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HOUSE RESEARCH ORGANIZATION

daily floor report

Saturday, May 4, 2013
83rd Legislature, Number 66
The House convenes at 9 a.m.
Part One

Forty-nine bills are on the daily calendar for second-reading consideration today. The bills on the Major State and General State calendars analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

One postponed bill, HB 2072 by E. Rodriguez, et al., is on the supplemental calendar for second-reading consideration today. The bill analysis is available on the HRO website at http://www.hro.house.state.tx.us/pdf/ba83r/hb2072.pdf.

Bill Callegari
Chairman
83(R) – 66

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Saturday, May 04, 2013
83rd Legislature, Number 66
Part One

(D) Digest

SUBJECT: Continuing TDCJ, health care and parole boards, Windham School District

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Parker, White, Allen, Riddle, Rose, J.D. Sheffield, Toth

0 nays

WITNESSES: For — Doots Dufour, Diocese of Austin; Marc Levin, Texas Public Policy Foundation, Center for Effective Justice; Caroline Rickaway, Texas Probation Association; Ana Yanez Correa, Texas Criminal Justice Coalition; (*Registered, but did not testify:* Ray Allen, Rodney Thompson Texas Probation Association; Annie Mahoney, Texas Conservative Coalition; John Stuart, National Association of Social Workers (NASW),Texas Chapter;)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association; Cindy Eigler, Texas Interfaith Center for Public Policy; Allen Hightower, Correctional Managed Healthcare Committee; Jennifer Jones, Sunset Commission; Brad Livingston, Carey Welebob, April Zamora, Texas Department of Criminal Justice; Peter McGraw, Hogg Foundation for Mental Health; Rissie Owens, Texas Board of Pardons and Paroles; (*Registered, but did not testify:* Bryan Collier, Lannette Linthicum, Angie McCown, Texas Department of Criminal Justice; Tim Mcdonnell, Bettie Wells, Board of Pardons and Paroles)

BACKGROUND: **Texas Department of Criminal Justice**

The Texas Department of Criminal Justice (TDCJ) operates the state's adult correctional system. The agency is responsible for confining and rehabilitating offenders sentenced to state prisons and state jails, supervising offenders released on parole and mandatory supervision, and assisting local Community Supervision and Corrections (probation) Departments.

As of March 2013, there were about 150,000 offenders incarcerated in TDCJ, and the agency supervised about 87,500 offenders who were on

parole. The agency's operational capacity was 154,775. TDCJ oversees 111 correctional facilities, of which about 16 are private. The agency has about 40,000 employees, of which about 65 percent are correctional officers. TDCJ's estimated general revenue related appropriation for fiscal 2012-13 is $5.9 billion, of which about 80 percent is used to incarcerate offenders.

The nine-member Texas Board of Criminal Justice governs TDCJ. The governor appoints the members to staggered, six-year terms and appoints the chair of the board. Board members all represent the general public and must represent different areas of the state. The board also serves as the board of trustees for the Windham School District, which provides educational, vocational, and life-skills training programs within TDCJ. The Texas Board of Criminal Justice and the Texas Department of Criminal Justice will be abolished September 1, 2013, unless continued by the Legislature.

Correctional Managed Health Care Committee

The Correctional Managed Health Care Committee develops the state's managed health care plan for delivering deliver health care to prison inmates and establishes the polices and standards for delivering care.

TDCJ contracts with the University of Texas Medical Branch (UTMB) at Galveston and the Texas Tech University Health Sciences Center (TTUHSC) to provide the statewide managed care network which provides medical, dental, and psychiatric services to inmates. UTMB's contract covers about 80 percent of the state's about 150,800 inmates, and TTUHSC's contract covers the rest. TDCJ also has a contract with a Huntsville hospital that covers certain services for a small number of offenders.

The committee was established by the Legislature in 1993 to develop and launch a managed health care system for inmates, to act as an intermediary to contract for the care, to develop a health plan for offenders, to monitor care, and to address complaints. In 2011, the 82nd Legislature transferred to TDCJ the committee's responsibility for contracting with the care providers.

The committee has six members: a representative from TDCJ, one physician each from UTMB and TTUHSC; two public members appointed

by the governor who serve four-year terms; and the State Medicaid Director, who is an ex-officio, non-voting member. The governor designates the chair, who must be a public member who also is a physician. Non-public members serve at the will of their appointing agency.

The committee is funded with general revenue, through a strategy in TDCJ's budget, and spends about $639,000 annually on its administration. It has three employees and receives administrative support from UTMB. The state is expected to spend an estimated $902.3 million in general revenue in fiscal 2012-13 on inmate health care. The committee is subject to the Sunset Act and must be reviewed with TDCJ but does not have a specific abolishment date.

Board of Pardons and Paroles

Texas Constitution, Art. 4, sec. 11 requires the Legislature to establish a Board of Pardons and Paroles (BPP). Government Code, sec. 508 establishes a seven-member board appointed by the governor with the advice and consent of the Senate. Members are full time and salaried and serve staggered, six-year terms, with the governor designating the presiding officer.

The board shares responsibility for the parole system with the parole division of TDCJ. The board, along with 12 full-time parole commissioners whom it hires, usually works in panels of three to determine which inmates are released on parole and discretionary mandatory supervision, a type of parole supervision, and to determine the conditions of parole and mandatory supervision. The board also makes decisions about revoking parole and mandatory supervision, reviews requests for clemency, and makes clemency recommendation to the governor. TDCJ’s parole division supervises parolees after they have been released.

The board has about 600 staff and in fiscal 2012-13 received about $51.4 million in general revenue.

Because the BPP is established in the Constitution, it cannot be abolished by statute but only by a constitutional amendment. However, it is subject to review under the Sunset Act and must be reviewed with TDCJ.

Windham School District

Windham School District provides educational, vocational and life-skills training programs within TDCJ. The TDCJ board serves as Windham's board of trustees, overseeing the districts and hiring the superintendent.

Windham has about 1,100 staff, including teachers, principals, counselors, college-level instructors, administrators, and support staff. The staff works at a central office in Huntsville and in 86 TDCJ units throughout the state. About 63,000 offenders participated in Windham's programs in fiscal 2011-12.

In fiscal 2011 Windham received about $80 million in total revenue, with $65.3 million coming from the Foundation School Program and being passed through the Texas Education Agency.

The 82nd Legislature placed Windham under a special purpose review of its structure, management, and operations to be conducted as part of TDCJ's Sunset review.

DIGEST:

CSHB 2289 would continue the Texas Department of Criminal Justice and the Texas Board of Criminal Justice until September 1, 2021, and would revise laws dealing with the Correctional Managed Health Care Committee, the Board of Pardons and Paroles, and the Windham School District. These revisions would include:

- expanding the components of the offender reentry plan and requiring TDCJ to adopt the plan;
- requiring TDCJ to adopt a standardized risk and needs assessment instrument for offenders;
- establishing requirements for individual treatment plans for inmates;
- requiring TDCJ to establish case management committees to assess inmates;
- requiring TDCJ to establish a standard grant making process for probation funding and studying the feasibility of performance-based grants;
- revising the procedures for handling victim impact statements;
- changing the structure of the Correctional Managed Health Committee and revising the duties of the committee and TDCJ as they relate to inmate health care;

- revising the decision making procedures of the Board of Pardons and Paroles to require explanations to offenders for decisions, to require the establishment and maintenance of parole approval rates for the parole guidelines, and to establish peer review panels to examine voting patterns; and
- requiring Windham School District to evaluate the effectiveness of its programs.

The bill would take effect September 1, 2013.

Texas Department of Criminal Justice

Offender reenty. TDCJ would be required to adopt the comprehensive reentry and reintegration plan that it currently is required to develop. The bill would expand the mandatory elements of the plan, including requiring it to:

- incorporate the risk and needs assessment required by the bill;
- identify transition services provided by TDCJ;
- coordinate reentry services through state and volunteer programs;
- collect and maintain data about inmates who received and did not receive reentry services; and
- evaluate the effective of reentry and reintegration services by reporting data, including recidivism information.

TDCJ would have to adopt the comprehensive plan by January 1, 2014. A currently required report on recidivism and the reentry and reintegration plan would be eliminated.

TDCJ would have to work with the Board of Pardons and Paroles and the Windham School District to establish the role of each entity in providing reentry and reintegration services. The comprehensive reentry plan would have to include the responsibilities of each entity.

TDCJ would have to regularly evaluate the plan and update it at least every three years. The evaluation of the plan would have to delivered to legislative leaders by September 1 of even-numbered years, beginning in 2016.

CSHB 2289 would expand the membership of the 22 member state reentry

task force, currently coordinated by TDCJ and the Office of Court Administration, to include additional representatives of state, criminal justice, and local entities.

The current duties that the task force is authorized to undertake would become mandatory, and it would be given additional duties relating to identifying the task force's goals, a timeline for achieving the goals, and the responsibilities of its members.

Risk and needs assessment instrument. TDCJ would be required to adopt a standardized instrument to assess the risk and needs of offenders in the criminal justice system based on criminogenic factors. TDCJ would have to implement the instrument by January 1, 2015.

The instrument would have to be made available to local community supervision departments. TDCJ would have to require local community supervision departments to use the risk and needs assessment when placing persons on probation and when required by an offender's reentry and reintegration plan.

Individual treatment plan. CSHB 2289 would establish requirements for the plans that TDCJ creates for individual inmates and formally name the plans "individual treatment plans". The plans would have to include a record of inmates' participation in programs, results of any assessments of the inmate, and inmates' treatment and programming needs. The plans would have to be reviewed and updated annually. Before being paroled, inmates would have to agree to participate in the programs and activities described by the plans.

Case management committee. Each TDCJ facility would be required to establish a case management committee to assess inmates and ensure they were receiving appropriate services or participating in appropriate programs. The committees would have to review inmates' individual treatment plans, discuss them with inmates, and meet with inmates when they were initially placed in facilities and if they were reclassified based on refusal to participate in a program. Committees would have to be established by October 1, 2013.

Probation grant formulas. CSHB 2289 would require TDCJ's Community Justice Assistance Division (CJAD) to establish goals for each grant program and a process for making grants to local probation departments.

CJAD would have to establish a process for appealing decisions about grant applications. The division also would have to monitor grant performance and make certain information available to the public. TDCJ would have to comply with these requirements by January 1, 2014.

CJAD would have to review its funding formulas, study the feasibility of adopting performance-based funding formulas, and make recommendations for changes to current formulas. The review would have to include whether the formulas should consider offenders' risk level or other factors. By January 1, 2017, CJAD would have to include information from the study in reports that it currently is required to produce.

Victim impact statements. TDCJ's victim services division would have to develop recommendations to ensure that completed victim impact statements were submitted to TDCJ. The recommendations would have to be developed by January 1, 2014.

Courts would be required to inquire whether a victim impact statement had been returned to the prosecutor. Prosecutors, instead of the local victim assistance coordinator, would be required to make the statements available to the court, upon inquiry. If a person were put on probation, prosecutors, instead of courts, would be required to forward victim impact statements to local probation departments.

Information about whether a victim impact statement was returned to a prosecutor would be added to the things that courts should include in their judgments.

Correctional managed health care

The Correctional Managed Health Care Committee would be expanded from five to nine voting members. The four new members would be appointed by the governor for four-year terms and would be:

- two physicians who were employed by a medical school other than The University of Texas Medical Branch at Galveston or the Texas Tech University Health Science Center; and
- two members who were licensed mental health professionals.

After the four-year term of the two physicians ended, the governor would be required to use an alphabetical list of the state's medical schools to appoint two members from the next two medical schools that alphabetically follow the names of the schools employing the vacating members. The governor would have to make the appointments of the new members by January 31, 2014.

The bill would revise the duties of the CMHCC and transfer some of its duties to TDCJ. Among the duties transferred to TDCJ would be the authority of the committee to enter into certain types of contracts relating to financial consulting services, financial monitoring, and actuarial consulting services.

TDCJ's current authority to contract to implement the managed health care plan would be revised and enumerated. The agency could enter into a contract with any entity for offender health care, including contracting for services and the integration of services into the managed health care provider network.

TDCJ would be required to report quarterly to the LBB and the governor on actual and projected expenditures for correctional managed health, utilization and acuity data, savings realized from contracting with providers other than UTMB and TTHSC. The first report would have to be submitted by the 30th day after the end of the first quarter of fiscal 2014.

Board of Pardons and Paroles (BPP)

Notification of parole decisions. When granting or denying an inmate's release on parole or denying a release on mandatory supervision, parole panels would be required to provide a clear and understandable written explanation of the decision and the reasons for it that related specifically to the inmate. The statement would have to be provided to the inmate and placed in the inmate's file. Parole panels could withhold information that was confidential and was not public information or that the panel considered to possibly jeopardize the health and safety of anyone.

The explanation of parole panels' decisions would apply only to decisions made on or after November 1, 2013.

Parole approval rates. The parole board would be required to establish

and maintain a range of recommended parole approval rates for each category or score within the currently required parole guidelines, which are defined as the basic criteria on which parole decision are made. The board would be required to review and discuss the parole approval rates annually when it reviews its parole guidelines. Modifications to the range of recommended parole approval rates would have to be done in an open meeting.

The bill would eliminate a current requirement that board members and parole commissioners who deviate from the current parole guidelines produce a written statement describing the circumstances of the deviation.

The range of recommended parole rates would have to be established by January 1, 2014.

Peer review panels. The parole board would be required to conduct an annual review of the voting patterns of each regional office and individual parole panel members to identify those with parole approval rates that deviate from the recommended range of rates for a category or score by more than 5 percent.

The board would have to develop and implement a peer review process. Under this process, panels would have to review the parole decisions of a regional office that deviated from the range of recommended parole approval rates. The chair of the board would have to designate the peer review panel from among the board members and parole commissioners.

The review panels would have to determine whether deviations were justified or indicated a need for additional training, a reexamination of the parole guidelines, or a modification of the range of recommended parole approval rates. The panels also would have to make recommendations to the regional offices being reviewed so the office could more accurately align its approval rates with the range of recommended approval rates.

The peer review process would have to be implemented by January 1, 2014.

Parole hearing. CSHB 2289 would allow the parole board to delegate hearings, but not parole determinations, to hearings officers.

Windham School District

CSHB 2289 would require Windham to evaluate the effectiveness of its programs. It would have to compile and analyze information about each of its programs, including performance-based information and data about its academic, vocational training, and life skills programs. The information would have to include, for each person who participated in Windham programs, an evaluation of disciplinary violations while incarcerated, subsequent arrests, convictions, confinements, costs of confinement, and education achievements. Windham would have to use the information to evaluate whether its programs met its goals and to make necessary changes.

CSHB 2289 would make the Windham School District subject to Sunset review and would require that it be reviewed when TDCJ was reviewed.

SUPPORTERS SAY:

TDCJ should be continued for another eight years because no other entity could perform the agency's jobs of confining offenders, providing educational and rehabilitation programs to inmates, managing parolees, assisting local probation departments, and contracting for inmate health care. The state has an ongoing need to protect public safety by performing these tasks.

CSHB 2289 would continue the TDCJ for eight years, instead of the standard 12 years. The size and complexity of the agency and the changes made to treatment and diversion programs in recent years warrant a more frequent review than the standard Sunset recommendation. CSHB 2289 also would require the Correctional Managed Health Care Committee, the Parole Board, and the Windham School District to be reviewed in eight years with TDCJ so the entire adult system can be reviewed comprehensively. A review done sooner than eight years might be of limited usefulness, as the changes in CSHB 2289 might not have had enough time to be fully implemented and evaluated.

Texas Department of Criminal Justice

Offender reentry. CSHB 2289 would address problems with a lack of focus and coordination in TDCJ's efforts to aid the reintegration into society of the about 75,000 offenders released each year. In 2009, the Legislature required TDCJ to develop a comprehensive reentry plan and to evaluate the plan's impact on offender recidivism, and it established a

reentry task force to examine the challenges of reentry. CSHB 2289 would flesh out those laws by requiring TDCJ to adopt a formal plan, establishing specific requirements for the plan, and requiring regular evaluation and updates of the plan.

CSHB 2289 would improve reentry services for individual inmates, which could reduce recidivism. For example, TDCJ would be required to identify transition services for offenders, coordinate services through state and volunteer programs, and collect data relating to reentry.

CSHB 2289 would expand the membership of TDCJ's reentry task force to include numerous entities involved with offenders and the criminal justice system. Expanded representation would ensure that the committee was a forum for all stake holders. The bill would focus and clarify the work of the task force by requiring it to identify its goals, the responsibilities of its members, and more.

Risk and needs assessment instrument. CSHB 2249 would address the current problem of TDCJ performing several fragmented assessments at different times by requiring the agency to adopt and use one consistent risk and needs assessment tool from probation through parole. TDCJ has been pursuing the use of a unified risk assessment instrument, and CSHB 2249 would help formalize this decision.

Individual treatment plan. The requirements in CSHB 2249 to upgrade offender treatment plans would result in better treatment and programming for inmates which could increase inmates' success when reentering society.

Case management committees. CSHB 2289's requirement to establish case management committees would be a natural extension of the current unit classification committees. The bill would ensure that a committee at each unit worked to direct the placement of offenders in education and rehabilitation programs. Having the committees review individual treatment plans and discuss them with offenders should improve offender management, which could result in better rehabilitation.

Probation grant formulas. CSHB 2289 would address the lack of statutory framework for TDCJ's probation grant system by requiring the agency to implement standard grant processes. The bill also would move the grant process toward performance-based funding by having TDCJ

study its feasibility.

Victim impact statements. CSHB 2289 would improve the process for considering victims' input by clarifying who was responsible for making victim impact statements available to courts, TDCJ, and probation departments. The bill would require courts to inquire about the statements to ensure that courts received this important information.

Correctional managed health care

CSHB 2289 would expand the Correctional Managed Health Care committee so that representatives from the state's medical schools could rotate through committee seats and so that the mental health community was adequately represented. This diverse expertise would improve the ability of the committee to perform its duties. The University of Texas Medical Branch and the Texas Tech University Health Sciences Center would retain seats on the committee due to their decade of experience in providing health care to the majority of offenders.

CSHB 2289 would clarify and formalize the current system of providing inmate health care with the Correctional Managed Health Care Committee developing the managed health care plan and TDCJ contracting with providers. The bill would clarify that TDCJ could contract with any entity to provide the care and would transfer to TDCJ some of the other committee duties that dovetail with contracting.

Retaining the committee, instead of giving all its duties to TDCJ, would ensure that the state continues to deliver inmate health care in a way that meets its duty to maintain a constitutional prison health care system and avoids costly litigation.

Board of Pardons and Paroles

Notification of parole decisions. CSHB 2289 would improve the information given to offenders who are denied parole so that they might better understand what steps could be taken to better their rehabilitation and their chance of parole approval in the future. In many cases, the information given to inmates currently is too vague to help offenders know why their parole was denied, including the listing of both possible and actual reasons for the denial of parole. CSHB 2289 would address this problem by requiring the parole board to provide clear and understandable

written explanations of its decision, including reasons that apply directly to the offender.

Parole approval rates. CSHB 1 would include several changes to improve and to monitor the parole decision-making process to increase its reliability, validity, and effectiveness. For example, the bill would require the board to establish and maintain a range of recommended parole approval rates for each parole guideline. This would give the board a tool to examine parole voting to identify whether the guidelines were applied consistently and whether the guidelines or recommended approval rates should be re-examined. Several other states operate on a similar evidence-based driven model.

These changes would not limit parole board or commissioners' discretion, establish any right to parole, or require approval based on recommended approval rates. Parole voting patterns would be examined retrospectively so they would not influence a decision on an individual case.

Peer review panels. The peer review panels established by the bill would give the board another formal way to evaluate its work. A 2010 report showed wide voting variations among members within the current guidelines. The panels would help ensure that the parole guidelines were applied in a consistent manner and could help identify needs for additional training or updating the guidelines. Peer review panels would be more transparent and consistent than the current system and would institutionalize the review system rather than rely on the board chair.

The process established by the bill would not be burdensome for the panels or the board chair because as they would examine only the most significant departures from the guidelines, not all voting decisions, and could analyze a reasonable sample of votes.

Windham School District

Currently, Windham School District does not consistently evaluate its programs and services, making it difficult to know whether it is achieving its goals. CSHB 2289 would require Windham to examine its programs, including by collecting performance-based data. This would allow Windham to make decisions about its structure and programs. It also would allow the Legislature to make an informed decision about whether Windham should continue to provide educational services for inmates or

whether another model should be instituted. Changing this structure now would be premature.

OPPONENTS SAY:

TDCJ should undergo Sunset review again in 2025, the standard 12-year period. The agency is running well, and the shortened Sunset review periods could distract the agency from its core missions.

Correctional Managed Health Care Committee

The Correctional Managed Health Care Committee should be restructured as a committee of the Texas Board of Criminal Justice, instead of remaining an independent entity. Since TDCJ took over the task of contracting with offender health care providers, there is no need for an independent entity to perform the few remaining duties of the committee. When the state changed to a managed health care system for inmates, it was necessary for CMHCC to have independent staff to develop and launch the new system, but it is no longer needed as an intermediary.

TDCJ could easily integrate the communication, monitoring, reporting, and other duties done by the committee. This change could save the state some of the annual roughly $673,000 budget for committee staff.

Board of Pardons and Paroles

Notification of parole decisions. The parole board currently gives offenders who are rejected for parole adequate and useful information about why they are rejected. The board has developed a system that provides information efficiently and uniformly and works to revise the system when necessary. Providing individualized information to the offenders could strain the board's resources since it considers about 100,000 cases annually.

Parole approval rates. Requiring the board to establish and maintain recommended approval rates would be an inappropriate way to evaluate parole decisions. Currently, parole guidelines are just one of many tools used by board members and parole commissioners to make decisions. Other information often considered includes case summaries, court information, and victim input. CSHB 2289 could result in expectations about parole decisions based solely on the guidelines and in the approval rates being viewed as a type of quota. This would be inappropriate given that the parole board's function is to act in a purely discretionary way.

Other states' parole boards do not use pre-established approval rates.

Peer review panels. It is unnecessary and inappropriate to require the use of peer review panels. The board currently has an effective system for evaluating voting patterns of members and parole guidelines. Under this system, the board chair regularly receives reports on voting patterns, and the board has a parole guidelines committee to review the guidelines and modify them. This system has resulted in increased parole approval rates and declining parole revocation rates over the last decade, illustrating that the parole guidelines are working well to determine the likelihood of offenders' success on parole. Requiring certain actions by peer review panels for what are purely discretionary decisions would be inappropriate.

OTHER OPPONENTS SAY:

TDCJ and the other criminal justice entities should be reviewed every four to six years instead of the eight-year period in CSHB 2289. The complexity of the criminal justice system and the importance of its success in rehabilitating offenders and ensuring public safety warrant more frequent evaluations of these entities.

NOTES:

The companion bill, SB 213 by Whitmire, was reported favorably as substituted by the House Corrections Committee on April 18.

SUBJECT: Limiting the contractual subrogation rights of certain insurers

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson

0 nays

WITNESSES: For — David Chamberlain, Texas Chapters of American Board of Trial Advocates; Guy Choate; Jay Harvey; Mike Hull, Texas Alliance for Patient Access; Judy Kostura; Alice London; Dustin Strelsky; Jennifer Strelsky; (*Registered, but did not testify*: Jason Byrd, Texas Trial Lawyers Association; George Christian, Texas Association of Defense Counsel; Ware Wendell, Texas Watch)

Against — Jerry Fazio, Texas Alliance of Nonsubscribers; Jay Thompson, Texas Association of Life and Health Insurers; Scott Wilson, TML Intergovernmental Employee Benefits Pool; (*Registered, but did not testify*: David Gonzales, Texas Association of Health Plans; Gregg Knaupe, Seton Healthcare Family; Mark Mendez, Tarrant County; Mike Meroney, Huntsman Corp.; Kaden Norton, TML Intergovernmental Employee Benefits Pool and Texas Association of Benefit Administrators)

On — Jay Dyer, Office of the Attorney General; (*Registered, but did not testify*: Doug Danzeiser, Texas Department of Insurance)

BACKGROUND: Local Government Code, sec. 172.015, governs subrogation rights and recovery procedures for the Texas Political Subdivisions Uniform Group Benefits Program.

DIGEST: ***(Floor substitute analyzed in lieu of CSHB 1869)***
CSHB 1869 would limit the contractual subrogation rights of certain health benefit plans and specify how a court could award attorney's fees.

Applicability. This bill would apply to issuers of health benefit plans that provide benefits for medical and surgical expenses as a result of a health condition, accident, or sickness, disability benefit plans, employee welfare plans, franchise insurance policy or insurance agreements, or group

hospital service contracts. It also would apply to individual or group evidence of coverage, including insurance companies and other similar types of coverage under the Insurance Code. This bill would specify all other health and benefit plans to which it applied.

The bill would not apply to:

- a worker's compensation insurance policy or other source of worker's compensation medical benefits;
- Medicare;
- a Medicaid medical assistance program or a Medicaid managed care program;
- the state children's health plan (CHIP) or another state children's health plan; and
- self-funded plans under the Employee Retirement Income Security Act of 1974 (ERISA).

This bill would define "covered individual" as someone entitled to benefits. It would define "payor of benefits" or "payor" as an issuer of a plan that had contractual subrogation rights and paid benefits to (or on behalf of) a covered individual injured after the tortious conduct of a third party.

Limited subrogation rights. In a health benefit plan, a payor could contract for subrogation and reimbursement rights. This would entitle the payor to recover for payments made and benefits provided to an individual covered by a plan who was injured by a third-party tortfeasor. If an injured covered individual was entitled by law to seek recovery from a third party, then all payors would be entitled to a portion of the recovery.

If a covered individual was not represented by an attorney when seeking recovery, a payor's portion of the recovery would be limited to the lesser of:

- one-half of the covered individual's gross recovery; or
- the total cost of the benefits paid, provided, or assumed by the payor as a direct result of the third party's tortious conduct.

If the covered individual was represented by an attorney, the payor's portion of the recovery would be limited to the lesser of those amounts after the attorney's fees and procurements costs had been deducted.

The common law doctrine that would require an injured party to be "made whole" before a payor with subrogation rights was entitled to a portion of the recovery would not apply to these cases. This bill would repeal the subrogation rights and recovery procedures for the Texas Political Subdivisions Uniform Group Benefits Program.

Attorney's fees. If a covered individual were represented by an attorney and the payor was not, the payor would have to pay an agreed-upon portion of the attorney's fees and a proportional share of incurred expenses. If the covered individual's attorney and the payor did not reach a fee agreement, the court would have to award a reasonable attorney's fee out of the payor's portion of the recovery. This award could not exceed one-third of the payor's recovery.

If both the covered individual and payor were represented by attorneys in a recovery action, the court would have to award the attorney's fees out of the payor's portion of the recovery. In awarding fees, the court would need to consider how the payor benefitted from each attorney's service, and total fees could not exceed one-third of the payor's recovery.

If there were a declaratory judgment, a court could not award costs or attorney's fees to any party.

No first-party recovery. A payor would be prohibited from pursuing a portion of a covered individual's first-party recovery, except that a payor could pursue a portion of uninsured/underinsured motorist coverage or medical payment coverage if the covered individual's family did not pay the premiums.

Rules. This bill would control if it conflicted with another law. It would not create a cause of action and could not be interpreted as preventing a payor from waiving, negotiating, or not pursuing a subrogation right. If any part of the bill were found to be unconstitutional, that part would be eliminated and the rest of the bill would remain in effect. This bill would apply only to subrogation rights in causes of action that accrued on or after January 1, 2014.

This bill would take effect January 1, 2014.

SUPPORTERS

CSHB 1869 would be a fair and equitable approach to contractual

SAY:

subrogation rights. When an individual is injured by a third party, the person's insurer will pay for medical and surgical expenses. Almost all insurance and benefit contracts have subrogation clauses that entitle an insurer to be reimbursed for these expenses with any money recovered from the third party who caused the injury. Injured parties are also entitled to recover from the third party for expenses, such as future medical costs and lost wages, which are not covered by an insurer.

Often, however, a third party does not have enough money to pay the entire recovery judgment. When this happens, current subrogation laws heavily favor insurance companies, making it difficult for injured parties to obtain any portion of the recovery. This is especially devastating for individuals who will suffer from a serious injury for the rest of their lives. By limiting contractual subrogation rights, this bill would ensure that injured parties received a larger, fairer share of the recovery.

This bill also would make cases easier to settle. Current law allows insurance companies to insist on very high recovery amounts, which third parties often are unwilling to pay. When the parties cannot agree to a settlement, the cases go to trial. By limiting the amount an insurer could recover, this bill would encourage settlement agreements and reduce litigation.

While some argue that this approach to recovery could reduce the amount recovered by insurers and increase premiums, it is more likely that it would facilitate settlements, ultimately increasing the amount insurers recover through the subrogation process.

OPPONENTS SAY:

CSHB 1869 could increase premiums. When deciding how much to charge policyholders, insurers take into consideration the amount of money they could recover through the subrogation process. If insurers recover less from subrogation, they might need to increase premiums to make up the difference.

OTHER OPPONENTS SAY:

CSHB 1869 should further limit contractual subrogation rights. Several states prohibit subrogation in situations where the third party does not have enough money to pay an entire judgment. Texas should adopt this approach or further decrease the amount an insurer can recover. This would better ensure that injured parties were fairly compensated.

NOTES:

Compared with the committee substitute, the floor amendment would:

- exempt specific types of health and benefit plans;
- increase a payor's potential portion of a recovery from one-third to one-half of the covered individual's gross recovery;
- require the court to award and apportion attorney's fees if both the covered individual and the payor were represented by attorneys;
- allow first-party recovery in certain situations;
- repeal the subrogation rights and recovery procedures for the Texas Political Subdivisions Uniform Group Benefits Program;
- specify that if any part of the bill were found to be unconstitutional, that part would be eliminated and the rest of the bill would remain in effect; and
- specify a later effective date.

SUBJECT: Shortening the length of classroom hours for a concealed handgun license

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — Pickett, Fletcher, Dale, Flynn, Lavender, Sheets, Simmons

0 nays

2 absent — Cortez, Kleinschmidt

WITNESSES: For — Michael Cargill; Charles Cotton; Mike Cox; Doug Lee; Rachel Malone; Chris Reitsma; Alice Tripp, Texas State Rifle Association; (*Registered, but did not testify:* Dennis Allen; Brett Connett, Texas Conservative Coalition; Angel Gonzalez; Amy Hedtke; Susan Morrison; Joe Palmer; Heather Reitsma)

Against — Heather Ross, Gun and Mental Health Action Group; (*Registered, but did not testify:* David Albert; Grace Chimene; Tanya Lavelle; Joanne Richards; Bridget Wiedenmeyer, Moms Demand Action - Texas Chapter; John Woods, Texas Gun Sense)

On — Merily Keller, Texas Suicide Prevention Council; (*Registered, but did not testify:* Steve Moninger and Sherrie Zgabay, Texas Department of Public Safety)

BACKGROUND: Government Code, sec. 411.188 (a) requires the establishment of a training session for demonstrating handgun proficiency before receiving a concealed handgun license (CHL). One part of the course must include range instruction and demonstration of proficiency in using a handgun, and the other part must be classroom instruction. Government Code, sec. 411.188 (b) requires this course to last between 10 and 15 hours and to cover the following:

- laws on weapons and the use of deadly force;
- handgun use, proficiency, and safety;
- nonviolent dispute resolution; and
- proper storage practices for handguns.

Government Code, sec. 411.188 (c) requires DPS to develop a continuing education course for CHL holders who wish to renew their licenses.

DIGEST:

CHSB 47 would make the handgun proficiency requirements for new issuances and renewals of CHLs the same, instead of requiring those renewing their license to take a continuing education course that is from the novice CHL proficiency course. The bill would also repeal Government Code, sec. 411.188 (c), which outlines requirements for the development of a CHL renewal course by DPS.

The bill would change the length requirement of the classroom portion of these proficiency courses to last a minimum of six hours instead of 10 to 15 hours for the combined classroom and range course.

The classroom portion of the proficiency course would be offered online for CHL holders seeking to renew their licenses.

The bill would take effect September 1, 2013, and would apply only to those applications to obtain or renew a CHL made on or after the effective date.

SUPPORTERS SAY:

CHSB 47 would help the state streamline the application process and eliminate unnecessary obstacles to obtain a CHL. Last year, as many as 146,000 people applied for a CHL in Texas. The requirements for classes to last 10 to 15 hours derive from a statute passed in 1995, before DPS developed the curriculum of handgun proficiency courses to match the statutory content requirements. Subsequently, when the curriculum was developed, the classroom time needed to cover the requirements fell short of 10 hours.

Texas has some of the most stringent classroom-hour requirements in the country, with only seven of 50 states requiring more classroom hours than Texas to attain a CHL. Shortening these hours may enable the attorney general to approve more reciprocity agreements with other states. Shortening the hours also makes the Texas CHL a more attractive option for Texans seeking to carry a concealed weapon. Thus, some Texans go for CHLs with less onerous standards in states that have reciprocity agreements with Texas.

The bill would not reduce the amount of time spent on the range. The bill would not change the exam passing requirements to attain a CHL; it would

only lessen the length of classroom training. Graduates of these courses still would need to demonstrate the same level of knowledge and proficiency as before, including shooting 50 rounds on a range. The bill could even have the effect of improving retention, as shortening the minimum number of course hours could decrease tedium and allow students to focus their attention in a sustained manner on the material.

OPPONENTS SAY:

Whereas in current law the classroom time and range time are both included in the total of mandatory course hours, this bill would only stipulate six or more hours of classroom instruction. This may have the effect of shortening the length of time spent on the range by instructors, as range time no longer would be included in the minimum required course time. Instructors could feel pressure to shorten the length of a long class and rush through the 50-round range test of handgun proficiency to finish the course sooner instead of taking time, especially with beginners, to cover the material thoroughly.

OTHER OPPONENTS SAY:

The bill would not put an upper limit on the required number of classroom hours, only touching on the lower limit. DPS could pass administrative rules necessitating even longer classroom time.

SUBJECT: Eliminating the proficiency test to renew a concealed handgun license

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — Pickett, Fletcher, Dale, Flynn, Lavender, Sheets, Simmons

0 nays

2 absent — Cortez, Kleinschmidt

WITNESSES: For — Michael Cargill; Rachel Malone; (*Registered, but did not testify:* Dennis Allen; Brett Connett, Texas Conservative Coalition; Angel Gonzalez; Amy Hedtke; Joe Palmer; Alice Tripp, Texas State Rifle Association)

Against — (*Registered, but did not testify:* David Albert; Grace Chimene; Tanya Lavelle; Susan Morrison; Joanne Richards; Heather Ross, Gun and Mental Health Action Group; Bridget Wiedenmeyer, Moms Demand Action - Texas Chapter; John Woods, Texas Gun Sense)

On — Merily Keller, Texas Suicide Prevention Council; (*Registered, but did not testify:* Steven Moninger and Sherrie Zgabay, Texas Department of Public Safety)

BACKGROUND: Government Code, sec. 411.188 lists the requirements for demonstrating handgun proficiency in order to attain a concealed handgun license (CHL). Subsection (b) requires the course to cover the following topics:

- laws on weapons and use of deadly force;
- handgun use, proficiency, and safety;
- nonviolent dispute resolution; and
- proper storage practices for handguns.

Subsection (c) directs the Department of Public Safety to develop a continuing education course for a CHL holder who wishes to renew the license, administered by a qualified handgun instructor.

Subsection (j) enables DPS or a qualified instructor to offer an online

version of the continuing education course and a written section of the proficiency exam for CHL holders wishing to renew their license.

Government Code, sec. 411.199 allows honorably retired peace officers to obtain a CHL. Subsection (e) requires these retired peace officers to demonstrate annually their maintenance of the handgun proficiency standards required for a peace officer for the category of weapon licensed.

Government Code, sec. 411.172 lists the eligibility requirements which must be met to qualify for a CHL. Applicants must not have a class A or B misdemeanor conviction in the past five years, a felony conviction, or certain psychiatric disorders or a history of commitment in a mental hospital in addition to meeting other criteria in order to obtain a CHL.

DIGEST:

CSHB 48 would eliminate the requirement for a CHL holder to demonstrate handgun proficiency by taking a continuing education course to renew the license. The bill would repeal Government Code sections 411.188 (c) and 411.188 (j), which require a continuing education course for CHL renewal and would specify how DPS should adopt rules for this course.

DPS would mail a notice of license expiration, a renewal application form, and an informational form to a CHL holder at least 60 days before the person's license expired. To renew the license, a CHL holder would have to submit electronically or via an application for renewal, payment of the nonrefundable fee and the signed informational form describing pertinent state laws such as those related to deadly force. DPS would issue the renewed license not later than 45 days after receiving these materials. The director of DPS could adopt rules enabling CHL renewal after the license holder submitted these materials by mail or online.

Active and retired peace officers carrying a handgun under an extension of the CHL license would not need to take continuing education courses or examinations. The bill would repeal Government Code, sec. 411.199 (e).

The director of DPS would adopt rules as soon as practicable after the effective date of this bill. The bill would apply only to applications submitted on or after the effective date.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

This bill would streamline the CHL renewal process for existing license holders without requiring those renewing to complete onerous and redundant courses. The bill would make renewing a license easier and more convenient for both the license holders and DPS alike.

Discontinuing the renewal examination for CHL holders should not be compared to the process for renewing a driver's license because bearing arms is a constitutional right, whereas driving a car is a privilege.

Requiring those who want to renew their licenses to sign an informational form detailing changes in the concealed-carry law is both useful and sufficient to take the place of a renewal examination. Changes to the law are not extensive enough to merit a four-hour continuing education course.

CSHB 48 would not jeopardize reciprocity agreements with other states, as it only makes a minor change to CHL laws.

OPPONENTS SAY:

The state should continue its CHL continuing education mainly for two reasons: a license holder's proficiency to shoot a gun could deteriorate, and the laws regularly change regarding carrying a handgun.

Having a CHL is akin to having a driver's license. Both entail the operation of dangerous machinery, and in both cases the state has an interest in ensuring that the holders of these licenses maintain an adequate level of proficiency. Possessing a gun may be a constitutional right, but having a CHL is not. DPS does not grant concealed carry licenses automatically, and Government Code, sec. 411.172 lists several criteria that must be met before the issuance of a CHL. These eligibility requirements for a license exist as a public safety measure and reasonably should include demonstrating handgun proficiency over time.

The Texas Legislature frequently changes the laws regarding these types of licenses, including adding new specifications for the locations where a license holder may carry a concealed weapon. Signing an informational form listing changes in law would not be sufficient. License holders who wish to renew should take a continuing education course and exam to ensure they fully understand the law.

Additionally, this law may jeopardize reciprocity agreements with other states. The lack of a handgun proficiency test for renewal could fall short of other state CHL standards.

SUBJECT: Modifying certain fees for concealed handgun licenses

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — Pickett, Fletcher, Dale, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

2 absent — Cortez, Flynn

WITNESSES: For — Lon Craft, Texas Municipal Police Association

Against — None

On — RenEarl Bowie, Texas Department of Public Safety

BACKGROUND: In 2005, the 79th Legislature enacted HB 322 by Hupp, et al., adding Government Code, sec. 411.1951, which requires the Department of Public Safety (DPS) to add veterans honorably discharged by at least one year from military service to the list of those eligible to pay half of the normal licensing fee for concealed handgun licenses. A normal fee for concealed handgun licenses is $140, and a fee for renewal of such licenses is $70.

Government Code, sec. 411.1991 requires active peace officers who are employed full time to pay a fee of $25 for concealed handgun licenses.

DIGEST: CSHB 485 would lower concealed handgun license fees for veterans who were honorably discharged by at least one year from military service from $70 to $25. These veterans also would pay half of the fee to obtain duplicate or modified licenses.

The bill also would allow reserve peace officers to pay $25 for concealed handgun licenses.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

The state should show gratitude to honorably discharged veterans who have been out of the military for at least a year by giving them a greater discount on concealed handgun licenses than they already enjoy. This provision would help honor their service to their country and would bring them closer to the full waiver on concealed handgun license fees granted to more recent veterans and active-duty service members under current law.

CSHB 485 would extend to reserve and part-time peace officers the same fee discounts for concealed handgun permits given to active peace officers who are employed full time. When on the job, reserve peace officers take the same kinds of risks as active peace officers. Some of these reserve officers are volunteers and could benefit from a significant discount on concealed handgun licenses. Lowering concealed handgun license fees for reserve peace officers and veterans could prompt more people to purchase licenses and increase revenues in a way that eclipses any projected loss that could result from the additional discounts described in the bill.

OPPONENTS SAY:

Reducing concealed handgun license fees would cost the state revenues it collects to pay for important services. The Legislative Budget Board stipulated that the bill would result in a negative impact of about $807,000 through the biennium ending August 31, 2015.

SUBJECT: Illegal posting of "no carry" signs by state agencies, political subdivisions

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody, Schaefer

0 nays

2 absent — Burnam, Toth

WITNESSES: For — (*Registered, but did not testify:* Jerry Patterson)

Against — None

On — Scott Houston, Texas Municipal League; (*Registered, but did not testify:* Alice Tripp,Texas State Rifle Association)

BACKGROUND: Penal Code, sec. 30.06 makes it a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) for a concealed handgun license holder to carry a concealed handgun on another's property without effective consent if the person received certain notice. The notice must be that that entry on the property by a concealed handgun licensee with a concealed handgun was prohibited or that remaining on the property with a concealed handgun was forbidden and the person did not depart. Notice can be provided orally or in writing. The definition of written communication includes a sign posted on the property and displayed in a conspicuous manner with specific language in sec. 30.06

In addition, Penal Code, sec. 46.03 lists places where all firearms and other weapons are prohibited. It is not a defense to prosecution under this offense that a person had a handgun and was licensed to carry a concealed handgun.

Penal Code, sec. 46.035(c) and (i) prohibit concealed handgun license holders from carrying concealed handguns in several types of places, including any meeting of a government entity, if the license holder was given notice that complied with Penal Code, sec. 30.06. These offenses are class A misdemeanors.

DIGEST:

CSHB 508 would prohibit state agencies and political subdivisions of the state from providing notice to concealed handgun licensees, as described by Penal Code, sec. 30.06, that entering or remaining on the premises of a governmental entity was prohibited if license holders were not prohibited from carrying a concealed handgun on the premises by Penal Code, secs. 46.03 or 46.035.

State agencies and political subdivisions that violated this prohibition would be liable for civil penalties of $1,000 to $1,500 for the first violation and $10,000 to $10,500 for second and subsequent violations. Each day of a continuing violation would be considered a separate violation. The penalties would be deposited in the crime victims' compensation fund.

Upon request by a Texas citizen or a person with a Texas concealed handgun license, the attorney general would be required to sue to collect the civil penalty in CSHB 508. Before bringing a suit, the attorney general would have to give the agency or subdivision notice that described the violation, stated the proposed penalty, and gave the agency or subdivision 15 days from receipt of the notice to remove the sign and cure the violation to avoid the penalty, unless it was a repeat offense. Sovereign immunity would be waived for liability created by the bill.

The current prohibition for concealed handgun licensees to carry a handgun "at" government meetings would be changed to specify that the prohibition applied to the room or rooms where a meeting was held, and to require that it be an open meeting under the Government Code and that the government entity had provided notice of the prohibition.

The bill would take effect September 1, 2013, and would apply to offenses committed on or after that date.

SUPPORTERS SAY:

CSHB 508 would ensure that governmental entities did not post "no carry" signs unless carrying a concealed handgun was prohibited by statute. Currently, some governmental entities post "no carry" signs erroneously in places in which it is legal to carry a concealed handgun. This is confusing and could potentially subject concealed handgun license holders to a criminal penalty. CSHB 508 would address this problem by creating a civil penalty for the wrongful placement of these signs.

CSHB 508 would impose a reasonable civil penalty for violations. The bill

would create a 15-day period during which governmental entities could cure any violation and avoid fines. This is ample time for any entity acting in good faith to avoid a lawsuit. Requiring the attorney general to file these suits would ensure that violations of the bill were addressed. It would be appropriate to waive sovereign immunity in these narrowly drawn circumstances to ensure that Texas' concealed carry laws are followed.

The bill also would clarify that it is in the actual room where a government meeting is taking place that concealed handguns could be prohibited, that it must be an open meeting, and that notice must be provided. This reasonable, common interpretation of the current law would help both concealed handgun license holders and governmental entities follow the statutes.

OPPONENTS SAY:

The state should be cautious about waiving sovereign immunity of state agencies and political subdivisions, even for the limited circumstances of CSHB 508. This should be reserved only for situations in which there is no other appropriate remedy.

CSHB 508 should not mandate that the attorney general file suits under the bill on the request of Texas citizens or concealed handgun licensees. The attorney general should have discretion about filing suits.

SUBJECT: Fingerprint submission procedures for a concealed handgun license

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Lavender, Sheets, Simmons

0 nays

1 absent — Kleinschmidt

WITNESSES: For — Michael Cargill; Bobby Clakley, Bill Titus, Texas Concealed Handgun Association; Lindan Morris; Mark Smith; Alice Tripp, Texas State Rifle Association (*Registered, but did not testify*: Dennis Allen; Charles Cotton; Mike Cox; Angel Gonzalez)

Against — Heather Ross, Gun and Mental Health Action Group (*Registered, but did not testify*: David Albert; Grace Chimene; Dean McWilliams, MorphoTrust; Susan Morrison; Joanne Richards; John Woods, Texas Gun Sense)

On — RenEarl Bowie, Skylor Hearn, Texas Department of Public Safety (*Registered, but did not testify*: Steve Moninger, Sherrie Zgabay, Texas Department of Public Safety)

BACKGROUND: Government Code, ch. 411 requires a person seeking a concealed handgun license to submit two complete sets of legible and classifiable fingerprints. Administrative rules (Title 37, Texas Administrative Code, Part 1, ch. 6, subch. B, §6.12) for the Department of Public Safety (DPS) require all original applicants to submit the fingerprints electronically at a qualified entity.

DIGEST: CSHB 698 would require DPS to establish procedures for the submission of fingerprints by concealed handgun license applicants who did not reside within a 25-mile radius of a facility capable of processing digital or electronic fingerprints. These applicants would include active and honorably retired peace officers, as well as active and retired judicial officers.

CSHB 698 would take effect September 1, 2013, and would apply to an application for a license issued on or after that date.

SUPPORTERS SAY:

CSHB 698 would reduce barriers to concealed handgun license registration by requiring DPS to establish procedures for applicants who live far from a fingerprint processing facility, including active and retired peace officers and judicial officials.

Current procedures for submitting fingerprints are onerous for rural Texans. In 2011, the state entered into an exclusive contract with a single vendor to provide the service of collecting fingerprints. This vendor has only 72 fingerprint facilities across Texas, and one-quarter of the population lives more than 25 miles from such a facility. Some residents must travel more than 100 miles just to get their fingerprints taken. Additionally, there is often a waiting list to get an appointment at a fingerprint service center, which makes planning a long trip to scan one's fingerprints even more difficult.

Collecting fingerprint information should not be so burdensome. There are other ways of obtaining fingerprints, including use of an ink card or the establishment of more service centers. By requiring DPS to create procedures for people who live in remote locations, CSHB 698 would lower the obstacles to obtaining a concealed handgun license, while helping to protect Second Amendment rights.

OPPONENTS SAY:

CSHB 698 could encourage DPS to put convenience before security. Concealed handgun licenses are a meaningful privilege and the proper security measures should not be spared. Requiring all license applicants to submit electronic fingerprints at a qualifying entity is the best way to ensure security.

Under the bill, DPS could adopt rules allowing such applicants to use an ink card system, which involves submitting a paper-stamped version of their fingerprints. Not only is this system slow, costly, and frequently inaccurate, it also could weaken security by making it difficult to determine if the applicant actually submitted his or her own fingerprints. The current, mandatory electronic process is much more secure.

SUBJECT: Authorizing signage to alert hunters of school location

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — Pickett, Fletcher, Dale, Flynn, Lavender, Sheets, Simmons

0 nays

2 absent — Cortez, Kleinschmidt

WITNESSES: For — Rene Gutierrez, Edinburg CISD (*Registered, but did not testify:* Dr. Martin Castillo and Carlos Guzman, Edinburg CISD)

Against — None

On — Ana Correa Yanez, Texas Criminal Justice Coalition (*Registered, but did not testify:* David Sinclair, Texas Parks and Wildlife Department)

BACKGROUND: Texas requires mandatory hunter education for every hunter, including those from out of state, born on or after September 2, 1971. Annually more than 30,000 youth and adults become certified under the program operated by the Texas Department of Parks and Wildlife (TDPW).

DIGEST: CSHB 801 would add provisions for school districts to request signage alerting hunters to the location of a nearby school. It also would require TDPW to educate hunters about the danger of discharging a firearm across the property line of a school.

At the request of a school district, the Texas Department of Transportation (TxDOT) would be required to place signs in appropriate places along state or federal highways to alert hunters to the proximity of a school. TxDOT also would be required to act jointly with cities and counties to place signs along roadways maintained by those entities. School districts would be required to pay for the signs.

The bill would require TDPW to include information in its mandatory

hunter education program about a hunter's personal responsibility for discharging a firearm, awareness of school property and other surroundings and the danger of discharging a firearm across a school property line. This information also would be made available in any written or Internet-based material produced by TDPW for the hunting public.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 801 would raise awareness of the dangers of discharging a firearm near school property. It would do this through the appropriate placement of signs on nearby highways and roads and through enhanced hunter education.

The bill properly charges TxDOT with determining whether the signs should be placed. If the request meets TxDOT's standards, then the school district would pay for the signs.

The bill is designed to protect children and school employees from bullets reaching school property. In December 2011, two boys were trying out for the basketball team at a middle school in the Edinburg CISD when they were struck by bullets fired from a nearby property. One boy is paralyzed and bound to a wheelchair and the other lost a kidney and suffered other damage to internal organs.

Texas is a growing state and as more schools are located in formerly rural areas, the problem of stray gunfire crossing school property is expected to increase. This is a common-sense proposal that does not interfere with property owner or gun owner rights.

OPPONENTS SAY:

Texas does not need another state law specifying highway signage. The issue could be handled at the local level without involving TxDOT.

SUBJECT: Extending sales tax exemption for coins and precious metals

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 5 ayes — Hilderbran, Bohac, Button, Gonzalez, Strama

0 nays

4 absent — Otto, Eiland, Martinez Fischer, Ritter

WITNESSES: For — Rich Danker, American Principles Project; Mike Fuljenz, Universal Coin and Bullion, Ltd.; Chris Howe; Ryan Lambert, Texas Sound Money; Jorge Landivar; (*Registered, but did not testify*: Stephanie Gibson, Texas Retailers Association; Jake Posey, United States Money Reserve, Inc.)

Against — None

On — Carol McAnnally and Brad Reynolds, Comptroller

BACKGROUND: Tax Code, sec. 151.010 defines taxable items for the purpose of assessing state and local sales-and-use taxes.

Tax Code, sec. 151.336 exempts precious metal coins and bullion from the sales tax when the total sales price is $1,000 or more. Sale of a precious metal coin is also exempt from the use tax until the item is subsequently transferred.

DIGEST: HB 787 would amend Tax Code, sec. 151.336 so that all precious metal coins and bullion would be exempt from sales-and-use taxes.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. Only tax liability accruing before the bill's effective date would be affected.

SUPPORTERS SAY: HB 787 would allow more Texans, especially lower and fixed-income residents, to invest in the financial security offered by precious metal coins

without being penalized by the sales tax. The difficulty with Texas' current tax treatment of precious metal coins is that the tax break is out of reach for most Texans. The current policy actually punishes those who would like to save but can only purchase precious metal coins in lower denominations. Those who wish to protect themselves against possible future increases in inflation should not be penalized 8.25 percent for making smaller investments in gold and silver.

By extending the sales-and-use tax exemption to all purchases of metal coins under $1,000, the bill would allow Texans to save more. Twenty-one other states have no sales tax on gold and silver coins. It is difficult for those with low or fixed incomes, such as teachers who want to invest in metal coins to pay for retirement, to save enough for their precious metal purchases to be exempt from sales tax. These individuals should be able to make small transactions to help make themselves financially secure, as opposed to making their purchases out-of-state, which leaves them unprotected by consumer protection laws.

Precious metal coin dealers in the state would see increased sales because Texans would purchase their metal coins from them instead of from out-of-state dealers. These in-state dealers also would spend more advertising dollars in the state trying to reach Texas customers. HB 78's minor impact on tax revenue would be offset with the economic impact from this increase in advertising directed at the large Texas market.

OPPONENTS SAY:

In recent years, there have been deep cuts to public services in Texas. Now that the state is enjoying stronger fiscal health, it should restore these services to levels that existed before the recession and then fund other, more pressing priorities, such as water and transportation, before considering such a tax break. Additionally, no significant increase to the market for metal coins in Texas would occur as a result of the bill. Currently, millions of dollars of sales of bullion and coins in the state are not taxable. The below-$1,000 transactions constitute a very small portion of gold and silver purchases in the state.

NOTES:

According to the fiscal note, the tax exemption in HB 78 would have a negative impact on general revenue of $424,000 through fiscal 2015 if the bill took immediate effect. If the bill took effect September 1, 2013, there would be a negative impact of $375,000 in fiscal 2014-15. A proportional loss of sales and use tax revenue would be experienced by local taxing jurisdictions.

SUBJECT: Carrying concealed handguns on institutions of higher education campuses

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — Fletcher, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

1 nay — Pickett

1 absent — Cortez

WITNESSES: For — David Bloom; Jeremy Blosser, Tarrant County Republican Party; Michael Cargill; Russell Doyle; Nathan Giesenschlag; James Greene; Eric Jackson; Joan Jackson; Ryan Lambert; Jorge Landivar; William Loeb, Rachel Malone, Texas Firearms Freedom; Glenn Meyer; Kristen Ploeger; Howard Ray; Richard Smith; Thomas Sovik; Tom Swearingen; Steven Traeger, Texas A&M Student Government Association; Alice Tripp, Texas State Rifle Association; B.R. Wallace; Madison Welch, Texas Students for Concealed Carry on Campus; Lucy Wendt; (*Registered, but did not testify:* Justin Aguilar, Students for Concealed Carry; Ian Armstrong; Cole Bordner, Texas A&M Students for Concealed Carry on Campus; Austin Brown, Texas Students for Concealed Carry; Keith Brown; Kevin Cottrell; Matthew Daugherty, Texas Students for Concealed Carry on Campus; Annita Ellison; Marida Favia del Core Borromeo, Exotic Wildlife Association; Robert Gordon; Caroline Gorman, Libertarian Party of Travis County; Phil Graves; Kenneth Gross; Monica Grosz; Jennifer Hall, Tarrant County Republican Party; Cameron Hofker; Coleman Hofker; John Hofker; Michael Holter; John Horton, Young Conservatives of Texas; Thomas Johnson, Young Americans for Liberty Northeast Lakeview; Joseph Ledlow, Students for Concealed Carry on Campus; Guillermo Lopez; Kevin Mack, Texas Students for Concealed Carry on Campus; Ray Mack; Payton Mogford, Students for Conceal Carry; Camille Mohle, Texas A&M Students for Concealed Carry on Campus; Brandon Moore, Tarrant County Republican Party; Philip Smith; Sherida Tripp; Stephen Walton)

Against — Fidel Acevedo, LULAC; Jim Bryce; Molly Cummings; Mary Eisenberg; Rebecca Eisenberg, Texas Gun Sense; Alice Embree; Katherine Eyberg; Alex Ferraro; Troy Gay, Austin Police Department;

Nicole Golden, Moms Demand Action; Claire Wilson James; Thomas Just; M. H. Keller, Texas Suicide Prevention Council; Lucy Krivitsky; Glen Maxey, Texas Democratic Party; Scott Medlock; Nick Mitchell, University of Texas: College of Natural Sciences; Tess Ortega; Brad Parker, TTLA; Kenneth Perrine; Kathleen Points; Madonna Ramp; Joanne Richards; Heather Ross, Gun and Mental Health Action Group, Occupy the NRA; Cissy Sanders, Moms Demand Action for Gun Sense in America; Frances Schenkkan, Texas Gun Sense; Gyl Switzer, Mental Health America of Texas; Saurah Tabrizi; Robin Wallace; Sandra Wilson Mandell-Thiher; John Woods, Texas Gun Sense; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Laura Blanke, Texas Pediatric Society; Christine Bryan; Ellison Carter; Heather Fazio, Texans for Accountable Government; Chris Frandsen; Brette Garner; Dwight Harris, Texas AFT; Debbie Hersh; Brooke Hersh-Thompson; Ramey Ko; Catherine Lamb, Moms Demand Action for Common Sense Gun Laws; Dawn Lewis, Texas Gun Sense; Susan Milam, National Association of Social Workers/Texas Chapter; Caitlin Miller; Nathaniel Norris; Joseph Oliveri, Community Committee Against Gun Violence; Rosalie Oliveri, Community Committee Against Gun Violence; Justin Perez; Herman Prager; Stewart Snider, League of Women Voters TX; Amanda Van Epps; Bridget Wiedenmeyer; Lucien Zahendra, Moms Demand Action; Crystal Zhao)

On — (*Registered, but did not testify:* RenEarl Bowie, Texas DPS; William Holda, Texas Association of Community Colleges; Steve Moninger, Texas DPS; Sherrie Zgabay, Texas Department of Public Safety)

BACKGROUND:

Penal Code, sec. 46.03, makes it an offense for a person to intentionally, knowingly, or recklessly possess or go with a firearm, illegal knife, club, or other prohibited weapon onto:

- the premises of a school or educational institution;
- any grounds or building on which an activity sponsored by a school or educational institution is being conducted; or
- a vehicle of a school or educational institution, whether the school or institution is public or private.

An offense is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000). Sec. 46.03 provides certain defenses to prosecution and also allows weapons to be carried in the places listed

above pursuant to written regulations or written authorization of the institution.

Penal Code, sec. 30.06 creates an offense for a concealed handgun license holder who carries a handgun on someone's property after receiving verbal or written notice that entry on the property by a concealed handgun license holder is forbidden, or remaining on and failing to depart such a property with a concealed handgun after receiving notice.

Written notice must contain the words: "Pursuant to Sec. 30.06 Penal Code (trespass by a holder of license to carry a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (concealed handgun law), may not enter this property with a concealed handgun."

DIGEST:

HB 972 would allow holders of a concealed handgun license to carry a concealed firearm onto the campuses of higher education institutions, with certain exceptions for institutions that chose not to allow them.

Public institutions. CSHB 972 would create an opt-out system for public institutions of higher education.

The bill would allow an institution of higher education, after consulting with its students, staff, and faculty to adopt rules prohibiting license holders from carrying concealed handguns on any ground or building owned or leased by the institution on which an activity sponsored by the institution was being conducted, or on the institution's passenger transportation vehicles. An institution adopting such rules would give notice by posting appropriate signs in accordance with Penal Code 30.06.

A public institution that did not adopt a policy prohibiting concealed carry would be required to adopt rules concerning the:

- storage of handguns in dormitories or other residential facilities owned or leased and operated by the university; and
- carrying of concealed handguns by license holders at collegiate sporting events taking place on grounds or buildings owned or leased and operated by the institution.

Private or independent institutions. HB 972 would create an opt-in system for private or independent institution of higher education. These

institutions, after consulting with its students, staff, and faculty, could adopt rules allowing license holders to carry concealed handguns on any ground or building owned or leased by the institution on which an activity sponsored by the institution was being conducted, or on the institution's passenger transportation vehicles.

An institution adopting such rules would be required to adopt further rules described above concerning the proper storage of handguns and carrying of concealed handguns.

Hospitals and pre-K-12 schools attached to institutions. CSHB 972 would prohibit anyone from carrying a concealed handgun on the premises of a hospital, preschool, elementary, or secondary school maintained by an institution of higher education if the institution posted appropriate notice in compliance with Penal Code, sec. 30.06.

Immunity. The bill would amend Government Code, sec. 411.208, to prevent a court from holding any of the following liable for damages caused by an applicant or a concealed handgun license holder or by an action or failure to perform a duty imposed by applicable concealed handgun license statutes:

- an institution of higher education;
- a private or independent institution of higher education; or
- an officer or employee of either.

Nor could a cause of action be brought against any of the above institutions due to any damages caused by the actions of an applicant or license holder. These protections would not apply if the act or failure to act was capricious or arbitrary.

Other provisions. HB 972 would create in Penal Code, sec. 46.035 a class A misdemeanor offense (up to one year in jail and/or a maximum fine of $4,000) for a license holder who intentionally, knowingly, or recklessly carried a handgun onto the campus of a public institution of higher education that had adopted rules prohibiting concealed carry under CSHB 972.

The bill would take effect on January 1, 2014. It would apply only to causes of action that accrued or offenses committed on or after that date.

SUPPORTERS SAY:

CSHB 972 would allow concealed handgun license holders to carry firearms on the premises of institutions of higher education to protect the right of self-defense and to deter shooters or even stop them altogether.

People need to be able to protect themselves in public because government authorities are not always able to do so. While authorities claim they are able to respond quickly to shooters, too often people have died waiting for official response to arrive. If civilians were able to defend themselves, they could stop a shooter and save lives.

It is important to let law-abiding citizens have access to their firearms for self-defense because laws alone do not stop criminals or the disturbed from committing violent crimes. The potential of armed students, faculty, and staff on campus, beyond just police, could deter shooters from targeting campuses. Current laws, by preventing civilians from bringing firearms onto a campus, make colleges and universities notoriously vulnerable targets.

Twenty-four other states allow concealed carry on campuses. The system has been tried and shown to be successful. CSHB 972 would allow Texas' colleges and universities to adopt such a policy on their own as they deemed appropriate. Local control of this sort would respect the ability of institutions of higher education to continue to make the most appropriate choices for their communities.

Even if it were desirable for society to be free of guns and violence, such a perfect world does not exist. CSHB 972 would promote the right of individuals to protect themselves, along with their fellow students and co-workers, from those in society who would do them harm.

OPPONENTS SAY:

By allowing concealed firearms on campus, CSHB 972 would contribute to a more dangerous environment and a culture of fear at Texas' colleges and universities.

Campus police and other safety authorities are better trained and better prepared to respond to a shooting attack than ever before. This is improving as public awareness and spending on the matter have increased. Authorities are concerned, however, that officers responding to a shooting would have difficulty differentiating between shooters if one or more were people with concealed handgun licenses trying to stop an aggressor.

Authorities also argue that, even with the required training and education that comes with a license, shooting calmly and with precision is extremely difficult. This is true even for people with military experience. This lack of ability and experience can contribute to casualties from cross-fire and the inability to tell friend from foe.

Campus police and others have argued that an increase in guns only leads to an increase in gun violence. Studies from Europe and elsewhere in the developed world where firearms are tightly restricted or banned show negligible levels of gun violence. On the other hand, countries like the United States and South Africa, with high levels of guns and gun ownership, display shocking and tragic levels of gun violence and gun-related death. Increasing the places in Texas where guns could legally be carried only would spread this further.

Colleges and university mental health officials worry about the correlation between guns and suicide. Suicide is a leading cause of death of university students, and increasing access to an effective means of impulsively taking one's own life could increase its incidence.

An increase of lethal weapons on campus would detract from an environment designed to foster learning and academic debate. More guns on campus only would reinforce a siege mentality and a generalized feeling that people are under assault. Studies show that the increased presence of firearms in an environment causes people to have more violent thoughts.

OTHER OPPONENTS SAY:

It would be better for the state to pursue ways of keeping firearms out of the hands of criminals and the mentally ill. Texas should focus on proven methods of reducing gun violence, such as background checks, limits on high-capacity magazines, and better availability of mental health programs.

SUBJECT: Designating certain employees as school marshals

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 6 ayes — Pickett, Fletcher, Dale, Lavender, Sheets, Simmons

1 nay — Flynn

2 absent — Cortez, Kleinschmidt

WITNESSES: For — Ramiro Canales, Texas Association of School Administrators; Melanie Kriewaldt-Roth; Charley Wilkison, Combined Law Enforcement Associations of Texas; (*Registered, but did not testify:* Jay Arnold, Texas PTA; Lon Kraft, Texas Municipal Police Association; Frederick Frazier and James Parnell, Dallas Police Association; Dominic Giarratani, Texas Association of School Boards; and eight individuals)

Against — Read King; Ted Melina Raab, Texas AFT; Bridget Wiedenmeyer; (*Registered, but did not testify:* Portia Bosse, Texas State Teachers Association; Ashley Chadwick, Freedom of Information Foundation of Texas; Heather Fazio, Texans for Accountable Government; Caroline Gorman, Libertarian Party of Travis County; Jennifer Hall and Brandon Moore, Tarrant County Republican Party; Catherine Lamb, Cissy Sanders, and Lucien Zahendra, Moms Demand Action for Common Sense Gun Laws; Joseph Oliveri and Rosalie Oliveri, Community Committee Against Gun Violence; John Woods, Texas Gun Sense; and six individuals)

On — Thomas Just, Students for Gun Free Schools; Heather Ross, Gun and Mental Health Action Group; (*Registered, but did not testify:* RenEarl Bowie, Steve Moninger, and Sherrie Zgabay, Texas Department of Public Safety; John Woods, Texas Gun Sense; and four individuals)

DIGEST: HB 1009, The Protection of Texas Children Act, would establish a new category of law enforcement officer designated as a school marshal. The bill would allow school districts and open-enrollment charter schools to designate employees as school marshals and would set training standards and establish the rights, restrictions, limitations, and responsibilities of those marshals.

Designating marshals. The bill would permit school boards and charter school governing boards to appoint one employee per 400 students on a campus to serve as a school marshal. Those designated would be required to obtain certification by the Commission on Law Enforcement Officer Standards and Education (TCLEOSE).

A marshal could act only as necessary to prevent or abate the commission of an offense that threatened serious bodily injury or death of students, faculty, or school visitors.

A marshal would be authorized to make arrests and exercise all authority given railroad peace officers under Code of Criminal Procedure, art. 2.121 subject to a district's written regulations. A school marshal could not issue a traffic citation.

The identity of a school marshal would be confidential and not subject to a request under the public information law. TCLEOSE would be required to disclose the identity to:

- the director of the Department of Public Safety;
- the employer school district or charter school;
- the police chief or sheriff; and
- the chief administrator of commissioned peace officers employed at a school district.

The school board could, but would not be required to, reimburse the amount paid by the applicant to participate in the training. A school marshal would not be entitled to state benefits normally provided to a peace officer.

Training and licensing. HB 1009 would authorize TCLEOSE to establish a training program open to school employees who hold a concealed handgun license (CHL). Only TCLEOSE staff could conduct the training, which would include 80 hours of specified instruction. Trainees would be subject to a psychological examination to determine whether they were fit to carry out the duties of a school marshal in an emergency shooting.

TCLEOSE would license individuals who completed the training and were deemed psychologically fit. The bill would require marshals be recertified every two years. It also would require the Department of Public Safety to

notify TCLEOSE if a school marshal's concealed handgun license was suspended or revoked.

The bill would provide for a training fee and would require TCLEOSE to establish the training program by January 1, 2014.

Handgun provisions. A school marshal would be allowed to carry or possess a handgun on school promises in accordance with written regulations by a school board. As an exception, those regulations would require a school marshal whose job involved regular, direct contact with students to keep the weapon in a locked and secured safe within the marshal's reach. A handgun could be loaded only with frangible ammunition designed to disintegrate on impact for maximum safety and minimal danger to others.

A marshal could access the weapon only in situations involving an active shooter.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1009 is prompted by the terrible events of December 12, 2012, when a shooter killed 20 students and six adults at Sandy Hook Elementary School in Connecticut. The bill is designed to provide an option for districts to protect Texas students from any similar tragedy without the great expense of placing a law enforcement officer in every school building in the state.

The bill would allow local districts to designate a school employee as a school marshal, who would serve as the last line of defense should an armed attacker threaten the lives of children in public schools. A marshal on the premises could respond before police arrived, possibly saving many lives.

Districts would be limited to one school marshal for an average elementary school of 300 to 500 students. The marshals would be individuals who possessed concealed handgun licenses and had undergone 80 hours of training specific to school shooting situations. TCLEOSE, the state law enforcement licensing agency, would develop the training and screen candidates for psychological fitness.

Other law enforcement officers undergo more extensive training because their duties are much broader. HB 1009 would match the level of training to the limited duties of school marshals.

Some large school districts are able to afford a police force and school resource officers. However, those resource officers usually are stationed at middle schools and high schools to deal with routine problems involving drugs, gangs, and fights. Elementary schools frequently are left largely unprotected. In addition, district police and resource officers are usually in uniform, which would allow a school shooter to identify and target them. School marshals, like air marshals, are covert and have their weapons concealed, giving them a potential advantage over an armed intruder.

HB 1009 would prevent accidental shootings by requiring school employees who work in the classroom to keep their weapons in a lockbox. Other school marshals who work away from students could carry concealed handguns. The bill also requires a type of ammunition designed to disintegrate upon contact with hard surfaces, minimizing the risk of errant shots that might ricochet or go through an interior wall.

The identity of a school marshal would be known only to the head school administrator and local law enforcement authorities. Districts that chose to reimburse the marshals for their training expense or pay them a stipend could do so through their regular salary to protect their identity.

While it is true that school boards may adopt policies allowing employees to carry concealed weapons on school premises, HB 1009 offers a well-thought out template that districts could opt to follow. It was developed with input of law enforcement and school officials to cover a broad range of issues.

Districts could face liability for the actions of a school marshal but also could be subjected to lawsuits for failing to provide adequate security.

The issue of school safety and guns on campus has been studied and debated by the Legislature previously. Now is the time to act before the next shooting claims innocent lives.

OPPONENTS SAY:

HB 1009 would allow school districts to pretend to be addressing school safety instead of truly providing the resources needed to make schools

safer.

Only fully certified law enforcement personnel should be dealing with weapons on campus. One teacher's group said that 65 percent of the 2,000 teachers who responded to an online survey agreed that security should be provided by local law enforcement and school security, rather than teachers and other school personnel. As has been shown in previous cases, confrontations with active shooters are challenging even for fully trained law enforcement officers. More guns in schools outside the hands of true law enforcement officers would invite more accidents.

Proponents claim HB 1009 is modeled after the federal air marshal program, but this is not true. Federal air marshals are full law enforcement personnel who undergo a 35-day basic training followed by a 43-day advanced training, including 155 hours of firearms training. School marshals would need only 80 hours of training.

It is inevitable that word will leak out at each school about the identity of the school marshal. At that point, the lack of anonymity would compromise the marshal's ability to be effective. In addition, school districts could face liability if a student or employee was injured or killed due to negligence or actions of a school marshal.

OTHER OPPONENTS SAY:

There is no need for a new state law prescribing detailed regulations for something that school districts already can do. While state law prohibits individuals from taking firearms onto school premises, districts may permit exceptions through written regulations or authorizations. Harrold ISD has a well-publicized program allowing staff to carry concealed weapons and other school boards are considering similar measures.

School shootings are a complex problem that should be studied further before enacting a law creating a new category of law enforcement. Other issues, such as the need for better mental health services, should be included in a comprehensive plan to address school violence.

SUBJECT: Intentional display of a handgun by a concealed handgun license holder

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 8 ayes — Pickett, Fletcher, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

1 absent — Cortez

WITNESSES: For — Charles Cotton; Mike Cox; Rachel Malone; (*Registered, but did not testify:* Dennis Allen; Michael Cargill; Lon Craft, Texas Municipal Police Association; Angel Gonzalez; Amy Hedtke; Joe Palmer; Alice Tripp, Texas State Rifle Association)

Against — (*Registered, but did not testify:* David Albert; Grace Chimene; Susan Morrison; Joanne Richards; Heather Ross, Gun and Mental Health Action Group; Bridget Wiedenmeyer, Moms Demand Action Texas Chapter; John Woods, Texas Gun Sense)

On — (*Registered, but did not testify:* Steve Moninger, Department of Public Safety)

BACKGROUND: Under Penal Code, sec. 46.035 it is an offense if a concealed handgun license holder carrying a handgun on or about his or her person intentionally fails to conceal the gun. Under sec. 46.035(h), it is a defense to this crime if the actor, at the time of the offense, would have been justified in the use of deadly force under Penal Code, ch. 9.

DIGEST: HB 1304 would make it an offense under Penal Code, sec. 46.035 for a concealed handgun license holder to intentionally display his or her handgun, rather than intentionally failing to conceal it.

The defense under sec. 46.035(h) would be available if the actor would have been justified in the use of force, rather than the use of deadly force.

The bill would take effect September 1, 2013, and would apply only to an offense committed on or after that date.

SUPPORTERS SAY:

HB 1304 would clarify ambiguous statutory language to make the law easier to understand and apply. The phrase "intentionally fail to conceal" is difficult to interpret and often is misconstrued because intending to do something and failing to do something are conflicting standards. This ambiguity has led to the prosecution and harassment of concealed handgun license holders for accidentally or inadvertently displaying their guns, which might happen, for example, when a piece of clothing shifted and revealed the firearm. By changing the language to "intentionally displays," the bill would clarify the intent required by the actor under this offense.

The bill would ensure that license holders were held to the same standard of law as people who did not hold concealed handgun licenses. The provisions in Penal Code, ch. 9 governing justified threat of force allow a person to produce a weapon to create apprehension in an aggressor that the person producing the weapon would use deadly force if necessary. This law has been applied inconsistently for different defendants because license holders have a duty to conceal their weapons under Penal Code, sec. 46.035. By striking "deadly" from the language in the defense, the bill would clarify that both people with and without concealed handgun licenses could produce a weapon as a threat of force under Penal Code, ch. 9.

HB 1304 would prevent the escalation of violence. Threatening force by producing a weapon has been shown to decrease crime, even when a shot is not fired. Sixty percent of convicted felons have admitted that they avoided committing a crime when they knew the victim was armed. The bill would discourage aggressors and criminals from carrying out violent crimes or escalating potential altercations.

OPPONENTS SAY:

HB 1304 would change the nature of a concealed handgun license holder's duties under the law. The name of the license makes it clear that it should be incumbent upon a license holder to attempt to conceal the handgun. The current language is clear, and changing the code to require intentional display would set too low a bar and would be inconsistent with the purpose of the license.

HB 1304 would weaken standards in the law and allow license holders to brandish their weapons even when use of deadly force was not justified. Handguns are a deadly force, killing hundreds of Texans every year. There is an extreme range of circumstances under which use of any force could

be justified, so the standard for allowing a license holder to display his or her weapon as a threat to another person should remain high. If the weapon produced in response to a threat were to be discharged it would constitute deadly force, so that level of force should be justified before a weapon could be displayed as a threat.

The bill would invite escalation of violence. When a firearm is produced, any person present could reasonably be expected to react to it in turn with deadly force. Because the bill would weaken standards for the display or production of a concealed handgun, it would increase the number of situations in which these weapons were displayed or brandished, which in turn would lead to an increase in violent altercations.

SUBJECT: Unlawful seizure of a firearm by a governmental officer or employee

COMMITTEE: Federalism and Fiscal Responsibility, Select — favorable, without amendment

VOTE: 4 ayes — Creighton, Burkett, Lucio, Scott Turner

1 nay — Walle

WITNESSES: For — (*Registered, but did not testify:* Ian Armstrong; Judith Fox; Tommy Gage, Montgomery County Sherriff's Office; Joann Galich; Bob Green; Ded Hebert; Chris Howe; Ryan Lambert, Marlene Parlak; Tim Parlak; Marissa Patton, Texas and Southwestern Cattle Raisers Association; Robert Ritchey; Michelle Smith; Alice Trip, Texas State Rifle Association; Terri Williams, Texas Motorcycle Rights Association)

Against — (*registered, but did not testify:* Jimmy Rodriguez, San Antonio Police Officers Association; Charley Wilkison, Combined Law Enforcement Association of Texas)

On — (*Registered, but did not testify*: Tom Glass, Libertarian Party of Texas)

DIGEST: HB 1314 would make it a class A (up to one year in jail and/or a maximum fine of $4,000) for an employee of the United States, Texas, or a subdivision of Texas — under color of the person's office or employment — to knowingly seize a firearm that is permitted or required by a federal statute, order, rule, or regulation that imposes a prohibition or regulation that does not exist under Texas law.

The bill would define a person who acted under color of the person's office or employment s one who acted or purported to act in an official capacity or took advantage of that actual or purported capacity.

The bill would allow an exception if a person's seizure of a firearm was consistent with an explicit and applicable grant of federal statutory authority that was consistent with the U.S. Constitution.

The prosecution could negate the existence of the exception by proving,

based on a U.S. Supreme Court decision, that the federal order, rule, or regulation used to seize a firearm was not within the scope of federal powers conferred by the U.S. Constitution.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1314 would ensure that Texans' rights guaranteed in the second amendment of the U.S. constitution were protected from unlawful firearm seizure under "color of law."

Such a seizure has been deemed unconstitutional by the U.S. Supreme Court. According to the FBI, it is a federal crime for anyone acting under "color of law" to willfully deprive a person of the right protected by the Constitution or U.S. law. During 2012, 42 percent of the FBI's total civil rights caseload involved color of law issues, with "deprivation of property" one of the top five categories.

HB 1314 would not create a dispute between state and federal authority, but would act as the final backstop against agents of the federal or state government that exceeded constitutional authority and violated the rights of Texas citizens. Given the Legislature's short biennial session, it is essential to address the possibility that federal decrees could be passed during the interim that could be struck down in the interim by the U.S. Supreme Court.

OPPONENTS SAY:

HB 1314 could criminalize police officers acting to fulfill their jobs to the best of their knowledge. Police officers should not be caught in the middle of federal and state firearm laws.

Moreover, HB 1314 is not necessary because it is already illegal to enforce a law that the U.S. Supreme Court has judged to be unconstitutional. The bill would merely signal Texas' unwillingness to constructively address the serious issue of enforcing federal and state gun laws while also protecting citizens' rights.

SUBJECT: Disposition by law enforcement of certain seized weapons

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 7 ayes — Pickett, Fletcher, Dale, Flynn, Kleinschmidt, Lavender, Simmons

0 nays

2 absent — Cortez, Sheets

WITNESSES: For — (*Registered, but did not testify:* TJ Patterson, City of Forth Worth; Alice Tripp, Texas State Rifle Association)

Against — None

On — (*Registered, but did not testify:* J.D. Robertson, Texas Rangers)

BACKGROUND: Code of Criminal Procedure, art. 18.19 governs the disposition of weapons seized by law enforcement in connection with certain offenses. In all cases in which the weapon is not returned to or claimed by the person found in possession of the weapon, the weapon must be destroyed or forfeited to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory.

DIGEST: HB 1421 would allow a seized weapon not returned to or claimed by the person found in possession of the weapon to be sold at public sale by the law enforcement agency holding the weapon or by a licensed auctioneer. Only a licensed federal firearms dealer could purchase a weapon sold under this provision. The proceeds from the sale, after deductions for court costs and auction costs, would be transferred to the law enforcement agency holding the weapon.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: HB 1421 would allow law enforcement agencies to benefit from the proceeds of the sale of guns. Between March and August of 2012, the Texas Department of Public Safety destroyed 1,673 firearms, many of

which could have been sold or auctioned instead. The practice of destroying seized firearms denies courts and law enforcement agencies thousands of dollars in potential income, which could be used to help purchase safety equipment and to cover the costs of investigating and trying the offenses in which the seized weapons were involved.

HB 1421 would correct a statewide problem and bring more law enforcement agencies into compliance with the law. There is widespread misunderstanding about the legality of selling seized weapons, and by legalizing and establishing rules for the practice, the bill would help agencies that are currently out of compliance to engage in this practice within the bounds of the law.

The bill would not increase the number of guns sold or circulated in Texas. The mechanics of the free market would decide how many of these firearms were sold and whether there would be demand for them. The bill merely would allow a new option for law enforcement to dispose of firearms and for firearms dealers to obtain them. It would not have an effect on the demand or market for these weapons.

The bill would not lead to the sale or commercialization of weapons used in notorious or heinous crimes. Courts still would have discretion in which disposition method to use, and still would have the option of destroying seized weapons. Guns that were used in a particularly heinous or notorious crime could be destroyed to prevent their inappropriate resale.

OPPONENTS SAY:

HB 1421 would put more guns in circulation in Texas, which would threaten public safety and the safety of peace officers. Deadly weapons seized by law enforcement during the commission of a crime should be destroyed rather than resold. By allowing seized weapons to be sold, the bill would allow law enforcement to reintroduce a dangerous weapon back into the community against which it was used. Assault weapons, which could be sold or auctioned by law enforcement under this bill, are used against peace officers more often than they are used against regular citizens. Allowing these weapons to continue to circulate through the cycle of crime endangers communities and peace officers.

HB 1421 would allow weapons used in the commission of notorious or heinous crimes to be sold to the public. A weapon seized during a gruesome murder could be sold under this bill, and the licensed firearms dealer could then resell it to a person who might not have purchased it had

he or she known about the crime in which the weapon was involved. Alternately, the bill could unintentionally create a new market for sensationalized guns. Although judges would use discretion in destroying certain weapons, firearms dealers still could attempt to capitalize on the guns purchased from law enforcement and inspire demand for guns that had been used in crimes. These could be sold to people who lionize crime and violence and would enjoy the cachet of owning a gun that had been used in a notorious crime.

SUBJECT: Permitting overweight vehicles carrying timber, timber products

COMMITTEE: Transportation — committee substitute recommended

VOTE: 10 ayes — Phillips, Martinez, Burkett, Fletcher, Guerra, Harper-Brown, Lavender, McClendon, Pickett, Riddle

0 nays

1 absent — Y. Davis

WITNESSES: For —Duane Gordy, Community Development Education Foundation; Lonnie Grissom, North American Procurement Co.; Bill Kuhn, Georgia Pacific; Brent Mosley, Setx Environmental; Martin Nash, Tyler County; Charles Overstreet, Polk County; Linda Price, Ward Timber and Texas Logging Council; Betty Zimmerman, Texas Forest Landowners Council; (*Registered, but did not testify:* Richard A. Bennett, Texas Association of Manufacturers; George Christian, American Forest and Paper Association, MeadWestvaco Corp.; Norman Garza, Jr., Texas Farm Bureau; Charles Gee, Texas Logging Council; Wayne Griffin, Griffin Logging; Jill Grissom; Brad Hodges, Hodges Trucking; Forrest Hodges, Forrest Hodges Inc.; Ronald Hufford, Texas Forestry Association; Robert Hughes, Campbell Timberland Management; Joe Morris, Texas Sheep and Goat Raisers Association; Jim Reaves, Texas Nursery and Landscape Association; John Roby, Port of Beaumont; Marlin Rodrigues, Rodrigues and Sons Logging; Ed Small, Texas Forestry Association; Jim Sylvester, Travis County Sherriff's Office; Bob Turner, Texas Poultry Federation)

Against — Joe English, Nacogdoches County; (*Registered, but did not testify:* Chuck Copeland and Elton Milstead, Nacogdoches County; Jim Elder, Nacogdoches County Commissioners Court; Doyle Williams, Nacogdoches County Road and Bridge)

On — Jimmy Archer, Carol Davis, and William Harbeson, Texas Department of Motor Vehicles; John Barton, Texas Department of Transportation; Robert Bass, County Judges and Commissioners Association of Texas

BACKGROUND:

Transportation Code, sec. 621.101 states a vehicle or combination of vehicles cannot be operated over or on a public highway or at a port of entry between Texas and the United Mexican States if the vehicle or combination has a tandem axle weight heavier than 34,000 pounds, including all enforcement tolerances. The overall gross weight on a group of two or more consecutive axles cannot be heavier than 80,000 pounds.

DIGEST:

CSHB 777 would create a new excess tandem axle weight permit and notification requirements for a person who was operating a vehicle or combination of vehicles to transport unrefined timber, wood chips or woody biomass over a highway or road. The bill would remove provisions that applied to vehicles used exclusively for transporting poles, piling, or unrefined timber.

Civil penalties. The bill would create a $5,000 civil penalty for operating an overweight vehicle without an excess tandem axle weight permit and a $1,000 civil penalty for not complying with notification requirements, to be awarded by a court having jurisdiction over misdemeanors. These penalties would be deposited in the county road and bridge fund of the county in which the violation occurred.

Overweight permit. The overweight tandem axle permit would increase the maximum allowable weight carried on any tandem axle to 44,000 pounds. The permit could be issued in addition to other permits required by law. To use the permit, an applicant would have to:

- pay $800 per year;
- designate each county where they would operate the overweight vehicle or combination of vehicles; and
- carry the permit in the vehicle for which it was issued.

The $800 permit fee would be divided as follows:

- 50 percent to the state highway fund;
- 50 percent divided among all counties designated in the permit application according to the ratio of the total amount of timber harvested in that county to the total amount of timber harvested by all counties designated on the application, as determined by the Texas A&M Forest Service's Harvest Trends Report.

The bill would require the comptroller to send the amount of the $800

permit due to each county to the treasurer or officer performing the function of that office for deposit to the county road and bridge fund.

Notification requirements. The bill would require a person operating a vehicle to transport timber to electronically file a notification document with TxDMV at least two days before they planned to use a county road or state highway. TxDMV would have to send an electronic receipt of the notification document to each county identified in the notification document, the Texas Department of Transportation, and the financially responsible party. The notification document would include:

- the name and address of the financially responsible party, meaning the vehicle owner, vehicle operator, or the person who hired, leased, rented, or subcontracted the vehicle for use on a road maintained by a county or a state highway;
- a description of each permit issued for the vehicle or combination of vehicles;
- a description of how they established financial responsibility, whether through liability insurance, a surety bond, a deposit, or self-insurance;
- the address or location of the area where the financially responsible party wished to operate, including the specific route and the name or number of each county road or state highway;
- a calendar or schedule of duration including the days and hours when the financially responsible party anticipated using the county road or highway; and
- the license plate numbers or other registration information for all vehicles and the means of financial responsibility for each vehicle if they were not covered by a single insurance policy, surety bond, deposit, or other means of financial assurance.

Inspection. The bill would allow TxDOT to inspect and document the condition of a road or highway identified in the notification document before and after the financially responsible party planned to use them. TxDOT would have to provide a copy of the inspection to the financially responsible party.

National standards. The bill would not supersede national weight and size requirements for the national system of interstate and defense highways in Texas.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 777 would make it easier for vehicles that transport timber, wood chips or wood biomass to operate efficiently, legally, and safely without increasing the gross weight limit allowed under current law. Current law makes it difficult for loggers to meet current axle weight requirements and creates an incentive for loggers to operate illegally. Many loggers have made the economically rational decision to not purchase a permit, operate over the regulatory limits, and to consider any assessment of fines as "the cost of doing business." The bill would simply allow loggers to operate legally by creating an $800 yearly permit to provide financial relief for counties and the state to maintain roads used by the logging industry.

CSHB 777 would give loggers the discretion to carry more weight on one of the tandem axles to address the difficulty of distributing wood biomass. Vans transporting wood chips tend to concentrate wood biomass on their front axles because the biomass gets stuck there as woodchips are blown into the van.

The bill would protect county and local taxpayers' investment in their roads by adding protections against rogue haulers who failed to obtain a permit and haulers who failed to file financial responsibility information with TxDMV by issuing a $5,000 and $1,000 civil penalt,y respectively, that would be deposited to the credit of the county road and bridge fund of the county in which the violation occurred.

The bill would decrease damage to local roads because loggers who currently run overweight on their tandem axles do not sufficiently reimburse local government for road damage. By creating a more prohibitive fine for not carrying an overweight permit, the bill would discourage loggers from going above the gross weight limit and causing more damage.

OPPONENTS SAY:

The bill would erode local control over overweight permits and would not reimburse counties sufficiently for increased administrative costs for collecting the state's portion of the permitting fee and the resulting damage to local roads. Counties would receive only 50 percent of the fee collected from the $800 permit, to be divided among all affected counties. County roads are built and paid for by local taxpayers, who would not receive enough relief under this bill to maintain the roads they paid for.

SUBJECT: Use of social security numbers in concealed handgun licensure

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 7 ayes — Pickett, Fletcher, Dale, Flynn, Lavender, Sheets, Simmons

0 nays

2 absent — Cortez, Kleinschmidt

WITNESSES: For — Michael Cargill and Richard Lowe (*Registered, but did not testify*: Dennis Allen; Glen Bartholomew; Brent Connett, Texas Conservative Coalition; Mike Cox; Angel Gonzalez; Susan Morrison

Against — Heather Ross, Gun and Mental Health Action Group; Bridget Wiedenmeyer, Moms Demand Action - Texas Chapters; (*Registered, but did not testify*: David Albert; Grace Chimene; Joanne Richards; John Woods, Texas Gun Sense)

On — Steve Moninger and Sherrie Zgabay, Texas Department of Public Safety (*Registered, but did not testify*: RenEarl Bowie, Texas Department of Public Safety

BACKGROUND: Family Code, sec. 231.302 generally requires applicants for a state license, contracts or grants to provide social security numbers for the purposes of identifying individuals to enhance the ability collect child support.

DIGEST: CSHB 1349 would amend Family Code, sec. 231.302 to state that the Department of Public Safety (DPS) was not required for the purposes of issuing a concealed handgun license to request an applicant's social security number, nor would the applicant be obligated to supply it.

The bill would prohibit DPS from requesting or requiring to be disclosed an applicant's social security number during the initial application or renewal of a concealed handgun license.

The bill would take effect September 1, 2013, and would apply to new or renewal license applications submitted on or after that date.

SUPPORTERS SAY:

HB 1349 would protect the privacy rights of Texans by eliminating the requirement that social security numbers be provided on an application for a new or renewed concealed handgun license. Social security numbers are not required to perform the background checks that DPS conducts when reviewing a concealed handgun license application.

DPS background checks are run using fingerprints, names, birthdays, and other information. While social security numbers provide unique identifiers, they are not essential to background checks. In fact, social security numbers are not required to purchase guns under federal law. With regard to the use of social security numbers by the attorney general and DPS to identify individuals who are delinquent on their child support payments, there are other methods the agencies could use to identify these individuals.

In an age of big government and multinational corporations aggregating data on individuals, Texas must be a leader in opposing this trend and should do all it can to protect the privacy rights of individuals. HB 1349 would protect both state sovereignty and individual rights.

Not requiring the collection of social security numbers for background checks also would protect individuals from online identity thieves, who have shown the ability to hack into government databases and retrieve social security numbers.

OPPONENTS SAY:

Social security numbers are collected throughout state government's many licensing processes. The Texas Department of Licensing and Regulation alone collects social security numbers on 155 licenses in order to help enforce child support orders.

By preventing the collection of social security numbers from concealed handgun applications, HB 1349 effectively would exempt these applicants from the OAG's system to enforce child support orders. Child support delinquency may be a proxy not only for domestic violence, but also lack of individual responsibility. Deadbeat parents should be flagged, not rewarded by creating an exemption that could allow them to obtain a concealed handgun permit.

The idea that providing social security numbers to a government agency somehow invades privacy rights plays into the general belief that our personal liberties are under threat. Individuals in commerce and

interaction with the government routinely reveal social security numbers, credit card information, and other information that remains confidential or is used prudentially. Individual freedom has not been impaired by the exchange of data in the Internet age.

Government Code, sec. 411.192 already protects the information gathered on concealed handgun applications with strict confidentially requirements, allowing DPS to share the data in limited circumstances with other law enforcement agencies. While other identifying information might be provided under this Government Code, social security numbers already are confidential.

SUBJECT: Allowing certain training funds to be used for the staff of defense attorneys

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Lewis, Farrar, Farney, Gooden, Hunter, K. King, Raymond, S. Thompson

0 nays

1 absent — Hernandez Luna

WITNESSES: For — (*Registered, but did not testify:* Rebecca Bernhardt, Texas Defender Service; Andrea Marsh, Texas Fair Defense Project; Allen Place, Texas Criminal Defense Lawyers Association)

Against — (*Registered, but did not testify:* Bobby Gutierrez, Justice of the Peace and Constables Association of Texas

BACKGROUND: Government Code, ch. 56 creates the judicial and court personnel training fund for the continuing legal education of judges and court personnel.

Government Code, sec. 56.004 requires the judicial and court personnel training fund be used to provide for continuing legal education, technical assistance, and other support programs for: judges and their court personnel, prosecuting attorneys and their personnel, criminal defense attorneys who regularly represent indigent defendants in criminal matters, and justices of the peace and their court personnel. Additionally, innocence training programs for law enforcement officers, law students, and other participants also are paid for by the fund.

DIGEST: HB 1245 would add the personnel of criminal defense attorneys who regularly represent indigent defendants in criminal matters to the groups that could receive continuing legal education, technical assistance, and other support programs from the judicial and court personnel training fund.

The bill would take effect on September 1, 2013.

SUPPORTERS SAY:

HB 1245 would provide clarification to the judicial and court personnel training fund. Under current law, prosecuting attorneys and their personnel, as well as court personnel at all court levels may participate in trainings administered by the fund. However, the personnel of criminal defense attorneys who regularly represent indigent defendants are not able to participate as they are not specifically listed under the statute. The bill would equalize the fund by allowing employees of criminal defense attorneys to receive training from the fund.

It would be appropriate to include the staff of defense attorneys because they would not cost much to train and there are funds available. CSSB 1 would appropriate $17.9 million for the judicial and court personnel training fund. After specific appropriations are made from the fund, $550,000 would be left available. The Legislative Budget Board fiscal note estimates it would cost $115,000 per year to train criminal defense personnel. In comparison, the cost to train prosecuting attorneys' staff for 2012 was $276,822. In that same year, it cost $844,052 to train JP and constable personnel.

OPPONENTS SAY:

HB 1245 could reduce the already small amount of funding available to groups already allowed to access the judicial and court personnel training fund by whatever amount would be allocated to defense attorney personnel. While criminal defense attorney personnel are a deserving group, HB 1245 would not be the right vehicle for additional training funds.

OTHER OPPONENTS SAY:

The bill should only allow funds for the training of defense attorney personnel to come from funds already marked for the training of defense attorneys. This would be more fair to other groups that already draw on the fund for training resources.

SUBJECT: Creating the Texas Firearm Protection Act

COMMITTEE: Federalism and Fiscal Responsibility, Select — favorable, without amendment

VOTE: 3 ayes — Creighton, Burkett, Scott Turner

1 nay — Walle

1 absent — Lucio

WITNESSES: For — Michael Atkins, Montgomery County Constable Pct 3; Michelle Byerly, 1 Million Moms Against Gun Control; David Carter; Nancy Crecelius; Warren Diepraam, Montgomery Country DAO; Tommy Gage, Montgomery County Sherriff's Office; Tom Glass, Libertarian Party of Texas; Doris Goleman; Kenneth Hayden, Montgomery County Constable Pct 4; Ryan Lambert; Mario Loyola, Texas Public Policy Foundation; Tammy McRae; James Metts, Justice of the Peace Pct 4; Lynn O'Sullivan, and William O'Sullivan, Texas Patriots PAC; Michelle Prescott, Texan Gun Rights; (*Registered, but did not testify*: Ian Armstrong; Jeremy Blosser, Tarrant County Republican Party; Daniel Earnest, San Antonio Police Officers Association; Judith Fox; Joann Galich; Bob Green; Jennifer Hall, Tarrant County Republican Party; Dede Hebert; Chris Howe; Brandon Moore; Washington Moscoso, San Antonio Police Officer's Association; Susan Nawojski; Marlene Parlak; Tim Parlak; Mariss Patton, Texas and Southwestern Cattle Raisers Association; Robert Ritchey; Michelle Smith; Pat Tibbs; Alice Tripp, Texas State Rifle Association; Terri Williams, Texas Motorcycle Rights Association)

Against — (*Registered, but did not testify*: Charley Wilkinson, Combined Law Enforcement Associations of Texas)

BACKGROUND: Penal Code, sec. 46.01 defines a firearm as any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

DIGEST: HB 1076 would prohibit any state entity or employee of a state entity from adopting a rule, order, ordinance, or policy under which it enforced or

allowed the enforcement of a federal statute or regulation on firearms or firearm accessories, such as a capacity limitation or registration requirement, that did not exist under current state law.

Any agency that violated these prohibitions would not be allowed to receive state grant funds for the fiscal year in which a final judgment determined that there was a violation.

HB 1076 would allow any citizen under the geographic jurisdiction of a state entity to file a complaint, along with evidence, with the attorney general if an entity enforced a federal law prohibited by the bill.

If the attorney general determined a complaint was valid, the attorney general could file a petition for a writ of mandamus or other equitable relief in the appropriate district court to compel the entity to comply with the bill's provisions.

Appeals of a suit brought by the attorney general would be governed under the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The court would render a final judgment with the least possible delay.

HB 1076 would make it a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) for an officer or person acting under the authority of a state entity to knowingly enforce a federal statute, order, rule, or regulation that violated current Texas law.

The bill would apply to:

- the state of Texas, including an agency, department, commission, bureau, board, office, council, court or other branch of state government created by the Texas Constitution or statute, including a university system or system of higher education;
- the governing body of a municipality, county, or special district or authority;
- an officer, employee or other body that was part of a municipality, county, or special district, including a sheriff, municipal police department, municipal attorney, or county attorney; and
- a district attorney or criminal district attorney.

The bill would define a firearms accessory as an item used in conjunction with or mounted on a firearm but that was not essential to the basic

function of the firearm, including a detachable magazine.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 1076 would protect Texans' rights under the second amendment of the U.S. Constitution, protect Texas' state and local law enforcement officers from violating the U.S. Constitution, and prevent the federal government from targeting certain firearms and accessories with restrictions.

Texans have the constitutionally protected right to bear arms, but it is possible that a U.S. president could issue an executive order or Congress could pass a bill that violated that right. HB 1076 would send a strong message to the federal government that Texans would not stand idly by while their basic freedom was violated and would empower citizens to report violations to the state's attorney general.

The bill would protect state and local law enforcement from having to enforce a law that was unconstitutional. Police officers already have plenty of challenges without being coopted to enforce federal regulations of dubious legality and possibly violate their oath to uphold the law.

The bill would protect the state from the federal government's attempt to make certain styles of rifles or higher capacity magazines illegal. Limiting the type of firearm that a citizen may own would limit that person's freedom and right to self-protection.

OPPONENTS SAY:

HB 1076 would be unconstitutional, ineffectual, and violate the basic legal concept of federal law supremacy. The attempt to nullify federal law with state law would ultimately not stand up under scrutiny and would therefore not have any legal authority. Passing the bill would amount to symbolic gesturing and would not be a constructive way to find a sensible and legal balance between federal and state gun laws.

HB 1076 also could put rank-and-file police officers in the middle of the contentious debate over federal authority and states' rights with regard to gun regulation. The bill would create confusion regarding which laws to enforce and could end up creating a situation in which Texas police officers would be in violation of the law while honestly attempting to enforce it. The penalty for violating Texas law could ultimately lead to

disciplinary action or termination. Passing HB 1076 would not be the right way to address the question of whether Texas would have to enforce a federal law its citizens did not like.

SUBJECT: Allowing appraisal districts to waive penalties for certain overdue taxes

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Ritter, Strama

0 nays

1 absent — Martinez Fischer

WITNESSES: For — (*Registered, but did not testify*: George Allen, Texas Apartment Association; Marya Crigler, TAAD Legislative Committee, Travis Central Appraisal District; Donald Lee, Texas Conference of Urban Counties; Randy Lee, Stewart Title Guaranty Company; Roland Love, Texas Land Title Association; Mark Mendez, Tarrant County; Windy Nash, Texas Association of Appraisal Districts and Dallas Central Appraisal District); Jim Robinson, Texas Assn of Appraisal Districts Legislative Committee; Brent South, Hunt County Appraisal District, Texas Assn. Of Appraisal Districts; Rodrigo Carreon)

Against — None

BACKGROUND: Tax Code, ch. 33, governs the collection of property taxes and provides a penalty for delinquent tax payment. An appraisal district board may waive penalties and interest for certain purposes.

Current law allows an appraisal district to add appraised property that was omitted or erroneously allowed an exemption in the last five years.

DIGEST: CSHB 1913 would allow an appraisal district board to waive penalties and interest on a delinquent tax for a period before the owner acquired the property, provided the owner or another person liable for the tax paid it within 180 days of receiving notice of the delinquency. The delinquency would have to be the result of:

- property added to the appraisal roll under a different account number or parcel when the property was owned by a prior owner;
- omitted from an appraisal roll in any one of the five preceding

years; or

- an exemption that was erroneously allowed in any one of the five preceding years.

The bill would take effect September 1, 2013.

SUBJECT: Regulating cottage food businesses, changing local governance

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Coleman, Collier, Cortez, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

1 nay — S. Davis

WITNESSES: For — Amy Blea; Rebecca Callaway; Judith McGreary, Farm and Ranch Freedom Alliance; Germaine Swenson; Jennifer Webb; (*Registered, but did not testify*: Nikki Delvecchio, Little Snowflakes Bakery Cottage; Loretta Holland and Carriebeth Mandrell, Texas Home Bakers; Lisa Hughes, Texas Academy of Nutrition and Diatetics; Peter McCarthy, Texas Health Freedom Coalition; Marissa Rathbone, Active Life; Alexa Senter, HOPE Farmers Market, Andrew Smiley, Sustainable Food Center; Ty Wolosin, Texas Organic Farmers and Gardeners Association; and 83 individuals)

Against — Brenda Elrod, Texas Environmental Health Association; (*Registered, but did not testify*: Vincent Delisi, Austin/Travis County Health and Human Services Department; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County, and 4 individuals)

On — Michael Hill, Texas Association of Local Health Officials; Ronnie Volkening, Texas Retailers Association; (*Registered, but did not testify*: Cheryl Wilson, DSHS)

BACKGROUND: Health and Safety Code, ch. 437, regulates food service establishments, retail food stores, mobile food units, and roadside food vendors. It defines "cottage food production operation" as an operation out of the individual's home that:

- produces a baked good, a canned jam or jelly, or a dried herb or herb mix for sale at the person's home;
- has an annual gross income of $50,000 or less from the sale of those items; and
- sells those foods only directly to consumers.

These items may not be sold over the Internet. Cottage food production operations are not considered a food service establishment, and local health departments are prohibited from regulating these operations.

DIGEST:

CSHB 970 would change the regulation of cottage food production operations (or cottage food businesses) and prevent local government authorities from regulating cottage food operations.

Cottage food production operations. The bill would define "cottage food production" as an operation out of an individual's home that produced baked goods, canned jams or jellies, candy, nuts, butters, fruit pies, dehydrated fruits or vegetables, and dried herbs or herb mixes, among other things. The individual could only sell these items directly to consumers at home, a farmer's market, farm stand, fair, festival, or event. The individual could also deliver them to the consumer at the point of sale or another location designated by the consumer, but the items could not be sold by mail order or at wholesale.

An individual who operated a cottage food business would need to complete an accredited basic food safety program for food handlers. No individual could process, prepare, package, or handle cottage food products unless they had completed the safety program, were supervised by someone who had completed a safety program, or were a member of a household that produced cottage food items. An individual operating a cottage food business would not be required to complete a basic food safety program for food handlers before January 1, 2014.

With regard to cottage food businesses, the bill would authorize the Department of State Health Services to impose an emergency or recall order to prevent an immediate and serious threat to human life or health.

Potentially hazardous foods. Cottage food businesses could not sell potentially hazardous foods, defined as food that requires time and temperature control to limit pathogen or toxin production. Potentially hazardous foods would include meat, poultry, fish, and baked goods that require refrigeration, among other things.

Packaging. Cottage food businesses would need to package food items in a way that prevented contamination, unless the item was too large or bulky for conventional packaging. If the item was too large or bulky to be packaged, the label required by the Health and Human Services

Commission would need to be included on the invoice or receipt.

Local regulation. A local government authority, including a local health department, could not regulate the production of food at a cottage business. A municipal or county zoning ordinance could not prohibit the use of a home for a cottage food business, but this would not limit nuisance or other tort causes of action.

This bill would take effect on September 1, 2013.

SUPPORTERS SAY:

CSHB 970 would help small business owners. It would allow cottage food businesses to sell a wider range of items at more locations, enabling them to reach more customers and generate more revenue. During tough economic times, many are looking for ways to earn a living, supplement an income, and expand home businesses.

Consumers are informed that the food is not inspected by a health department and should be allowed to make a decision about whether to purchase the items. Moreover, ill-prepared food would quickly ruin a business, so cottage food vendors are careful to produce food in a sanitary location.

This bill would contain provisions to ensure the public's health. Cottage food businesses would have to package most foods, complete an accredited food handlers program, and be subject to emergency or recall orders from the Department of State Health Services. Because businesses would not be able to sell potentially hazardous food, all items would have a low risk of contamination and spoilage, even during transportation and delivery.

If certain cottage foods were contaminated, it would not be difficult to trace the source because vendors sell directly to consumers and are required to either label the items or provide contact information on an invoice or receipt. These factors make it easier to trace cottage foods than store-bought or restaurant-prepared foods, so state registration would be unnecessary.

OPPONENTS SAY:

CSHB 970 could be detrimental to public health by expanding a category of food operations that already have very little regulation. State and local authorities would be unable to ensure the protection of the public's health without the ability to conduct routine inspections, have adequate

enforcement authority, or the ability to apply science-based food safety standards. At minimum, cottage food businesses should be required to register with the state and provide their state registration number to consumers.

Allowing cottage food vendors to sell a variety of home-prepared foods at multiple locations would create the potential for contamination at various stages, particularly with the transportation and delivery of unpackaged items. This is especially concerning because food-borne outbreaks are challenging to investigate and difficult to trace back to the source.

SUBJECT: Relating to display of the Honor and Remember flag

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 8 ayes — Menéndez, R. Sheffield, Collier, Farias, Miller, Moody, Schaefer, Zedler

1 nay — Frank

WITNESSES: For — Melanie Battise, Alabama-Coushatta Tribe of Texas; Ramona Fowler; Carson George and George Lutz, Honor and Remember; Ben Hancock and Roy James, Texas Chapter of Honor and Remember; Thomas Logan; (*Registered, but did not testify:* Brent Connett, Texas Conservative Coalition; Cindy McNally Blankenship and Michelle Toungate, Wilco Blue Star Mothers; Tami Sims, Gold Star Mothers)

Against — None

BACKGROUND: Honor and Remember, Inc. is a 501(c)(3) nonprofit organization that encourages congressional and state adoptions of its flag. Several states have adopted the flag as a way to honor U.S. service members killed in action.

DIGEST: CSHB 3077 would amend Government Code, sec. 2165 and require the Honor and Remember Flag to be flown at state office buildings and veterans' state cemeteries during:

- the third Saturday in May (Armed Forces Day);
- the last Monday in May (Memorial Day);
- June 14 (Flag Day);
- July 4 (Independence Day);
- Nov. 11 (Veterans Day);
- National POW/MIA Recognition Day;
- the last Sunday in September (Gold Star Mother's Day); and
- any date on which a state resident is killed while serving on active duty in the U.S. military.

If a state office building did not have staff available to display the Honor

and Remember flag on any day this bill required it to be flown, the building's staff would be required to display the flag on the last preceding day staff were available and leave it on display.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 3077 would help Texas properly honor the military service members who died defending the United States. By adopting the Honor and Remember Flag and flying it at state office buildings and state veterans' cemeteries, Texas would join more than a dozen states that display the flag on important dates to this nation's veterans and military and whenever a resident is killed while serving on active duty in the Armed Forces.

No other flag officially and specifically memorializes the men and women in the military who died while on active duty. The Honor and Remember Flag also serves to honor the sacrifice borne by each family of fallen service members. Displaying this flag at state office buildings and cemeteries would not be difficult, and the bill would provide clear guidelines for flying this symbol. A report by the Legislative Budget Board stipulated the bill would not result in a significant fiscal implication to the state.

OPPONENTS SAY:

Honoring our service members who died while on active duty is important to Texas and requires our careful attention. CSHB 3077 would not make clear how the trademarked flags would be obtained so they could be flown at every state building and state veterans' cemetery, nor would it address any possible costs to meet new requirements.

SUBJECT: Use of concealed handgun license as valid proof of ID

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

WITNESSES: For — Jerry Patterson, Texas General Land Office; *(Registered, but did not testify:* Brent Connett, Texas Conservative Coalition; Steven Tays, Bexar County Criminal District Attorney's Office; Alice Tripp, Texas State Rifle Association*)*

Against — None

On — RenEarl Bowie, Department of Public Safety; *(Registered, but did not testify:* Margaret Spinks, Texas Department of Public Safety*)*

DIGEST: CSHB 2665 would prohibit the denial of a concealed handgun license as proof of personal identification to gain access to goods, services, or facilities, except when renting a car or in regard to operating a motor vehicle.

This would not affect the current law requiring a license holder carrying a handgun to display a driver's license or personal identification card, as well as the concealed handgun license when a peace officer asked to see identification. It also would not affect the types of identification required under federal law to access airports or pass through airport security.

This bill would take effect September 1, 2013.

SUPPORTERS SAY: Currently, a concealed handgun license (CHL) is not considered a valid form of identification by some businesses for the purpose of accessing goods, services, or facilities. HB 2665 would prohibit denying a CHL holder access to goods, services, or facilities simply for presenting a CHL as identification rather than a driver's license.

Much like the driver's license, the most commonly accepted form of identification, the CHL has a color photo of the licensee, the license holder's full name, date of birth, eye color, height, signature, home address, and expiration date. A CHL even has the individual's driver's license number and includes an individual's hair color and weight.

To get a driver's license an individual must present proof the person has domicile in the state, present proof of identity satisfactory to the Department of Public Safety, provide a physical description of themselves, and provide a thumb and fingerprint.

The CHL is a far more secure form of identification than a typical driver's license. To receive a CHL an individual must be a resident of the state for at least 6 months, over 21 years old, have no felony or class A or B convictions, not be chemically dependent, pass a local, state and national criminal history record check, and have the individual’s identity and background verified by fingerprint, among other obstacles.

If an individual presents a CHL as a form of ID, a provider of goods and services can be certain that the individual is in fact who the individual claims to be.

OPPONENTS SAY:

Requiring the acceptance of a concealed handgun license as a form of identification to access good, services, or facilities could take away the individual discretion of private businesses when creating a policy for acceptable identification.

SUBJECT: Creating a criminal sentencing policy, accountability, and review council

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Toth

1 nay — Schaefer

1 absent — Hughes

WITNESSES: For — Caitlin Dunklee , Texas Criminal Justice Coalition; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Rebecca Bernhardt, Texas Defender Service; John Dahill, Texas Conference of Urban Counties; Kristin Etter, Texas Criminal Defense Lawyers Association; Patricia Gonzales and Jesse Romero, William C. Velasquez Institute; Leah Gonzalez, National Association of Social Workers; Sandra Martinez, Methodist Healthcare Ministries of South Texas; Brian McGiverin ,Texas Civil Rights Project; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County Commissioners Court; Kandice Sanaie, Texas Association of Business; Gyl Switzer, Mental health America of Texas)

Against — None

On — Yolanda Davila, Legislative Budget Board

DIGEST: HB 990 would create the Texas Sentencing Policy, Accountability, and Review Council. The purpose of the council would be to develop means to promote a more balanced and cost-effective criminal justice system.

The council would have 20 members, who, subject to state funding, would be appointed by January 31 every 10 years from the date of the most recent appointments. The commission would be composed of:

- four member of the Senate, appointed by the lieutenant governor;
- four members of the House of Representatives, appointed by the speaker; and
- 12 members appointed by the governor.

The governor's appointees would have to be: a member of the court of

criminal appeals; a current or former criminal trial judge; a prosecutor; a defense attorney; a crime victims' rights advocate; a defendants' rights advocate; a statewide corrections systems administrator; a county jail administrator; a law professor or former law professor; and a representative of law enforcement. The governor would designate the presiding officer.

Council members would serve terms that expired on the date of adjournment sine die of the next regular legislative session that initially convened following the date of their appointment.

Members would not be compensated but would be entitled to reimbursement for travel expenses as provided by Government Code statutes governing state officer and employee travel expenses and the general appropriations act.

The council would be required to:

- conduct an in-depth analysis of sentencing practices used in the Texas criminal justice system;
- identify disparities between the severity of offenses and their penalties and determine appropriate adjustments;
- ascertain other means to enhance consistency and reduce disparity in sentencing;
- compare Texas' community supervision (probation), parole, and sentencing terms to other states;
- determine means to balance state and county criminal justice responsibilities with resources; and
- devise an approach to allow the state to balance state and county criminal justice responsibilities with resources.

The Legislative Budget Board (LBB) would be required to assist the council.

The council would be required to submit a report, including proposed legislation, to the Legislature. The council could contract with a governmental or non-governmental entity to complete the report. The council's first report would have to be submitted by January 1, 2015.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2013. Initial appointments would have to be made by the 30th day after the bill's effective date. The terms of the initial council members would expire on sine die adjournment of the 84th regular legislative session. The next appointments would have to be made by January 31, 2023.

SUPPORTERS SAY:

HB 990 would create a mechanism for the state to periodically review its criminal sentencing structure. This review would help ensure the integrity of the criminal justice system, promote fairness and equity in the system, protect public resources, and increase public safety. The bill would implement a recommendation from the LBB's January 2013 report on Texas State Government Effectiveness and Efficiency.

Texas last reviewed and made wholesale changes to the Penal Code 20 years ago, and the Legislature has made innumerable changes since then. These changes often have ripple effects through the system and wide ranging impacts, and they have not been systematically studied.

HB 990 would address this situation by creating a commission, like the one used 20 years ago, to review sentencing laws and their effects. This would give the Legislature the necessary information to make changes that could streamline and simplify the Penal Code and offenses in other codes and balance sentencing practices, fairness, and budget constraints. The commission's duties would be broad to ensure that it could take into consideration all necessary factors. HB 990 could lead to savings and other efficiencies, as it has in other states.

The Legislature needs to create a new entity to examine sentencing because currently there is no adequate mechanism for doing so. Legislative committees do not have the singular focus of a specialized commission to examine sentencing in a systemic way and would not have the extensive expertise of members of the commission.

The commission's appointed members, limited mission, and legislative oversight would help ensure that it did not become an unwieldy bureaucracy. The Legislature would have the power to make changes to the commission's duties or existence. Under HB 990, the commission would reform only once a decade and would not be a permanent bureaucracy.

Under HB 990, eight of the commission members would be legislators

appointed by legislative leaders, ensuring that the governor would not have exclusive power over the committee appointments. Having the governor appoint the remaining members would be in keeping with other state bodies. HB 990 requires most commission members to have specific qualifications, ensuring that the commission would have the necessary expertise and that stakeholders were represented.

The cost of a sentencing commission could be recouped by savings that resulted from its recommendations.

OPPONENTS SAY:

Texas' criminal sentencing practices could be studied without creating a new governmental entity. For example, an interim study could be conducted by a legislative committee or the criminal justice legislative oversight committee established in the Government Code. The commission created by HB 990 would give too much power to the governor, who would appoint the majority of its members, and it could be used as a political tool.

Creating a sentencing commission unnecessarily would add to state bureaucracy and to demands for state funding. According to the fiscal note, HB 990 would cost $1.1 million and require three new employees for fiscal 2014-15. A sentencing commission could be hard to abolish because governmental entities traditionally are difficult to eliminate and tend to grow in scope to justify their continued existence

OTHER OPPONENTS SAY:

If Texas needs to revise the Penal Code, a commission could be created with that specific task, as opposed to the one in HB 990 whose authority and duties would be overly broad.

NOTES:

HB 990 would cost about $1.1 million for fiscal 2014-15, according to the fiscal note. The costs would be for three council personnel, office expenses, travel and housing, and resources to support the 20 council members.

SUBJECT: Relating to the duties of certain inter-agency teams.

COMMITTEE: Government Efficiency and Reform — favorable, without amendment

VOTE: 6 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Scott Turner, Vo

0 nays

1 absent — Taylor

WITNESSES: For — (*Registered, but did not testify*: Annie Mahoney, Texas Conservative Coalition)

Against — None

On — (*Registered, but did not testify*: David Brown, Department of Information Resources; Deborah Hujar, Department of Information Resources)

BACKGROUND: Government Code, sec. 2054.158 provides for the creation of a Quality Assurance Team (QAT). The state auditor, Legislative Budget Board, and Department of Information Resources in creating this team must specify each member agency's responsibilities in performing the duties assigned to QAT by law.

The Contract Advisory Team (CAT) was created under Government Code, sec. 2262.101 to assist agencies in improving their management of contracts. The team consists of five members from five agencies: the comptroller's office, attorney general's office, the Department of Information Resources, the Texas Building and Procurement Commission, and the governor's office. The duties of CAT include reviewing state agencies' solicitation of major contracts, reviewing the findings of the state auditor regarding agencies' compliance with the contract management guide, and making recommendations to the comptroller on the development of the guide.

DIGEST: HB 1965 would amend Government Code, sec. 2054.158 to require the Quality Assurance Team to perform the following actions:

- develop and recommend best practices to improve the contract management process of state agencies;
- develop and recommend procedures to improve value-based decision making in state agency contracting practices; and
- monitor state agencies to see if they are meeting the needs of the persons to whom the agencies provide services.

The bill would also amend Government Code, sec. 2262.101 to assign the same three functions to the list of duties of the Contract Advisory Team.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

The bill would amend statute to better define the duties of the Quality Assurance Team, which assists with major information systems contracts, and the Contract Advisory Team, which advises on professional service-related contracts.

At the close of fiscal 2010, the state had almost 5,000 open contracts each worth $1 million or more. State laws exist to ensure state agency employees receive contract training and guidance. However, the nature of existing contract and procedural guidance has tended to create a risk-averse culture emphasizing administrative compliance versus strategic outcome-based contractor performance. With this bill, contract guidance would be refocused on quality and achieving value for those served by state agencies.

Approving HB 1965 would keep the bill moving through the legislative process, during which any concerns about the need for additional resources could be addressed.

OPPONENTS SAY:

The bill would require monitoring state agencies to determine if they were meeting the needs of those receiving services. The comptroller, for example, would have to set up a reporting structure, hire contract specialists to sift through the reports, and provide the reports to the Contract Advisory Team at its quarterly meetings. Additional resources likely would be needed to meet such requirements.

SUBJECT: Relating to the sale and advertisement of portable fire extinguishers.

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Eiland, G. Bonnen, Creighton, Muñoz, Sheets, Taylor, C. Turner

1 absent — Morrison

WITNESSES: For — (*Registered, but did not testify:* Randy Cain, Texas Fire Chiefs Association)

Against — None

On — (*Registered, but did not testify:* Mark Lockerman, Texas Department of Insurance, State Fire Marshall Office)

BACKGROUND: All fire extinguishers in Texas are required to carry a label of approval indicating they perform according to their manufacturer's claims. Fire extinguishers may also be listed by a testing laboratory approved by the Texas Department of Insurance (TDI) if they are tested and meet TDI's adopted standards.

DIGEST: CSHB 2447 would prohibit the use of the terms "portable fire extinguisher" or "fire extinguisher" in the sale or advertisement of a fire suppression device that did not conform to either the National Fire Protection Association's standard for portable fire extinguishers or a similarly stringent standard.

The bill would remove the Insurance Code's licensing exemption from any firm that sold portable fire extinguishers not listed by a TDI-approved testing laboratory. It would also clarify the Insurance Code's intent to prohibit non-listed fire extinguishers.

SUPPORTERS SAY: CSHB 2447 would ensure consumer safety by requiring any fire suppression device marketing itself as a "fire extinguisher" met industry-standard testing requirements. Individuals who purchase alternatives to fire extinguishers may put their and their loved ones' lives at risk if they equate them with tested fire extinguishers. For example, Consumer

Reports issued a “don’t buy: performance problem” rating to portable aerosol fire sprays and noted that they could actually make some fires worse.

The bill would not prevent manufacturers from selling alternatives to fire extinguishers, but simply would require they were accurately labeled so that consumers would be fully informed about their purchase.

OPPONENTS SAY:

CSHB 2447 unnecessarily would expand government regulation by attempting to limit the way businesses promote their products. It would be better to allow consumers to exercises choices and the market to determine product labeling within a system of free enterprise.