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 436).

Present — Mr. Speaker; Agnich; Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Boner; Burnett; Bush; Cain; Carriker; Cary; Cavazos; Cervera; Clark; Clemens; Colbert; Collazo; Connelly; Coody; Craddick; Criss; Crockett; Danburg; Davis; DeLay; Delco; Denton; Eckels; Edwards; Eikenburg; Emmett; English; Evans, C.; Evans, L.; Finnell; Fox; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley; 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; Pierce; Polk; Polumbo; Presnal; Price; Ragsdale; Rangel; Robinson; Robnett; Rudd; Russell; Saunders; Schlueter; Schooalcraft; Shaw; Shean; Short; Simpson; Smith, A.; Smith, C.; Smith, T.; Staniswalis; Stiles; Sutton; Tejeda; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Uher; Valles; Vowell; Waldrop; Wallace; Watson; Whaley; Wieting; Willis; Wilson; Wolens; Word; Wright.

Absent, Excused — Buchanan; Salinas.

The invocation was offered by Reverend Billy Crosby, Northwest Memorial Baptist Church, Houston, Texas, as follows:

Dear Father,

It’s good to see the faces of people for whom I have prayed for almost four years. Because you have commanded us to “pray for kings and all that are in authority,” I pray that you might draw each person to yourself that has not embraced Jesus Christ as Lord and Savior.

I pray for those who have received Christ, that they be attentive to his spirit within them.

Please, Father, give us officials who face decisions on the basis of right or wrong and not personal gain.

Grant each elected official physical strength to carry out their responsibilities.

Help each to seek wisdom from the one who said, “If any man lack wisdom let him ask of God.”

Cause each person at this session today to realize the awesome responsibility, yet glorious privilege, they have to represent the people of the great State of Texas.

I pray a special blessing upon my representative, Barry Connelly, and his family, Phyllis, Chris, Joe, David, and Maura.

In Jesus name, Amen.
LEAVES OF ABSENCE GRANTED

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

Salinas on motion of T. Hall.

The following member was granted leave of absence for today to attend a funeral:

Buchanan on motion of Whaley.

MESSAGE FROM THE SENATE

Austin, Texas, May 19, 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:

Local and Uncontested Calendar

HB 1571 by Gavin, relating to exceptions to the Nonresident Violator Compact of 1977.
HB 1582 by Jackson, relating to a taxpayer protest of the situs of property.
HB 1619 by Salinas, relating to filing notice of a sale of real estate under a power conferred by a contract lien. (amended)
HB 1689 by Schoolcraft, relating to the eligibility of certain students to be enrolled in the first grade in the public schools.
HB 1725 by Polumbo, relating to the administration of children’s protective services in Harris County.
HB 1766 by Shaw, relating to the protection by easement of certain real property having natural or historic value. (amended)
HB 1818 by Oliver, relating to the service of process in an election contest.
HB 1840 by Hinojosa, relating to a joint office for certain irrigation districts.
HB 1991 by Pierce, relating to the withholding of the compensation of certain county officers who elect not to be paid for their services.
HB 2009 by C. Evans, relating to contracts, leases and other arrangements for the use and occupancy of airport property.
HB 2032 by Khoury, relating to the parties in an appeal of a property tax determination and to service of process on those parties.
HB 1187 by Delay, et al., relating to the validation of certain municipal annexations and other governmental acts and proceedings.
HB 1200 by Berlanga, et al., relating to a United States foreign-trade zone and subzones at or near the customs port of entry of Corpus Christi.
HB 1203 by Peveto, relating to revision of the Tax Code to conform to recent constitutional amendments concerning property taxation. (amended)
HB 1217 by Colbert, relating to the labeling and advertising of kosher food.
HB 1293 by E. F. Lee, relating to the amount charged by the county for the use of electronic voting equipment in a primary election.
CSHB 1304 by Criss, relating to the authority of certain cities concerning port and harbor improvements and facilities.
HB 1368 by Hinojosa, relating to the failure of certain persons to maintain records of the source of citrus fruit.
HB 1395 by Schlueter, et al., relating to the remedies for unequal appraisal of property for property tax purposes.
HB 1446 by Turner, relating to the required filing date for a notice of protest in a property tax dispute.
HB 1510 by Wieting, relating to commercial feed and commercial fertilizer.
HB 1542 by J. Gibson, relating to gifts received by the board of regents of The University of Texas System.
HB 930 by Uher, et al., relating to predator control from aircraft in Jackson and Matagorda counties.
HB 936 by M. Garcia, relating to annexation of city, town, or village territory by certain junior college districts.
HB 943 by Connelly, relating to write-in voting in an election for the office of trustee of an independent school district.
HB 970 by Geistweidt, et al., relating to the creation of a juvenile board in each of the counties of Blanco, Burnet, Llano, Mason, and San Saba.
HB 1013 by Geistweidt, relating to establishment of a juvenile board in each of the counties of Kimble and Menard.
HB 1031 by Rangel, relating to the creation of the county court at law of Kleberg County.
HB 1064 by Agnich, relating to the establishment and use of the special nongame and endangered species conservation fund.
HB 1122 by Schlueter, relating to the definition of “newspaper” in Chapter 151 of the Tax Code and to the repeal of certain other taxes and fees.
HB 1128 by D. Lee, relating to records of births, deaths, and fetal deaths, enforcement of the vital statistics law, and providing a hearing for a person whose application for a copy of a record is refused.
HB 1133 by B. Gibson, relating to the repeal of the state law requiring that certain businesses maintain and make public certain personal information about their customers.
HB 544 by Bush, relating to liability for interference with child custody and to court orders providing for possession of or access to a child.
HB 603 by Millsap, relating to the destruction of an industrial die, mold, or form.
HB 637 by Wright, relating to statewide assignment of judges of the statutory probate courts.
HB 639 by G. Hill, relating to the federal post card application for an absentee ballot.
HB 647 by DeLay, relating to the submission of the appraisal roll to a taxing unit.
HB 724 by Rangel, relating to the reorganization of the 28th Judicial District and the compensation of the district judges in Kleberg County.
HB 825 by Hackney, relating to the definitions, registration, and certification of motorcycles, motor-driven cycles, and mopeds. (amended)
HB 842 by Simpson, relating to amounts of coverage for spouses and children under certain group term life insurance.
HB 854 by Grisham, et al., relating to validation of certain acts, proceedings, and orders concerning exclusion of territory from the Meadowlakes Municipal Utility District of Burnet County, Texas.
HB 897 by Criss, relating to the protection of consumers and regulation of manufactured housing. (amended)
HB 134 by Criss, relating to the compensation of the judges of the district courts in Galveston County.
HB 147 by Green, et al., relating to the determination of local option status under the Bingo Enabling Act. (amended)
HB 242 by Burnett, relating to the status of adult probation department personnel as state employees for certain purposes.

HB 374 by Wright, relating to the management of property recovered in a suit by the next friend of an incapacitated person.

HB 377 by Wright, relating to providing notice to heirs and beneficiaries concerning final settlements in probate proceedings. (amended)

HB 378 by Wright, relating to the distribution of small estates on affidavit.

HB 449 by Leonard, relating to the financial transactions of a corporation.

HB 455 by Barrientos, et al., relating to operating a motor vehicle, trailer, or semi-trailer with expired registration.

HB 475 by G. Hill, permitting inspection of certain juvenile records by the Texas Department of Corrections for statistical and diagnostic purposes.

HB 534 by Peveto, relating to the date by which rendition statements and property reports must be delivered to the chief appraiser.

HB 2077 by Colbert, relating to pilot projects for year round school programs.

HB 2140 by W. Hall, relating to the use of volunteers by certain governmental entities that provide human services.

HB 2143 by A. Smith, relating to permitting more than one policy of credit life or credit health and accident insurance, provided the aggregate insurance does not exceed the statutory limits imposed by the Texas Insurance Code.

HB 2161 by Geistweidt, relating to the requirement of permits for the transportation of water from the Edwards Underground Water District.

HB 2165 by DeLay, relating to certain licensing requirements and penalties under the Liquefied Petroleum Gas Code.

HB 2183 by Barrientos, relating to the use of odometer readings on certificates of title and assignments of title to motor vehicles.

HB 2226 by Davis, relating to the power of general law municipalities to annex navigable streams.

HB 2301 by Whaley, relating to the establishment of a juvenile board in Crosby County.

HB 2306 by Whaley, relating to the election and terms of office of the directors of the Lubbock County Water Control and Improvement District No. 1.

HB 2307 by Tow, relating to the jurisdiction of County Court at Law No. 1 of Montgomery County and of the County Court at Law No. 2 of Montgomery County.

HB 2320 by Grisham, et al., relating to validation of certain contracts of and issuance of a certain order by the Meadowlakes Municipal Utility District.

HB 2369 by Laney, relating to the establishment of a juvenile board in Lamb County.

CSHB 2371 by Presnal, relating to the establishment of a juvenile board in Brazos County.

HCR 72 by C. Evans, granting Ron and Loretha Stanley, parents of Lou Jean Stanley, permission to sue Burleson Independent School District. (amended)

HCR 97 by Russell, memorializing Congress to enact legislation to prevent the unwarranted diversion of European steel exports to the United States to pipe and tube products.

HCR 105 by T. Smith, accepting a plaque from the Austin Lawyers' Wives Club to be placed on the bicentennial granite star on the Capitol grounds.

HCR 118 by Gilley, granting Dave Chovanic permission to sue the state.

HCR 121 by Kemp, granting Cram Construction, Inc., permission to sue the State of Texas and the Parks and Wildlife Department.

HCR 134 by Kemp, granting South Texas Property Associates permission to sue the State of Texas and the Department of Highways and Public Transportation.
HCR 135 by Barrientos, encouraging community gardening.

HCR 146 by A. Smith, granting Marathon Oil Company permission to sue the State of Texas and the General Land Office.

HCR 147 by Oliveira, granting William Kenon and George Purvis permission to sue the state.

HCR 149 by Barrientos, granting Mabel Ann Brownlow permission to sue the State of Texas and the University of Texas System. (amended)

HCR 154 by D. Lee, naming the building that is headquarters of the Texas Cosmetology Commission as the "Frank Joseph Cosmetology Building."

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

SB 397 by Doggett, relating to the regulation of monopolies, contracts, combinations and conspiracies in restraint of trade or commerce; and declaring an emergency.

SB 1342 by Henderson, relating to metropolitan rapid transit authorities.

Respectfully,
Betty King
Secretary of the Senate

INTRODUCTION OF MRS. TEXAS

Speaker Lewis introduced Mrs. Texas, Sandy Sheats to the house.

Mrs. Sheats addressed the house briefly.

Speaker Lewis presented her with a gavel.

HB 1909 - NOTICE GIVEN

Pursuant to the provisions of Rule 15, Section 4 of the House Rules; at 10:26 a.m., the speaker notified the house that in one hour, Representative Stiles would be recognized to make a motion to suspend all necessary rules in order to take up and consider HB 1909.

HB 2451 - PERMISSION TO INTRODUCE

Representative Rudd moved to suspend the constitutional rule for permission to introduce and have placed on first reading HB 2451.

The motion prevailed by (Record 437): 135 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Annbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Bomer; Burnett; Bush; Cain; Carriker; Cary; Cavazos; Cevera; Clark; Clemons; Colbert; Collazo; Connelly; Coody; Craddick; Criss; Crockett; Danburg; Davis; DeLay; Delco; Denton; Eckels; Edwards; Eikenburg; Emmett; English; Evans, C.; Evans, L.; Finnell; Fox; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley; Glossbrenner; Granoff; Green; Hackney; Hale; Hall, L.; Hall, T.; Hall, W.; Hammond; Harrison, D.; Harrison, W.; Hellin; Hernandez; Hightower; Hibbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Hollowell; Horn; Hudson, D.; Hury; Jackson; Keller; Kemp; Khouy; Kubiak; Kuempel; Lancy; Lee, E. F.; Leonard; Luna; McKenna; McWilliams; Madla; Mankins; Martinez, R.; Martinez, W.; Messer; Millsap; Moreno, A.; Moreno, P.; Oliveira; Oliver; Patrick; Patronella; Patterson; Pennington; Peveto; Pierce; Polk; Polumbo; Presnal; Price; Ragsdale; Rangel; Robinson; Robnett; Rudd; Russell; Saunders; Schuetter; Schoolcraft; Shea; Short; Simpson; Smith, A.; Smith, T.; Staniswalis; Stiles; Tejeda; Thompson, G.; Thompson, S.; Toomey;
Present, not voting — Mr. Speaker(C).

Absent, Excused — Buchanan; Salinas.

Absent — Agnich; Grisham; Hanna; Hudson, S.; Jones; Lee, D.; Parker; Shaw; Smith, C.; Sutton; Wallace; Wilson.

**HR 373 - ADOPTED**

Representative S. Hudson moved that all necessary rules be suspended to take up and consider at this time, HR 373.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By S. Hudson:

HR 373, Honoring Melba Joyce.

The resolution was adopted without objection.

On motion of Representative S. Hudson, the names of all the members of the house were added to HR 373 as signers thereof.

**HR 442 - ADOPTED**

Representative Craddick moved that all necessary rules be suspended to take up and consider at this time, HR 442.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Craddick:

HR 442

WHEREAS, This important day marks the 63rd birthday of our distinguished colleague, the Honorable Joe Hanna, an outstanding legislator who for almost 14 years has met the demanding responsibilities and challenges facing a state representative; and

WHEREAS, In honor of this noteworthy occasion in the life of Representative Hanna, his colleagues wish to commemorate the date he was born, May 19, 1920, in Lawton, Oklahoma; and

WHEREAS, This former Sooner is now a tried and true Texan, and, since the 62nd Legislature, he has capably represented the constituents of his district with utmost integrity and tremendous dedication; and

WHEREAS, During his long tenure in office, Representative Hanna has also earned the respect and praise of his fellow members in the house of representatives through his astute guidance, his inspiring leadership, and his legislative skill; and

WHEREAS, His record during his many years of public service to the state has consistently been one of excellence, and it is with great pleasure that his colleagues acknowledge his birthday; now, therefore, be it

RESOLVED, That the House of Representatives of the 68th Legislature of the State of Texas hereby wish the Honorable Joe Hanna a Happy Birthday; and, be it further

RESOLVED, That an official copy of this resolution be prepared for Representative Hanna as a memento of this day and as a token of the good wishes of the Texas House of Representatives.
The resolution was read and was adopted without objection.

HR 443 - ADOPTED

Representative Denton moved that all necessary rules be suspended to take up and consider at this time, HR 443.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Denton and Polk:

HR 443, Designating Dr. Daniel Rader as Special Physician for the Day.

The resolution was adopted without objection.

HB 2436 ON SECOND READING

The speaker laid before the house, as a special order of business, on its second reading and passage to engrossment, the complete committee substitute for HB 2436.

CSHB 2436

A BILL TO BE ENTITLED
AN ACT
relating to the exemption from the motor fuels tax for gasoline and alcohol mixtures.

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

SECTION 1. Sections 153.123(e) and (f), Tax Code, are amended to read as follows:

(e) The mixture of gasoline and alcohol for which transfers, credits, or payments shall be made under this section shall meet the following specifications:

(1) the mixture must contain at least 10 percent ethyl alcohol;
(2) the alcohol added to the gasoline must have been at least 192 proof when added;
(3) the alcohol added to the gasoline must have been produced and distilled only from a renewable source produced in Texas [only]; and
(4) except as provided by Subsection (f) of this section, the mixture must contain no alcohol that was produced or distilled outside the state.

(f) If the comptroller certifies that alcohol that was produced or distilled in another state was produced from an agricultural or renewable source produced in Texas and if the alcohol produced in the other state meets the specifications provided by Subdivisions (1), (2), and (3) of Subsection (e) of this section, the specifications for the mixture for which the transfers shall be made to the gasoline and alcohol mixture fund and for which credits or payments shall be made shall include mixtures that include alcohol produced and distilled in the other state or in Texas and the other state. However, if a mixture of alcohol, produced or distilled in another state from agricultural or renewable sources produced in Texas, and gasoline qualifies under this subsection for a transfer and a credit, the amount of the transfer and credit under this section for the mixture may not exceed the amount of the exemption, credit, or refund (stated in or converted to cents for each gallon of the mixture) provided by the state in which the alcohol was produced or distilled. If the comptroller certifies that another state provides an exemption from that state's taxes applicable to gasoline or a credit or refund for taxes collected or an amount in lieu of taxes collected on a mixture of gasoline and alcohol, and if the other state's exemption, credit, or refund allowance applies to a mixture that includes alcohol produced or distilled in Texas, and if the alcohol produced in the
other state meets the specifications provided by Subdivisions (1), (2), and (3) of Subsection (c) of this section, then the specifications for the mixture for which the transfers shall be made to the gasoline and alcohol mixture fund and for which credits or payments shall be made shall include mixtures that include alcohol produced and distilled in the other state or in Texas and the other state. However, if a mixture of alcohol produced or distilled in another state and gasoline qualifies under this subsection for a transfer and a credit, the amount of the transfer and credit under this section for the mixture may not exceed the amount of the exemption, credit, or refund (stated in or converted to cents for each gallon of the mixture) provided by the state in which the alcohol was produced or distilled:]

SECTION 2. The provisions of Section 153.123, Tax Code, are not severable. If any portion of Section 153.123, Tax Code, is held to be unlawful or unconstitutional, the entire section shall have no force and effect.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

CSHB 2436 was read second time.

Representative Shaw raised a point of order against further consideration of CSHB 2436 on the grounds that the committee substitute violates Rule 4, Sec. 29(b)(6) of the House Rules.

The speaker overruled the point of order.

Representative Shaw moved that consideration of CSHB 2436 be postponed until Friday, May 20, at 3:30 p.m.

A record vote was requested.

The motion to postpone was lost by (Record 438): 58 Yeas, 82 Nays, 1 Present, not voting.

Yeas — Armbrister; Barrientos; Barton, B.; Berlanga; Carriker; Cary; Cavazos; Clemmons; Colbert; Collazo; Danburg; Denton; Eckels; Edwards; Eikenburg; Gamez; Gandy; Garcia, A.; Garcia, M.; Gibson, J.; Glossbrenner; Granoff; Hackney; Hall, T.; Hall, W.; Hernandez; Hinojosa; Hudson, S.; Jackson; Jones; Kemp; Kubiak; Laney; Luna; McWilliams; Martinez, R.; Martinez, W.; Moreno, A.; Moreno, P.; Oliveira; Oliver; Parker; Patrick; Patronella; Patterson; Pierce; Ragsdale; Rangel; Robnett; Rudd; Schoolcraft; Shaw; Simpson; Uher; Valles; Wallace; Wieting; Willis.

Nays — Agnish; Arnold; Barton, E.; Blanton; Bomer; Burnett; Cain; Cerverha; Clark; Connelly; Coody; Craddock; Criss; Crockett; Davis; DeLay; Delco; Emmett; English; Evans, C.; Evans, L.; Finnell; Fox; Gavin; Geistweidt; Gibson, B.; Gilley; Green; Grisham; Hall, L.; Hammond; Hanna; Harrison, D.; Harrison, W.; Heflin; Hightower; Hilbert; Hill, A.; Hill, G.; Hill, D.; Hollowell; Horn; Hudson, D.; Hury; Khoury; Kuempel; Lee, E. F.; Leonard; McKenna; Madsen; Mankins; Messer; Millsap; Pennington; Peveto; Polk; Polumbo; Presnal; Robinson; Russell; Saunders; Schluter; Shea; Short; Smith, A.; Smith, C.; Smith, T.; Stanislawski; Stiles; Tejeda; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Vowell; Waldrop; Watson; Whaley; Wolens; Word; Wright.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Buchanan; Salinas.
Representative Rudd offered the following amendment to CSHB 2436:

Amend CSHB 2436 by deleting Section 2, and adding in lieu thereof the following:

"SECTION 2. The legislature hereby declares that the primary purpose of Section 153.123, Tax Code, is to promote the growth of the alcohol fuels industry in Texas, and to promote the use of Texas renewable resources in the manufacture of alcohol fuels. To that end, if any of the provisions of Section 153.123 or its application to any person or circumstance is held unlawful or unconstitutional, then that section shall be applied in such a manner as to preserve the exemptions granted by that section, to the extent possible. If any of the amendatory provisions of this Act render Section 153.123 unlawful, then that section shall be applied as it existed prior to the effective date of this Act."

Representative Schlueter moved to table the Rudd amendment.

A record vote was requested.

The motion to table was lost by (Record 439): 62 Yeas, 76 Nays, 1 Present, not voting.

Yeas — Agnich; Barton, E.; Blanton; Borner; Bush; Cain; Ceverha; Clark; Connelly; Coody; Craddick; Criss; Crockett; DeLay; Emmett; English; Fox; Geistweidt; Gilley; Grisham; Hammond; Hanna; Harrison, W.; Hellin; Hightower; Hilbert; Hill, A.; Hill, G.; Hollowell; Horn; Hudson, D.; Hudson, S.; Hury; Kemp; Khoury; Kuempel; Lee, E. F.; Leonard; McKenna; Mankins; Messer; Peveto; Polk; Polunbo; Robinson; Russell; Saunders; Schlueter; Shea; Short; Smith, A.; Smith, C.; Sutton; Thompson, G.; Tow; Turner; Vowell; Waldrop; Watson; Wolens; Word; Wright.

Nays — Armbrister; Arnold; Barrientos; Barton, B.; Berlanga; Burnett; Carriker; Cary; Cavazos; Clemens; Colbert; Collazo; Danburg; Davis; Delco; Denton; Eckels; Edwards; Eikenburg; Evans, L.; Finnell; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Gibson, B.; Glossbrenner; Granoff; Green; Hackney; Haley; Hall, L.; Hall, T.; Hall, W.; Harrison, D.; Hernandez, B.; Hinojosa; Jackson; Jones; Keller; Kubiak; Laney; Luna; McWilliams; Madla; Martinez, R.; Martinez, W.; Moreno, A.; Moreno, P.; Oliveira; Oliver; Parker; Patrick; Patronella; Patterson; Pennington; Pierce; Price; Rangel; Robnett; Rudd; Schoeller; Shaw; Simpson; Staniswalis; Stiles; Tejeda; Toomey; Uher; Valles; Wallace; Whaley; Wieting; Willis.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Buchanan; Salinas.

Absent — Evans, C.; Gibson, J.; Lee, D.; Millsap; Presnal; Ragsdale; Smith, T.; Thompson, S.; Wilson.

A record vote was requested.

The Rudd amendment was adopted by (Record 440): 78 Yeas, 63 Nays, 1 Present, not voting.

Yeas — Armbrister; Arnold; Barrientos; Barton, B.; Berlanga; Burnett; Carriker; Cary; Cavazos; Clemens; Colbert; Collazo; Danburg; Davis; Delco; Denton; Eckels; Edwards; Eikenburg; Evans, C.; Evans, L.; Finnell; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Gibson, B.; Granoff; Green; Hackney; Haley; Hall, L.; Hall, T.; Hall, W.; Hernandez, B.; Hinojosa; Hudson, S.; Jackson;
STATEMENT BY REPRESENTATIVE KUEMPEL
On Record Vote 440, I inadvertently voted yes when I meant to vote no.

Kuempel

MESSAGE FROM THE SENATE
Austin, Texas, May 19, 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:

Local and Uncontested Calendar

SB 621 by Parker, relating to the continuance of public hearings.
SB 631 by Caperton, relating to the creation of the County Court at Law No. 3 of Montgomery County.
SB 1348 by Farabee, relating to the powers, duties, financing and territory of the Red River Authority.
SB 1353 by Parker, relating to the conveyance of certain state real property in Jefferson County to the City of Port Arthur.
SB 1356 by Parker, relating to the dissolution of the Northwest Harris County Municipal Utility District No. 7.
SB 1366 by Truan, relating to the establishment of a juvenile board in each of the counties of Brooks, Kenedy, Kleberg and Willacy.
SB 1367 by Whitmire, amending the Act creating the Coastal Industrial Water Authority; and declaring an emergency.
SB 1379 by Montford, relating to the establishment of a juvenile board in Garza County.
SB 1394 by Santiesteban, relating to funds for the operation and maintenance of the Franklin Mountains State Park.
SB 1397 by Truan, relating to a child support collection service fee and a fee assessed as costs in certain contempt actions in Nueces County.
SB 1398 by Glasgow, relating to the creation of the Argyle Municipal Utility District in Denton County.
SB 1418 by Santiesteban, relating to the authority and duties of a county historical commission and of a county commissioners court.
SB 1426 by Montford, relating to the establishment of a juvenile board in Terry County.
SCR 93 by Doggett, granting Ercilea Flores permission to sue the state.
SCR 109 by Vale, granting Lucy and August Sheldon permission to sue the state.
SCR 117 by Doggett, granting Dan H. Marshall II and Winifred Mildred Marshall permission to sue the state.
SCR 120 by Brown, requesting the Department of Emergency Management to consider funding the Public Information Emergency System.

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

HJR 91 by D. Harrison of Terrell, et al., proposing a constitutional amendment to authorize fewer justice of the peace and constable precincts in certain counties.
HB 225 by Toomey, et al., relating to unannounced inspections of nursing and convalescent homes.
HB 54 by Blanton, relating to career education. (amended)
HJR 59 by Schlueter, proposing a constitutional amendment to authorize broadened investment authority for certain veteran and university funds. (amended)
HB 634 by Haley, relating to a substantive revision of the laws concerning creation, consolidation and abolition of school districts.
CSHB 2154 by Turner, et al., relating to the creation of a commission to examine possible violations of and to interpret, state ethics provisions. (amended)

Respectfully,
Betty King
Secretary of the Senate

HCR 225 - ADOPTED

Representative T. Smith moved that all necessary rules be suspended to take up and consider at this time, HCR 225.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Geistweidt, et al.:

HCR 225

WHEREAS, Carroll Abbott, a man who has dedicated his life to the preservation of wildflowers and the natural beauty of Texas, was the driving force behind the designation of the fourth Saturday in April as "Texas Wildflower Day"; and

WHEREAS, Through politics, teaching, publishing, and research, he has enhanced Texans' appreciation of their state's native flowers; and

WHEREAS, Carroll Abbott's quest to save the native flowers of Texas has revealed a man of commendable ambition, dreams, and fortitude; and

WHEREAS, Those personal qualities and an eternal Texas optimism are also evident in his current battle against cancer; and
WHEREAS, The State of Texas is proud of Carroll Abbott and his accomplishments, which have contributed significantly to the betterment of the state; now, therefore, be it

RESOLVED by the House of Representatives, the Senate concurring, That the 68th Legislature of the State of Texas hereby honor Carroll Abbott for his unselfish commitment to the state and the preservation of Texas wildflowers; and, be it further

RESOLVED, That an official copy of this resolution be prepared for Carroll Abbott as an expression of esteem from the Texas Legislature.

The resolution was adopted without objection.

On motion of Representative Glosbrenner, the names of all the members of the house were added to HCR 225 as signers thereof.

ADDRESS BY CARROLL ABBOTT

Speaker Lewis introduced Mrs. Lady Bird Johnson who read HCR 225 in full and introduced Mr. Carroll Abbott to the house.

Mr. Abbott addressed the house, speaking as follows:

Mr. Speaker, Representative Geistweidt, those of you who have voted for this resolution, I thank you.

I would like to accept this tribute on behalf of 5,479 species of plants native to Texas without whose existence I wouldn't be here today. I'd like to accept on behalf of the many, many Texans who have become more and more aware of the beauty and usefulness of wildflowers, because without their business we couldn't have paid my doctor bills and I really wouldn't have been here today. But more importantly, I would like to accept this honor and this tribute on behalf of a small group of loving people who, armed only with blind faith, would not let me let go of my dream in the long days and longer nights of the early going, and that is my family.

Texas is a great place to be if you like wildflowers. The Highway Department this year started its mowing program of not mowing and now we have thousands and thousands and thousands of more miles of wildflowers, not only to see, but also to provide seed for even more wildflowers.

Texas Woman's University, who is represented here today by its president, Dr. Mary Evelyn Hewie, has celebrated an awards program on Texas Wildflower Day last month for the fourth time. They have a wildflower art contest for the students in Denton County and 8,000 students participated in that program last month. And you can see examples of it in Representatives Horn's and Hall's offices, and I invite you to do it.

Commissioner Hightower of the Texas Department of Agriculture last night told me that he will start a program to promote native plants, their uses, and their propagation in the State of Texas.

Now, to me wildflowers are a feast for the eye and food for the soul, and my working with them was no work at all; it was a joy and a pleasure. Lately I've run into a problem, my breath is short, my hair is short, and my days are short. I live like you by the grace of God, but I also need the prayers and love and good wishes of my many friends and the medical ingenuity of my doctor. But before you consider feeling sorry for me, let me tell you something—I still wear my pocket comb. In my right hip pocket is a black, plastic, 39-cent, K-Mart special, and I combed my hair with it last year and someday I want you to know I'm going to comb my hair again. This is a goose-pimply, wet-eyed, magic moment for me and I know it must pass like all things must in the march of time, but I guarantee you that it will live wildflower-fresh in my memory for all the days I have yet to live,
and I thank all of you and each of you for helping make this day and this moment possible. Thank you.

Speaker Lewis presented Mr. Abbott with a gavel.

Speaker Lewis recognized Representative Geistweidt who introduced members of Mr. Abbott's family and other platform guests.

REMARKS ORDERED PRINTED

Representative Khoury moved to print Mr. Abbott's remarks in the journal.

The motion prevailed without objection.

CSHB 2436 - (consideration continued)

CSHB 2436, as amended, was passed to engrossment. (T. Hall, Uher, and Robnett recorded voting no)

BILL AND A RESOLUTION SIGNED BY THE SPEAKER

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

HCR 254, HB 872

HR 445 - ADOPTED

Representative Hanna moved that all necessary rules be suspended to take up and consider at this time, HR 445.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Hanna:

HR 445

WHEREAS, The Texas Capitol is a majestic symbol of this state's great heritage, and it houses many of the state's historical treasures; and
WHEREAS, Because of its historical and symbolic significance, the Capitol is a highly appropriate location for a special library devoted to Texas, its history, government, and culture; and
WHEREAS, The Legislative Ladies Club has acquired an outstanding collection of books on Texas that would be the nucleus of a Texana library and has offered the collection for a special library to be located in the speaker's apartment; and
WHEREAS, This library would greatly enhance the Capitol's historical resources and be a noteworthy legacy for future generations of Texans; now, therefore, be it

RESOLVED, That the House of Representatives of the 68th Legislature, on behalf of the people of Texas, accept the gift of books from the Legislative Ladies Club, authorize their placement in the speaker's apartment, and designate the collection as the Speaker's Texana Library; and, be it further

RESOLVED, That an official copy of this resolution be prepared for display in the Speaker's Texana Library to denote the prominent role of the Legislative Ladies Club in the creation of the library.

The resolution was adopted without objection.
HOUSE BILLS ON FIRST READING

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

By Carriker:
HB 2448, A bill to be entitled An Act relating to the establishment of a juvenile board in Fisher, Mitchell, and Nolan counties.
To Committee on County Affairs.

By Rudd:
HB 2451, A bill to be entitled An Act relating to the exclusion of certain conduct by probation officers from the offense of unlawfully carrying a weapon.
To Committee on Criminal Jurisprudence.

RESOLUTIONS REFERRED TO COMMITTEES

The following resolutions were laid before the house and referred to committees:

By Mankins:
HR 405, Congratulating the owners and manager of the Hoffbrau Restaurant in Longview.
To Committee on Rules and Resolutions.

By Eckels:
HR 406, Commending Doug Johnson.
To Committee on Rules and Resolutions.

By Eckels:
HR 407, Commending R. E. Boazeman.
To Committee on Rules and Resolutions.

By Robinson:
HR 408, Commending the Honorable Maxine Ratliff Goodman.
To Committee on Rules and Resolutions.

By Robinson:
HR 409, Commending Mrs. Katheryn Chenault.
To Committee on Rules and Resolutions.

By B. Barton:
HR 410, Commending Paula Moeller.
To Committee on Rules and Resolutions.

By Hackney:
HR 411, Congratulating Foster Martin.
To Committee on Rules and Resolutions.

By Pennington:
HR 412, Requesting the Public Utility Commission to encourage telephone companies that serve a municipality to charge similar rates.
To Committee on State Affairs.

By Tejeda:
HR 414, Congratulating Fred Diaz, Jr.
To Committee on Rules and Resolutions.

By Tejeda:
HR 415, Congratulating Joy Scharf.
To Committee on Rules and Resolutions.
By Tejeda:
**HR 418**, Congratulating Ricardo Casiano.
To Committee on Rules and Resolutions.

By Clark:
**HR 419**, Honoring Joe H. Tonahill.
To Committee on Rules and Resolutions.

By T. Hall:
**HR 420**, Commending Pat Neff Roberts.
To Committee on Rules and Resolutions.

By S. Thompson:
**HR 422**, Requesting the House Committee on Human Services to conduct a study on the regulation, practice, standards, and licensing of human ecology practitioners.
To Committee on Human Services.

By S. Hudson:
**HR 423**, Commending Annette Strauss.
To Committee on Rules and Resolutions.

By Bush:
**HR 424**, In memory of the Honorable Jimmie C. Buford.
To Committee on Rules and Resolutions.

By Gilley:
**HR 425**, Directing the Committee on Judicial Affairs to study during the interim the advisability and feasibility of creating a statewide index of probate proceedings.
To Committee on Judicial Affairs.

By Stiles:
**HR 427**, Congratulating Rufus Eugene Newburn Wortham.
To Committee on Rules and Resolutions.

By Stiles:
**HR 428**, Commending June Stancil Toler.
To Committee on Rules and Resolutions.

By A. Moreno:
**HCR 255**, Granting Ramon Murillo, Jr., and Graciela Murillo permission to sue the state.
To Committee on Judicial Affairs.

By Barrientos:
**HCR 256**, Granting Percor Incorporated permission to sue the state.
To Committee on Judicial Affairs.

By Tow:
**HCR 257**, Designating October as "Crime Stoppers Month" in Texas.
To Committee on Rules and Resolutions.

**SCR 118**, Designating May 29, 1983, as Texas Crawfish Day.
To Committee on Rules and Resolutions.

**SCR 121**, Requesting the Public Utility Commission to encourage telephone companies that serve a municipality to charge similar rates.
To Committee on Rules and Resolutions.
SENATE BILLS ON FIRST READING

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

SB 397 to Committee on Business and Commerce.
SB 41 to Committee on County Affairs.
SB 161 to Committee on State Affairs.
SB 472 to Committee on Liquor Regulation.
SB 689 to Committee on County Affairs.
SB 715 to Committee on Criminal Jurisprudence.
SB 816 to Committee on Human Services.
SB 827 to Committee on Insurance.
SB 836 to Committee on Criminal Jurisprudence.
SB 950 to Committee on Labor and Employment Relations.
SB 1040 to Committee on Insurance.
SB 1094 to Committee on Insurance.
SB 1184 to Committee on Judicial Affairs.
SB 1185 to Committee on Judicial Affairs.
SB 1241 to Committee on Natural Resources.
SB 1355 to Committee on State Affairs.
SB 1361 to Committee on Liquor Regulation.

CORRECTION IN REFERRAL

SB 538, relating to the increase in minimum automobile liability coverage for motor vehicles 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 538 to the Committee on Insurance.

MOTION TO SUSPEND RULES

Representative Gilley moved to suspend all necessary rules to take up all house bills on the calendar on second reading after the senate bills on second reading.

The motion was lost.

INTRODUCTION OF MELBA JOYCE

Speaker Lewis recognized Representative S. Hudson who introduced Melba Joyce to the house.

Speaker Lewis presented Ms. Joyce with a gavel.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:
Insurance, on noon recess today, Desk 96, to consider SB 1094 and SB 538.
Higher Education, on noon recess today, Desk 110, to consider senate bills.
Natural Resources, on noon recess today, Desk 70.
Public Education, on noon recess today, Desk 26.
Retirement and Aging, Subcommittee on HCR 110 and HCR 111, 1:45 p.m.
today, Desk 130, to consider HCR 110 and HCR 111.
Urban Affairs, on noon recess today, Desk 9.

RECESS

Representative E. Barton moved that the house recess until 2 p.m. today.
The motion prevailed without objection.
The house accordingly, at 12:21 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.

HR 426 - ADOPTED

Representative Gandy moved that all necessary rules be suspended to take up
and consider at this time, HR 426.
The motion prevailed without objection.
The speaker laid before the house the following resolution:
By Gandy:

HR 426, Congratulating Colonel James T. Spann and the North Mesquite
High School Reserve Officers Training Corps.
The resolution was adopted without objection.

HCR 241 - ADOPTED

Representative Wallace moved that all necessary rules be suspended to take up
and consider at this time, HCR 241.
The motion prevailed without objection.
The speaker laid before the house the following resolution:
By Wallace, et al.:

HCR 241, Designating May 29, 1983, as Texas Crawfish Day.
The resolution was adopted without objection. (Polumbo and Ceverha
recorded voting no)

HR 434 - ADOPTED

Representative M. Garcia moved that all necessary rules be suspended to take up
and consider at this time, HR 434.
The motion prevailed without objection.
The speaker laid before the house the following resolution:
By M. Garcia:

HR 434, Congratulating Gerald Bermea.
The resolution was adopted without objection.
MESSAGE FROM THE SENATE

Austin, Texas, May 19, 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:

Local and Uncontested Calendar

SB 885 by Montford, relating to procedures for offenses regarding certificates of title to motor vehicles.

SB 1049 by Vale, relating to an extended temporary permit for the transporting of raw farm products only from the farm to elevators and markets and to fees for permits.

SB 1071 by Edwards, relating to establishment of a juvenile board in Ellis County.

SB 1265 by Santiesteban, relating to the powers and status of the tribal councils and tribal businesses of the Alabama-Coushatta and the Tigua Indian Tribes.

SB 1318 by Sims, relating to the place that the Court of Appeals for the Third Supreme Judicial District transact business.

SB 1351 by Sharp, relating to the validation of the adoption of a municipal home-rule charter.

SB 1379 by Montford, relating to the terms of office, election and compensation of directors of the High Plains Underground Water Conservation District Number One.

SB 1388 by Caperton, relating to a merger of a home-rule city's separately owned municipal and rural electric systems.

SB 1395 by Montford, relating to the establishment of a juvenile board in Lynn County.

SB 1404 by Lyon, relating to the creation of the Emerald Bay Municipal Utility District.

SB 1427 by Montford, relating to establishment of a juvenile board in Yoakum County.

SB 324 by Howard, creating offenses involving the unauthorized use of the insignia and name of certain state law enforcement agencies.

SB 626 by Glasgow, relating to the time of a defendant's election of the judge or the jury to assess punishment in a criminal case.

SB 791 by Lyon, relating to the appointment of a local registrar of births and deaths.

SB 1165 by Glasgow, relating to the definition of floating rate public securities.

SB 1209 by Sarpalius, relating to the issuance of certain licenses by the Department of Agriculture.

SB 1330 by Sarpalius, relating to establishment of a juvenile board for Hansford County.

SB 1363 by Henderson, creating and establishing a conservation and reclamation district to be known as "Harris County Municipal Utility District No. 233 of Harris County, Texas"; and declaring an emergency.

SB 1368 by Farabee, relating to time periods for the filing of reports and the payment of contributions for social security for public employees.
SB 1370 by Farabee, relating to the selection of a private architect/engineer and the appointment of a director of facilities planning and construction.

SB 1373 by Glasgow, relating to the acquisition of a supply of fresh water by counties.

SB 1376 by Parker, relating to the incorporation, regulation, administration, funding, and dissolution of nonprofit education finance corporations.

SCR 47 by Uribe, granting William Kenon and George Purvis permission to sue the state.

SCR 73 by Uribe and Doggett, resolving the Texas Legislature proclaim solidarity with Soviet Jewry.

SCR 80 by Parmer, that funding for federal/state nutrition programs, including food stamps, child nutrition programs and elderly nutrition programs should be protected from further budget cuts.

SCR 107 by Doggett, granting Southern Union Gas Company permission to sue the state.

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

HB 279 by Turner, relating to duties and powers of the Texas Commission for the Deaf.

HB 622 by Jackson, relating to nonprofit corporations a purpose of which is to assist a state agency. (amended)

HB 675 by Polumbo, et al., relating to the use of rest areas.

HB 730 by Evans of Tarrant, relating to the validity of signatures on voters' petitions in certain elections. (amended)

HB 1147 by Hammond, relating to the improvement of the teaching of mathematics and science in the public schools.

HB 1422 by A. Smith, relating to approval of certain insurance policy forms and documents. (amended)

HB 1445 by Craddick, relating to the assessment of administrative penalties by the Railroad Commission of Texas to enforce certain laws within its jurisdiction. (amended)

HJR 29 by Coody, proposing a constitutional amendment relating to the powers of state-chartered banks.

HCR 85 by Polk, et al., requesting Department of Human Resources to amend Medicaid program to provide reimbursement for prenatal care.

HCR 225 by Geistweidt, congratulating Carroll Abbott.

Respectfully,
Betty King
Secretary of the Senate

HJR 1 WITH SENATE AMENDMENTS

Representative Oliveira called up with senate amendments for consideration at this time,

HJR 1, A joint resolution proposing a constitutional amendment to allow for the assignment of income for the enforcement of court-ordered child support payments.

On motion of Representative Oliveira, the house concurred in the senate amendments to HJR 1 by (Record 441): 141 Yeas, 2 Nays, 1 Present, not voting.

Yeas — Agnich; Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Bomer; Burnett; Bush; Carricker; Cary; Cavazos; Ceverha; Clark;
Amend HJR 1 by amending the first sentence in SECTION 2 to read as follows:

"This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 8, 1983."

 SENATE AMENDMENT NO. 2

Amend the caption to conform to the body of the bill.

HB 2 WITH SENATE AMENDMENTS

Representative Oliveira called up with senate amendments for consideration at this time,

HB 2, A bill to be entitled An Act relating to the enforcement of court-ordered child support.

On motion of Representative Oliveira, the house concurred in the senate amendments to HB 2 by (Record 442): 138 Yeas, 1 Nay, 1 Present, not voting.

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

Nays — Green; Hudson, S.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Buchanan; Salinas.

Absent — Cain; Harrison, W.; Millsap; Thompson, S.

HJR 1 - TEXT OF SENATE AMENDMENTS

SENATE AMENDMENT NO. 1

Amend HJR 1 by adding the following:

"This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 8, 1983."

SENATE AMENDMENT NO. 2

Amend the caption to conform to the body of the bill.

HB 2 WITH SENATE AMENDMENTS

Representative Oliveira called up with senate amendments for consideration at this time,

HB 2, A bill to be entitled An Act relating to the enforcement of court-ordered child support.

On motion of Representative Oliveira, the house concurred in the senate amendments to HB 2 by (Record 442): 138 Yeas, 1 Nay, 1 Present, not voting.

Yeas — Agnich; Armbrister; Arnold; Barrientos; Barton, B.; Barton, E.; Berlanga; Blanton; Bomer; Burnett; Carriker; Cary; Cavazos; Cervera; Clark; Clemons; Colbert; Collazo; Connelly; Craddick; Criss; Crockett; Danburg; Davis; Delay; Delco; Denton; Eckels; Edwards; Eikenburg; Emnett; English; Evans, C.; Evans, L.; Finnell; Fox; Gamez; Gandy; Garcia, A.; Garcia, M.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley; Glossbrenner; Granoff; Grisham; Hackney; Haley; Hall, L.; Hull, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Heflin; Hernandez; Hightower; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Hollowell; Horn; Hudson, D.; Hury; Jackson; Jones; Keller; Kemp; Khoury; Kubiak; Kuempel; Laney; Lee, D.; Lee, E. F.; Leonard; Luna; McKenna; McWilliams; Madla; Mankins; Martinez, R.; Martinez, W.; Messer; Moreno, A.; Moreno, P.; Oliveira; Oliver; Patrick; Patronella; Patterson; Pennington; Peveto; Pierce; Polk; Polumbo; Presnal; Price; Ragsdale; Rangel; Robinson; Robnett; Rudd; Russell;
Amend HB 2 by inserting the word "voluntarily" between the words "may" and "assign" on page 2, line 43.

Amend Committee Amendment No. 2 to HB 2 by striking the word "conform" in subdivision (5) and substituting in lieu thereof the words "be subject".

Amend SECTION 2 of HB 2 by amending subsection (p) to read as follows:

"(p) Involuntary Assignment of Earnings
(1) The court of continuing jurisdiction may order an involuntary assignment of earnings for child support upon proper motion, notice to all parties and a hearing.
(2) An involuntary assignment of earnings may be ordered if the court finds that the total amount of child support in arrears was equal to or in excess of the amount due for a two month period at the time the motion for involuntary assignment was filed with the court.
(3) In determining the amount of the assignment, the court may consider, in addition to other relevant factors, the amount of support in arrears as well as the amount of payments to become due in the future.
(4) A motion for an involuntary assignment of earnings may be filed by (a) the person entitled to receive support for the benefit of a child or
(b) the Attorney General if the State is providing assistance to or services for the child
(c) the court of continuing jurisdiction
(5) An assignment ordered under this subsection shall conform to all other provisions of this section."

Amend HB 2 by adding new SECTIONS 4 and 5 as follows and renumbering existing SECTIONS 4 and 5 accordingly:

SECTION 4. Section 14.03, Family Code, is amended to read as follows:
Sec. 14.03. POSSESSION OF AND ACCESS TO CHILD. (a) If a managing conservator is appointed, the court may appoint one or more possessory conservators and set the time and conditions for possession of or access to the child by the possessory conservators and others. If ordered, the times and conditions for possession of or access to the child must be specific and expressly stated in the order, unless either party shows good cause why specific orders would not be in the best interest of the child.
(b) The court by local rule may establish and publish schedules, guidelines, and formulas for use in determining the times and conditions for possession of and access to a child.

(c) On the appointment of a possessory conservator, the court shall prescribe the rights, privileges, duties, and powers of the possessory conservator.

(d) The court may not deny possession of or access to a child to either or both parents unless it finds that parental possession or access is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child.

(e) If the court finds that it is in the best interests of the child as provided in Section 14.07 of this code, the court may grant reasonable access rights to either the maternal or paternal grandparents of the child; and to either the natural maternal or paternal grandparents of a child whose parent-child relationship has been terminated or who has been adopted before or after the effective date of this code. This relief may not be granted unless one of the child’s legal parents at the time the relief is requested is the child’s natural parent. The court may issue any necessary orders to enforce the decree.

SECTION 5. Section 14.05(a), Family Code, is amended to read as follows:

(a) The court may order either or both parents to make periodic payments or a lump-sum payment, or both, for the support of the child until he is 18 years of age in the manner and to the persons specified by the court in the decree. In addition, the court may order a parent obligated to support a child to set aside property to be administered for the support of the child in the manner and by the persons specified by the court in the decree. In determining the amount of child support, the court shall consider all appropriate factors, including but not limited to the needs of the child, the ability of the parents to contribute to the child’s support, any financial resources available for the support of the child, and any schedules, guidelines, and formulas adopted by the court. The court by local rule may establish and publish schedules, guidelines, and formulas to be used by the court in determining the amount and manner of child support.

SENATE AMENDMENT NO. 5

Amend HB 2 by deleting SECTIONS 4 and 5 and substituting in lieu thereof the following:

SECTION 6. This Act takes effect immediately, except that Section 2 takes effect on adoption of the constitutional amendment proposed by H.J.R. No. 1, 68th Legislature, Regular Session, 1983.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create and 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.

SENATE AMENDMENT NO. 6

Amend the caption to conform to the body of the bill.

BILLS AND A RESOLUTION SIGNED BY THE SPEAKER

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

SJR 13, SB 396, SB 578, SB 727, SB 911, SB 969, SB 1030, SB 1270

SB 283 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative T. Smith submitted the conference committee report on SB 283.
Representative T. Smith moved to adopt the conference committee report on SB 283.

The motion prevailed without objection.

**HB 658 WITH SENATE AMENDMENTS**

Representative Laney called up with senate amendments for consideration at this time,

**HB 658.** A bill to be entitled An Act relating to the establishment of a restitution center program as an alternative to traditional methods of sentencing defendants.

On motion of Representative Laney, the house concurred in the senate amendments to HB 658. (Schueter recorded voting no)

**HB 658 - TEXT OF SENATE AMENDMENTS**

**SENATE AMENDMENT NO. 1**

Amend HB 658, page 6, by striking subsection (h) and substituting the following new subsection (h); by adding a new subsection (i) as follows; and renumbering the present subsequent subsections:

(h) If a restitution center director is unable to find employment for a probationer, the director shall transfer the probationer to the supervision of the director of another restitution center who agrees to accept the probationer as a participant in the center's program.

(i) If a restitution center director determines that the probationer is knowingly or intentionally failing to seek employment, the director shall request the court having jurisdiction of the case to revoke the probationer's probation and transfer the probationer to the custody of the Texas Department of Corrections.

(j) A restitution center director may grant an emergency furlough to a probationer for the purpose of obtaining medical treatment or diagnosis or to attend funerals or visit critically ill relatives. A furlough for purposes other than medical purposes may not exceed 24 hours in length.

(k) A probationer participating in a program under this article shall be confined in the restitution center at all times except for:

1. time spent at work and traveling to and from work;
2. time spent attending and traveling to and from an education or rehabilitation program approved by the restitution center director;
3. time spent attending and traveling to and from a community-service project; and
4. time spent on emergency furlough.

**SENATE AMENDMENT NO. 2**

Amend the caption to conform to the body of the bill.

**HB 1438 WITH SENATE AMENDMENTS**

Representative Messer called up with senate amendments for consideration at this time,

**HB 1438.** A bill to be entitled An Act relating to the removal of certain businesses from treatment as a consumer under the Deceptive Trade Practices-Consumer Protection Act.

On motion of Representative Messer, the house concurred in the senate amendments to HB 1438. (Price recorded voting no)
SENATE AMENDMENT NO. 1
Amend HB 1438 on page 1, line 18 by striking "$111 million" and substituting "$5 million" in lieu thereof.

SENATE AMENDMENT NO. 2
Amend the caption to conform to the body of the bill.

HB 1909 ON SECOND READING
Representative Stiles moved that all necessary rules be suspended to take up and consider at this time, HB 1909.

Mr. Agnich raised a point of order against the Stiles motion to suspend all necessary rules to consider HB 1909 in that the bill violates Art. III, Section 57 of the State Constitution by virtue of the chair's ruling that HB 1909 violated Rule 8, Section 10 pertaining to local bills and the fact that there is no evidence that notice of this bill was published as required.

The chair sustained the point of order.

SB 627 ON SECOND READING
(G. Thompson - House Sponsor)
The speaker laid before the house, in lieu of HB 150, on its second reading and passage to third reading.

SB 627, A bill to be entitled An Act relating to the manufacture with intent to deliver and the delivery of a simulated controlled substance and to certain defenses to prosecution and certain evidentiary considerations; providing a penalty; and providing for forfeiture of seized substances.

The bill was read second time.

(G. Hill in the chair)
Representative Danburg offered the following amendment to the bill:

Amend SB 627 on page 3, lines 3 and 4 as follows:

Strike the words "felony of the third degree" and insert the words "Class A misdemeanor" after the word "a".

Representative G. Thompson moved to table the Danburg amendment.

The motion to table prevailed.

SB 627 was passed to third reading.

HB 150 - LAID ON THE TABLE SUBJECT TO CALL
Representative G. Thompson moved that HB 150 be laid on the table subject to call.

The motion prevailed without objection.

SB 1208 ON SECOND READING
(L. Hall - House Sponsor)
The chair laid before the house, as postponed business, on its second reading and passage to third reading.

SB 1208, A bill to be entitled An Act relating to the issuance of a driver's license to a person from another state and to the renewal of a driver's license by mail;
amending Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), by amending Section 10 and by adding Subsection (g) to Section 18.

The bill was on the calendar on May 18 and was postponed until 10 a.m. today.

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

**SB 763 ON SECOND READING**

(L. Hall - House Sponsor)

The chair laid before the house, as postponed business, on its second reading and passage to third reading,

SB 763, A bill to be entitled An Act relating to contracting to provide for the transportation of public school students; amending Section 16.212, Texas Education Code, by amending the heading and amending Subsection (a).

The bill was on the calendar on May 18 and was postponed until 10 a.m. today.

The bill was read second time.

Representative Hackney offered the following amendment to the bill:

Amend SB 763 by striking lines 6 through 13 and substituting the following:

**SECTION 1.** Section 16.212(a), Texas Education Code, is amended to read as follows:

(a) As an alternative to maintaining and operating a complete public school transportation system under this subchapter[,] a county or district school board may contract with a public or commercial transportation company or system (companies) for all or any part of its public school transportation if the board is able to obtain an economically advantageous contract[,] provided that the commercial transportation company or system:

(A) requires its school bus drivers to be trained and certified by the Central Education Agency;

(B) posts a $500,000 liability bond for each school bus used to transport public school students; and

(C) uses only those school buses in transporting public school students that:

(i) are equipped with safety interlocks that keep a bus from moving while a door is open;

(ii) are equipped with air suspension systems;

(iii) are of a strong, crashworthy, monocoque construction;

(iv) have emergency exits and two doors; and

(v) satisfy any other safety requirements imposed by law on school buses operated by public school transportation systems.

Representative L. Hall moved to table the Hackney amendment.

The vote of the house was taken on the motion to table the Hackney amendment and the vote was announced yeas 71, nays 68.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted as follows (Record 443): 67 Yees, 66 Nays, 1 Present, not voting.

Yees — Agnish; Arnold; Blanton; Ceverha; Connelly; Coody; Craddick; DeLay; Eckels; Eikenburg; Emmett; English; Evans, C.; Fox; Garcia, A.; Gavin;
The following member was granted leave of absence for the remainder of today because of important business:

M. Garcia on motion of Rangel.

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

Robnett on motion of Uher.

MESSAGE FROM THE SENATE

Austin, Texas, May 19, 1983

The Honorable Speaker of the House of Representatives

The Honorable

Mr. Speaker:

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

HB 493 by Price, relating to the authority of the commissioners court in certain counties to designate a stadium or airport as a wet area.

HCR 137 by C. Evans, granting Prudential Insurance Company permission to sue the state.

HB 642 by Willis, relating to awarding the Texas Department of Human Resources fees for court-ordered social studies. (amended)

HB 1970 by Geistweidt, et al., relating to the regulatory and enforcement procedures and authority of the Railroad Commission of Texas.

HB 1505 by Pennington, relating to housing projects subject to the jurisdiction of a housing authority.
HCR 241 by Wallace, designating May 29, 1983, as Crawfish Day in Texas.
CSHB 1125 by Hinojosa, relating to the creation, operation and dissolution of enterprise zones. (amended)

Respectfully,
Betty King
Secretary of the Senate

SB 763 - (consideration continued)

Representative Hackney offered the following amendment to the bill:

Amend SB 763 by striking lines 6 through 13 and substituting the following:

SECTION I. Section 16.212(a), Texas Education Code, is amended to read as follows:

(a) As an alternative to maintaining and operating a complete public school transportation system under this subchapter:[;]

(l) a county or district school board may contract with a public or commercial transportation company or system [companies] for all or any part of its public school transportation if the board is able to obtain an economically advantageous contract[;], provided that the commercial transportation company or system:

(A) requires its school bus drivers to be certified by the Central Education Agency;

(B) uses only those school buses in transporting public school students that satisfy safety requirements imposed by law on school buses operated by public school transportation systems.

The amendment was adopted without objection.

A record vote was requested.

SB 763, as amended, was passed to third reading by (Record 444): 72 Yeas, 68 Nays, 1 Present, not voting.

Yeas — Agnich; Arnold; Blanton; Bomer; Burnett; Ceverha; Clark; Connelly; Coody; Craddick; DeLay; Eckels; Eikenburg; Emmett; English; Evans, C.; Fox; Gavin; Geistwoldt; Gibson, B.; Gibson, J.; Grisham; Hall, L.; Hall, T.; Hammond; Hanna; Harrison, D.; Heflin; Hightower; Hilbert; Hill, A.; Hill, P.; Hollowell; Horn; Jackson; Jones; Keller; Khoury; Kuempel; Laney; Lee, D.; Leonard; McKenna; McWilliams; Messer; Millsap; Patterson; Pennington; Pierce; Presnal; Robinson; Rudd; Russell; Schlueter; Schloart; Shedd; Simpson; Smith, A.; Staniswalis; Stiles; Thompson, G.; Toomey; Tow; Turner; Uher; Valles; Waldrop; Whaley; Wieting; Willis; Wolens; Word.

Nays — Armbrister; Barrientos; Barton, B.; Barton, E.; Berlanga; Bush; Cain; Carriker; Cary; Cavazos; Clemons; Colbert; Collazo; Criss; Crockett; Darburg; Davis; Delco; Denton; Edwards; Evans, L.; Finnell; Gamez; Gandy; Garcia, A.; Gilley; Glabrenner; Granoff; Green; Hackney; Haley; Hall, W.; Harrison, W.; Hernandez; Hill, G.(C); Hinojosa; Hudson, D.; Hudson, S.; Hury; Kemp; Kubiak; Lee, E. F.; Luna; Madla; Mankins; Martinez, R.; Martinez, W.; Moreno, A.; Moreno, P.; Oliveira; Oliver; Parker; Patronella; Peveto; Polk; Polumbo; Price; Ragsdale; Rangel; Saunders; Shaw; Smith, T.; Sutton; Tejeda; Thompson, S.; Wallace; Watson; Wilson.

Present, not voting — Mr. Speaker.

Absent, Excused — Buchanan; Garcia, M.; Robnett; Salinas.

Absent — Patrick; Short; Smith, C.; Vowell; Wright.
SB 106 ON SECOND READING
(C. Evans - House Sponsor)

The chair laid before the house, as postponed business, on its second reading and passage to third reading,

SB 106, A bill to be entitled An Act relating to the continuation of the State Securities Board and to the membership, qualifications, powers and duties, and administration of the board and the duties of the Securities Commissioner; to procedures for registration of dealers, agents, and salesmen; authorizing certain fees, assessments, and charges; providing for hearings and judicial review; providing for exemption of certain transactions; requiring an annual audit; providing enforcement procedures and penalties and a limitation period for indictment for certain offenses; amending The Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes), by amending Sections 2, 5, 11, 13, 14, 18, 19, 24, 25, 27, 29, 32, 33, and 36 and Subsection F, Section 28-1; adding Section 29-1; and repealing Subsections G through L, Section 28-1.

The bill was on the calendar on May 18 and was postponed until 10 a.m. today.

The bill was read second time.

Representative Wolens offered the following amendment to the bill:

Amend SB 106 by striking everything below the enacting clause and substituting therefor the following:

SECTION 4. SECURITIES ACT. The Texas Securities Act of 1983 is enacted to read as follows:

ARTICLE 1. FRAUDULENT AND OTHER PROHIBITED PRACTICES

Sec. 1.01. UNLAWFUL SALES AND PURCHASES. It is unlawful for any person, in connection with the offer, sale, or purchase of any security (whether or not the security or transaction is exempt), directly or indirectly:

(1) to employ any device, scheme, or artifice to defraud;

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(4) to employ any fraud or fraudulent practice.

Sec. 1.02. UNLAWFUL ADVISORY ACTIVITIES. (a) FRAUDULENT ADVICE. It is unlawful for any person (whether or not an investment adviser under Section 4.01(9) and whether or not licensed or required to be licensed under Section 2.01) who receives any consideration from another person primarily for advising the other person as to the value of any security (whether or not the security is exempt) or its purchase or sale (whether or not the transaction is exempt), whether through the issuance of analyses or reports or otherwise:

(1) to employ any device, scheme, or artifice to defraud the other person;

(2) to make any untrue statement of a material fact; or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(b) INVESTMENT ADVISORY CONTRACTS. It is unlawful for any investment adviser who is required to be licensed under Section 2.01(d) to enter into, extend, or renew any investment advisory contract unless it provides in writing:
(1) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(2) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

c) ASSIGNMENT. "Assignment," as used in Subsection (b)(1), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority of interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

d) CUSTODY OF CLIENT'S FUNDS AND SECURITIES. It is unlawful for any investment adviser who is required to be licensed under Section 2.01(d) to take or have custody of any securities or funds of any client except as provided by rules adopted by the board.

Sec. 1.03. MANIPULATION. (a) BY WASH SALES OR MATCHED ORDERS. It is unlawful for any person, for the purpose of creating a false or misleading appearance of active trading in a security or a false or misleading appearance with respect to the market for a security:

(1) to effect a transaction in a security of the same class that involves no change in its beneficial ownership; or

(2) to enter an order or orders for the purchase (or sale) of a security of the same class with knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price for the sale (or purchase) of a security of the same class have been or will be entered by or for the same person or a different person.

(b) BY TRADING. It is unlawful for any person to effect (alone or with one or more other persons) a series of transactions in securities that:

(1) raises or depresses the price of the securities for the purpose of inducing the purchase or sale of a security (whether the same or a different class) of the same issuer (or a controlling, controlled, or commonly controlled company) by others; or

(2) creates active trading (actual or apparent) for the purpose of inducing such a purchase or sale.

(c) BY FICTITIOUS QUOTATION. It is unlawful for any person to make a fictitious quotation with respect to a security.

(d) BY OTHER FRAUD. It is unlawful for any person to use any other fraudulent practice to affect the market in a security.

ARTICLE II. LICENSING OF BROKER-DEALERS, AGENTS, AND INVESTMENT ADVISERS

Sec. 2.01. LICENSE REQUIREMENT. (a) AGENT. It is unlawful for any person to transact business in this state as an agent unless he is licensed as an agent under this Act.

(b) BROKER-DEALERS. It is unlawful for any person to transact business in this state as a broker-dealer unless:

(1) he is licensed as a broker-dealer under this Act;

(2) he effects transactions in this state exclusively through:

(A) the issuers of the securities involved in the transactions; or

(B) other broker-dealers; or
(3) during any period of 12 consecutive months, he does not in any manner direct offers to sell or buy to, or make sales to or purchases from, more than 15 persons (other than those specified in Subdivision (2)) in this state whether or not the offeror or any of the offerees, purchasers, or sellers is then present in this state.

c) AGENT'S RELATION TO BROKER-DEALER OR ISSUER. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is licensed. The license of an agent is not effective during any period when he is not associated with a particular broker-dealer licensed under this Act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner. The board by rule or the commissioner by order may impose additional requirements to apply when an agent terminates a connection with one broker-dealer or issuer and begins a connection with another broker-dealer or issuer.

d) INVESTMENT ADVISER. It is unlawful for any person to transact business in this state as an investment adviser unless:

(1) he is licensed as an investment adviser under this Act;

(2) he is licensed as a broker-dealer without the imposition of a condition under Section 2.04(e)(5);

(3) he is licensed as an investment adviser under the federal Investment Advisers Act of 1940;

(4) his only clients in this state (except as permitted by Subdivision (5)) are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the federal Investment Company Act of 1940, small business investment companies as defined in the Small Business Investment Act of 1958, pension or profit sharing trusts with assets of $250,000 or more, other financial institutions with assets of $250,000 or more, or institutional investors with assets of $250,000 or more (whether the organizations under this subdivision are acting for themselves or as trustees); or

(5) during any period of 12 consecutive months, he does not direct business communications into this state in any manner to more than 15 clients other than those specified in Subdivision (4), whether or not he or any of the persons to whom the communications are directed is then present in this state.

e) LENGTH OF LICENSE. Except as provided by this subsection, every license expires one year from its effective date unless renewed. The board may by rule change or prescribe expiration dates to conform to any system of licensing or registration used in one or more other states. The Board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees payable after the 60th day and before the 30th day before January 1st of the next year shall be prorated on a monthly basis so that each person shall pay only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(f) WAIVER BY BOARD. The board may waive any license requirement for an applicant with a valid registration or license from another state having registration or license requirements substantially equivalent to those of this state.

Sec. 2.02. LICENSING PROCEDURE. (a) APPLICATION. A broker-dealer, agent, or investment adviser may obtain an initial or renewal license by filing with the commissioner an application together with a consent to service of process pursuant to Section 4.17(g). The application shall contain whatever information the board (taking into account the purposes of Section 4.19) by rule requires concerning such matters as:

(1) the applicant's form and place of organization;
(2) the applicant's proposed method of doing business;
(3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser, the qualifications and business history of any employee;
(4) any legal proceedings (whether or not related to securities) including any injunction or administrative order, any conviction of a misdemeanor (other than traffic violations), and any indictment or conviction of a felony; and
(5) the applicant's financial condition and history.
(b) EFFECTIVE DATE OF LICENSE. If no denial order is in effect and no proceeding is pending under Section 2.04, a license becomes effective at noon on the 45th day after the date the application is filed. The board by rule or commissioner by order may specify an earlier effective date. The commissioner may by order defer the effective date until noon of the 45th day after the filing of any amendment. By agreement with the applicant, the commissioner may further defer the effective date.
(c) LIMITED EXTENT. Licensing of a broker-dealer does not constitute licensing of any agent, including one who is a partner, officer, or director, or a person occupying a similar status or performing similar functions.
(d) LICENSE FEE. License fees shall be paid in accordance with Section 4.18.
(e) SURETY BONDS. The board may by rule require licensed broker-dealers, agents, and investment advisers to post surety bonds and may determine their conditions and amounts. Every bond shall provide for suit thereon by any person who has a cause of action under Section 4.13 and, if the board by rule requires, by any person who has a cause of action not arising under this Act. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the period specified in Section 4.13.
(f) EVIDENCE OF LICENSE. The evidence of license shall be in the form determined by the Commissioner. The Board may prescribe rules regarding retention or display of evidence of license.
(g) RENEWALS. A person may renew an unexpired license by paying to the Board before the expiration date of the license the required renewal fee. If a person's license has been expired for not longer than ninety (90) days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the original application fee for the license. If a person's license has been expired for longer than ninety (90) days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the original application fee for the license. If a person's license has been expired for two years or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an initial license. At least thirty (30) days before the expiration of a person's license the person shall be notified in writing of the impending license expiration. A person who sells securities after the person's license has expired and before it is renewed is subject to the sanctions in this Act for selling securities without being licensed.
Sec. 2.03. POST-LICENSING PROVISIONS. (a) BOOKS AND ACCOUNTS. Every licensed broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the board by rule prescribes. All records so required shall be preserved for three years unless the board by rule prescribes otherwise for particular types of records.
(b) FINANCIAL REPORTS. Every licensed broker-dealer and investment adviser shall file such financial reports as the board by rule prescribes.
(c) CORRECTIONS. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensed person shall promptly file a correcting amendment unless notification of the correction has been given under Section 2.01(c).

(d) INSPECTION POWER. All the records referred to in Subsection (a) are subject at any time or from time to time to such reasonable periodic, special or other inspections by representatives of the commissioner, within or without this state, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors. The board by rule may prescribe requirements for the availability for inspection in this state of records kept outside this state. For the purpose of avoiding unnecessary duplication of inspections, the commissioner, insofar as he considers it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchanges or national securities association registered under the Securities Exchange Act of 1934.

(e) NOTIFICATION OF COMMISSIONER CONCERNING ACTION OF OTHER AGENCIES. Every licensed broker-dealer, investment adviser, and agent shall in writing notify the commissioner of any order against him of the kind listed in Section 2.04(a)(2)(F) and shall attach a copy of the order. The notification shall be given within 30 days of the order.

(f) CONTINUING EDUCATION. The Board may recognize, prepare, or administer continuing education programs for licensed persons. Participation in the programs is voluntary.

Sec. 2.04. DENIAL, REVOCATION, SUSPENSION, CANCELLATION, AND WITHDRAWAL OF LICENSE. (a) SANCTIONS; GROUNDS. The commissioner may by order deny, suspend, or revoke any license or censure the licensed person if he finds:

1. that the order is in the public interest; and
2. that the applicant or licensed person or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:
   A. has filed an application for a license which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
   B. has intentionally or knowingly violated or intentionally or knowingly failed to comply with any provision of this Act or a predecessor act or any rule or order under this Act or a predecessor act;
   C. has been convicted, within the past 10 years, of any misdemeanor which directly relates to the duties and responsibilities of a broker-dealer, investment adviser, or agent as determined in accordance with Chapter 267, Acts of the 67th Legislature, Regular Session, 1981 (Article 6252-13c, Vernon's Texas Civil Statutes) or has been convicted of a felony;
   D. is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
   E. is the subject of an order of the commissioner denying, suspending, or revoking a license as a broker-dealer, agent, or investment adviser;
   F. is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking a license or registration as a broker-dealer, agent, or investment adviser, or the substantial equivalent of those terms as defined in this Act, or is the
subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order; but the commissioner:

(i) may not institute a revocation or suspension proceeding under Paragraph (F) more than one year from the date of the order relied on; and

(ii) may not enter an order under Paragraph (F) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section;

(G) has engaged in fraud in the securities business;

(H) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer or investment adviser; or

(I) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in Subsection (e).

(b) SANCTIONS; OTHER GROUNDS. The commissioner may by order deny, suspend, or revoke any license or censure the licensed person if he finds:

(1) that the order is in the public interest; and

(2) that the applicant or licensed person:

(A) has failed reasonably to supervise, with a view to preventing violations of this Act, his agents (if he is a broker-dealer) or his employees (if he is an investment adviser) if the agents or employees are subject to his supervision; or

(B) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this subdivision, and he shall vacate any such order when the deficiency has been corrected.

(c) FAILING REASONABLY TO SUPERVISE. For the purpose of Subsection (b)(2)(A), a person does not fail reasonably to supervise an employee or agent if:

(1) there have been established procedures, and a system for applying the procedures, that would reasonably be expected to prevent and detect, insofar as practicable, violations by agents or employees; and

(2) the person has reasonably discharged his duties and obligations under the procedures and system, without reasonable cause to believe that the procedures and system were not being complied with.

(d) RESTRICTION ON PROCEEDING. After a license has become effective, the commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction disclosed by the applicant in the application unless the proceeding is instituted within 30 days.

(e) QUALIFICATIONS OF BROKER-DEALERS, AGENTS, AND INVESTMENT ADVISERS. In the application of Section 2.04(a)(2)(I), the commissioner:

(1) may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than:

(A) the broker-dealer himself if he is an individual; or

(B) an agent of the broker-dealer;

(2) may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than:

(A) the investment adviser himself if he is an individual; or

(B) any other person who represents the investment adviser in doing any of the acts which make him an investment adviser or in soliciting clients;

(3) may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;
(4) shall consider that an agent who will work under the supervision of a licensed broker-dealer need not have the same qualifications as a broker-dealer;
(5) shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent, and when he finds that an applicant for an initial or renewal license as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's license as a broker-dealer upon his not transacting business in this state as an investment adviser;
(6) may not enter an order on the basis of lack of experience of a broker-dealer or investment adviser if the applicant or licensed person was registered under prior law as a dealer on the effective date of this Act;
(7) may not enter an order on the basis of lack of experience of an agent if the applicant or licensed person was registered under prior law as an agent or salesman on the effective date of this Act; and
(8) may not enter an order on the basis of lack of knowledge if the applicant or licensed person passed the applicable examination under this Act or under prior law.

(f) WRITTEN EXAMINATION. In the application of Section 2.04(a)(2)(1):
(1) The board may by rule provide for a written examination to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser or in soliciting clients.
(2) Not later than the 30th day after the day on which an examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination not later than the 14th day after the day on which the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than ninety (90) days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.
(3) If requested in writing by a person who fails an examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.
(g) CANCELLATION OF LICENSE. If the commissioner finds that any licensed person or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the license or application.
(h) WITHDRAWAL FROM LICENSING. Withdrawal from licensing as a broker-dealer, agent, or investment adviser becomes effective 30 days after receipt of an application to withdraw or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under Subsection (a)(2)(B) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license was effective.
(i) PROCEDURE. No order may be entered under any part of this section without:
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(1) compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes);
(2) appropriate prior notice to the employer or prospective employer of the applicant or licensed person if the applicant or licensed person is an agent;
(3) opportunity for hearing; and
(4) written findings of fact and conclusions of law.

(6) POWER TO VACATE OR MODIFY. The commissioner may vacate or modify an order entered under this section if the commissioner finds that the conditions that prompted its entry have changed or that it is otherwise in the public interest to do so.

Sec. 2.05. CLASSIFICATION OF LICENSED PERSONS. (a) AUTHORITY. For the purpose of licensing and in the public interest, the board may reasonably classify persons, prescribe different requirements for different classes, and provide for different kinds of broker-dealer licenses, including provisional, probationary or temporary licenses, general licenses applicable to all securities, and limited licenses applicable to specific classes of securities.

(b) EFFECT ON AGENTS. A licensed agent is limited by the terms of the license of the broker-dealer or issuer with whom he is associated.

ARTICLE III. REGISTRATION OF SECURITIES

Sec. 3.01. REGISTRATION REQUIREMENT. It is unlawful for any person to offer or sell any security in this state unless:
(1) a registration statement for the security is in effect under this Act; or
(2) the security or transaction is exempted under Section 4.02.

Sec. 3.02. REGISTRATION BY NOTIFICATION. (a) WHEN APPLICABLE. A security may be registered by notification, whether or not it is also eligible for registration by coordination under Section 3.03, if it is a security whose issuer and any predecessors have been in continuous operation for at least five years and if:
(1) there has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and
(2) the issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting principles:
   (A) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal to at least five percent of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price); or
   (B) which, if the issuer or any predecessors have not had any security of the type specified in Paragraph (A) outstanding for three full fiscal years, equal to at least five percent of the amount (as measured in Paragraph (A)) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued.

(b) CONTENT OF REGISTRATION STATEMENT. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 3.05(c) and the consent to service of process required by Section 4.17(g):
(1) a statement demonstrating eligibility for registration by notification;
(2) with respect to the issuer and any significant subsidiary: its name, address, and form or organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;

(3) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

(4) a description of the security being registered;

(5) the information on the terms and method of the offering, and the financial statements required in an application for registration under Section 3.04; and

(6) a copy of the prospectus required by Section 3.05(k).

(c) EFFECTIVE DATE. If no stop order is in effect and no proceeding is pending under Section 3.06, a registration statement under this section automatically becomes effective at 3 p.m. Central Standard Time on the fifth full business day after the filing of the registration statement or the last amendment; or at such earlier time as the commissioner determines.

Sec. 3.03. REGISTRATION BY COORDINATION. (a) WHEN APPLICABLE. Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) CONTENT OF REGISTRATION STATEMENT. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 3.05(c) and the consent to service of process required by Section 4.17(g):

(1) three copies of the latest form of prospectus filed under the Securities Act of 1933 and, if the commissioner requires, copies of any documents the prospectus incorporates by reference;

(2) if the commissioner requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreement with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) if the commissioner requests, any other information or copies of any other documents filed under the Securities Act of 1933; and

(4) an undertaking to forward all future amendments to the federal prospectus other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) EFFECTIVE DATE OF REGISTRATION FILED BEFORE FEDERAL REGISTRATION EFFECTIVE. A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) no stop order is in effect and no proceeding is pending under Section 3.06;

(2) the registration statement has been on file with the commissioner for at least 10 days; and

(3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for the following periods (or such shorter period as the commissioner permits by rule or otherwise) and the offering is made within those limitations:

(A) one full business day if the statement contains and is accompanied by any material information other than information related to prices, discounts, and commissions; or

(B) two full business days if the statement contains and is accompanied by any material information other than information related to prices, discounts, and commissions.
(d) NOTIFICATION OF EFFECTIVE FEDERAL REGISTRATION; FILING OF POSTEFFECTIVE AMENDMENT. The registrant shall promptly notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment or supplement, if any, and shall promptly file a copy of the prospectus and a posteffective amendment or supplement containing the information and documents in the price amendment or supplement. "Price amendment or supplement" means the final federal amendment or supplement which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent on the offering price.

(e) STOP ORDER. On failure to receive the required notification and posteffective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending it, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order is void as of the time of its entry.

(f) WAIVER OF CONDITIONS. The commissioner may by rule or otherwise waive either or both of the conditions specified in Subsections (c)(2) and (c)(3).

(g) WHEN EFFECTIVE IF CONDITIONS NOT SATISFIED BEFORE FEDERAL REGISTRATION EFFECTIVE. If the federal registration statement becomes effective before all the conditions in Subsection (c) are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied.

(h) NOTICE OF SATISFACTION OF CONDITIONS. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under Section 3.06; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

(i) DELAYING AMENDMENT. A registrant may file a delaying amendment in this state at any time before the registration statement becomes effective. A delaying amendment is an amendment that requests delay of the effective date of the registration statement. If a delaying amendment is filed, the registration becomes effective on the later of the following times, unless the commissioner permits an earlier time:

1. 3 p.m. Central Standard Time on the second full business day after the cancellation of the delaying amendment by a further amendment which requests effectiveness at the earliest possible date, or
2. the time specified in Subsection (c) or (g), whichever is applicable.

(j) EFFECTIVE DATE OF REGISTRATION FILED AFTER FEDERAL REGISTRATION EFFECTIVE. A registration statement under this section may be filed up to 30 days after the effective date of the registration statement filed under the Securities Act of 1933 or at such later time as the commissioner permits. A registration statement so filed becomes effective on the later of the following times, unless the commissioner permits an earlier time:

1. 3 p.m. Central Standard Time on the fifth full business day after filing; or
2. the time specified in Subsection (g).

Sec. 3.04. REGISTRATION BY QUALIFICATION. (a) WHEN APPLICABLE. Any security may be registered by qualification.
(b) CONTENT OF REGISTRATION STATEMENT. A registration statement under this section shall contain the prospectus required by Section 3.05(k) and any additional information the commissioner, taking into account the purposes of Section 4.19, requires by order or form.

(c) EFFECTIVE DATE. A registration statement under this section becomes effective when the commissioner so orders.

Sec. 3.06. PROVISIONS APPLICABLE TO REGISTRATION GENERALLY. (a) PERSONS WHO MAY FILE. A registration statement may be filed by the issuer, any other person on whose behalf the offering is made, or a licensed broker-dealer.

(b) FEES. Registration fees shall be paid in accordance with Section 4.18.

(c) ANNEXES TO REGISTRATION STATEMENT. Every registration statement shall specify:

1. the amount of securities to be offered in this state;
2. the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and
3. any withdrawal or any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) INCORPORATION OF DOCUMENTS BY REFERENCE. Any document filed under this Act or a predecessor act within five years (or with the commissioner's consent, more than five years) preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate or is made currently accurate by amendment or by the incorporating document.

(e) COMMISSIONER'S POWER TO REDUCE CONTENT. The commissioner may by order or otherwise permit the omission of any item of information or document from any registration statement.

(f) CONTENT OF REGISTRATION STATEMENT FOR NON-ISSUER DISTRIBUTION. In the case of a non-issuer distribution, information may not be required under Section 3.04 or Subsection (h) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g) EFFECTIVE PERIOD AND WITHDRAWAL. Every registration statement is effective for one year from its effective date, except during the time a stop order is in effect under Section 3.06. A registration statement may be withdrawn only at the discretion of the commissioner.

(h) REPORTS. So long as a registration statement is effective, the board by rule or the commissioner by order may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(i) CERTAIN INVESTMENT COMPANY SECURITIES. A registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities proposed to be offered. Such an amendment becomes effective when the commissioner so orders. The person filing the amendment shall pay a fee, in accordance with Section 4.18(f), for the additional securities.

(j) SALES IN EXCESS OF AMOUNT REGISTERED; FEES. An offeror who sells securities in this state in excess of the aggregate amount of securities registered may, while the registration is still effective (or with the commissioner's consent, within 90 days after the registration is no longer effective), apply to amend
the registration to include the excess securities by paying three times the difference between the initial fee paid and the filing fee calculated in the manner specified in Section 4.18(f), with respect to the securities sold to persons within this state. Registration of the excess securities, if it becomes effective, shall be effective retroactively to the date of the original registration.

(k) USE OF PROSPECTUS. A prospectus shall be sent or given to each person to whom an offer of a security (for which a registration statement has been filed or is effective) is made. It must be sent or given before or concurrently with whichever of the following occurs first:

(1) the first written offer made to the person, otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of any sale made by or for the account of the person;

(3) payment pursuant to any sale; or

(4) delivery of the security pursuant to any sale.

(l) CONTENT OF PROSPECTUS. The prospectus must fully disclose the material facts about the security, the issuer, and the offering. The board by rule or the commissioner by order, taking into account the purposes of Section 4.19, may further prescribe the content of the prospectus.

(m) ADDITIONAL INFORMATION IF LICENSED BROKER-DEALER NOT TO BE USED. If the securities for which a registration statement is filed are to be offered or sold other than through a licensed broker-dealer, the registration statement shall be accompanied by the information that would be required by Section 2.02(a) if the issuer were applying for license as a broker-dealer.

Sec. 3.06. DENIAL, SUSPENSION, AND REVOCATION OF REGISTRATION. (a) GROUNDS. The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds:

(1) that the order is in the public interest; and

(2) that:

(A) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under Section 3.05(i) or 3.05(j) as of its effective date, or any report under Section 3.05(h) had any of the following defects that have not been cured by amendment:

(i) incompleteness in any material respect;

(ii) untrue statement of a material fact;

(iii) omission to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading; or

(iv) other fraudulent aspects.

(B) any provision of this Act or any rule, order, or condition lawfully imposed under this Act has been intentionally or knowingly violated, in connection with the offering, by:

(i) the person filing the registration statement;

(ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) any underwriter;

(C) the security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction
of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but

(i) the commissioner may not institute a proceeding against an effective registration statement under Paragraph (C) more than one year from the date of the order or injunction relied on; and

(ii) he may not enter an order under Paragraph (C) on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(D) the issuer's business consists of or would include activities which are illegal where performed;

(E) when a security is sought to be registered by notification, it is not eligible for such registration;

(F) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by Section 3.03(b)(4);

(G) the applicant or registrant has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this paragraph and he shall vacate any such order when the deficiency has been corrected;

(H) persons offering the security sought to be registered have not complied with rules the board, taking into account the coordination policy of Section 4.19 and the nature of the offering, may adopt on the distribution of preliminary prospectuses; or

(I) in the case of a security to be offered at a price of $5 or less:

(i) the proposed plan of business of the issuer of the security or of the person filing the registration statement is not fair, just and equitable, or

(ii) the consideration paid or to be paid for the security by promoters is not fair, just and equitable when that consideration is less than the offering price to the public, or

(iii) the security or the methods to be used in offering or selling the security will work a fraud on the purchaser.

(b) REPRESENTATION AS TO STOCK SPLITS, ETC. In connection with a security to be offered at a price of more than $5, the Commissioner may require (in the prospectus or elsewhere) a representation that there is no plan to make a stock or other security dividend or distribution, stock or other security split, rights offering or other transaction whose probable effect will be to reduce the market price of the security to $5 or less.

(c) RESTRICTION ON PROCEEDING. After a registration statement has become effective, the commissioner may not institute a stop-order proceeding on the basis of a fact or transaction disclosed in the registration statement unless the proceeding is instituted within 30 days after the registration statement became effective.

(d) PROCEDURE. No stop order may be entered under any part of this section without:

(1) compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes);

(2) appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(3) opportunity for hearing; and

(4) written findings of fact and conclusions of law.

(e) POWER TO VACATE OR MODIFY. The commissioner may vacate or modify a stop order if he finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.
ARTICLE IV. GENERAL PROVISIONS

Sec. 4.01. DEFINITIONS. In this Act unless the context otherwise requires:

(1) "Board" means the State Securities Board.

(2) "Commissioner" means the securities commissioner.

(3) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in effecting transactions in a security exempted by Subsection (a)(1), (a)(2), (a)(3), (a)(9), or (d)(2) of Section 4.02; effecting transactions exempted by Section 4.02(c); or effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. Additionally, "agent" does not include any bona fide employee of an issuer if the employee's primary activity is something other than effecting securities transactions, and no commission or other remuneration based on the securities transactions effected is paid or given directly or indirectly to the employee. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(4) "Bank" means:

(A) a national bank organized under the laws of the United States; or

(B) a bank organized under and subject to supervision and examination under The Texas Banking Code of 1943 (Article 342-101 et seq., Vernon's Texas Civil Statutes) or the corresponding laws of another state.

(5) "Broker-dealer" means any person engaged in effecting transactions in securities for the account of others or for his own account as part of a regular business rather than in connection with his investment activities. The term does not include an agent, an issuer, a bank, or a savings institution.

(6) "Fraud," "fraudulent," "fraudulent practice," "deceit," and "defraud" are not limited to common-law deceit. An act may be within the terms in this subdivision even though it constitutes mismanagement or a fiduciary breach, but it is not within those terms solely because it constitutes mismanagement or a fiduciary breach. The terms in this subdivision include:

(A) an untrue statement of a material fact;

(B) an omission to state a material fact necessary to make the statements made, in the light of the circumstances in which they are made, not misleading;

(C) an intentional failure to disclose a material fact; and

(D) a material prediction known to be false by the person making it.

(7) "Guaranteed" means guaranteed as to payment of principal and interest, or dividends.

(8) "Industrial revenue obligation" includes a security that is issued under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) and a security issued under the corresponding law of another state.

(9) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(A) a bank, savings institution, or trust company;

(B) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(C) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
(D) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(E) a person whose advice, analyses, or reports relate only to securities exempted by Section 4.02(a)(1);

(F) any other person not within the intent of this subdivision as the board by rule or the commissioner by order may designate.

(10) "Issuer" means any person who issues or proposes to issue any security, except that:

(A) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued;

(B) with respect to certificates of interest or participation in oil, gas or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any "issuer"; and

(C) with respect to a limited partnership, the term "issuer" means:

(i) for purposes of Sections 4.02(d) and 4.02(e)(1)(A), the partnership and each of the general partners; and

(ii) for all other purposes, the partnership.

(11) "Non-issuer" means not directly or indirectly for the benefit of the issuer.

(12) "Person" includes an individual, a corporation, a limited or general partnership, an association, a joint-stock company, a trust if the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(13)(A) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(B) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(C) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(D) A purported gift of assessable stock is considered to involve an offer and sale.

(E) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(F) The terms defined in this subdivision do not include:

(i) any stock or other security dividend or distribution, whether or not the person distributing the dividend is the issuer of the security, if the person's security holders give nothing of value for the dividend or surrender a right to a cash or property dividend, whether or not each stockholder may elect to take the dividend in cash or property or in stock or other securities;

(ii) any stock split or reverse stock split if the issuer's stockholders give nothing of value except cash to round out fractional shares; or

(iii) the negotiation and creation of any oil, gas, or mineral unitization or pooling agreement.

(15) "Security" means any note; bond; debenture; commercial paper: evidence of indebtedness; stock or share (whether or not transferable or treasury): interest or participation in any profit-sharing agreement; limited partners' interest in a limited partnership; collateral-trust certificate; equipment trust certificate; preorganization certificate or subscription; investment contract; voting-trust certificate; certificate of deposit for a security; interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease or in contracts relating thereto; or, in general, any interest or instrument commonly known as a "security" or any interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy, annuity contract, optional annuity contract, or any contract relating to such a policy or contract, issued by an insurance company subject to the supervision of the State Board of Insurance if the form of the policy or contract has been filed with that board as required by law; a check (whether or not certified), draft, bill of exchange, or bank letter of credit; a note or evidence of indebtedness issued in a primarily mercantile or consumer (rather than investment) transaction not involving a public offering; or an interest in a deposit account with a bank or a bank certificate of deposit that ranks on a parity in liquidation with an interest in a deposit account with the bank. This subdivision does not exclude from the definition of "security" a participation in any of the foregoing.

(16) "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(17) "Trust company" means a trust company organized and subject to supervision under Chapter 388, Acts of the 55th Legislature, Regular Session, 1957 (Article 1513a, Vernon's Texas Civil Statutes), or the corresponding laws of another state.

Sec. 4.02. EXEMPTIONS. (a) SECURITIES EXEMPT WHEN SOLD BY ISSUER OR LICENSED BROKER-DEALER. The following securities are exempt from Sections 3.01 and 4.03 when sold by the issuer or a subsidiary of the issuer or by or through a licensed broker-dealer:

(1) AMERICAN GOVERNMENTS. Any security, except an industrial revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) FOREIGN GOVERNMENTS. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or grantor;

(3) BANKS. Any security issued by and representing an interest in or a debt of, or guaranteed by a bank;

(4) SAVINGS AND LOANS. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) FARMERS' COOPERATIVES; MUTUAL LOAN CORPORATIONS. Any security issued by a farmers' cooperative marketing association under Chapter 52, Agriculture Code, a farmers' cooperative society under Chapter 51, Agriculture Code, or a mutual loan corporation under Chapter 54, Agriculture Code, or issued by those organizations under predecessor statutes of those provisions; however, this exemption is not applicable to agents of any of these organizations when the...
securities are sold to nonmembers, or when a commission or other remuneration is paid directly or indirectly to the agents on securities sold to members;

(6) CREDIT UNIONS. Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state;

(7) RAILROADS; COMMON CARRIERS; UTILITIES. Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:
   (A) subject to the jurisdiction of the Interstate Commerce Commission;
   (B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act;
   (C) regulated in respect to its rates and charges by a governmental authority of the United States or any state; or
   (D) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province;

(8) SECURITIES LISTED ON CERTAIN EXCHANGES. Any security listed or approved for listing on notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Pacific Stock Exchange, the Chicago Board Options Exchange, or any other national securities exchange that is registered under the Securities Exchange Act of 1934 and that the board designates by order in accordance with Subsection (c) and any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; any evidence of indebtedness guaranteed by any company, any stock of which is so listed; or any warrant or right to purchase or subscribe to any of the foregoing; and

(9) COMMERCIAL PAPER. Any negotiable commercial paper sold in denominations of at least $100,000 per buyer which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee or such paper or of any such renewal.

(b) UNITS OF EXCHANGE SECURITIES. The sale as a unit of two or more securities to which Subsection (a)(8) applies is exempt from Sections 3.01 and 4.03 if each of the securities in the unit is exempt.

(c) DESIGNATION OF EXCHANGE BY BOARD. A national securities exchange may apply for designation by the board under Subsection (a)(8) in the manner and on the forms that the board prescribes. The board may not designate the exchange unless the facts and data supplied with the application are found to satisfy the requirements that the board establishes by rule. The board may designate an exchange only after a reasonable investigation and hearing. Designation must be made by written order on a finding of fact substantially in accordance with this subsection. The board, on compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon’s Texas Civil Statutes), may withdraw designation previously granted to an exchange that does not at the time of hearing meet the requirements established under this subsection. On the withdrawal of designation, securities listed on the exchange are no longer entitled to the benefit of exemption unless the board later approves the exchange.

(d) OTHER EXEMPT SECURITIES. The following securities are exempt from Sections 3.01 and 4.03:

(1) NONPROFIT PERSONS. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association, but only if the security
is (A) offered and sold by the issuer or by a bona fide member of the issuer to a bona
fide member of the issuer and no commission or other remuneration is paid directly
or indirectly for the sale or (B) offered and sold by a licensed broker-dealer;

(2) EMPLOYEE BENEFIT PLANS. Any investment contract issued by an
employer or by a trust or plan created by an employer in connection with an
employee’s stock purchase, stock ownership, savings, pension, profit-sharing, stock
bonus or similar benefit plan if:

(A) the securities purchased by the plan would be exempt under Subsection
(a) if sold by a licensed broker-dealer;

(B) the securities purchased by the plan are purchased in transactions exempt
under Subsection (c);

(C) the securities purchased by the plan are registered under Section 3.02,
3.03, or 3.04; or

(D) the commissioner is notified in writing 30 days before the interests in the
plan are first offered to the employees in this state or, with respect to plans which
are in effect on the effective date of this Act, within 60 days thereafter, or within 30
days before they are reopened if they are closed on the effective date of this Act.

(e) EXEMPT TRANSACTIONS. The following transactions are exempt
from Sections 3.01 and 4.03:

(1) ISOLATED TRANSACTIONS BY PERSONS OTHER THAN THE
ISSUER. Any of the following transactions, whether effected through a
broker-dealer or not:

(A) any isolated non-issuer transaction; or

(B) any isolated transaction by a person other than the issuer that would be
exempt if made by the issuer;

(2) CERTAIN NON-ISSUER DISTRIBUTIONS. Any non-issuer
distribution, effected by or through a licensed broker-dealer, of an outstanding
security of an issuer which is an operating concern actually engaged in business and,
unless the commissioner waives this requirement, is not in receivership or
bankruptcy, if any of the following paragraphs is satisfied:

(A) the issuer is registered under Section 12 of the Securities Exchange Act
of 1934 and is current in its filings under that Act;

(B) the issuer is required to file current reports with the Securities and
Exchange Commission under Section 15(d) of the Securities Exchange Act of 1934
and is current in those filings;

(C) current financial and other information about the issuer, as prescribed in
the board’s rules and forms, is on file with the commissioner and is publicly
available; or

(D) the security has a fixed maturity or a fixed interest or dividend provision
and there has been no default during the current fiscal year or within the three
preceding fiscal years, or during the existence of the issuer and any predecessors, if
less than three years, in the payment of principal, interest, or dividends on the
security;

(3) UNSOLICITED NON-ISSUER TRANSACTIONS BY
BROKER-DEALERS. Any non-issuer transaction effected by or through a licensed
broker-dealer pursuant to an unsolicited order or offer to buy; but the board may
by rule require that the customer acknowledge on a specified form that the sale was
unsolicited and that a signed copy of each such form be preserved by the
broker-dealer for a specified period;

(4) UNDERWRITING TRANSACTIONS. Any transaction between the
issuer, or other person on whose behalf the offering is made, and an underwriter,
or among underwriters;

(5) WHOLE MORTGAGES. Any transaction in a bond or other evidence of
indebtedness secured by a real or chattel mortgage, deed of trust, or security
agreement, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(6) TRANSACTIONS BY EXECUTORS, ETC. Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) TRANSACTIONS BY PLEDGEES. Any transaction executed by a bona fide pledgee without any purpose of evading this Act;

(8) TRANSACTIONS WITH INSTITUTIONS AND BROKER-DEALERS. Any offer or sale to one of the following, whether the purchaser is acting for itself or in some fiduciary capacity:
   (A) a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, small business investment company as defined in the Small Business Investment Company Act of 1958, or a broker-dealer; or
   (B) a pension or profit-sharing trust with assets of $250,000 or more, another financial institution with assets of $250,000 or more, or an institutional investor with assets of $250,000 or more;

(9) EMPLOYEE OPTIONS AND PURCHASE PLANS. Any offer or sale of shares of stock pursuant to the grant of employees' restricted stock options, qualified stock options, incentive stock options, or employee stock purchase plans as defined in the federal Internal Revenue Code or similar options or plans the board may designate by rule;

(10) 35 OR FEWER SECURITY HOLDERS. Any offer or sale of any security by or on behalf of the issuer so long as the total number of security holders of the issuer does not exceed 35 persons (determined under Subsection (g)) after taking the sale into account, provided that there is no public solicitation;

(11) 15 OR FEWER BUYERS IN 12 MONTHS. Any sale of any security by or on behalf of the issuer to not more than 15 persons in any period of 12 consecutive months (determined under Subsections (f) and (g)) and any offer (whether or not to a purchaser) in connection with such sale, provided that there is no public solicitation and that the issuer reasonably believes the purchasers have purchased the securities for their own account and not for distribution;

(12) PREORGANIZATION SUBSCRIPTIONS. Any offer or sale of a preorganization certificate or subscription if:
   (A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;
   (B) the number of subscribers, excluding accredited investors as defined by the board, does not exceed 35;
   (C) no payment is made by any subscriber; and
   (D) there is no public solicitation;

(13) TRANSACTIONS WITH EXISTING SECURITY HOLDERS. Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities or nontransferable warrants, if no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state;

(14) OFFERS DURING WAITING PERIOD. Any offer by a registered broker-dealer of a security for which a registration statement has been filed under this Act if:
   (A) no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under this Act or, if the registration statement has also been filed under the Securities Act of 1933, under that Act;
(B) a copy of any written offer, including any script or accompanying pictorial demonstration, is filed with the commissioner prior to its use in this state;

(C) the offer prominently states on the first page of a written offer or as a preface to any pictorial or broadcast offer, in language satisfactory to the commissioner, that the security may not be bought or sold before the registration statement becomes effective; and

(D) payment is not accepted from the offeree and no contract of sale is made before the registration statement is effective;

(15) CERTAIN SMALL BUSINESS OFFERINGS. Any offer or sale of a security as contemplated under the Small Business Investment Act of 1958:

(A) to the federal Small Business Administration;

(B) by a small business concern to a small business investment company as defined in the Small Business Investment Act of 1958, or to a development company for equity capital provided or loans made; or

(C) by a small business investment company to a small business concern as a condition to providing the latter with equity capital or loans;

(16) LIMITED OFFERINGS OF OIL INTERESTS. Any offer or sale of any interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, or in contracts relating thereto if:

(A) the total number of sales by any one owner of interests, whether whole or fractional, segregated or undivided, in any single oil, gas, or mining title or lease, or in payments out of production under such a title or lease, or in contracts relating thereto, does not exceed 35 in any period of 12 consecutive months (determined under Subsection (h)); and

(B) there is no public solicitation;

(17) PLEDGES. Any bona fide pledge or loan of a security;

(18) JUDICIALLY APPROVED REORGANIZATIONS. Any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash;

(19) BANK CONVERSIONS TO HOLDING COMPANIES. Any offer or sale of a security interest incident to the conversion of a bank into a bank holding company if each holder in this state of securities in the bank is entitled to receive the same proportionate amount of securities in the bank holding company as he held in the bank;

(20) EXEMPTIONS BY RULE OR ORDER. Any other transactions or conditions the board, taking into account the purposes of Section 4.19, conditionally or unconditionally defines or prescribes as exempt by rule or order.

(f) EXCLUSIONS IN DETERMINING 15 OR FEWER BUYERS IN 12 MONTHS. For the purposes of Subsection (e)(11), the following transactions shall be excluded in determining the number of persons to which offers and sales are made:

(1) offers and sales of securities exempt under Sections 4.02(a) and 4.02(d); and

(2) offers and sales made in transactions exempt under Subsection (e) other than Subdivisions (9) and (10) of that subsection; and offers and sales of securities registered under Article III of this Act.

(g) INCLUSIONS AND EXCLUSIONS IN DETERMINING 35 OR FEWER SECURITY HOLDERS AND 15 OR FEWER BUYERS IN 12 MONTHS. For purposes of Subsections (e)(9)-(11), it is immaterial whether any of the offerees or purchasers are then present in this state. For purposes of Subsections (e)(10) and (11):

(1) an offer or sale pursuant to which a security is or would be acquired by husband and wife as community property, as joint tenancy, (with or without survivorship) or as tenancy by the entirety is an offer or sale to only one person; and
(2) an offer or sale to an accredited investor, as defined by the board, shall be excluded.

(h) INCLUSIONS AND EXCLUSIONS IN DETERMINING LIMITED OFFERINGS OF OIL INTERESTS. For purposes of Subsection (e)(16):

(1) it is immaterial whether any of the offerees or purchasers are then present in this state;

(2) an offer or sale pursuant to which such an interest is or would be acquired by husband and wife as community property, as joint tenancy, (with or without survivorship) or as tenancy by the entirety is an offer or sale to only one person; and

(3) an offer or sale to an accredited investor, as defined by the board, shall be excluded.

(i) DENIAL AND REVOCATION OF EXEMPTIONS. On compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the commissioner may by order deny or revoke any exemption specified in Subsection (d) or (e) with respect to a specific security or transaction if he has reasonable grounds to believe that the sale of such security or the transaction would tend to defraud any purchaser. No order under this subsection may operate retroactively. No person may be considered to have violated Section 3.01 or 4.03 by reason of any offer or sale effected after the entry of an order under this subsection until he has received actual notice from the commissioner of the denial or revocation.

(j) BURDEN OF PROOF. In any proceeding under this Act, the burden of proving an exemption or an exception from a definition is on the person claiming it.

(k) PLEADING EXEMPTIONS. It is not necessary to negate any of the exemptions in this Act in any complaint, information, or indictment or in any writ or proceeding laid or brought under this Act.

Sec. 4.03. FILING OF SALES LITERATURE. The board by rule or the commissioner by order may require the filing of any prospectus, pamphlet, circular, form letter, advertisement, pictorial demonstration, script of broadcast or recording, or other offer or sales literature addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by Section 4.02.

Sec. 4.04. MISLEADING FILINGS. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this Act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Sec. 4.05. UNLAWFUL REPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION. (a) NO OFFICIAL APPROVAL. Neither the fact that an application for a license under Article II or a registration statement under Article III has been filed nor the fact that a person or security is effectively licensed or registered constitutes a finding by the commissioner that any document filed under this Act is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way on the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) UNLAWFUL REPRESENTATIONS. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with Subsection (a).

Sec. 4.06. STATE SECURITIES BOARD AND SECURITIES COMMISSIONER. (a) BOARD. The State Securities Board together with the other officials designated by this Act shall administer this Act.

(b) COMPOSITION; TERM. The Board is composed of three citizens of the state. With the advice and consent of the Senate, the Governor shall biennially
appoint one member. Members of the Board hold office for staggered terms of six years, with one member's term expiring January 31 of each odd-numbered year. A member shall remain in office until his successor qualifies. Vacancies shall be filled by the Governor with the advice and consent of the Senate for the unexpired term. Members are eligible for reappointment. Appointments to the Board shall be made without regard to the race, creed, sex, religion or national origin of the appointees.

(c) QUALIFICATIONS; PROHIBITED RELATIONS. Board members must be members of the general public. A person is not eligible for appointment as a member if the person or the person's spouse:

1. is licensed as a broker-dealer, agent, or investment adviser;
2. is employed by or participates in the management of a business entity engaged in business as a broker-dealer or investment adviser; or
3. has, other than as a consumer, a financial interest in a business entity engaged in business as a broker-dealer or investment adviser.

(d) OTHER PROHIBITED RELATIONS. A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the securities industry. A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the securities industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(e) GROUNDS FOR REMOVAL. It is a ground for removal from the Board if a member:

1. does not have at the time of appointment the qualifications required by Subsection (b) or (c) for appointment to the Board;
2. does not maintain during the service on the Board the qualifications required by Subsection (b) or (c) for appointment to the Board; or
3. violates a prohibition established by Subsection (d).

(f) EFFECT ON BOARD ACTION. 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.

(g) COMPENSATION. Each member of the Board is entitled to per diem as set by legislative appropriation for each day that the member engages in the business of the Board.

(h) CHAIRMAN. The members of the board annually shall select a chairman.

(i) QUORUM. A majority of the members of the board constitutes a quorum for the transaction of any business.

(j) COMMISSIONER AND DEPUTY COMMISSIONER. The board shall appoint a securities commissioner who serves at the pleasure of the board. The commissioner, with the consent of the board, may designate a deputy securities commissioner who shall perform all the duties required by law to be performed by the commissioner when the commissioner is absent or unable to act for any reason.

(k) BOND. Before assuming office, the commissioner shall give a bond in the sum of $50,000 payable to and to be approved by the governor conditioned that he will faithfully execute the duties of his office. The same requirement is made of the deputy securities commissioner. The commissioner may require any or all of his staff and employees to be bonded in a similar manner. The expense of all such bonds may be paid by the state.

(l) ANNUAL REPORT. On or before January 1 of each year, the Board, with the advice of the Commissioner, shall report to the Governor and the presiding officer of each house of the Legislature as to its administration of this Act, as well as plans and needs for future securities regulation. The report must include a
detailed accounting of all funds received and disbursed by the Board during the preceding year.

(m) RESTRICTION ON OFFICIALS’ CONDUCT. It is unlawful for the members of the board, the commissioner, or any of their officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this Act, except Section 4.07(e), authorizes the members of the board, the commissioner, or any of their officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this Act. No provision of this Act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought from the board, the commissioner, or any of their officers or employees.

(n) BOARD AND COMMISSIONER. The board shall be the policymaking and governing authority under this Act and shall be responsible for the enforcement of this Act and the promulgation of rules and forms. The commissioner shall administer the Act under the supervision of the board and in accordance with its policies, and has power to issue rules and orders as specifically provided by this Act or as delegated by the board. The enforcement of criminal penalties is the responsibility of the attorney general and the district or county attorneys as provided in Subsection (o). Each member of the board shall have access to all offices and records under his supervision. The board may exercise any power or perform any act authorized to the commissioner by this Act.

(o) DISTRICT AND COUNTY ATTORNEYS; ATTORNEY GENERAL. The commissioner may refer evidence concerning criminal violations of this Act, or of any rule or order hereunder, to the district or county attorney of the proper county. If the attorney neglects or refuses to prosecute the violation, the commissioner may submit the evidence to the attorney general, who may proceed with all the rights, privileges, and powers conferred by law on district or county attorneys, including the power to appear before grand juries and to interrogate witnesses before grand juries. Any district or county attorney or the attorney general may prosecute violations with or without a reference. The attorney general may seek injunctions under Section 4.10.

(p) CAREER PROGRAM. The Commissioner or his designee shall develop an intra-agency career ladder program, one part of which shall be the intra-agency posting of all nonentry level positions for at least ten (10) days before any public posting. The Commissioner or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this section.

(q) CONSUMER INFORMATION. The Board shall prepare information of consumer interest describing the regulatory functions of the Board and Commissioner and describing the Board’s and Commissioner’s procedures by which consumer complaints are filed with and resolved by the Board or Commissioner. The Board shall make the information available to the general public and appropriate state agencies. There shall be prominently displayed at all times in the place of business of each dealer, salesman, or agent regulated under this Act, a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that the complaints against a dealer, salesman, or agent may be directed to the Board.

(r) AUDIT. The state auditor shall audit the financial transactions of the Board during each fiscal year.

(s) OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE. The Board and Commissioner are subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon’s Texas
Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) COMPLAINT FILES. The Commissioner shall keep an information file about each complaint filed with the Commissioner or Board relating to a person licensed under this Act.

(u) NOTICE TO COMPLAINANTS. If a written complaint is filed with the Commissioner or Board relating to a person registered under this Act, the Commissioner, at least as frequently as quarterly and until the 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.

(v) SUNSET. The State Securities Board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1995.

Sec. 4.07. INVESTIGATIONS AND SUBPOENAS.

(a) INVESTIGATIONS. The commissioner in his discretion:

(1) may make such public or private investigations within or without this state as he considers necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or order hereunder, or to aid in the enforcement of this Act or in the prescribing of rules and forms hereunder;

(2) may require or permit any person to file a statement in writing under oath or otherwise as the commissioner determines, as to all the facts and circumstances relevant to the matter to be investigated; and

(3) may publish information concerning any violation of this Act or any rule or order hereunder.

(b) SUBPOENA. For purposes of any investigation or proceeding under this Act, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner considers relevant to the inquiry. A witness may be accompanied, represented, and advised by counsel, and may have an accurate transcript of his testimony, at his expense, by a reporter used by the commissioner. Any subpoena, summons, or other process issued by the commissioner may be served, at the commissioner's discretion, by the commissioner, his authorized agent, a sheriff, or a constable.

(c) SUBPOENA ENFORCEMENT. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the District Court of Travis County or the district court of any other county where service can be obtained on the person, on application by the commissioner, may issue to the person an order requiring him to appear before the commissioner, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence relevant to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) CONFIDENTIALITY; LIMITED DISCLOSURE. Information obtained by the commissioner in the course of an investigation or for enforcement purposes is confidential within the meaning of the open records act, Section 3(a)(1), Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be disclosed except:

(1) pursuant to court order;

(2) in an administrative hearing under this Act; or

(3) in the commissioner's discretion, to any governmental authority approved by board rule or to any quasi-governmental authority charged with overseeing securities activities which is approved by board rule.
(e) PERMITTED DISCLOSURE. The disclosure under Subsection (d) does not violate this Act or the open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon’s Texas Civil Statutes).

Sec. 4.08. CEASE AND DESIST ORDERS. (a) GROUNDS. The commissioner may enter against any person a cease and desist order prohibiting an act or practice if he finds that:
(1) the order is in the public interest; and
(2) the person has engaged or is about to engage in the act or practice that constitutes a violation of this Act or of any rule adopted or order issued under this Act.

(b) PROCEDURE. A cease and desist order may not be entered under this section without compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon’s Texas Civil Statutes).

(c) POWER TO VACATE OR MODIFY. The commissioner may vacate or modify a cease and desist order if he finds that the conditions that prompted its entry have changed or that it is otherwise in the public interest to do so.

Sec. 4.09. STOP-OFFER NOTICES. (a) GROUNDS. The commissioner may enter a stop-offer notice against any person prohibiting the offering of a security in this state if he:
(1) finds that the notice is in the public interest; and
(2) has reason to believe that the offer is fraudulent or likely to deceive a reader or recipient of the order.

(b) PROCEDURE. A stop-offer notice under this section is not effective until the commissioner gives a copy of the notice to the person named in the notice.

(c) POWER TO VACATE OR MODIFY. The commissioner may vacate or modify a stop-offer notice if he finds that the conditions that prompted its entry have changed or that it is otherwise in the public interest to do so.

Sec. 4.10. INJUNCTIONS; ANCILLARY RELIEF. (a) AUTHORITY TO BRING SUIT. Whenever it appears to the attorney general or the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of this Act or any rule adopted or order issued under this Act, the attorney general on his own initiative or at the request of the commissioner may bring an action in the name of the state to enjoin the acts or practices and to enforce compliance with this Act or any rule adopted or order issued under this Act. The attorney general, in his discretion, may delegate to the commissioner the power to bring the action.

(b) VENUE. The action may be brought in the district court of any county where any defendant resides; where any defendant has his or its principal place of business or, if a corporation, its registered agent or office; or where any act or practice constituting the violation occurred. That district court has jurisdiction and venue of the action. This subsection controls over any other law fixing jurisdiction or venue for such an action.

(c) RELIEF. On a proper showing:
(1) the court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus and may appoint a receiver or conservator for the defendant or the defendant’s assets; or
(2) the court may grant restitution, rescission, or similar relief to compensate identifiable persons for actual damages from or to restore money or property acquired by a defendant’s violation of Section 1.01, 1.02(a), or 1.03 and, so far as feasible, the relief shall be comparable to the rescission or damages the identifiable persons would receive as plaintiffs under Sections 4.13(b)-(p), excluding attorneys’ fees.
(d) **BOND NOT REQUIRED.** The court may not require the attorney general or the commissioner to post a bond.

Sec. 4.11. **RECEIVERSHIPS OF PERSONS OR ASSETS OF PERSONS ACTING AS BROKER-DEALERS.** (a) **GROUNDS.** An action may be brought under this section for the appointment of a receiver for a person or for the assets of a person, with or without an action under Section 4.10, whenever it appears to the attorney general or the commissioner, either on complaint or otherwise, that:

1. a person, a substantial portion of whose business consists of acting as a broker-dealer, whether or not registered under this Act, has engaged in any act, transaction, practice, or course of business in violation of Section 1.01, 1.02(a) or 1.03;

2. the person acted as a broker-dealer in connection with the violation; and

3. the appointment of a receiver for the person or the assets of the person is necessary in order to conserve and protect the assets of the person for the benefit of customers, security holders, or other actual and potential claimants of the person.

(b) **SUITE BY ATTORNEY GENERAL OR COMMISSIONER.** The attorney general on his own initiative may bring the action in the name of the state. The attorney general in his discretion may delegate the power to bring the suit to the commissioner. The petition for relief must be verified by the commissioner on information and belief.

(c) **VENUE.** The action may be brought in the district court of any county where the defendant resides; where the defendant has his or its principle business or, if a corporation, its registered agent or office; or where any act or practice constituting the violation occurred. That district court has jurisdiction and venue of the action. This subsection controls over any other law fixing jurisdiction or venue for such an action.

(d) **SUBPOENAS.** The attorney general or commissioner may apply for, and on proper showing be entitled to have issued, the court's subpoena requiring the immediate appearance of the defendant and his employees, salesmen, or agents and the production of documents, books, and records as may appear necessary for any hearing, to testify and give evidence concerning matters relevant to the appointment of a receiver.

(e) **APPOINTMENT; HEARING.** In any action brought by the attorney general or commissioner under Subsection (b), the court, on a proper showing by the attorney general or the commissioner of the existence of the facts enumerated in Subsection (a) with respect to a person, may appoint a receiver for the person or the assets of the person. If the receiver is appointed without notice to and opportunity for the person to be heard, the person is entitled to apply in writing to the court for an order dissolving the receivership, and, if application is made within the 30-day period beginning on the day of service on the person of the court's order making the appointment, is entitled to a hearing on the order on 10 days' written notice to the attorney general or commissioner.

(f) **QUALIFICATION; BOND.** A person may not be appointed a receiver pursuant to this section unless the person is found by the court, after hearing the views of the attorney general or the commissioner and, if considered by the court to be practicable, the person against whom relief is sought, to be qualified to discharge the duties of receiver giving due consideration to the probable nature and magnitude of the duties of the receiver in the particular case. No bond for receivership shall be required of the commissioner or attorney general in any action under this section. The court shall require a bond of any receiver appointed under this section, conditioned on faithful discharge of the receiver's duties, in an amount found by the court to be sufficient, giving due consideration to the probable nature and magnitude of the duties of the receiver in the particular case.
(g) SAVINGS OF EXISTING REMEDIES. The remedy in this section is in addition to all other remedies afforded the commissioner or the attorney general by other provisions of statutory or decisional law of this state, including any provision authorizing receiverships.

Sec. 4.12. CRIMINAL PENALTIES. (a) LICENSE AND REGISTRATION VIOLATIONS. Any person who intentionally or knowingly violates Section 2.01 or 3.01 of this Act, commits a felony and, on conviction, shall be fined not more than $5,000 or imprisoned for not more than 10 years, or both.

(b) FRAUD VIOLATIONS. Any person who intentionally or knowingly does an act which violates Section 1.01, 1.02(a), or 1.03 of this Act commits a felony and, on conviction, shall be punished by:

(1) confinement for:
   (A) not less than 2 or more than 10 years if the money or the value of the property obtained by the violation is less than $20,000; or
   (B) not less than 2 or more than 20 years if the money or the value of the property obtained by the violation is $20,000 or more; or

(2) a fine of not more than:
   (A) $5,000, if the money or the value of the property obtained by the violation is less than $20,000; or
   (B) $10,000, if the money or value of the property obtained by the violation is $20,000 or more; or

(3) both confinement and a fine.

(c) OTHER VIOLATIONS. Any person who intentionally or knowingly violates any other section of this Act, or any rule or order under this Act, commits a felony and, on conviction, shall be fined not more than $1,000 or imprisoned in the penitentiary for not more than two years, or both; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.

(d) SAVINGS OF OTHER CRIMES. Nothing in this Act limits the power of the state to punish any person for any conduct which constitutes a crime by any other statute or at common law.

(e) STATUTE OF LIMITATIONS FOR FRAUD. Indictments for violations of Section 1.01, 1.02 or 1.03 must be presented within the five-year period beginning on the date of commission of the offense and not afterward.

Sec. 4.13. CIVIL LIABILITIES. (a) LIABILITY OF SELLERS FOR LICENSE, REGISTRATION, AND RELATED VIOLATIONS. A person who sells a security in violation of Section 2.01(a), 3.01, 3.05(k), or 4.05(b) or an order under Section 4.08 is liable to the person buying the security from him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security.

(b) LIABILITY OF SELLERS FOR FRAUD. A person who offers or sells a security, whether or not the security or transaction is exempt under Section 4.02, by means that constitute a violation of Section 1.01 is liable to the person buying the security from him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security. However, the offeror or seller is not liable if he sustains the burden of proof that:

(1) the buyer knew of the facts constituting the violation; or
(2) the offeror or seller did not know, and in the exercise of reasonable care could not have known, of facts constituting the violation, unless the offeror or seller is the issuer of the security (other than a government issuer identified in Section 4.02(a)(1)), and the violation is an untruth or omission in a prospectus required by Section 3.05(k) or in a writing prepared and delivered by the issuer in the sale of a security.
(c) LIABILITY OF BUYERS FOR FRAUD. A person who offers to buy or buys a security, whether or not the security or transaction is exempt under Section 4.02, by means that constitute a violation of Section 1.01 is liable to the person selling the security to him, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the security. However, an offeror or buyer is not liable if he sustains the burden of proof that either the seller knew of the facts constituting the violation or the offeror or buyer did not know, and in the exercise of reasonable care could not have known, of the facts constituting the violation.

(d) LIABILITY OF INVESTMENT ADVISERS. A person who violates Section 1.02 is liable to his client for damages caused by the violation, plus interest. However, a person is not liable if he sustains the burden of proof that either the client knew of the facts constituting the violation or the adviser did not know, and in the exercise of reasonable care could not have known, of the facts constituting the violation. Damages under this subsection shall be measured as at common law.

(e) LIABILITY OF MANIPULATORS. A person who violates Section 1.03 is liable to any person buying or selling a security at a price affected by the violation for damages, plus interest. However, a person is not liable if he sustains the burden of proof that the plaintiff knew of the facts constituting the violation. Damages under this subsection shall be computed as the difference between the price at which the plaintiff bought or sold the security and the market price that the security would have had at the time of the purchase or sale if there had been no manipulation.

(f) LIABILITY OF ISSUERS THAT REGISTER. This subsection applies only to an issuer for whose securities a registration statement has been filed under Section 3.02, 3.03, or 3.04 by the issuer or by another person with the issuer's written consent and which statement has become effective. If the prospectus required by Section 3.05(k) in connection with the registration contains, as of its effective date, an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the issuer is liable to a person buying the registered security, who may sue either at law or in equity for rescission or for damages if the buyer no longer owns the securities. However, an issuer is not liable if it sustains the burden of proof that the buyer knew of the untruth or omission.

(g) BUYER'S RECOVERY ON RESCISSION. On rescission, a buyer, on tender of the security or a security of the same class and series, is entitled to recover an amount equal to the consideration he paid for the security plus interest from the date of payment by him, less the amount of any income he received on the security.

(h) SELLER'S RECOVERY ON RESCISSION. On rescission, a seller, on tender of the amount of the consideration he received for the security plus interest from the date of receipt by him less the amount of any income the buyer received on the security, is entitled to recover the security or a security of the same class and series.

(i) TIME OF TENDER. Any tender specified in Subsection (g) or (h) may be made at any time before entry of judgment.

(j) BUYER'S RECOVERY OF DAMAGES UNDER SUBSECTIONS (a), (b), (f). A buyer who prevails in a suit or on a claim for damages under Subsections (a) or (b) or (subject to Subsection (f)) under Subsection (f) is entitled to an amount equal to the consideration he paid for the security plus interest from the date of payment by him, less the sum of the value of the security at the time he disposed of it plus the amount of any income he received on the security.

(k) SELLER'S RECOVERY OF DAMAGES UNDER SUBSECTION (c). A seller who prevails in a suit or on a claim for damages under Subsection (c) is entitled to an amount equal to the sum of the value of the security at the time of sale plus the amount of any income the buyer received on the security, less the sum of the
consideration paid the seller for the security plus interest from the date of payment to the seller.

(I) **BUYER’S CONSIDERATION AND RECOVERY UNDER SUBSECTION (f).** For determining the amount recoverable by a buyer suing under Subsection (f):

1. the consideration the buyer paid is the lesser of:
   1. the price he paid for the security; or
   2. the price at which the security was offered to the public; and

2. the amount recoverable shall be reduced to the extent (which may be complete) the defendant proves that the untruth or omission did not cause the loss.

(m) **COSTS; ATTORNEY’S FEES.** In a suit for rescission or damages under this section, the prevailing party is entitled to recover court costs and may recover reasonable attorney’s fees if the court finds that the recovery is equitable in the circumstances.

(n) **COMPUTATION OF INTEREST.** Interest shall be computed at the Federal Reserve Bank discount rate or rates for the relevant periods.

(o) **LIABILITY OF CONTROL PERSONS.** A person who directly or indirectly controls a person liable under Subsection (a), (b), (c), (d), (e), or (f) is jointly and severally liable with the other person and to the same extent as if he were the other person, unless the controlling person sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(p) **LIABILITY OF AIDERS.** A person who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids another person liable under Subsection (a), (b), (c), (d), (e), or (f) is jointly and severally liable with the other person and to the same extent as if he were the other person.

(q) **CONTRIBUTION.** There is contribution as in cases of contract among the several persons so liable.

(r) **SURVIVABILITY OF ACTIONS.** Every cause of action under this Act survives the death of any person who might have been a plaintiff or defendant.

(s) **STATUTE OF LIMITATIONS.** (1) No person may sue under Subsection (a) or (o) or (p) so far as they relate to Subsection (a):

A. more than one year after the sale;
B. if he received a rescission offer (meeting the requirements of Subsection (t)) before suit unless he:
   i. rejected the offer in writing within 30 days of its receipt; and
   ii. expressly reserved in the rejection his right to sue; or
C. more than six months after he so rejected a rescission offer meeting the requirements of Subsection (t).

(2) No person may sue under Subsection (b), (f), or (o) or (p) so far as they relate to Subsection (b) or (f):

A. more than one year after discovery of the facts constituting the violation or after discovery should have been made by the exercise of reasonable diligence;
B. more than three years after the sale; or
C. if he received a rescission offer (meeting the requirements of Subsection (t)) before suit, unless he:
   i. rejected the offer in writing within 30 days of its receipt; and
   ii. expressly reserved in the rejection his right to sue; or
D. more than six months after he so rejected a rescission offer meeting the requirements of Subsection (t).

(3) No person may sue under Subsection (c) or (o) or (p) so far as they relate to Subsection (c):
(A) more than one year after discovery of the facts constituting the violation, or after discovery should have been made by the exercise of reasonable diligence;
(B) more than three years after the purchase;
(C) if he received a rescission offer meeting the requirements of Subsection (u) before suit unless he:
   (i) rejected the offer in writing within 30 days of its receipt; and
   (ii) expressly reserved in the rejection his right to sue; or
(D) more than six months after he so rejected a rescission offer meeting the requirements of Subsection (u).
(4) No person may sue under Subsection (d), (e), (o), or (p) so far as they relate to Subsection (d) or (e):
   (A) more than one year after discovery of the facts constituting the violation, or after discovery should have been made by the exercise of reasonable diligence; or
   (B) more than three years after the plaintiff's purchase or sale.

REQUIREMENTS OF A RESCISISON OFFER TO BUYERS. For a rescission offer under Subsection (s)(1) or (s)(2) to be valid:
(1) the offer must include financial and other information material to the offeree's decision whether to accept the offer, and may not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
(2) the offeror shall deposit funds in escrow in a state or national bank doing business in this state, or in another bank approved by the commissioner, or receive an unqualified commitment from such a bank to furnish funds sufficient to pay the amount offered; however, the commissioner may waive or modify this requirement for good cause;
(3) the amount of the offer to a buyer who still owns the security must be the amount, excluding costs and attorneys' fees, he would recover on rescission under Subsection (g);
(4) the amount of the offer to a buyer who no longer owns the security must be the amount, excluding costs and attorneys' fees, he would recover in damages under Subsection (j);
(5) the offer must state:
   (A) the amount of the offer given, as determined pursuant to Subdivision (3) or (4), which must be given:
      (i) so far as practicable, in terms of a specified number of dollars and a specified rate of interest for a period starting at a specified date, and,
      (ii) so far as necessary, in terms of specified elements, such as the value of the security when it was disposed of by the offeree, known to the offeree but not to the offeror, which are subject to the furnishing of reasonable evidence by the offeree;
   (B) the name and address of the bank where the amount of the offer will be paid;
   (C) that the offeree will receive the amount of the offer within a specified number of days, not more than 30, after receipt by the bank, in form reasonably acceptable to the offeror and in compliance with the instructions in the offer, of:
      (i) the security, if the offeree still owns it, or evidence of the fact and date of disposition if he no longer owns it, and
      (ii) evidence, if necessary, of elements referred to in Paragraph (A)(ii);
   (D) conspicuously that the offeree may not sue on his purchase under Subsection (a), (b), or (f) or Subsection (a) or (p) so far as they relate to Subsection (a), (b), or (f) unless:
      (i) he accepts the offer but does not receive the amount of the offer, in which case he may sue within the time allowed by Subsection (s)(1)(A), (s)(2)(A), or (s)(2)(B), as applicable; or
(ii) he rejects the offer in writing within 30 days of its receipt and expressly reserves in the rejection the right to sue, in which case he may sue within six months after he so rejects;

(E) in reasonable detail, the nature of the violation of this Act that occurred or may have occurred; and

(F) any other information the offeror wants to include.

(u) REQUIREMENTS OF A RESCISSION OFFER TO SELLERS. A rescission offer under Subsection (s)(3) must meet the following requirements:

(1) the offer must include financial and other information material to the offeree's decision whether to accept the offer, and may not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(2) the offeror shall deposit the securities in escrow in a state or national bank doing business in this state, or in another bank approved by the commissioner; however, the commissioner may waive or modify this requirement for good cause;

(3) the terms of the offer must be the same, excluding costs and attorney's fees, as the seller would recover on rescission under Subsection (h);

(4) the offer must state:

(A) the terms of the offer given, as determined pursuant to Paragraph (3), which must be given:

(i) so far as practicable, in terms of a specified number and kind of securities and a specified rate of interest for a period starting at a specified date, and,

(ii) so far as necessary, in terms of specified elements known to the offeree but not the offeror, which are subject to the furnishing of reasonable evidence by the offeror;

(B) the name and address of the bank where the terms of the offer will be carried out;

(C) that the offeree will receive the securities within a specified number of days, not more than 30, after receipt by the bank, in form reasonably acceptable to the offeror and in compliance with the instructions in the offer, of:

(i) the amount required by the terms of the offer; and

(ii) evidence, if necessary, of elements referred to in Paragraph (A)(ii);

(D) conspicuously that the offeror may not sue on his sale under Subsection (c) or Subsection (o) or (p) so far as they relate to Subsection (c) unless:

(i) he accepts the offer but does not receive the securities, in which case he may sue within the time allowed by Subsection (s)(3)(A) or (s)(3)(B), as applicable; or

(ii) he rejects the offer in writing within 30 days of its receipt and expressly reserves in the rejection his right to sue, in which case he may sue within six months after he so rejects;

(E) in reasonable detail, the nature of the violation of this Act that occurred or may have occurred; and

(F) any other information the offeror wants to include.

(v) UNENFORCEABILITY OF ILLEGAL CONTRACTS. No person who has made or engaged in the performance of any contract in violation of this Act or any rule or order or requirement hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(w) WAIVERS VOID. A condition, stipulation, or provision binding a buyer or seller of a security to waive compliance with a provision of this Act or a rule or order or requirement hereunder is void.

(x) SAVINGS OF EXISTING REMEDIES. The rights and remedies provided by this Act are in addition to any other rights, including exemplary or punitive damages, or remedies that may exist at law of inequity.
(y) ACTIONS FOR COMMISSIONS. Except as provided in this subsection, no person shall maintain any action in the courts of this state for collection of a commission or compensation for services rendered in the sale or purchase of securities without alleging and proving that he was duly licensed under this Act and that the securities so sold were duly registered under this Act at the time the alleged cause of action arose. This subsection does not apply:

1. to the sale or purchase of securities exempted by Section 4.02(a) when sold by a registered broker-dealer or licensed agent;
2. to transactions exempted by Section 4.02(d);
3. to transactions exempted by Section 4.02(c).

Sec. 4.14. APPEAL AND JUDICIAL REVIEW OF ORDERS. (a) APPEAL TO STATE SECURITIES BOARD. Any person aggrieved by an order of the commissioner may request a hearing before the board. 

(b) HEARING. Within 45 days after receipt of the request, the hearing must be held by the board, or by a hearing officer (who need not be an employee of the board) appointed by the board who has not been previously involved in the order. The board or hearing officer may set the hearing at a later date with consent of the requester. 

(c) NOTICE. The aggrieved party shall have at least 10 days’ notice of the time and place of the hearing.

(d) FINDINGS. Except as provided by this subsection, the board or hearing officer shall issue written findings accompanied by a written opinion not later than 30 days after the day on which the hearing is completed. If the hearing concerns an application for registration of securities by coordination, under Section 3.03, with a registration statement filed under the Securities Act of 1933, the decision shall be given within 10 days after the day on which the hearing is completed, or within 10 days after the effective date of the federal registration statement, whichever is later.

(e) APPEAL TO BOARD IS OPTIONAL. A request to the board for hearing is optional with the aggrieved party and is not a condition precedent to an appeal to the courts under Subsection (f).

(f) APPEAL TO COURTS. Any person aggrieved by an order of the board, commissioner, or hearing officer may obtain judicial review of the order in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon’s Texas Civil Statutes) under the substantial evidence rule.

(g) EFFECT OF APPEAL. The beginning of proceedings under Subsection (a) does not, unless specifically ordered by the board, operate as a stay of the commissioner’s order.

(h) EFFECT OF JUDGMENT. A judgment under Subsection (f) sustaining the denial, suspension, or revocation of a license of a broker-dealer or agent does not bar, after one year, a new application for a license. A judgment granting such a license does not prevent the commissioner from denying, suspending, or revoking the license in accordance with Section 2.04 for any proper cause that may accrue or be discovered after the judgment.

(i) COSTS. The courts may dispose of all costs.

Sec. 4.15. RULES, FORMS, ORDERS, AND HEARINGS. (a) AUTHORITY. The board, and the commissioner where specifically authorized by this Act, may (taking into account the purposes of Section 4.19) from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this Act, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with the provisions of this Act. For the purposes of rules and forms, the board may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.
(b) STANDARDS FOR ADOPTION. No rule, form, or order may be made, amended, or rescinded unless the board or the commissioner, as the case may be, finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act. The board and commissioner may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the purposes of Section 4.19.

(c) RESTRICTIONS ON RULES. The board may not adopt rules restricting competitive bidding or advertising by a person licensed under this Act except to prohibit false, misleading, or deceptive practices by the person. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that restricts the person's use of any medium for advertising, restricts the person's personal appearance or use of his voice in an advertisement, relates to the size or duration of an advertisement by the person, or restricts the person's advertisement under a trade name. However, this section does not affect limitations on public solicitation contained in Section 4.02(c)(10), (11), or (16) or in rules adopted by the board under Section 4.02(c)(20).

(d) FORM AND CONTENT OF FINANCIAL STATEMENTS. All financial statements shall be prepared in accordance with generally accepted accounting principles except as the board by rule or the commissioner by order may prescribe. The board by rule may prescribe whether any required financial statements shall be accompanied by an opinion of independent public or independent certified public accountants.

(e) PROCEDURE; PUBLICATION. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to the board's and commissioner's rules and forms.

(f) GOOD FAITH RELIANCE. No provision of this Act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the board or commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(g) HEARING TO BE PUBLIC. Except as provided by this subsection, every hearing in an administrative proceeding shall be public. To the extent permitted by the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the board or commissioner, in its or his discretion, may grant a request joined in by all the respondents that the hearing be conducted privately.
jurisdiction may, on cause shown, require the production of the original entry or document.

e) OPINIONS. The board or commissioner in its or his discretion may honor requests from interested persons for interpretative opinions.

(f) RECORD RETENTION. The board or commissioner shall retain records relating to securities registration for at least five years, and those relating to broker-dealer, investment adviser, and agent licenses for at least 10 years. After the requirements of this subsection are met, the records may be destroyed.

Sec. 4.17. SCOPE OF ACT AND SERVICE OF PROCESS. (a) SELLERS. Sections 1.01, 2.01(a), 3.01, 4.05, and 4.13(a), (b), (f), (o), (p), and (q) apply to persons who sell or offer to sell when:

(1) an offer to sell is made in this state; or

(2) an offer to buy is made and accepted in this state.

(b) BUYERS. Sections 1.01, 2.01(a), 4.05, and 4.13(c), (o), (p), and (q) apply to persons who buy or offer to buy when:

(1) an offer to buy is made in this state; or

(2) an offer to sell is made and accepted in this state.

(c) OFFERS IN THIS STATE. For the purpose of this section:

(1) an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer:

(A) originates from this state; or

(B) is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer; and

(2) a broker-dealer whose name is included in a written or broadcast offer along with the name of a licensed broker-dealer is not considered to make an offer in this state by that fact alone.

(d) ACCEPTANCE IN THIS STATE. For the purpose of this section:

(1) an offer to buy or to sell is accepted in this state when acceptance:

(A) is communicated to the offeror in this state; and

(B) has not previously been communicated to the offeror, orally or in writing, outside this state; and

(2) acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(e) PUBLICATIONS, RADIO, AND TELEVISION. Unless an offer in any of the media listed in Subdivision (1) or (2) is, by its express terms, addressed to persons in this state, an offer to sell or to buy is not made in this state when:

(1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(2) a radio or television program originating outside this state is received in this state.

(f) INVESTMENT ADVICE. Sections 1.02, 2.01(c), 4.13(c), (o), (p), and (q), as well as Section 4.05, so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) CONSENT TO SERVICE OF PROCESS. Every applicant for registration under this Act and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner in such form as he by rule prescribes, an irrevocable consent
appointing the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor or administrator which arises under this Act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has in connection with a previous registration filed such a consent which remains in effect need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

1. the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the commissioner; and

2. the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(b) SUBSTITUTED SERVICE OF PROCESS. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this Act or any rule or order hereunder, and he has not filed a consent to service of process under Subsection (g) and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor or administrator which grows out of that conduct and which is brought under this Act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by delivering to and leaving with the commissioner, the deputy commissioner, or any employee designated by the commissioner to receive process, a copy of the process. The service is not effective unless:

1. the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice; and

2. the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) CONTINUANCES. When process is served under this section, the court, or the commissioner in a proceeding before him, shall order such continuances as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

Sec. 4.18. FEES. (a) COLLECTION. The commissioner or board shall charge and collect the fees prescribed by this section and shall pay all fees received into the general revenue fund of the state treasury.

(b) BROKER-DEALER OR INVESTMENT ADVISER LICENSE. The fee for filing an initial or renewal application for a license as a broker-dealer or investment adviser under Section 2.02 is $200.

(c) AGENT LICENSE. The fee for filing an initial or renewal application for a license as an agent under Section 2.02 is $50.

(d) AMENDMENT. The fee for filing an amendment to a broker-dealer, investment adviser, or agent license is $20.

(e) DUPLICATE LICENSE. The fee for issuance of a duplicate license is $20.

(f) REGISTRATION STATEMENT. The fee for filing a registration statement for a security under Sections 3.02, 3.03, or 3.04 (whether or not the registration statement becomes effective) is one-tenth of one percent of the maximum aggregate offering price at which the securities to be registered are to be
offered in this state. The board, taking into account the nature of the security, the offering, and other relevant factors, may:

1. by rule or order reduce the fee for filing a registration statement for specified classes of securities or offerings; and
2. by rule or order determine, for fee calculation purposes, the offering price when the offering is not cash.

(g) AMENDMENT TO REGISTRATION STATEMENT. The fee for filing an amendment to a registration statement is $50 plus any amounts required by Sections 3.05(i) and (j).

(b) COPIES OF DOCUMENTS. The fee for copies of a document in the commissioner's office, or for certification of the copies, is equal to the fee that the secretary of state is authorized to charge for similar documents.

(i) APPLICATION FOR APPROVAL OF STOCK EXCHANGE. The fee for filing an application for approval of a stock exchange under Section 4.02(a)(8) is $1,000.

(j) REFUNDS. If the commissioner or board determines that all or part of a fee should be refunded, the commissioner may make the refund by warrant on the state treasury from funds appropriated from the general revenue fund for that purpose.

Sec. 4.19. PURPOSES. (a) UNIFORMITY. This Act shall be construed and implemented so as to effectuate its general purpose to make uniform the law of those states which enact similar provisions.

(b) FEDERAL-STATES COORDINATION. This Act shall be construed and implemented so as to effectuate its general purpose to maximize coordination with federal and other states' law and administration, particularly with respect to:
1. procedure, reports, and forms; and
2. exemptions.

(c) INVESTOR PROTECTION; CAPITAL FORMATION; RELATED MATTERS. This Act shall be construed and implemented so as to effectuate its general purposes to protect investors (principally through full disclosure of material information and through vigorous enforcement against fraud) but, consistent therewith, to encourage capital formation and free and competitive securities markets and to minimize regulatory burdens on persons subject to the Act (especially small businesses).

Sec. 4.20. SHORT TITLE. This Act may be cited as the Texas Securities Act of 1983.

Sec. 4.21. REFERENCES TO OTHER STATUTES. References in this Act to other statutes are to the other statutes as they exist on the effective date of this Act or as they may be amended after that date, or to other statutes of similar import which may replace them in the future.

Sec. 4.22. INTERNAL REFERENCES. In this Act:
1. a reference to a section without further identification is a reference to a section of this Act; and
2. a reference to a subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this Act in which the reference appears.

SECTION 5. REPEAL AND SAVINGS PROVISIONS. (a) The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is repealed except as saved in this section.

(b) Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this Act, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought
within any period of limitation which applied when the cause of action accrued and in any event within two years after the effective date of this Act.

(c) All effective registrations under prior law, all administrative orders relating to such registrations, and all conditions imposed on such registrations remain in effect so long as they would have remained in effect if this Act had not been passed. They are considered to have been filed, entered, or imposed under this Act, but are governed by prior law.

(d) Prior law applies in respect to any offer or sale made within one year after the effective date of this Act pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.

(e) Judicial review of all administrative orders as to which review proceedings have not been instituted before the effective date of this Act are governed by Section 4.14, Texas Securities Act of 1983, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within 60 days after the effective date of this Act.

(f) This Act does not affect:

(1) Article I la, Chapter IV, The Texas Banking Code of 1943 (Article 342-41a, Vernon's Texas Civil Statutes);
(2) Section 11.01, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes);
(3) Section 19, The Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes);
(4) Section 4.07, Health Facilities Development Act (Article 1528j, Vernon's Texas Civil Statutes);
(5) Section 11.17, Texas Credit Union Act (Article 2461-11.17, Vernon's Texas Civil Statutes);
(6) Section 18, Hospital Project Financing Act (Article 4437c-2, Vernon's Texas Civil Statutes); or
(7) Articles 3.72 and 3.73, Insurance Code.

SECTION 6. TRANSITION. A person holding office as a member of the securities board on the effective date of this Act continues to hold office for the term for which the member was originally appointed.

SECTION 7. EFFECTIVE DATE. This Act takes effect September 1, 1983.

SECTION 8. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Representative Wolens offered the following amendment to the Wolens amendment:

Amend Wolens amendment to SB 106 on page 11, line 26 by deleting "or has been convicted of a felony;" and substituting in lieu thereof "or has been convicted, at any time, of a misdemeanor of which fraud is an essential element or of a felony."

The amendment was adopted without objection.

Representative Wolens offered the following amendment to the Wolens amendment, as amended:

Amend Wolens amendment to SB 106:
(1) On page 12, line 8 by inserting after "Securities and Exchange Commission" and before "denying or revoking": "or the Commodity Futures Trading Commission."

The amendment was adopted without objection.
(2) On page 12, line 15 by inserting after “Fraud order” and before the semicolon: “or is the subject of an order based on a finding of fraud by any federal or state agency.”

The amendment was adopted without objection.

Representative Wolens offered the following amendment to the Wolens amendment, as amended:

Amend Wolens amendment to SB 106:

(1) On page 84, line 23 by inserting after “is” and before “one-tenth”: “$50 plus.”

(2) On page 85, lines 5-7 by deleting Subsection (g) and substituting in lieu thereof:

“(g) AMENDMENT TO REGISTRATION STATEMENT. The fee for filing an amendment to a registration statement is:

(1) $50 plus

(2) The percentage fee specified in Subsection (f) for any increase in the maximum offering price effected by the amendment, plus

(3) any amount required by Section 3.05(j).”

The amendment was adopted without objection.

Representative C. Evans moved to table the Wolens amendment, as amended.

(Robnett now present)

The vote of the house was taken on the motion to table the Wolens amendment and the vote was announced yeas 70, nays 68.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 445): 69 Yeas, 62 Nays, 2 Present, not voting.

Yeas — Arnold; Barrientos; Barton, E.; Bomer; Cain; Carriker; Cary; Colbert; Coody; Criss; Danburg; Davis; Delco; Denton; Eikenburg; English; Evans, C.; Evans, L.; Finnell; Fox; Gamez; Gibson, B.; Glossbrenner; Green; Grisham; Haley; Hall, L.; Hall, T.; Hall, W.; Hanna; Harrison, D.; Harrison, W.; Hightower; Hill, G.; Hury; Keller; Kemp; Kuempel; Lee, D.; Lee, E. F.; Luna; Madia; Mankins; Martinez, R.; Millsap; Patronella; Patterson; Peveo; Pierce; Polk; Polumbo; Presnal; Price; Ragsdale; Rangel; Robinson; Schluter; Shaw; Short; Sutton; Thompson, G.; Thompson, S.; Tow; Valles; Waldrop; Wallace; Watson; Wieting; Willis.

Nays — Agnich; Armbrister; Barton, B.; Blanton; Burnett; Clark; Collazo; Connelly; Craddock; Crockett; DeLay; Eckels; Emmett; Gandy; Garcia, A.; Gavin; Geistweidt; Gibson, J.; Gilley; Granoff; Hammond; Hilbert; Hill, A.; Hill, P.; Hinojosa; Hollowell; Horn; Hudson, D.; Hudson, S.; Jackson; Jones; Khoury; Kubiak; Laney; Leonard; McKenna; McWilliams; Martinez, W.; Messer; Moreno, A.; Oliveira; Oliver; Parker; Pennington; Robnett; Rudd; Russell; Saunders; Schoolcraft; Simpson; Smith, A.; Smith, T.; Staniswalis; Stiles; Toomey; Turner; Uher; Vowell; Whaley; Wolens; Word; Wright.

Present, not voting — Mr. Speaker; Wilson.

Absent, Excused — Buchanan; Garcia, M.; Salinas.

Absent — Berlanga; Bush; Cavazos; Ceverha; Clemens; Edwards; Hackney; Heflin; Hernandez; Moreno, P.; Patrick; Shea; Smith, C.; Tejeda.
The chair stated that the motion to table prevailed by the above vote.

MESSAGE FROM THE SENATE

Austin, Texas, May 19, 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 569 by Vale, relating to the district courts of Bexar County, Texas.
SB 1237 by Parker, relating to the membership of the Court of Appeals for the Ninth Supreme Judicial District.
SB 1271 by Howard, relating to the temporary imposition of local sales and use taxes in certain cities for the financing of justice centers located on the state line.
SB 1337 by Mauzy, relating to a loan program for students preparing to teach primary and secondary grade subjects for which teachers are critically needed.
SB 1346 by Farmer and Montford, relating to the regulation of the care and treatment of animals in commercial kennels and to licensing of facilities and personnel.
SB 1409 by Truan, relating to the composition and compensation of the Nueces County Juvenile Board.
SB 673 by Traeger, relating to licensing and regulation of motor vehicle storage facilities and the placement of motor vehicles in such facilities.

Respectfully,
Betty King
Secretary of the Senate

HJR 19 - RULES SUSPENDED

Representative Delco moved to suspend all necessary rules to allow the Conference Committee on HJR 19 to meet while the house is in session.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Conference Committee on HJR 19 will meet at this time in the speakers committee room.

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for the remainder of today because of important business:

Tejeda on motion of Madla.
Hackney on motion of Luna.

SB 106 - (consideration continued)

Representative Wolens offered the following amendment to the bill:

Amend SB 106, page 38, line 6, by adding the following before Section 7 and renumbering Sections 7 and 8 as Sections 8 and 9:
'SECTION 7. The Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 10-1 to read as follows:

'Section 10-1. PURPOSES. (a) FEDERAL-STATES COORDINATION. This Act may be construed and implemented so as to effectuate its general purpose to maximize coordination with federal and other states' law and administration, particularly with respect to:

(1) procedure, reports and forms; and
(2) exemptions.

(b) INVESTOR PROTECTION; CAPITAL FORMATION; RELATED MATTERS. This Act may be construed and implemented so as to effectuate its general purposes to protect investors (principally through registration of securities, licensing of persons, full disclosure of material information and vigorous enforcement against fraud) and, consistently therewith to encourage capital formation and job formation and free and competitive securities markets and to minimize regulatory burdens on issuers and persons subject to the Act (especially small businesses).”

The amendment was adopted without objection.

Representative Wolens offered the following amendment to the bill:

Amend SB 106, page 38, line 6 by adding the following before Section ______ and renumbering Sections __________ as Sections __________:

“SECTION __________. The Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes), is amended by adding Subsection 10D to Section 10 to read as follows:

'D. COMMISSIONER'S DISCRETION. In applying the “fair, just and equitable” standards of Sections 10A and 7C(2), the Commissioner may waive or relax any restriction or requirement in the Board's rules which, in his opinion, is unnecessary in a particular case.”

The amendment was adopted without objection.

SB 106, as amended, was passed to third reading.

HB 763 - LAID ON THE TABLE SUBJECT TO CALL

Representative Wolens moved that HB 763 be laid on the table subject to call.

The motion prevailed without objection.

HB 2000 - POSTPONED

Representative Jackson moved that consideration of HB 2000 be postponed until Monday, May 23, at 2 p.m.

The motion prevailed without objection.

SB 799 ON SECOND READING

(Price - House Sponsor)

The chair laid before the house, in lieu of HB 980, on its second reading and passage to third reading.

SB 799, A bill to be entitled An Act relating to student services fees at certain institutions of higher education; amending Section 54.503, Texas Education Code, as amended.

The bill was read second time and was passed to third reading.
HB 980 - LAID ON THE TABLE SUBJECT TO CALL

Representative Price moved that HB 980 be laid on the table subject to call.

The motion prevailed without objection.

SB 567 ON SECOND READING
(Presnal - House Sponsor)

The chair laid before the house on its second reading and passage to third reading, the complete committee substitute for SB 567.

CSSB 567

A BILL TO BE ENTITLED
AN ACT
relating to the rates of state and member contributions to the Teacher Retirement System of Texas.

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

SECTION 1. DEFINITION. In this Act "annual compensation" has the meaning assigned to that term by Section 31.001(4), Title 11OB, Revised Statutes.

SECTION 2. RATE OF STATE CONTRIBUTIONS. Instead of the rate of contributions required by Section 35.404(a), Title 11OB, Revised Statutes, the rate of state contributions to the Teacher Retirement System of Texas for the fiscal years beginning September 1, 1983, and September 1, 1984, may be determined in the General Appropriations Act at not less than 7.1 percent of the aggregate annual compensation of all members of the retirement system during the fiscal year.

SECTION 3. RATE OF MEMBER CONTRIBUTIONS. Instead of the rate of contributions required by Section 35.402, Title 11OB, Revised Statutes, the rate of member contributions to the Teacher Retirement System of Texas for the fiscal years beginning September 1, 1983, and September 1, 1984, is six percent of each member's annual compensation for the fiscal year.

SECTION 4. EXPIRATION DATE. This Act expires September 1, 1985.

SECTION 5. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

CSSB 567 was read second time.

Representative Presnal offered the following amendment to CSSB 567:

Amend CSSB 567 as follows:

1) Insert a new Section 4 to read as follows:

SECTION 4. OPTIONAL RETIREMENT CONTRIBUTIONS. Instead of the rates of contributions required by Section 36.201, Title 11OB, Revised Statutes, the rate of state contributions to the optional retirement program for the fiscal years beginning September 1, 1983, and September 1, 1984, is 8-1/2 percent of the aggregate annual compensation of all participants in the program during the fiscal year; and the rate of participant contributions to the optional retirement program for the fiscal years beginning September 1, 1983, and September 1, 1984, is 6.65 percent of each participant's annual compensation for the fiscal year.

2) Renumber current Sections 4 and 5 of the bill as Sections 5 and 6.

(Speaker in the chair)

The amendment was adopted without objection.
Representative Denton moved to table CSSB 567, as amended.

A record vote was requested.

Yeas — Armbrister; Arnold; Barrientos; Barton, B.; Cain; Carriker; Cavazos; Clark; Clemmons; Colbert; Collazo; Craddick; Crockett; Davis; Delco; Denton; Evans, L.; Finnell; Gamez; Gandy; Garcia, A.; Gilley; Glossbrenner; Granoff; Hall, L.; Hanna; Hightower; Hill, G.; Hinojosa; Hudson, D.; Hudson, S.; Hury; Jones; Kubiak; Lee, D.; Lee, E. F.; Leonard; Luna; McWilliams; Martinez, R.; Martinez, W.; Oliveira; Oliver; Patronella; Patterson; Pierce; Polumbo; Price; Ragsdale; Rangel; Robinson; Russell; Schoolcraft; Staniswalis; Valles; Watson; Wilson; Word.

Nays — Agnich; Barton, E.; Berlanga; Blanton; Bomer; Burnett; Bush; Cary; Connelly; Coody; Criss; Delay; Eckels; Eikenburg; Emmett; English; Evans, C.; Fox; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Green; Grisham; Haley; Hall, T.; Hall, W.; Hammond; Harrison, D.; Harrison, W.; Hellin; Hernandez; Hilbert; Hill, A.; Hill, P.; Hollowell; Horn; Jackson; Kemp; Khoury; Kucmcpel; Laney; McKenna; Madla; Mankins; Messer; Millsap; Moreno, A.; Parker; Peven; Polk; Presnal; Robnett; Rudd; Saunders; Schlueter; Shaw; Short; Simpson; Smith, A.; Smith, T.; Stiles; Sutton; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Uher; Vowell; Waldrop; Wallace; Whaley; Wieting; Willis; Wolens; Wright.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Buchanan; Garcia, M.; Hackney; Salinas; Tejeda.

A record vote was requested.

CSSB 567, as amended, was passed to third reading by (Record 447): 75 Yeas, 62 Nays, 1 Present, not voting.

Yeas — Agnich; Armbrister; Barton, E.; Berlanga; Blanton; Bomer; Burnett; Bush; Cary; Clark; Connelly; Coody; Criss; Danburg; Delay; Eckels; Eikenburg; Emmett; English; Fox; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Grisham; Hall, T.; Hall, W.; Hammond; Harrison, D.; Harrison, W.; Hellin; Hilbert; Hill, A.; Hill, P.; Hollowell; Horn; Jackson; Kemp; Khoury; Kubiak; Laney; Lee, E. F.; McKenna; Madla; Mankins; Messer; Millsap; Moreno, A.; Parker; Peven; Presnal; Robnett; Rudd; Saunders; Schlueter; Shaw; Short; Simpson; Smith, A.; Smith, T.; Stiles; Sutton; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Uher; Vowell; Waldrop; Whaley; Wieting; Willis; Wilson; Wolens; Wright.

Nays — Arnold; Barrientos; Barton, B.; Cain; Carriker; Cavazos; Clemmons; Colbert; Collazo; Craddick; Crockett; Davis; Delco; Denton; Evans, C.; Evans, L.; Finnell; Gander; Gandy; Garcia, A.; Gilley; Glossbrenner; Granoff; Green; Haley; Hall, L.; Hanna; Hernandez; Hightower; Hill, G.; Hinojosa; Hudson, D.; Hudson, S.; Hury; Jones; Kubiak; Lee, D.; Leon: Luna; McWilliams; Martinez, R.; Martinez, W.; Oliveira; Oliver; Patronella; Patterson; Pennington; Pierce; Polk; Polumbo; Price; Ragsdale; Rangel; Robinson; Russell; Schoolcraft; Staniswalis; Valles; Wallace; Watson; Word.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Buchanan; Garcia, M.; Hackney; Salinas; Tejeda.
Absent — Ceverha; Edwards; Moreno, P.; Patrick; Saunders; Shea; Smith, C.

Reason for Vote

Although I voted for the substitute to SB 567 when I would have normally voted against legislation of this type, I did so to fulfill the commitment I made in hammering out a compromise which would limit the reduction to two (2) years and insure that this reduction would not continue indefinitely. Even with the reduction called for in this bill, approximately one billion dollars in new money will be going into the Teacher Retirement System.

Madla

Reason for Vote

I reluctantly voted for SB 567 because it was the only way to insure passage of the Appropriations Bill which provides money for schools, hospitals, highways, the judiciary and all state services. The bill, as amended, will self destruct in 2 years and all teacher organizations assured it will not affect the actuarial soundness of the TRS. I have never voted against the teachers or retired teachers in my 29 years as Senator-Representative and I will continue to support their programs. I am ready to vote for whatever legislation is necessary to provide salary increases for teachers, state employees and provide money for other needed state services such as medical schools, hospitals, roads, etc.

Willis

HB 2452 - PERMISSION TO INTRODUCE

Representative T. Smith moved to suspend the constitutional rule for permission to introduce and have placed on first reading HB 2452.

The motion prevailed by (Record 448): 127 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Agnich; Armbriester; Arnold; Barrientos; Barton, B.; Barton, E.; Blanton; Bomer; Burnett; Cain; Carricker; Cavazos; Clark; Clemons; Colbert; Collazo; Coody; Craddock; Crockett; Danburg; Davis; DeLay; Delco; Denton; Eckels; Elkenburg; Emmett; English; Evans, C.; Evans, L.; Finnell; Fox; Gandy; Garcia, A.; Gavin; Geistweidt; Gibson, B.; Gibson, J.; Gilley; Glick; Glossbrenner; Granoff; Green; Grisham; Haley; Hall, T.; Hall, W.; Hammond; Hanna; Harrison, D.; Harrison, W.; Hellin; Hernandez; Hightower; Hilbert; Hill, A.; Hill, G.; Hill, P.; Hinojosa; Hollowell; Horn; Hudson, D.; Hudson, S.; Jackson; Jones; Kellers; Kemp; Khoury; Kumbak; Krueger; Laney; Lee, D.; Lee, E. F.; Leonard; Luna; McKenna; McWilliams; Madia; Martinez, R.; Martinez, W.; Messer; Millsap; Moreno, A.; Oliveira; Oliver; Parker; Patrnonella; Patterson; Pennington; Peveto; Pierce; Polk; Polumbo; Presnal; Price; Ragsdale; Rangel; Robinson; Robnett; Rudd; Russell; Saunders; Schulze; Schoolcraft; Shaw; Short; Simpson; Smith, A.; Smith, C.; Smith, T.; Stainswalls; Stiles; Thompson, G.; Thompson, S.; Toomey; Tow; Turner; Uher; Vowell; Waldrep; Wallace; Watson; Whaley; Wieting; Willis; Wilson; Wolens; Word.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Buchanan; Garcia, M.; Hackney; Salinas; Tejeda.

Absent — Berlanga; Bush; Cary; Ceverha; Connelly; Criss; Edwards; Gamez; Hall, L.; Hury; Mankins; Moreno, P.; Patrick; Shea; Sutton; Valles; Wright.
HB 972 WITH SENATE AMENDMENTS

Representative Patronella called up with senate amendments for consideration at this time,

HB 972, A bill to be entitled An Act relating to certain deadlines and actions in the Texas Election Code affecting the status of candidates.

On motion of Representative Patronella, the house concurred in the senate amendments to HB 972.

HB 972 - TEXT OF SENATE AMENDMENTS

SENATE AMENDMENT NO. 1
Amend HB 972 by deleting subsections (a) and (b) of SECTION 9.

SENATE AMENDMENT NO. 2
Amend the caption to conform to the body of the bill.

SB 748 - ORDERED NOT PRINTED
Representative Messer moved to not print SB 748.
The motion prevailed without objection.

HB 1107 - RULES SUSPENDED
Representative W. Hall moved to suspend the 48-hour subcommittee report rule to allow the Committee on Liquor Regulation to consider HB 1107.
The motion prevailed without objection.

SB 46 - RULES SUSPENDED
Representative W. Hall moved to suspend the 5-day posting rule to allow the Committee on Liquor Regulation to consider SB 46.
The motion prevailed without objection.

SB 1404 - RULES SUSPENDED
Representative G. Thompson moved to suspend the 5-day posting rule to allow the Committee on County Affairs to consider SB 1404.
The motion prevailed without objection.

SENATE BILLS ON FIRST READING
The following senate bills were today laid before the house, read first time and referred to committees:

SB 1404 to Committee on County Affairs.
SB 1367 to Committee on Natural Resources.
SB 791 to Committee on Public Health.

HOUSE BILL ON FIRST READING
The following house bill was today laid before the house, read first time and referred to committee:

By T. Smith, et al.:

HB 2452, A bill to be entitled An Act relating to financing county jails.
To Committee on County Affairs.
HB 1849 WITH SENATE AMENDMENTS

Representative Messer called up with senate amendments for consideration at this time.

HB 1849. A bill to be entitled An Act relating to fraud in a transaction involving real estate or stock in a corporation or joint stock company.

On motion of Representative Messer, the house concurred in the senate amendments to HB 1849.

HB 1849 - TEXT OF SENATE AMENDMENTS

SENATE AMENDMENT NO. 1

Amend Section 2, subsection (c) of HB 1849 to read as follows:

"(e) Any person who violates the provisions of this section shall be liable to the person defrauded for reasonable and necessary attorney's fees, expert witness fees, costs for copies of depositions and costs of court."

SENATE AMENDMENT NO. 2

Amend Section 1, subsection (c) of HB 1849 to read as follows:

"(c) A person who [wilfully] makes a false representation or false promise with actual awareness of the falsity thereof commits[, and a person who knowingly benefits from a false representation or false promise commits] the fraud described in Subsection (a) of this section and is [are] liable to the person defrauded for exemplary damages [not to exceed twice the amount of actual damages]. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness."

SENATE AMENDMENT NO. 3

Amend the caption to conform to the body of the bill.

HB 2452 - RULES SUSPENDED

Representative G. Thompson moved to suspend the 5-day posting rule to allow the Committee on County Affairs to consider HB 2452 at noon recess, May 20.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Agriculture and Livestock, Subcommittee on Agricultural Tools, on recess today, Desk 17, to consider SB 1076 and HB 2103.

Business and Commerce, 8 a.m. Friday, May 20, Old Supreme Court room, to consider SB 867 and SB 397.

Criminal Jurisprudence, Subcommittee on HB 1355, on recess today, Desk 120, to consider HB 1355.

Criminal Jurisprudence, on recess today, Desk 120, to consider pending subcommittee reports.

Judiciary, on recess today, Desk 79, to consider SB 45, SB 757, and HB 2070.

Liquor Regulation, on noon recess tomorrow, Desk 98, to consider SB 46.

Local and Consent Calendars, 8:50 a.m. Friday, May 20, back hall.
State Affairs, on recess today, Desk 97, to consider SB 1314 and pending legislation.

Natural Resources, on recess today, Desk 70, to consider SB 1367.

Conference Committee on SB 409, 8:30 a.m. tomorrow, Room 309, Capitol, to consider the appropriation bill.

RECESS

Representative Colbert moved that the house recess until 9 a.m. tomorrow in memory of Joanna Ignas.

The motion prevailed without objection.

The house accordingly, at 6:42 p.m., recessed until 9 a.m. tomorrow.

APPENDIX

STANDING COMMITTEE REPORTS

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

Appropriations - HB 1695, SB 456, SB 940

Business and Commerce - HB 1466, SB 105, SB 291, SB 342, SB 446, SB 482, SB 668, SB 921, SB 925, SB 1321

County Affairs - HB 1018, HB 2447, SB 395, SB 853, SB 1225, SB 1242, SB 1371

Criminal Jurisprudence - HB 1079, HB 2206

Elections - SB 306, SB 382

Environmental Affairs - SB 1023

Higher Education - HB 1190, HB 1519, SB 409, SB 461, SB 543, SB 572, SB 620, SB 652, SB 799, SB 1088

Judicial Affairs - HCR 107, HCR 189, HCR 214, HCR 232, HCR 238, HCR 251, SCR 24, SCR 31, SCR 46, SCR 49, SCR 65

Judiciary - SB 997

Natural Resources - SB 317, SB 733, SB 870, SB 943, SB 1075, SB 1260, SB 1283

Public Health - SB 1299

Retirement and Aging - HB 2288, SB 1128, HB 1209

State Affairs - HB 214, HB 2376, HJR 97, HR 63, SB 884, SB 1316, SB 1338

Transportation - HCR 236, SB 303, SB 369, SB 549, SB 766, SB 1322

ENGROSSED

May 18 - HB 2232, HJR 47, HJR 80, HJR 95

ENROLLED

May 18 - HB 872, HCR 254
SENT TO THE GOVERNOR

May 19 - HB 872, HCR 254