probation, that the defendant attend and successfully complete before the 181st day after the day probation is granted an educational program jointly approved by the Texas Commission on Alcoholism, the Texas Department of Public Safety, the Traffic Safety Section of the State Department of Highways and Public Transportation, and the Texas Adult Probation Commission designed to
rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcoholism shall publish the jointly approved rules and regulations and shall monitor and coordinate the educational programs. Persons who have successfully completed an approved educational program or who are currently under an order to attend an educational program shall not be eligible for attendance upon a subsequent offense. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider, but is not limited to: the offender's school and work schedule, the offender's health, the distance which the offender must travel to attend an educational program, and the fact that the offender resides out-of-state, has no valid driver's license or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a person is required, as a condition of probation, to attend an educational program, the court clerk shall immediately report such fact to the Texas Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. The report must include the beginning date of the person's probation. Upon the successful completion of the educational program, the person shall give notice to the probation department. The probation department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Texas Department of Public Safety for inclusion in the person's driving record. If the department does not receive notice that a person required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the person's driver's license, permit, or privilege, or prohibit the person from obtaining a license or permit, as provided by Subsection (g)(2), Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes). [For report of the offense for which the educational program was required as a condition of probation shall be made to the Texas Department of Public Safety unless the person fails to comply with the terms of the probation order. Information regarding the required attendance or successful completion of an educational program may not be used for any purpose other than to determine eligibility under this section.]

SECTION 21. Section 7, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

"Section 7. At any time after the defendant has satisfactorily completed one-third of the original probationary period, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation and the expiration of the period of probation, the court by order duly entered shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere to an offense other than an offense under Section 19.05(a)(2), Penal Code, or an offense under Article 6701d, Revised Statutes, and the court has discharged the defendant hereunder, such court shall set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information, or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which defendant has been convicted or to which defendant has pleaded guilty or pleaded nolo contendere, except that proof of defendant's conviction or plea of guilty or nolo contendere shall be made known to the court should the defendant again be convicted of any criminal offense."

SECTION 22. Subsection (a), Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:
"(a) When a person is charged with a misdemeanor offense under this Act, other than a violation of Section 50 or 51, committed while operating a motor vehicle, the court:

"(1) in its discretion may defer proceedings and allow the person 90 days to present evidence that, subsequent to the alleged act, the person has successfully completed a defensive driver's course approved by the Texas Department of Public Safety or other driving safety course approved by the court; or

"(2) shall defer proceedings and allow the person 90 days to present written evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved by the court, if:

"(A) the person presents to the court an oral request or written motion to take a course;

"(B) the person has a valid Texas driver's license or permit; and

"(C) the person's driving record as maintained by the Texas Department of Public Safety does not indicate successful completion of a driving safety course under this subdivision within the two years immediately preceding the date of the alleged offense."

SECTION 23. Chapter 1A, Title 116, Revised Statutes, is amended by adding Articles 67011-6 and 67011-7 to read as follows:

"Art. 67011-6. ALLOWING DANGEROUS DRIVER TO BORROW MOTOR VEHICLE. (a) A person commits an offense if he knowingly or intentionally permits another to operate a motor vehicle owned by the person and he knows that at the time permission is given, the other person's license has been suspended as a result of a conviction of an offense under Article 67011-1, Revised Statutes, or as a result of a failure to give a specimen under Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes).

"(b) An offense under this section is a Class C misdemeanor.

"Art. 67011-7. FORFEITURE OF MOTOR VEHICLE. (a) When a person is arrested for an offense under Section 19.05(a)(2), Penal Code, or an offense under Article 67011-1, Revised Statutes, the arresting officer shall immediately notify the district or the county attorney if:

"(1) the person was on probation for an offense under Section 19.05(a)(2), Penal Code, or an offense under Article 67011-1 or Article 67011-2, Revised Statutes, at the time of the arrest; or

"(2) the person has previously been finally convicted three or more times of:

"(A) an offense under Article 67011-1, Revised Statutes;

"(B) an offense under Article 67011-2, Revised Statutes;

"(C) an offense under Section 19.05(a)(2), Penal Code; or

"(D) any combination of offenses under Section 19.05(a)(2), Penal Code, and Section 67011-1 or 67011-2, Revised Statutes.

"(b) A motor vehicle owned and operated at the time of an offense by a person described by Subsection (a) of this article is subject to forfeiture to the county in which the offense occurred.

"(c) The district or the county attorney may seek a temporary restraining order prohibiting the person from selling or disposing of a vehicle described in Subsection (b) of this article and may, within 20 days from the date of the arrest, request a hearing in a county court or district court in the county to determine whether the vehicle is subject to forfeiture. The court in which the hearing is to be held shall set the cause for a hearing to be held no later than the 20th day after the date on which the district or the county attorney requests the hearing. The court shall serve notice of the hearing to the owner of the vehicle and to any lienholder or other secured party whose interest in the motor vehicle is registered as provided by law, in the manner provided for service of process by citation in civil cases.
“(d) If at a hearing requested under Subsection (c) of this article, the person arrested fails to file a denial stating that his motor vehicle is not subject to forfeiture, the court shall find that the vehicle is subject to forfeiture. If the person files a denial denying that the motor vehicle is subject to forfeiture, the court shall hear evidence to determine whether the vehicle is subject to forfeiture. If the court determines that the vehicle is subject to forfeiture, the court shall enter an order enjoining the person from selling or disposing of the vehicle pending the outcome of the prosecution of the person for the offense for which he was arrested. The court shall specify in the order that if the person is acquitted of the offense for which he was arrested, the injunction shall expire on the date of the acquittal. If after the court has issued an order under this subsection, the person proves by document or other evidence satisfactory to the court that prosecution for the offense has been dismissed, the court shall terminate the injunction.

“(e) If at the trial of the person for the offense for which he was arrested, the person is convicted, the court sentencing the person, on the motion of the district or the county attorney, and on a showing that a court has determined that the vehicle is subject to forfeiture, shall forfeit the vehicle to the county. However, if at sentencing discloses that the interest of any bona fide lienholder, secured party, or other person holding an interest in the vehicle in the nature of a security interest is greater than or equal to the present value of the vehicle, the court shall order the vehicle released to him. If such interest is less than the present value of the vehicle and if the proof shows that the vehicle is subject to forfeiture, the court shall order the vehicle forfeited to the county.

“(f) A vehicle that has been forfeited shall be sold at a public auction under the direction of the county sheriff after notice of public auction as provided by law for other sheriff’s sales. The proceeds of the sale shall be delivered to the county clerk and shall be disposed of as follows:

“(1) to any bona fide lienholder, secured party, or other party holding an interest in the vehicle in the nature of a security interest, to the extent of his interest; and

“(2) the balance, if any, to be deposited in the county treasury.

“(g) The State Department of Highways and Public Transportation shall issue a certificate of title to any person who purchases a vehicle under the provisions of this article.”

SECTION 24. (a) Each county with a population of 25,000 or more according to the most recent federal census shall purchase and maintain electronic devices capable of visually recording a person arrested within the county for an offense listed in Subsection (a) of this section.

(b) The sheriff of the county shall determine upon approval by the county commissioners court the number of devices necessary to ensure that a peace officer arresting a defendant for an offense listed in Subsection (a) of this section may visually record the defendant’s appearance within a reasonable time after the arrest.

(c) The fact that an arresting officer or other person acting on behalf of the state failed to visually record a person arrested for an offense listed in Subsection (a) of this section is admissible at the trial of the offense if the offense occurred in a county required to purchase and maintain electronic devices under this section.

SECTION 25. Chapter 54, Family Code, is amended by adding Section 54.042 to read as follows:

“Sec. 54.042. LICENSE SUSPENSION. (a) When a child has been found to have engaged in conduct that violates the laws of this state prohibiting driving while intoxicated, if the juvenile court determines that the child has previously been found to have engaged in conduct violating the same laws, it shall order the Department of Public Safety to suspend the child’s license or permit, or if the child does not have a license or permit, to deny the issuance of a license or permit to the child.
“(b) The order shall specify that the period of suspension or denial be until the person reaches the age at which he may legally purchase alcoholic beverages or for a period of one year, whichever period is longer.”

SECTION 26. Chapter 5, Insurance Code, is amended by adding Article 5.03-1 to read as follows:

“Art. 5.03-1. PREMIUM SURCHARGE. Sec. 1. A premium surcharge, in an amount to be prescribed by the State Board of Insurance, may be assessed by an insurer defined in Article 5.01, Texas Insurance Code, against an insured for no more than one policy year immediately following the date of conviction of the insured of an offense under Article 67011-1, Revised Statutes, or an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code. The premium surcharge shall be applied only to private passenger automobile policies as defined by the State Board of Insurance.

“Sec. 2. If an insured assessed a premium surcharge as a result of a conviction of an offense as set out in Section 1 of this Article is subsequently convicted of a violation of one of those statutes during the period he is assessed the premium surcharge, the period for which the premium surcharge may be imposed is increased by two additional consecutive policy years for each conviction.”

SECTION 27. Section 50, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon’s Texas Civil Statutes); Article 67011-2, Revised Statutes; and Chapter 436, Acts of the 52nd Legislature, 1951 (Article 67011-3, Vernon’s Texas Civil Statutes), are repealed.

SECTION 28. (a) A person who before the effective date of this Act refused to submit to a test is subject to the law in effect when the refusal occurred, and that law is continued in effect for the disposition of administrative proceedings against the person.

(b) The changes in law made by this Act for the punishment of an offense under Article 67011-1, Revised Statutes, as amended, apply only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act only if any element of the offense occurs before the effective date.

(c) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

(d) Article 5.03-1, Insurance Code, applies only for convictions of offense that occur after the effective date of this Act.

SECTION 29. This Act takes effect January 1, 1984.

SECTION 30. 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 1 was read second time.

STATEMENT BY REPRESENTATIVE D. HUDSON

On this day I voted yes on the motion to table an amendment to SB 232 on third reading and final passage. Due to a failure in my voting machine, I was not recorded as voting when I should have been recorded as voting yes. The sequence number on this vote was 0406.

D. Hudson

CSSB 1 - (consideration continued)

Representative T. Smith offered the following amendment to CSSB 1:

Amend CSSB 1 as follows:
(1) On page 29, strike the underlined language beginning on line 12 and ending on line 14.

(2) On page 29, line 16, strike "and" and substitute the following:

"If the jury recommends probation for a person convicted of an offense under Article 6701-1, Revised Statutes, and punished under Subsection (c) of that article, it [and]."

The amendment was adopted without objection.

Representative Shaw offered the following amendment to CSSB 1:

Amend CSSB 1 by renumbering Sections 29 and 30 as Sections 30 and 31 and inserting a new Section 29 to read as follows:

SECTION 29. Article XIII, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Section 107A to read as follows:

Sec. 107A. CONSUMPTION OF ALCOHOLIC BEVERAGE WHILE DRIVING. (a) In this section, "alcoholic beverage" has the meaning assigned by Section 1.04(1), Alcoholic Beverage Code.

(b) A person may not consume an alcoholic beverage while operating a motor vehicle on a street or highway.

(c) An offense under this section is a Class C misdemeanor.

Representative Salinas raised a point of order against further consideration of the Shaw amendment on the grounds that the amendment violates Rule 12, Section 2 of the House Rules.

The speaker sustained the point of order.

Representatives C. Smith and Craddick offered the following amendment to CSSB 1:

Amend CSSB 1, Section 22 by adding Section 22A to read as follows:

Section 22A, Article V, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Section 51A to read as follows:

Sec. 51A. POSSESSION OF OPEN ALCOHOLIC BEVERAGE CONTAINER. (a) In this section:

(1) "Alcoholic beverage" means a beverage that contains more than one-half of one percent of alcohol by volume and that is capable of use for beverage purposes.

(2) "Passenger portion" of a motor vehicle means the area of the vehicle that is accessible to a person riding in or within five feet of the driver's seat.

(b) Except as provided by Subsection (d) of this section, a person may not operate a motor vehicle with a container of an alcoholic beverage present in the passenger portion of the vehicle.

(c) Except as provided by Subsection (d) of this section, a person may not travel in a motor vehicle with a container of an alcoholic beverage present in the person's immediate possession.

(d) This Act does not prohibit the presence of an alcoholic beverage that is in its original container and has never been opened.

(e) A person who knowingly or intentionally operates or travels in a motor vehicle in violation of this section commits an offense.

(f) An offense under this section is a Class C misdemeanor.

Representative Salinas raised a point of order against further consideration of the C. Smith-Craddick amendment on the grounds that the amendment violates Rule 12, Sections 2 and 3 of the House Rules.
The speaker sustained the point of order.

Representatives Cevcrha, C. Smith, and Blanton offered the following amendment to CSSB 1:

Amend CSSB 1 by adding a new section (g) on line 20, page 9, and renumbering the subsequent sections, to read as follows:

(g) "If it is shown on the trial of the person punished for an offense under Subsection (d), or (e) of this Article that the person committed the offense, and at the time of his arrest the person was operating a motor vehicle with an open container of an alcoholic beverage present in the passenger portion of the vehicle, the minimum term of confinement for the offense is increased by 60 days and the minimum and maximum fines for the offense are increased by $300. The term "alcoholic beverage" means a beverage that contains more than one-half of one percent of alcohol by volume and that is capable of use for beverage purposes."

Representative T. Smith moved to table the Ceverha-C. Smith-Blanton amendment.

A record vote was requested.

The motion to table was lost by (Record 418): 64 Yeas, 83 Nays, 1 Present, not voting.

Yea — Agnish; Armbrister; Barrientos; Barton, B.; Barton, E.; Berlanga; Burnett; Cain; Carricker; Cary; Cavazos; Ciss; Crockett; Danburg; DeLay; Edwards; Evans, L.; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Granoff; Hall, W.; Harrison, D.; Hernandez; Hightower; Hill, P.; Hudson, D.; Hudson, S.; Hury; Jackson; Kemp; Lee, E. F.; Luna; Mankins; Martinez, R.; Martinez, W.; Moreno, A.; Moreno, P.; Oliveira; Oliver; Parker; Patrick; Peveto; Polk; Price; Ragsdale; Rangel; Robinson; Salinas; Sanders; Shea; Smith, T.; Thompson, S.; Tow; Uher; Valles; Waldrop; Wallace; Watson; Wicent; Willis; Wilson; Word.

Nay — Arnold; Blanton; Bomer; Buchanan; Bush; Ceverha; Clark; Clemens; Colbert; Collazo; Connelly; Coody; Craddock; Davis; Delco; Denton; Eccels; Eikenburg; Emmett; English; Evans, C.; Finnell; Fox; Gamez; Gandy; Gibson, B.; Gilley; Glassbrenner; Green; Grisham; Haley; Hall, L.; Hall, T.; Hammond; Hanna; Harrison, W.; Heflin; Hilbert; Hill, A.; Hill, G.; Hinojosa; Hollowell; Horn; Jones; Keller; Khoury; Kubiak; Kuempel; Laney; Lee, D.; Leonard; McKenna; McWilliams; Madla; Messer; Millsap; Patronella; Patterson; Pennington; Pierce; Polumbo; Presnal; Rohnet; Rudd; Russell; Schlueter; Schoolcraft; Shaw; Short; Simpson; Smith, A.; Smith, C.; Staniswalis; Stiles; Sutton; Tejeda; Thompson, G.; Toomey; Turner; Vowell; Whaley; Wolens; Wright.

Present, not voting — Mr. Speaker(C).

Absent — Gibson, J.; Hackney.

Representative T. Smith offered the following amendment to the Ceverha-C. Smith-Blanton amendment:

Amend CSSB 1 by adding a new section (g) on line 20, page 9, and renumbering the subsequent sections, to read as follows:

(g) "If it is shown on the trial of the person punished for an offense under Subsection (d), or (e) of this Article that the person committed the offense, and at the time of his arrest the person was operating a motor vehicle with an open container of an alcoholic beverage present in the passenger portion of the vehicle, the minimum term of confinement for the offense is increased by 3 days. The term
"alcoholic beverage" means a beverage that contains more than one-half of one percent of alcohol by volume and that is capable of use for beverage purposes.

Representative Bush offered the following substitute amendment for the
T. Smith amendment:

Amend CSSB 1 as follows:

(1) On page 3, line 1, strike "and" and substitute "(h), and (i)."

(2) On page 3, line 2, strike "(h)."

(3) On page 3, line 7, strike "and (h)" and substitute "(h), and (i).

(4) On page 3, line 8, strike "and (h)" and substitute "(h), and (i)."

(5) On page 4, line 21, between "subsection" and the comma, insert "and Subsection (i) of this section."

(6) On page 7, between lines 13 and 14, insert the following:

"(i) If a person is convicted of an offense under Article 67011-1, Revised Statutes, and the punishment for the offense which the person would otherwise receive is increased by Section (g) of that article, the court shall impose, in addition to the period of suspension authorized by Subsection (d) of this section, an additional period of suspension of 60 days. Except as otherwise provided by this subsection, the additional 60-day period of suspension shall commence immediately on the expiration of the period imposed under Subsection (d) of this section. The 60-day period of suspension shall commence immediately on conviction if another period of suspension that would otherwise have commenced on conviction has been deferred under Subsection (g) of this section."

(7) On page 7, line 25, insert a new Subdivision (2) of Section (a) and renumber the existing Subdivision (2) and following subdivisions accordingly:

"(2) 'Alcoholic beverage' has the meaning assigned that term by Section 1.04(1), Alcoholic Beverage Code."

(8) On page 9, line 20, insert a new Section (g) to read as follows and reletter the existing Section (g) and following sections accordingly:

"(g) If it is shown on the trial of a person punished for an offense under Section (c), (d), or (e) of this article, whether or not the punishment is increased under Section (f), that the person consumed an alcoholic beverage while committing the offense, the minimum and maximum fines for the offense are increased by $100."

(9) On page 10, line 4, strike "(g) and (h)" and substitute "(h) and (i)."

The Bush substitute amendment was adopted without objection.

The T. Smith amendment, as substituted, was adopted without objection.

A record vote was requested.

The Ceverha-C. Smith-Blanton amendment, as amended, failed of adoption by (Record 419): 66 Yeas, 78 Nays, 1 Present, not voting.

Yeas — Arnold; Blanton; Bomer; Bush; Carriker; Ceverha; Clark; Clemens; Collazo; Connelly; Coody; Craddick; Denton; Eckels; Eikenburg; English; Finnell; Fox; Gamez; Gibson, B.; Gibson, J.; Green; Grisham; Haley; Hall, L.; Hall, T.; Hammond; Harrison, W.; Hilbert; Hill, A.; Hill, G.; Hinojosa; Hollowell; Jones; Keller; Khoury; Kubak; Kuempel; Laney; Leonard; McKenna; McWilliams; Madison; Messenger; Millsap; Patronella; Patterson; Pennington; Presnal; Robnett; Schlueter; Schoolcraft; Shea; Smith, A.; Smith, C.; Staniswalis; Stiles; Tejeda; Toomey; Tow; Turner; Vowell; Whaley; Wieting; Wolens; Wright.

Nays — Agnich; Armbrister; Barrientos; Barton, B.; Barton, E.; Berlanga; Buchanan; Burnett; Cain; Cary; Cavazos; Criss; Crockett; Danburg; Davis; Delay; Delco; Edwards; Emmett; Evans, C.; Evans, L.; Gandy; Garcia, A.; Garcia, M.;
Representative C. Smith offered the following amendment to CSSB 1:

Amend CSSB 1 by adding a new section (g) on line 20, page 9, and renumbering the subsequent sections, to read as follows:

(g) "If it is shown on the trial of the person punished for an offense under Subsection (d) or (e) of this Article that the person committed the offense, and at the time of his arrest the person was operating a motor vehicle with an open container of an alcoholic beverage present in the passenger portion of the vehicle, the minimum term of confinement for the offense is increased by 10 days and the minimum and maximum fines for the offense are increased by $300. The term "alcoholic beverage" means a beverage that contains more than one-half of one percent of alcohol by volume and that is capable of use for beverage purposes. The term open container means a container containing more than one ounce of ALCOHOLIC BEVERAGE in a consumable condition and from which the contents may be drunk without manually opening or uncapping the container."

Representative T. Smith moved to table the C. Smith amendment.

The motion to table prevailed by (Record 420): 79 Yeas, 70 Nays, 1 Present, not voting.

Yea — Agnich; Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Buchanan; Burnett; Cain; Cary; Cavazos; Criss; Crockett; Danburg; Davis; Delay; Delco; Edwards; Emmett; Evans, C.; Evans, L.; Garcia, M.; Gavin; Geistweidt; Gibson, J.; Gilley; Glossbrenner; Granoff; Hackney; Hall, W.; Hanna; Harrison, D.; Heflin; Hernandez; Hightower; Hill, P.; Hudson, D.; Hudson, S.; Huff; Kemp; Lee, D.; Lee, E. F.; Luna; Mankins; Martinez, R.; Martinez, W.; Moreno, A.; Moreno, P.; Oliveira; Oliver; Parker; Patrick; Peveto; Polk; Polumbo; Price; Ragsdale; Rangel; Robinson; Rudd; Russell; Salinas; Saunders; Shaw; Short; Simpson; Sutton; Thompson, G.; Thompson, S.; Uher; Valles; Waldrop; Wallace; Watson; Willis; Wilson; Word.

Nay — Blanton; Borner; Bush; Carriker; Ceverha; Clark; Clemens; Colbert; Collazo; Connelly; Coody; Craddick; Denton; Eickels; Eikenburg; English; Fennell; Fox; Gamez; Gandy; Gibson, B.; Green; Grisham; Haley; Hall, L.; Hall, T.; Hammond; Harrison, W.; Heflin; Hilbert; Hill, A.; Hill, G.; Hinojosa; Hollowell; Horn; Keller; Khoury; Kubak; Kucmpe1; Laney; Leonard; McKenna; McWilliams; Mads1; Messer; Millsap; Patronella; Patterson; Pennington; Pierce; Polumbo; Presnal; Robnett; Schlueter; Schoolcraft; Shaw; Shea; Short; Smith, A.; Smith, C.;
MESSAGE FROM THE SENATE

Austin, Texas, May 17, 1983

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 836 by Parmer and Lyon, relating to the testimony or statement in certain civil and criminal proceedings of a child who is a victim of alleged sexual or other abuse.

SB 1241 by Brown, relating to certain definitions, to prevention and control of spills of hazardous substances.

SB 1361 by Doggett, et al., amending the Alcoholic Beverage Code to authorize the issuance of farm winery permits; and declaring an emergency.

Respectfully,
Betty King
Secretary of the Senate

CSSB 1 - (consideration continued)

Representative Barrientos offered the following amendment to CSSB 1:

Amend CSSB 1 as follows:
On page 27, line 7, strike "60" and substitute "120".

(C. Evans in the chair)

Representative T. Smith moved to table the Barrientos amendment.

A record vote was requested.

The motion to table was lost by (Record 421): 20 Yeas, 125 Nays, 2 Present, not voting.

Yeas — Agnich; Arnold; Berlanga; Burnett; Crockett; Danburg; Davis; Evans, L.; Hernandez; Hightower; Hill, P.; Hury; Lee, D.; Lee, E. F.; Parker; Peveto; Salinas; Smith, T.; Waldrop; Watson.

Nays — Armbrister; Barrientos; Barton, B.; Barton, E.; Blanton; Bomar; Buchanan; Bush; Cain; Carriker; Cary; Cavazos; Ceverha; Clark; Clemons; Colbert; Collazo; Connelly; Coody; Craddock; Criss; Delay; Delco; Denton; Eckels; Edwards; Eikenburg; Emmett; English; Finnell; Fox; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley; Glossbrenner; Granoff; Green; Hackney; Haly; Hall, L.; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Harrison, W.; Heflin; Hihert; Hill, A.; Hill, G.; Hinojosa; Hollowell; Horn; Hudson, D.; Hudson, S.; Jackson; Jones; Keller; Kemp; Khoury; Kubik; Kuempel; Laney; Leonard; Luna; McKenna; McWilliams; Madla; Mankins; Martinez, R.; Martinez, W.; Meser; Millsap; Moreno, A.; Moreno, P.; Oliveira; Oliver; Patrick; Patronella; Patterson; Pennington; Pierce; Polf; Polumbo; Presnal; Ragland; Rangel; Robinson; Robnett; Rudd; Russell; Schlueter;
STATEMENT BY REPRESENTATIVE BERLANGA

My machine malfunctioned. I wanted to be shown voting no instead of yes.

Representative Berlanga

The Barrientos amendment was adopted without objection.

Representative Salinas offered the following amendment to CSSB 1:

Amend CSSB 1 as follows:

Strike lines 6 and 7 on page 7 and insert "specified by the Court not to exceed one (1) year from the beginning date of the person's probation."

The amendment was adopted without objection.

Representative Uher offered the following amendment to CSSB 1:

Amend CSSB 1 as follows:

(1) Strike lines 25 through 27 on page 7 and lines 1 through 4 on page 8 and substitute the following:

"(2) 'Intoxicated' means the inability to safely operate a motor vehicle by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body. A person is presumed to be intoxicated if his alcohol concentration is 0.10 percent or more."

(2) Strike lines 16 through 22 on page 20 and substitute the following:

"(2) 'Intoxicated' means the inability to safely operate a motor vehicle by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body. A person is presumed to be intoxicated if his alcohol concentration is 0.10 percent or more."

LEAVE OF ABSENCE GRANTED

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

J. Gibson on motion of Schlueeter.

CSSB 1 - (consideration continued)

Representative T. Smith moved to table the Uher amendment.

A record vote was requested.

The motion to table prevailed by (Record 422): 114 Yeas, 29 Nays, 2 Present, not voting.

Yeas — Agnich; Armbrister; Barton, B.; Barton, E.; Berlanga; Blanton; Bomer; Buchanan; Burnett; Bush; Carriker; Cervera; Clemons; Colbert; Collazo; Connelly; Coody; Craddick; DeLay; Delco; Denton; Eckels; Elkenburg; Emmett; English; Finnell; Fox; Gamez; Gandy; Geisweidt; Gibson, B.; Granoff; Green; Grisham; Hackney; Haley; Hall, L.; Hall, W.; Hammond; Hanna; Harrison, D.; Harrison, W.; Heflin; Hightower; Hilbert; Hill, A.; Hill, G.; Hollowell; Horn; Hudson, D.; Hurry; Jackson; Jones; Keller; Kemp; Khoury; Kubialk; Kuempel; Laney; Lee, D.; Leonard; McKenna; McWilliams; Madia;
Nays — Arnold; Barrientos; Cain; Cary; Cavazos; Clark; Criss; Crockett; Danburg; Davis; Edwards; Garcia, A.; Garcia, M.; Gilley; Hall, T.; Hernandez; Hill, P.; Hinojosa; Hudson, S.; Luna; Martinez, W.; Moreno, P.; Oliver; Presnak; Rangel; Rudd; Vowell; Watson; Willis.

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

Absent, Excused — Gibson, J.

Absent — Evans, L.; Glossbrenner; Lee, E. P.; Uher.

STATEMENT BY REPRESENTATIVE S. THOMPSON

I inadvertently voted yes but intended to vote no.

S. Thompson

Representative Khoury offered the following amendment to CSSB 1:

Amend CSSB 1 as follows:

(1) On page 25, line 26, strike "may" and substitute "shall".
(2) On page 25, line 27, strike "for a time specified by the court and".
(3) On page 26, line 2, strike (d).
(4) On page 26, line 3, after the period insert the following:

The court shall require the person's participation in a program under this subsection according to the following schedule:

(1) 40 hours if the person is convicted of an offense under Article 67011-1, Revised Statutes, and is punished under Subsection (c) of that article;
(2) 80 hours if the person is punished under Subsection (d) of that article;
(3) 120 hours if that person is punished under Subsection (e) of that article;
(4) 160 hours if that person is convicted of an offense under Section 19.05(a)(2), Penal Code.

(5) On page 34, line 20, strike "may" and substitute "shall".
(6) On page 34, line 21, strike "for a time specified by the court and".
(7) On page 34, line 23, strike "(d).

(8) On page 34, line 24, after the period insert:

The court shall require the person's participation in a program under this subsection according to the following schedule:

(1) 40 hours if the person is convicted of an offense under Article 67011-1, Revised Statutes, and is punished under Subsection (c) of that article;
(2) 80 hours if the person is punished under Subsection (d) of that article;
(3) 120 hours if that person is punished under Subsection (e) of that article;
(4) 160 hours if that person is punished under Section 19.05(a)(2), Penal Code.

Representative Peveto moved to table the Khoury amendment.

A record vote was requested.

The motion to table prevailed by (Record 423): 106 Yeas, 35 Nays, 2 Present, not voting.
Representative G. Thompson offered the following amendment to CSSB 1:

Amend CSSB 1 as follows:

Strike Section 24 (page 43, line 15, through page 44, line 3).

The amendment failed of adoption.

A record vote was requested.

CSSB 1, as amended, was passed to third reading by (Record 424): 144 Yeas, 3 Nays, 1 Present, not voting.

Yeas — Agnich; Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Bomer; Buchanan; Burnett; Bush; Cain; Carriker; Cary; Cavazos; Clark; Collazo; Connelly; Coody; Crockett; Danburg; Davis; DeLay; Delco; Eckels; Emmett; English; Fox; Gamez; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gilley; Glossbrenner; Granoff; Green; Grisham; Hackney; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Harrison, W.; Hernandez; Hightower; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Hudson, D.; Hudson, S.; Hury; Jackson; Jones; Kemp; Kuempel; Lane; Lee, D.; Lee, E. F.; Leonard; Luna; Madia; Mankins; Martinez, W.; Moreno, A.; Moreno, P.; Oliveira; Oliver; Parker; Peveto; Pierce; Polk; Presnal; Price; Ragsdale; Rangel; Robnett; Russell; Salinas; Saunders; Shaw; Short; Simpson; Smith, A.; Smith, T.; Sutton; Tejeda; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Uher; Valles; Vowell; Waldrop; Wallace; Watson; Whaley; Wieting; Willis; Wolens; Word.

Present, not voting — Mr. Speaker: Evans, C.(C).

Absent, Excused — Gibson, J.

Absent — Edwards; Garcia, A.; Khoury; Martinez, R.; Robinson; Schluter.

(Speaker in the chair)

CSSB 1, as amended, was passed to third reading by (Record 424): 144 Yeas, 3 Nays, 1 Present, not voting.
Nays — Evans, L.; Hernandez; Ragsdale.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Gibson, J.

Absent — Moreno, P.

HB 2232 - SET AS SPECIAL ORDER

Representative A. Hill moved to set HB 2232 as a special order for Wednesday, May 18, at 10 a.m.

The motion prevailed without objection.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

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

SCR 6, SCR 38, SCR 58, SCR 97, SCR 103, SB 38, SB 59, SB 91, SB 162, SB 274, SB 280, SB 284, SB 335, SB 353, SB 379, SB 541, SB 544, SB 579, SB 613, SB 732, SB 781, SB 786, SB 809, SB 967, SB 971, SB 996, SB 1018, SB 1020, SB 1029, SB 1031, SB 1032, SB 1064, SB 1096, SB 1198, SB 1207, SB 1222, SB 1275, SB 1285

HOUSE BILLS ON FIRST READING

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

By D. Hudson, et al.:

HB 2449, A bill to be entitled An Act relating to the child support collection service fee in Smith County.

To Committee on County Affairs.

By D. Hudson:

HB 2450, A bill to be entitled An Act relating to the creation, administration, powers, duties, functions, operations, and financing of the Emerald Bay Municipal Utility District.

To Committee on County Affairs.

CORRECTIONS IN REFERRALS

SB 876, relating to the regulation of funeral directors, embalmers, funeral establishments, and apprentices in funeral directing and embalming; prescribing the powers and duties of the State Board of Morticians was inadvertently referred to the Committee on Public Health. The chair, after consultation with author and chairmen of the respective committees, now corrects the referral of SB 876 to the Committee on Business and Commerce.

SB 477, relating to the regulation of marriage and family counselors 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 SB 477 to the Committee on Human Services.

RULES SUSPENDED

Representative G. Thompson moved to suspend the 5-day posting rule to allow the Committee on County Affairs to consider HB 2447, HCR 223, SB 1225, SB 1371, and SB 853.

The motion prevailed without objection.
RULERS SUSPENDED

Representative Coody moved to suspend the 5-day posting rule to allow the Committee on Financial Institutions to consider SB 488, SB 429, SB 1156, and SB 1091.

The motion prevailed without objection.

RULERS SUSPENDED

Representative Tejeda moved to suspend the 5-day posting rule to allow the Committee on Judicial Affairs to consider HB 2109, HB 2360, HB 2329, HB 2399, SB 97, SB 1273, HB 2328, SB 1252, SB 1334, SB 1335, SB 1086, SB 564, SCR 11, and HCR 251.

The motion prevailed without objection.

SB 876 - RULERS SUSPENDED

Representative Jackson moved to suspend the 5-day posting rule to allow the Committee on Business and Commerce to consider SB 876.

The motion prevailed without objection.

SB 456 - RULERS SUSPENDED

Representative Presnal moved to suspend the 5-day posting rule to allow the Committee on Appropriations to consider SB 456.

The motion prevailed without objection.

HB 1079 - RULERS SUSPENDED

Representative Hury moved to suspend the 48-hour subcommittee report rule to allow the Committee on Criminal Jurisprudence to consider HB 1079.

The motion prevailed without objection.

HR 421 - ADOPTED

Representative G. Hill moved that all necessary rules be suspended to take up and consider at this time, HR 421.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By G. Hill, et al.:

HR 421

WHEREAS, Admiral Bob Inman will be in Austin on May 18, 1983; and WHEREAS, The Texas House of Representatives desires to honor this illustrious Texan, and it would be a distinct pleasure to all members for him to deliver an address before this body; now, therefore, be it

RESOLVED, That the House of Representatives of the 68th Legislature of the State of Texas extend an invitation to Admiral Bob Inman to address a session of the Texas House of Representatives in the hall of the house on May 18, 1983, at a time convenient; and, be it further

RESOLVED, That a copy of this resolution be prepared for Admiral Inman as his official invitation from the Texas House of Representatives.

The resolution was adopted without objection.
On motion of Representative T. Smith, the names of all the members of the house were added to HR 421 as signers thereof.

PROVIDING FOR A LOCAL AND CONSENT CALENDAR AND A RESOLUTIONS CALENDAR

Representative G. Hill moved to suspend all necessary rules to set a Local and Consent Calendar and Resolutions Calendar for 9 a.m., Friday, May 20.

The motion prevailed without objection.

PROVIDING FOR A CONGRATULATORY AND MEMORIAL RESOLUTIONS CALENDAR

Representative S. Hudson moved to suspend all necessary rules to set a Congratulatory and Memorial Resolutions Calendar for 9 a.m. Friday, May 20.

The motion prevailed without objection.

RULES SUSPENDED

Representative W. Hall moved to suspend the 5-day posting rule to allow the Committee on Liquor Regulation to consider SB 964, HB 1095, SB 1361, and HR 362.

The motion prevailed without objection.

HB 1889 - RULES SUSPENDED

Representative W. Hall moved to suspend the 48-hour subcommittee report rule to allow the Committee on Liquor Regulation to consider HB 1889.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Criminal Jurisprudence, on adjournment today, Desk 120, to consider eligible subcommittee reports and SB 840 and SB 627.

Judiciary, on adjournment today, Desk 79, to consider SB 898 and SB 997.

Local and Consent Calendars, on adjournment today, Room G-14.

Criminal Jurisprudence, Subcommittee on HB 5, on adjournment today, Desk 120, to consider HB 5.

Criminal Jurisprudence, Subcommittee on HB 1079, on adjournment today, Desk 88, to consider HB 1079.

Higher Education, on adjournment today, Room C, Reagan Building, to consider SB 409, SB 461, SB 652, SB 899, SB 1088, and SB 572.

County Affairs, 9:30 a.m. tomorrow, Room 346, Capitol, to consider HB 2447, HCR 223, SB 1225, SB 1371, and SB 853.

Conference Committee on HJR 19, 9 a.m. tomorrow, Old Supremec Court room.

ADJOURNMENT

Representative Granoff moved that the house adjourn until 10 a.m. tomorrow.

The motion prevailed without objection.

The house accordingly, at 8:03 p.m., adjourned until 10 a.m. tomorrow.
Favorable reports have been filed by committees on bills and resolutions, as follows:

Agriculture and Livestock - SB 866
County Affairs - HB 1296, HB 2350, HB 2441, HB 2249, HB 2321, HB 2414, HB 2425, HB 2435, HB 2439, HCR 247, SB 963, SB 1033, SB 1192, SB 1292, SB 1359
Criminal Jurisprudence - HB 1452, HB 1705, SB 742
Higher Education - HB 809
Judicial Affairs - HCR 253
Judiciary - HB 2445
Natural Resources - HB 1375
Public Health - SB 375
State Affairs - HB 836, HB 2246, HCR 115, SB 635
Urban Affairs - SB 440
Ways and Means - HB 1613, SB 1345

ENGROSSED

May 16 - HB 306, HB 1186, HB 1726

SENT TO THE GOVERNOR

May 11 - HB 1389, HCR 240
May 12 - HB 1020, HB 1376, HB 1406, HCR 139, HCR 156, HCR 178, HCR 186, HCR 187, HCR 188, HCR 193, HCR 196, HCR 234, HCR 235
May 16 - HB 593

COAUTHORS AUTHORIZED

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

HB 61 - Barrientos
HB 887 - D. Hudson
HB 1527 - Price
HB 2449 - Hollowell
HR 421 - T. Smith, Delco, Barrientos, B. Barton