**HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES**
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# HOUSE RESEARCH ORGANIZATION

## daily floor report

Thursday, May 04, 2017
85th Legislature, Number 63
The House convenes at 10 a.m.
Part One

Ninety-five bills and one joint resolution are on the daily calendar for second-reading consideration today. Those analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

Dwayne Bohac
Chairman
85(R) - 63

**HOUSE RESEARCH ORGANIZATION**

Daily Floor Report

Thursday, May 04, 2017

85th Legislature, Number 63

Part 1

SUBJECT: Applying for an Article V convention to limit the federal government

COMMITTEE: State and Federal Power and Responsibility, Select — committee substitute recommended

VOTE: *After recommitted:*
5 ayes — Darby, Murr, Gonzales, K. King, Paddie

1 nay — Turner

3 absent — Anchia, E. Johnson, S. Thompson

SENATE VOTE: On final passage, February 28 — 20-11 (Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: *On House companion, HJR 39:*
For — Robin Lennon, Kingwood Tea Party; Charles Adams, Joseph Arnold, Alan Arvello, Arthur Bedford, Jonah Blackmon, Richard Bohnert, Kimberly Burlington, Michael Cassidy, Ana Chapman-Wydrinski, Tamara Colbert, Sharon Correll, Sylvia Coulson, Thomas Dowdy, Johnny Duncan, Brent Dunklau, Stephenn Duvall, Cal Elliott, William Ely, Gary Goff, Sammi Hammers, Martin Harry, Neda Henery, Paul Hodson, Blaine Holt, Melanie Kriewaldt-Roth, Edna Krueger, Saundra Lapsley, Christopher Lewis, Timothy McShane, Natalie Miller, James Osteen, Robert Peery, Henry Perry, Donald Pollock, Corey Rapp, Jim Richardson, Christopher Rockett, Stephen Smith, Allison Tangeman, Bill Thoreson, Thomas Trigg, and Angie Turner, Convention of States Project-Texas; and 16 individuals; (*Registered, but did not testify*: Ray Allen, PublicData.com; Chip DeMoss, Paulette Rakestraw, and Greg Snowden, Compact for a Balanced Budget Amendment; James Lennon, Coalition for Public Responsibility PAC, Brendan Steinhauser, U.S. Term Limits; Michael Sullivan, Empower Texans; Larry Tarver, Clearfork Baptist Church; William Bailey, Esther Brant, John Brant, Suzon Bridges, David Brown, Robert Coffey, George Dawes, James Dettmann, Jan Elliott, Jan Fitzgerald, Keith Fitzgerald, Marian Freeland, Barbara Geerlings, PJ Geerlings, Thomas Henry, Karl Heubaum, Michelle Hodson, Audrey Howard, Kirsten Jackson, Mary Jones, John Lapaglia, Darrell Lowrance,

Robbie McDaniel, Peter McPhee, Bruce Melberg, Barbara Peters, Wendell Pool, Douglas Richter, Jim Sipiora, Linda Thoreson, Paula Trigg, Laraine Wahrmund, and James Young, Convention of States Project-Texas; and 28 individuals)

Against — Christy Callahan, Indivisible Galveston; Suzanne Carpenter and Nancy True, Texas Liberty Committee; Grace Chimene, League of Women Voters of Texas; Carolyn Galloway, Texas Eagle Forum; Barbara Harless, North Texas Citizens Lobby; Kurt Hyde, Denton County Republican Assembly; Michael Sullivan, Wimberley Indivisible; and seven individuals; (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Kelli Cook, Texas Campaign for Liberty; Anthony Gutierrez, Common Cause Texas; Jim Reaves, Texas Farm Bureau; and 21 individuals)

On — Tom Glass, Texas Constitutional Enforcement; Trevor Dupuy

BACKGROUND:

Article V of the U.S. Constitution requires Congress to call a convention to propose constitutional amendments upon application of the legislatures of two-thirds of the states. Any amendments adopted by an Article V convention must be ratified by the legislatures of three-fourths of the states.

DIGEST:

CSSJR 2 would apply to Congress to call a convention under Article V of the U.S. Constitution, for the limited purposes of proposing amendments to:

- impose fiscal restraints on the federal government;
- limit the power and jurisdiction of the federal government; and
- limit the terms of office of federal officials and members of Congress.

CSSJR 2 would require the secretary of state to forward official copies to the secretaries of state and presiding officers of the legislatures of each state requesting that they join Texas in applying to Congress for an Article V convention. The secretary of state also would be required to forward official copies to various federal elected officials and offices, with the request that it be entered into the Congressional Record.

CSSJR 2 would be effective only if two other proposed measures took effect: SB 21 by Birdwell, which would establish procedures for delegate oversight at an Article V convention; and SJR 38 by Estes, which would rescind all previous applications for an Article V convention except one proposing a balanced budget amendment to the Constitution.

SUPPORTERS SAY:

CSSJR 2 would attend to problems that can only be addressed through an Article V convention of the states. Congress and other federal branches simply do not have an incentive to resolve some of the most pressing issues facing the United States on matters of fiscal and governmental accountability. Texas, in conjunction with the other states, must act to restrict certain powers of the federal government which have become overly broad and harmful to the nation's future prospects.

**Balanced budget amendment.** Recent experience has shown that the temptation for out-of-control deficit spending is too strong for Congress to resist and must be addressed with a constitutional amendment. Excessive national debt and a large deficit burdens future generations and can be a drag on the economic health of the nation as a whole.

A balanced budget amendment could be drafted such that Congress would be able to respond to recessions and crises while being effectively limited. Such an application would clearly reflect the current intent of the Legislature and has been a consistent point of interest of the state for decades, as evidenced by the adoption of HCR 31 by Donaldson in 1977, requesting that Congress call a constitutional convention to propose a balanced budget amendment.

**Limitations on federal authority.** Federal regulators and lawmakers have created many restrictions on states' rights, affecting their sovereignty and ability to make laws governing their own citizens. Today, states are basically subcontractors subject to federal mandates, not the source and derivation of the power and legitimacy of the federal government. Such a source is laid out already in the 10th Amendment, but states lack the ability to enforce this provision and protect their rights against federal overreach, which an Article V convention pursuant to CSSJR 2 could provide.

**Term limits.** CSSJR 2 would be the best avenue to propose an amendment limiting the terms of federal officials and elected representatives. A citizen legislature is key to both efficiency and matching the founders' vision on good government. Term limits would ensure that power was not concentrated in Washington and would create a sense of urgency among lawmakers to fix problems in the limited time available, rather than merely trying to maintain their seats in the next election.

**Limits on convention.** It takes only 13 states to reject the product of any Article V convention, so fears that a runaway convention would rewrite the Constitution or threaten the basic structure of government are unfounded. This constitutional requirement forces any outcome to be at least somewhat bipartisan and appeal to a large cross-section of states and voters. In short, the risk is minimal, and the problem-solving ability of an Article V convention is unmatched.

**Other legislation.** CSSJR 2 appropriately would depend on SJR 38 by Birdwell and SB 21 by Estes because both would be key to ensuring a convention was properly limited. As Texas has made more than a dozen applications for conventions on various topics that have not been rescinded, without the passage of SJR 38 there would be no way to bind the delegates to focus on a more specific set of issues. SB 21 would lay out procedures for the recall and oversight of delegates, which need to be set before a convention is called.

OPPONENTS SAY:

CSSJR 2 would be an excessive approach to solving issues that can and should be addressed through the means already available under the Constitution. The foundation of government is not broken and the Constitution is not flawed — it is the government itself and its application of the Constitution, which could be reformed through traditional means. Elections already exist to fix the problems laid out by supporters of this measure. If these were issues that a sizable bloc of voters desired and were willing to cast their votes on, more action would be taken.

**Balanced budget amendment.** A balanced budget amendment would

eliminate the federal government's ability to respond appropriately to budget cycles when the economy needs a boost. For instance, some economists have concluded that had the amendment gone into effect in fiscal 2012, the effect on the economy would have doubled the unemployment rate. Analogies that suggest the federal government should balance budgets as families do ignore the fact that individuals often take out mortgages or loans for worthy investments.

Many specific programs would be at risk if a balanced budget were to pass. Social Security might have to cut benefits even if it could draw down reserves, as drawing down the reserves would affect the balance of the budget. The Federal Deposit Insurance Corporation and the Pension Benefit Guaranty Corporation also might not be able to respond to institutional failures because liquidating their assets would affect the balance of the budget

**Term limits.** CSSJR 2 would apply for a convention relating to the establishment of term limits, which would be counterproductive and reduce the democratic influence that voters have on their representatives. A large portion of the House and Senate at any given time would hit their term limits at once, meaning that a large portion of both chambers effectively could consist of lame-duck representatives with no incentive to consider the desires of the voters. Term limits should not be established, and especially should not be enshrined in the Constitution.

**Limits on convention.** Neither CSSJR 2, nor any accompanying legislation, could offer sound assurance that a limitation on the convention would be effective or valid. As no Article V convention has ever been called, this is uncharted legal ground. The most direct historical comparison was the 1787 Constitutional Convention, which produced the U.S. Constitution and replaced the Articles of Confederation. In that convention, several delegates violated the commissions given to them by their state, and all rather directly discarded the stated purpose of the convention, which was to amend, rather than to replace, the Articles of Confederation. The state should not risk the foundation of American government for non-catastrophic issues that should be dealt with through established procedures.

OTHER OPPONENTS SAY:

**Other legislation.** CSSJR 2 should be amended so that it is not dependent on the passage of SJR 38 and SB 21. Considering the importance of reform, the state should call for a convention even if the Legislature does not approve procedures or rescind other calls, which it can always do in the future should it be necessary.

NOTES:

SJR 38 by Estes, which would rescind certain applications for an Article V convention, was adopted yesterday in the House. SB 21 by Birdwell, which would establish certain procedures for an Article V convention, is on today's Emergency Calendar for third-reading consideration.

CSSJR 2 differs from the joint resolution as received from the Senate in that the committee substitute would be dependent on the enactment of SB 21 by Birdwell and passage of SJR 38 by Estes.

The companion resolution, HJR 39 by Miller, was left pending April 13 following a public hearing in the House Select Committee on State and Federal Power and Responsibility.

SUBJECT: Requiring pre-suit notice for certain claims against an insurer

COMMITTEE: Insurance — committee substitute recommended

VOTE: 6 ayes — Phillips, R. Anderson, Gooden, Oliverson, Paul, Sanford

3 nays — Muñoz, Turner, Vo

WITNESSES: For —Paul Ehlert, Germania Insurance; David Weber, Hochheim Prairie Insurance; James Dickey, IMGA; Joel Moore, National Association of Independent Insurance Adjusters; Joe Woods, Property Casualty Insurers Association of America (PCI); Felipe Farias, State Farm Insurance; Lee Parsley and Mary Tipps, Texans for Lawsuit Reform; John Stephens, Texas Farm Bureau Insurance Companies; Luz Monarrez; Buddy Steves; (*Registered, but did not testify*: Jay Thompson, Afact; Michael Chatron, AGC Texas Building Branch; Deborah Polan, AIG; Billy Phenix, Allstate Insurance Company; Fred Bosse, American Insurance Association; Keith Hopkinson, Assurant Ins. Group; Kinnan Golemon, Austin White Lime Company; John Marlow, Chubb; Tom Sellers, ConocoPhillips; Frank Galitski, Farmers Insurance; Max Jones, Greater Houston Partnership; Lee Loftis, Independent Insurance Agents of Texas; Bill Oswald, Koch Companies; Mike Toomey, Liberty Mutual; Paul Martin, National Association of Mutual Insurance Companies; Brian Yarbrough, Nationwide; Mark Gipson, Pioneer Natural Resources; Jody Richardson, Plains All American Pipeline LP; Josiah Neeley, R Street Institute; Chris Shields, San Antonio Chamber of Commerce; Luz Monarrez, State Farm; John Stuckemeyer, State Farm Insurance; Tiffany Young, Texans Against Lawsuit Abuse, Citizens Against Lawsuit Abuse; Ned Munoz, Texas Association of Builders; Amanda Martin, Texas Association of Business; Stephanie Simpson, Texas Association of Manufacturers; Robert Flores, Texas Association of Mexican American Chambers of Commerce/TAMACC; Lisa Kaufman, Texas Civil Justice League; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Keith Strama, Texas Surplus Lines Association; Anne O'Ryan, The Interinsurance Exchange of the Auto Club and Auto Club County Mutual; Michael Geary, The Texas Conservative Coalition; Lucas Meyers, The Travelers Companies, Inc. and Subsidiaries; Robert (Bo) Gilbert, Eric

Glenn and Kari King, United Services Automobile Association (USAA); Cary Roberts, U.S. Chamber Institute for Legal Reform; Robert Howden)

Against — Robert Ryan, Stallion Oilfield Services; Rene Sigman, Texas Association of Consumer Lawyers; Michael Gallagher, Texas Trial Lawyers Association; Bryan Blevins, Texas Trial Lawyers Association; Ware Wendell, Texas Watch; and eight individuals; (*Registered, but did not testify*: Tim Morstad, AARP; Jacob Smith, Texas Association of Consumer Lawyers; John Hubbard, Texas Association of Rural Schools, Kathleen Field; Cherilyn Stringer)

On — Jamie Walker, Texas Department of Insurance; (*Registered, but did not testify*: Joe Matetich, OPIC; Bill Stevens, Texas Alliance of Energy Producers; Marianne Baker, Cassie Brown, Mark Einfalt, Ginger Loeffler, Jesse McClure, David Muckerheide, Michael Nored, and Brian Ryder, Texas Department of Insurance; Sean Cameron; Kevin Pakenham)

BACKGROUND: Insurance Code, sec. 542.060 states that an insurer liable for a policy claim who violates Insurance Code, ch. 542 regulations for processing and settling claims is liable to pay the policyholder:

- the amount of the claim;
- interest on the amount of the claim at an annual interest rate of 18 percent; and
- reasonable attorney's fees.

DIGEST: CSHB 1774 would require an insured making a claim against an insurer or agent relating to damage to real property caused by an earthquake, earth tremor, wildfire, flood, tornado, lightning, hurricane, hail, wind, snowstorm, or rainstorm to provide written notice to the insurer at least 61 days before filing the claim. This pre-suit notice would have to provide a statement of the acts giving rise to the claim, the specific amount alleged to be owed, and amount of reasonable and necessary attorney's fees already incurred by the claimant. This notice would be admissible as evidence in a civil action or alternative dispute resolution.

Pre-suit notice would not be required if giving notice were impracticable based on a reasonable belief that there was insufficient time to give notice

before the statute of limitations would expire or because the action was asserted as a counterclaim.

The bill would authorize persons receiving this pre-suit notice to send a written request to inspect, photograph, or evaluate the property in a reasonable manner.

The bill would require a court to abate the action if the defendant filed a claim for abatement and the court found that the defendant did not receive pre-suit notice or was denied a request to inspect, photograph, or evaluate the property. Abatement would continue for the later of 60 days after complying notice was given or 15 days after the requested inspection occurred.

The bill would allow an insurer to provide written notice to the claimant accepting the liability of its agent, removing any cause of action against that agent. The court would be required to dismiss action against the agent, unless the insurer failed to make the agent available for testimony at a reasonable time and place or the acceptance of liability was conditioned to result in the insurer avoiding liability.

The bill would require a court to dismiss action by the insurer against the claimant occurring within 61 days after notice was provided.

Attorney's fees would be calculated as the lesser of:

- the amount of reasonable and necessary attorney's fees supported by sufficient evidence at trial and determined to have been incurred by the claimant in bringing the action;
- the amount of attorney's fees that may be awarded to the claimant under other any other applicable law; or
- the amount to be awarded in the judgment, divided by the amount alleged to be owed, then multiplied by the total amount of reasonable and necessary attorney's fees supported by sufficient evidence and determined to have been incurred in bringing the action.

The bill would require the court to award the full amount of reasonable

and necessary attorney's fees if the amount to be awarded in the judgment divided by the amount alleged to be owed was at least 0.8, not limited by statute, and recoverable. The court would be prohibited from awarding attorney's fees if this fraction was less than 0.2, or if the claimant failed to provide pre-suit notice.

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, 2017, and would apply only to actions filed and claims made on or after that date.

SUPPORTERS SAY:

CSHB 1774 would mitigate the growing trend of abusive severe weather event lawsuits. Opportunistic lawyers have been using extreme weather events as a pretext for exaggerating damages, suing innocent parties, and failing to give notice to insurers before filing lawsuits. The frequency of weather-related lawsuits against property insurers has risen 1,400 percent since 2012. This increase is motivated by profit, not actual damages to real property, and should be discouraged.

The bill also would minimize the increases in homeowners' insurance rates that have resulted from the recent explosion of lawsuits. Mass litigation is expensive for insurance companies, which pass these costs on to consumers in the form of higher premiums.

The bill would not damage the rights of policyholders to sue their insurers. Consumers still would have seven separate causes of action to sue, and carriers still would be subject to strict liability if shown to have underpaid a policyholder's claim. The bill simply would create penalties to enforce the existing pre-suit notice requirement.

OPPONENTS SAY:

CSHB 1774 would obstruct the ability and right of property insurance policyholders. Texans whose property is damaged by extreme weather should not be restricted from suing insurance companies that deny or underpay their claims, which carriers are especially likely to do in extreme weather situations when they observe an increase in claims. Requiring 61 days' notice before filing would be especially burdensome in extreme weather situations in which damage can worsen over time.

NOTES: A companion bill, SB 10 by Hancock, was reported favorably from the Senate Business and Commerce Committee on April 24.

SUBJECT: Requiring coverage of certain accelerated eye drop prescription refills

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — Peter Cass, Texas Optometric Association; Wanda Northam; (*Registered, but did not testify*: Robert Peeler, Allergan; Stephanie Simpson, Texas Association of Manufacturers; Thomas Kowalski, Texas Healthcare and Bioscience Institute; Lori Anderson, Renu Anupindi, Steven Hays, Charles Malone, Hector Miranda, Carolyn Parcells, and Clayton Stewart, Texas Medical Association; Victor Gonzalez, Jay Propes, and Rachael Reed, Texas Ophthalmological Association; Tommy Lucas and Steve Nguyen, Texas Optometric Association; Bobby Hillert and David Teuscher, Texas Orthopaedic Association; Bonnie Bruce, Texas Society of Anesthsiologists; Sunshine Moore, TMA Alliance; Patricia Loose, TMA, TMAA; Isabel C. Menendez Martinez, TMA, TRS; Stephanie Triggs, Travis County Medical Society; James Eskew, Travis County Medical Society, Texas Medical Association; and 14 individuals)

Against — (*Registered, but did not testify*: Wendy Wilson, Prime Therapeutics)

On — (*Registered, but did not testify*: Pat Brewer, Texas Department of Insurance)

BACKGROUND: Concerns have been raised that health plans may not cover early refills of prescription eye drops, which can be accidentally wasted when people have difficulty using them, including elderly glaucoma patients.

DIGEST: CSHB 2262 would prohibit a health benefit plan covering prescription eye drops to treat a chronic disease or condition from denying coverage for a refill of the eye drops because the prescription was refilled before the plan's general refill date if:

- the original prescription stated that additional eye drops were needed; and
- the refill did not exceed the total dosage authorized by the prescribing provider.

A health benefit plan would have to cover a refill dispensed:

- at least 21 days after the prescription for a 30-day supply of eye drops was dispensed;
- at least 42 days after the prescription for a 60-day supply of eye drops was dispensed; or
- at least 63 days after the prescription for a 90-day supply of eye drops was dispensed.

The bill would take effect September 1, 2017, and would apply only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2018.

NOTES: A companion bill, SB 1040 by Buckingham, was referred to the Senate Committee on Business and Commerce on March 6.

SUBJECT: Requiring state agencies to develop written succession plans

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Cook, Giddings, Craddick, Farrar, Geren, Guillen, K. King, Kuempel, Meyer, Paddie, E. Rodriguez, Smithee

0 nays

1 absent — Oliveira

WITNESSES: None

DIGEST: HB 2463 would require each state agency to develop a written succession plan identifying and developing mechanisms to ensure the transfer of institutional knowledge from experienced and retiring employees not appointed by the governor or the agency's governing body to succeeding employees. This requirement would not apply to an institution of higher education.

The bill would require a state agency to include in the agency's legislative appropriations request whether the agency had developed a written succession plan.

The state agency would update the written succession plan as necessary. Beginning in 2018, agencies would be required to submit their written succession plans to the state auditor no later than September 1 of each year and to post the succession plan on the agency's website.

HB 2463 also would require the state auditor to include in its annual report on classified employee turnover a list of each state agency that had submitted or failed to submit a written succession plan to the state auditor and a thorough and comprehensive summary of the types and extent of succession planning completed by state agencies.

The bill would take effect September 1, 2017.

SUBJECT: Allowing formation of a captive insurance exchange

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — Burnie Burner, Mitchell Williams; Scott Irwin, Phillips 66; Josh Magden, Texas Captive Insurance Association; (*Registered, but did not testify*: Steve Perry, Chevron USA; Frank Galitski, Farmers Insurance; Lee Loftis, Independent Insurance Agents of Texas; Amy Maxwell, Marathon Oil Corporation; Neftali Partida, Phillips 66; Amanda Martin, Texas Association of Business; Jay Brown, Valero)

Against — None

On — (*Registered, but did not testify*: Jamie Walker, Texas Department of Insurance)

BACKGROUND: Insurance Code, ch. 964 defines a captive insurance company as a company that holds a certificate of authority from the Texas Department of Insurance to insure the operational risks of the company's affiliates or risks of a controlled unaffiliated business. Texas authorizes the operation of captive insurance companies but does not authorize captive insurance companies to take credit for reinsurance from approved, non-affiliated insurers or to create a reciprocal exchange.

DIGEST: CSHB 1944 would allow for the formation of a captive exchange and would include a captive exchange under the definition of a "captive insurance company" in Texas law. The bill also would allow a captive insurance company to cede risks to or take credit for reserves on risks ceded to a non-affiliated reinsurer if the reinsurer:

- held a certificate of authority to transact insurance or reinsurance in a jurisdiction that was on the list of qualified jurisdictions from the

National Association of Insurance Commissioners and was acceptable to the Texas commissioner of insurance;

- maintained minimum capital and surplus or the equivalent of $250 million at the end of the previous year; and
- maintained a financial strength rating of B+ or its equivalent from a national or international rating agency as specified in the bill.

CSHB 1944 would allow a captive exchange to be formed that would operate as a captive insurance company under Texas law except as specified by the bill. The bill would define a "captive exchange" to mean a reciprocal or interinsurance exchange. It would set subscriber and attorney in fact requirements for a captive exchange. A "subscriber" would mean an affiliated company or controlled unaffiliated business that enters into a reciprocal contract of insurance with an attorney in fact as a subscriber of a captive exchange.

The bill would define an "attorney in fact" to mean a firm or corporation that, under a power of attorney or other appropriate authorization of the attorney in fact, acts for subscribers of a captive exchange by issuing reciprocal or interinsurance contracts. The attorney in fact would have its principal office in Texas.

The bill would require a captive exchange to file a subscriber declaration with the Department of Insurance that would include information specified by the bill, including the amount of the captive exchange's initial surplus and a provision to authorize a quorum of the captive exchange's attorney in fact to consist of at least one-third the size of the members of the governing body.

CSHB 1944 would allow the commissioner of insurance to waive the requirement for a captive insurance company to file an actuarial report with the company's annual report if the commissioner determined that the company had less than $1 million of net written premium or reinsurance assumed, or the company had been in operation for less than six months at the end of the previous calendar year.

The bill would make other changes to captive insurance companies, including allowing a captive insurance company to issue life insurance if

it insured employee benefits, and requiring the company to notify the insurance commissioner when issuing distributions to policyholders. A captive insurance company would not be required to use an insurance adjuster to adjust losses but would be required to use an insurance adjuster to adjust a claim that a person made against an affiliated company insured by the captive insurance company if the person was not an affiliated company or an insured controlled unaffiliated business.

The bill would allow a captive insurance company to have and maintain "the equivalent" of unencumbered capital and surplus for the purposes of meeting certain capital and surplus requirements in Texas law. CSHB 1944 would specify that the capital and surplus or the equivalent could be in the form of county or municipal bonds in addition to Texas bonds for the purpose of the Department of Insurance issuing a company a certificate of authority.

Under the bill, a captive insurance company, other than a captive exchange or an attorney in fact as defined by the bill, would be formed by filing an appropriate application with the secretary of state. The certificate of formation of such a company would have to comply with applicable requirements of the Business Organizations Code. The name of a captive insurance company or the attorney in fact could include the words "insurance," "company," or similar words that indicated the entity was meant to operate as an insurance company or attorney in fact.

Any information related to captive insurance companies that was filed with the commissioner would be confidential and privileged for all purposes. The secretary of state could index in the public record any document filed with the secretary by an applicant or captive insurance company. Bill provisions regarding information filed with the secretary of state would apply only to information filed on or after September 1, 2017. Information filed after that date would be governed by the law as it existed immediately before the bill's effective date and would continue the law in effect for that purpose.

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, 2017.

NOTES: A companion bill, SB 915 by Hughes, was left pending in the Business and Commerce Committee after a public hearing on April 25.

SUBJECT: Providing notice to landlords of arrests for prostitution on their premises

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

WITNESSES: For — Jamey Caruthers, Children at Risk; (*Registered, but did not testify*: Jessica Anderson, Houston Police Department)

Against — None

On — (*Registered, but did not testify*: Brad Bowman, Texas Department of Licensing and Regulation)

BACKGROUND: Civil Practice and Remedies Code, sec. 125.0015 establishes that a person maintains a common nuisance by maintaining a place where people habitually go for certain enumerated illegal activities — including prostitution, promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution — and knowingly tolerates the activity.

Concerns have been raised that some landlords involved in nuisance abatement suits have been able to avoid legal consequences for leasing property to massage businesses operating as a cover for prostitution by claiming ignorance about the lessee's activities.

DIGEST: CSHB 715 would require a law enforcement agency that made an arrest in connection with a massage parlor involved in certain prostitution-related offenses to send a written notice of the arrest within seven days to the owner of the property where the arrest occurred.

A prostitution-related offense that occurred after the arrest notice had been sent to the property owner would be prima facie evidence in a nuisance abatement suit that the property owner knowingly tolerated the activity.

The bill would take effect September 1, 2017.

SUBJECT: Continuing the Texas Leverage Fund program; modifying administration

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 8 ayes — Button, Vo, Bailes, Hinojosa, Leach, Metcalf, Ortega, Villalba

0 nays

1 absent — Deshotel

WITNESSES: For — (*Registered, but did not testify*: Rick Hardcastle, BDC of Vernon; Carlton Schwab, Texas Economic Development Council)

Against — None

On — Bryan Daniel, Office of the Governor, Economic Development and Tourism Office

BACKGROUND: The Texas Economic Development Bank fund is a dedicated account in the general revenue fund. Government Code, sec. 489.105 specifies that this fund consists of various investment earnings, economic development-related appropriations and fees, and any other amounts received by the state for the Texas Economic Development Bank fund.

10 TAC, part 5, chap. 181 establishes the Texas Leverage Fund program administered by the Office of the Governor's Economic Development and Tourism (EDT) Office, which issues loans to economic development corporations (EDCs) to finance eligible projects.

According to the terms of a master resolution adopted by the office in 1992, the Texas Leverage Fund program is scheduled to expire in 2022. Concerned parties suggest a need to continue this program and place it in statute. Uncertainty prevents loans from being issued now, because their maturity dates would be after 2022. These loans are valued by many as a key tool in promoting tourism and economic development in Texas.

DIGEST:

CSHB 3772 would establish the Texas Leverage Fund as a trust fund held outside the state treasury by the comptroller, who would act as a trustee. The fund would consist of proceeds from issuance of bonds, loan payments and origination fees, investment earnings, and any other money received by the Texas Economic Development Bank.

The leverage fund could be used only:

- to make loans to economic development corporations for eligible projects;
- to pay the bank's necessary and reasonable costs and fees associated with administering the program;
- to pay the principal and interest on bonds;
- for authorized reinvestment by the comptroller; or
- for any other purpose authorized by statute.

CSHB 3722 would authorize the Texas Economic Development Bank, the Economic Development and Tourism (EDT) Office, or the office's successor agency to issue, sell, and retire bonds to provide funding for economic development purposes. The executive director of EDT would oversee the format, terms, and rates of these loans. However, the bill would prohibit the director from issuing a loan with a term longer than 40 years or an interest rate greater than the maximum annual interest rate of 15 percent.

The bill would allow the executive director of EDT to make certain agreements contained in instruments securing bonds. However, the director could not incur a pecuniary liability or charge against the general credit of the state, office, or bank.

The bill also would allow bonds issued under the Texas leverage fund program to be refunded by bank issuance of refunding bonds. It would also classify bonds issued by the Texas Economic Development Bank as legal investments for fiduciaries.

The bill would retroactively validate the acts of the comptroller, EDT, and Texas Economic Development Bank relating to the administration of the

Texas Leverage Fund program, excluding misdemeanors, felonies, or a matter that has been held invalid by a final judgment of a court.

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, 2017.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have an estimated negative impact of $4.3 million on general revenue related funds through fiscal 2018-19.

SUBJECT: Allowing attorneys for the state to apply for expunctions

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

WITNESSES: For — Vincent Giardino, Tarrant County Criminal District Attorney's Office; (*Registered, but did not testify*: Nicholas Hudson, American Civil Liberties Union of Texas; Hetty Borinstein and Chas Moore, Austin Justice Coalition; Kathryn Freeman, Christian Life Commission; Reginald Smith, Communities for Recovery; Latosha Taylor, Grassroots Leadership; Darwin Hamilton and Lauren Johnson, Reentry Advocacy Project; Mary Mergler, Texas Appleseed; Shea Place, Texas Criminal Defense Lawyers Association; Kathy Mitchell, Texas Criminal Justice Coalition; Yannis Banks, Texas NAACP; Haley Holik and Marc Levin, Texas Public Policy Foundation; Teresa Dozier; Karen Gentry; Lauren Oertel; Thomas Parkinson)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 55.02 allows an acquitted person to petition the trial court for an expunction. Some have suggested this places an administrative burdens on acquitted persons in seeking such an order.

DIGEST: CSHB 557 would allow the attorney for the state to apply for an expunction on behalf and with the consent of the person acquitted.

The bill would take effect September 1, 2017, and would only apply to expunctions for offenses for which the trial began on or after that date.

NOTES: A companion bill, SB 325 by Burton, was approved by the Senate on April 3 and referred to the House Criminal Jurisprudence Committee on April 18.

SUBJECT: Removing liability of first responders who provide roadside assistance

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Smithee, Farrar, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

1 nay — Gutierrez

WITNESSES: For — Larry Cernosek and Amy Milstead, Texas Towing and Storage Association; (*Registered, but did not testify*: Arianna Smith, Combined Law Enforcement Associations of Texas (CLEAT); Bill Kelly, City of Houston Mayor's Office; Casey Haney, State Firefighters' and Fire Marshals' Association; Lee Parsley, Texans for Lawsuit Reform; Michael Pacheco, Texas Farm Bureau; Mike Gomez, Texas Municipal Police Association (TMPA); John Carlton, Texas State Association of Fire and Emergency Services Districts; Will Adams, Texas Trial Lawyers Association)

Against — None

On — (*Registered, but did not testify*: Will Adams, Texas Trial Lawyers Association)

DIGEST: CSHB 590 would specify that a first responder providing roadside assistance was not civilly liable for damage to the vehicle related to the assistance unless damage occurred due to an act of gross negligence, recklessness, or intentional misconduct.

A first responder would include a peace officer, fire fighter, or emergency services personnel. Liability protections under the bill would extend to assistance provided to the driver or passenger of a vehicle and related to its operation, such as jump-starting a car, replacing the battery, lockout assistance, replacing a flat tire, and breakdown assistance.

The bill would take effect September 1, 2017, and would apply only to a cause of action that accrued on or after that date.

SUPPORTERS SAY:

CSHB 590 would allow first responders to offer roadside assistance without being held responsible for inadvertent damage to an individual's vehicle. Individuals who accept roadside assistance from first responders should accept a reasonable amount of risk to their vehicles, such as an electric system short-circuiting that might result from jump-starting a vehicle. Personal injury stemming from unintentional vehicle damage due to a first responder's assistance is an assumed risk.

OPPONENTS SAY:

CSHB 590 could grant immunity for cases in which an individual was harmed due to the roadside assistance rendered by a first responder. These individuals should be able to seek legal remedy.

SUBJECT: Allowing public schools to buy insurance for CTE programs

COMMITTEE: Public Education — committee substitute recommended

VOTE: 6 ayes — Huberty, Bernal, Gooden, K. King, Koop, VanDeaver

0 nays

4 absent — Allen, Bohac, Deshotel, Meyer

1 present not voting — Dutton

WITNESSES: For — Scott Bland, Texas Association of Builders; Paul Taylor, Texas Association of School Boards Risk Management Services; (*Registered, but did not testify*: Michael Chatron, AGC Texas Building Branch; Jon Fisher, Associated Builders and Contractors of Texas; Marty De Leon, Career and Technical Association of Texas; Louann Martinez, Dallas ISD, the Texas Urban Council; Katija Gruene, Green Party of Texas; Mike Meroney, Huntsman Corporation, BASF Corporation, and Texas Workforce Coalition; Annie Spilman, National Federation of Independent Business/Texas; Priscilla Camacho, San Antonio Chamber of Commerce; Seth Rau, San Antonio ISD; Shannon Noble, Texas Air Conditioning Contractors Association; Courtney Boswell, Texas Aspires; Houston Tower, Texas Aspires; Miranda Goodsheller, Texas Association of Business; Barry Haenisch, Texas Association of Community Schools; Stephanie Simpson, Texas Association of Manufactures; Amy Beneski, Texas Association of School Administrators; Grover Campbell, Texas Association of School Boards; Michelle Smith, Texas Association of School Business Officials; Justin Yancy, Texas Business Leadership Council; Michael White, Texas Construction Association; Janna Lilly, Texas Council of Administrators of Special Education; Carlton Schwab, Texas Economic Development Council; Jim Reaves, Texas Farm Bureau; Colby Nichols, Texas Rural Education Association)

Against — None

On — Quentin Suffren, Texas Education Agency; Will Adams, Texas

Trial Lawyers Association; (*Registered, but did not testify*: Von Byer and Eric Marin, Texas Education Agency)

BACKGROUND:

Observers suggest that students participating in career and technology programs off campus may encounter certain risks while at job sites or being transported to and from school, raising concerns about accident liability for students, schools, and partnering organizations.

DIGEST:

CSHB 639 would allow the board of trustees of a school district or the governing body of an open-enrollment charter school to obtain accident, liability, or automobile insurance coverage to protect:

- a business or entity that provided a career and technology (CTE) program to students; and
- a district or school that participated in a CTE program.

The coverage would be required to be obtained from a reliable insurer authorized to engage in business in Texas or provided through a school district's self-funded risk pool.

The amount of coverage obtained by a district or charter would have to be reasonable considering the financial condition of the district or charter and could not exceed the amount reasonably necessary in the opinion of, as applicable, the district's board of trustees or the governing body of the school.

If a board of trustees or governing body obtained accident, liability, or automobile insurance coverage, an administrator designated by the board of trustees or governing body would be required to notify parents of each student participating in the CTE program.

A district or charter could not charge a student participating in a CTE program or the student's parent for the cost of providing insurance.

The failure of a board of trustees or a governing body to obtain a specific amount of coverage would not place any legal liability on the officers, agents, or employees of the district or charter.

A student who participated in a CTE program would be entitled to the same immunity as a volunteer to a district or charter.

The bill would repeal a provision in current law relating to specific types of insurance coverage for certain businesses that partner with a school district for a CTE program.

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, 2017, and would apply beginning with the 2017-18 school year.

NOTES:

Two companion bills, SB 1880 by Menéndez and SB 1898 by West, were referred to the Senate Committee on Education on March 23.

SUBJECT: Providing embryo donation information

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Collier, Cortez, Klick, Oliverson, Zedler

0 nays

1 absent — Guerra

WITNESSES: For — Daniel Nehrbass, Nightlight Adoptions; Kyleen Wright, Texans for Life; Joe Pojman, Texas Alliance for Life; (*Registered, but did not testify*: Ann Hettinger, Center for the Preservation of American Ideals)

Against — (*Registered, but did not testify*: Ashlee Cook)

On — (*Registered, but did not testify*: John Seago, Texas Right to Life)

BACKGROUND: Family Code, sec. 160.102 defines assisted reproduction to include intrauterine insemination, donation of eggs, donation of embryos, in vitro fertilization and transfer of embryos, and intracytoplasmic sperm injection.

Observers note that with the use of fertility treatment therapies on the rise, it is typical with such treatments for multiple embryos to be fertilized and frozen, with unused embryos remaining after therapy. Some have suggested that more information should be available about embryo donation.

DIGEST: HB 785 would require a physician performing an assisted reproduction procedure that involved the creation of a human embryo to inform the patient of the option of embryo donation for any unused human embryos.

The Department of Family and Protective Services would be required to post information about embryo donation on its website, including contact information for nonprofit organizations that facilitate embryo donation.

This bill would take effect September 1, 2017.

SUBJECT: Requiring certain health benefit plans to cover breast cancer screenings

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — Christy Gamble, Black Women's Health Imperative; Mary Pritzlaff and Ellen Ryan, Facing the Risk of Cancer Empowered; Dorothy Gibbons, The Riose; Mark Akin; Anne Hunt; Stephen Rose; (*Registered, but did not testify*: Patricia Kolodzey, Blue Cross Blue Shield; Reginald Smith, Communities for Recovery; Chuck Girard, Hospital Corporation of America; Maggie Hennessy, NARAL Pro-Choice Texas; Rene Lara, Texas AFL-CIO; Jamie Dudensing, Texas Association of Health Plans; Clayton Stewart, Texas Medical Association; Isabel C. Menendez Martinez, Texas Medical Association, Texas Radiologic Society; Jenna Courtney, Texas Radiological Society; Carisa Lopez, Travis County Democratic Party; Tilden Childs; Jeff Hunt)

Against — (*Registered, but did not testify*: Annie Spilman, National Federation of Independent Business/Texas; Amanda Martin, Texas Association of Business)

On — Ethan Cohen, The University of Texas MD Anderson Cancer Center; (*Registered, but did not testify*: Pat Brewer, Texas Department of Insurance)

BACKGROUND: Insurance Code, ch. 1356 requires a health benefit plan that covers a woman who is at least 35 years old to include coverage for an annual screening by low-dose mammography for the presence of occult breast cancer. The chapter applies only to a health plan that is an individual or group accident and health insurance policy, including a policy issued by a group hospital service corporation.

Some have suggested that few large health plans in the state cover three-

dimensional mammography, which is necessary for individuals with certain breast tissue, and contend that insurance coverage for such screenings should be expanded to detect breast cancer in its early stages.

DIGEST:

CSHB 1036 would expand the list of health benefit plans required to cover annual low-dose mammography to include small employer health plans, coverage by health group cooperatives, blanket or franchise group hospital insurance policies, group hospital service contracts, and certain other individual or group plans.

The bill would expand the definition of "low-dose mammography" to include a digital mammogram or breast tomosynthesis, a radiologic mammogram that produces three-dimensional images of the breast for cancer screening.

Annual low-dose mammography coverage also would be required for all applicable group health benefit plans provided to a state resident, group health coverage for school district employees, self-funded plans sponsored by a professional employer organization, church benefits board plans, regional or local health care programs, basic coverage plans, and standard plans.

The bill would not apply to the Children's Health Insurance Program, the health benefits plan for children who are qualified immigrants, the state Medicaid program for maternal and infant health, or the Medicaid managed care program.

The bill would take effect September 1, 2017, and would apply only to a health benefit plan that was delivered, issued for delivery, or renewed on or after January 1, 2018.

SUBJECT: Prohibiting contracts with companies engaged with certain foreign entities

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Cook, Giddings, Craddick, Farrar, Geren, Guillen, K. King, Kuempel, Meyer, Paddie, E. Rodriguez, Smithee

0 nays

1 absent — Oliveira

WITNESSES: For — (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas)

Against — None

On — (*Registered, but did not testify*: Paul Ballard, Treasury Safekeeping Trust Co.)

BACKGROUND: Some contend that insufficient protections are in place to prevent taxpayer dollars and governmental contracts going to companies engaged in business with certain foreign entities that tolerate, encourage, or engage in terrorist activities.

DIGEST: HB 1142 would prohibit a local or state governmental entity from entering into a contract with a company identified as engaged in business with Iran, Sudan, or a foreign terrorist organization designated by the U.S. secretary of state.

The comptroller would be required to prepare and maintain a list of companies known to contract with or provide supplies or services to a foreign terrorist organization. This list would have to be made available to each governmental entity.

The bill would take effect September 1, 2017, and would apply only to a contract or purchase for which a governmental entity first advertised or otherwise solicited bids, proposals, offers, or qualifications on or after that

date.

NOTES: A companion bill, SB 252 by V. Taylor, was approved by the Senate on April 3 and referred to the House Committee on State Affairs.

SUBJECT: Allowing prohibitions of fireworks in unincorporated areas of counties

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 7 ayes — Springer, Biedermann, Hunter, Neave, Roberts, Thierry, Uresti

1 nay — Stickland

1 absent — Coleman

WITNESSES: For — Robert Wilburn, Champions Creek HOA; P.T. (Pat) Calhoun, Goliad County; Laurie Christensen, Harris County Fire Marshal's Office; John Zitzmann, Office of Constable Mark Herman, Harris County Pct. 4; Donald Lee, Texas Conference of Urban Counties; (*Registered, but did not testify*: T.J. Patterson, City of Fort Worth; David Dillard, Concho County; Jim Allison, County Judges and Commissioners Association of Texas; Melissa Shannon, County of Bexar Commissioners Court; Jim Short and Donna Warndof, Harris County; David Riddle, Harris County Pct. 4 Commissioner R. Jack Cagle; Casey Haney, State Firefighters' and Fire Marshals' Association; Mark Mendez, Tarrant County; Rick Thompson, Texas Association of Counties; Jim Reaves, Texas Farm Bureau; Ariana Hargrove, Texas Fire Marshal's Association; Joseph Green, Travis County Commissioners Court; Woodrow Gossom, Wichita County)

Against — Eric Glenn, Texas Pyrotechnic Association; (*Registered, but did not testify*: Chester Davis and Carl Isett, Texas Pyrotechnic Association; Ramiro Gonzalez, Jr.)

DIGEST: HB 1183 would allow a county commissioners court to prohibit the use of fireworks in unincorporated areas of a county during certain hours. An order could include exemptions for holidays, including New Year's Eve and July 4, and a process for a person to apply for a permit to use fireworks during an otherwise prohibited period.

A violation of a fireworks prohibition would be punishable by a class C misdemeanor (maximum fine of $500).

The bill would take effect immediately if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

HB 1183 would give reasonable local control to county governments that are best positioned to regulate fireworks in unincorporated areas. The bill would address unregulated fireworks use that often infringes on the quality of life of others, while allowing local authorities to make exceptions for their use on special occasions.

OPPONENTS SAY:

HB 1183 would give commissioners courts unnecessary regulatory power over individuals living in unincorporated areas of a county, many of whom elect to live in rural areas to avoid government regulation.

SUBJECT: Repealing a state agency rule before adopting a new rule

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Cook, Giddings, Craddick, Farrar, Geren, Guillen, Kuempel, Meyer, Oliveira, Paddie, E. Rodriguez, Smithee

0 nays

1 absent — K. King

WITNESSES: For — Derek Cohen, Texas Public Policy Foundation; Lisa Fullerton; Carter Mayfield; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas; Annie Spilman, National Federation of Independent Business-Texas; Chad Cantella, Private Providers Association of Texas; Josiah Neeley, R Street Institute; CJ Grisham)

Against — (*Registered, but did not testify*: Sacha Jacobson)

BACKGROUND: Some have suggested that the state could ease compliance costs for businesses operating in Texas by curtailing new state agency rules and regulations.

DIGEST: HB 1290 would prohibit a state agency from adopting a proposed rule until it repealed at least one existing rule on or before the effective date of the new rule. This requirement would not apply to rules that were specifically required by legislation or necessary to protect the health and safety of residents of Texas as authorized under the Health and Safety Code.

The bill would take effect September, 1, 2017, and would apply only to rules proposed by an agency on or after the effective date.

SUBJECT: Allowing certain electronic forms when transferring a motor vehicle

COMMITTEE: Transportation — committee substitute recommended

VOTE: 11 ayes — Morrison, Martinez, Burkett, Y. Davis, Israel, Phillips, Pickett, Simmons, E. Thompson, S. Thompson, Wray

0 nays

2 absent — Goldman, Minjarez

WITNESSES: For — Jeff Huffman, Texas Credit Union Association; (*Registered, but did not testify*: Anne O'Ryan, AAA Texas; Billy Phenix, Allstate Insurance Company; Ray Sullivan, Copart, Inc.; Melodie Durst, Credit Union Coalition of Texas; Steve Bresnen and Amy Bresnen, Insurance Auto Auctions; Joe Woods, Property Casualty Insurers Association of America (PCI); Cathy DeWitt, Texas Association of Business; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Marti Johnson Luparello, Texas Farm Bureau Insurance Companies; Eric Glenn, USAA; Kari King, USAA; Jim Baxa)

Against — None

On — (*Registered, but did not testify*: Jeremiah Kuntz and Clint Thompson, Texas Department of Motor Vehicles)

BACKGROUND: Transportation Code, sec. 501.072 requires the seller of a motor vehicle to provide the buyer a written disclosure of the vehicle's odometer reading at the time of the sale on a form prescribed by the Texas Department of Motor Vehicles. Sec. 501.076 allows certain written limited power of attorney agreements to be executed by vehicle owners.

Observers note that written odometer reading disclosures and power of attorney agreements take time to transfer and that transactions involving such forms could be completed more quickly with electronic forms.

DIGEST: CSHB 1693 would allow the odometer disclosure statement to be

provided to a transferee electronically as long as the disclosure was in compliance with federal law and regulations.

The bill would require the department to provide, both in electronic and paper formats, a secure power of attorney form and a secure reassignment form for licensed motor vehicle dealers.

The bill would take effect January 1, 2018.

NOTES: A companion bill, SB 1062 by Perry, was approved by the Senate on April 25.

SUBJECT: Altering the certification timeframe for TDA's metrology lab

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 6 ayes — T. King, González, C. Anderson, Cyrier, Rinaldi, Stucky

0 nays

1 absent — Burrows

WITNESSES: For — None

Against — None

On — Philip Wright, Texas Department of Agriculture

BACKGROUND: The Texas Department of Agriculture (TDA) maintains in its metrology laboratory the state's primary standards by which all state and local standards of weights and measures are tried, authenticated, proved, and certified. Agriculture Code, sec. 13.113(b) requires TDA to submit these standards to the National Institute of Standards and Technology for certification at least once every 10 years.

In 2009, an assessment of the metrology laboratory found that the facility's environmental conditions were not meeting federal National Institute of Standards and Technology (NIST) requirements. The lab is NIST-recognized through fiscal 2017, but could lose its recognition unless repairs are conducted. Concerns have been raised regarding the financial impact that could result if TDA's metrology laboratory lost NIST recognition.

DIGEST: HB 1730 would revise the frequency with which the Texas Department of Agriculture (TDA) had to submit its standards to the National Institute of Standards and Technology (NIST) or a laboratory approved by NIST for certification. TDA would be required to submit the standards to one of the approved entities as necessary to maintain recognition of the laboratory, rather than at least once every 10 years as under current law.

The 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, 2017.

SUBJECT: Terminating parental rights for the sexual assault of a co-parent

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 6 ayes — Dutton, Dale, Biedermann, Moody, Schofield, Thierry

0 nays

1 present not voting — Cain

WITNESSES: For — Donna Bloom, Denton County Friends of the Family; Chris Kaiser, Texas Association Against Sexual Assault; Jared Julian; Rachel McPartland; (*Registered, but did not testify*: Jim Grace, Houston Area Women's Center; Julie Fleming and Courtney Szigetvari, Left Up To Us; Will Francis, National Association of Social Workers - Texas Chapter; Amy Bresnen, Texas Family Law Foundation; Glenn Scott)

Against — None

BACKGROUND: Family Code, sec. 161.001 allows a court to involuntarily terminate the parental rights of a person after finding by clear and convincing evidence that the parent has committed one or more dangerous or neglectful acts described in that section.

Observers have noted that some sexual assault survivors currently must co-parent with their attacker and do not have a readily available remedy under current law.

DIGEST: CSHB 1766 would make a conviction or community supervision, including deferred adjudication community supervision, for the sexual assault of a co-parent grounds to involuntarily terminate the offender's parental rights to a child shared with the victim. Courts still could order child support payments after termination if the offender was financially able.

The bill would take effect September 1, 2017, and would apply only to a suit affecting the parent-child relationship filed on or after that date.

NOTES: A companion bill, SB 77 by Nelson, was approved by the Senate on April 3 and referred to the House Committee on Juvenile Justice and Family Issues on April 13.

SUBJECT: Creating a limitations period for certain actions under open meetings laws

COMMITTEE: Government Transparency and Operation — committee substitute recommended

VOTE: 7 ayes — Elkins, Capriglione, Gonzales, Lucio, Shaheen, Tinderholt, Uresti

0 nays

WITNESSES: For — Don Glywasky, City of Galveston; (*Registered, but did not testify*: Tom Tagliabue, City of Corpus Christi; Mark Mendez, Tarrant County; John Dahill, Texas Conference of Urban Counties; Zindia Thomas, Texas Municipal League)

Against — Mike Kelly, Pine Forest Investment Group; Donnis Baggett, Texas Press Association; (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas; Terri Hall, Texans Uniting for Reform and Freedom (TURF); Michael Schneider, Texas Association of Broadcasters)

BACKGROUND: The Open Meetings Act (Government Code, ch. 551) governs open meetings requirements for governmental bodies. Sec. 551.141 establishes that an action taken by a governmental body in violation of the act is voidable. Sec 551.142 allows an individual to bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the act by members of a governmental body.

Civil Practice and Remedies Code, sec. 16.051 establishes that for every action for which there is no express limitations period, it must be brought within four years after the day the cause of action accrues.

DIGEST: CSHB 1784 would establish a limitations period on actions brought under Government Code, secs. 551.141 and 551.142. A person would have to bring a suit or an action within two years after the alleged violation occurred or after it should reasonably have been discovered.

The bill would take effect September 1, 2017, and would apply only to a violation that occurred on or after that date.

SUPPORTERS SAY:

CSHB 1784 would create a reasonable time frame for individuals to file actions against a governmental body claiming a violation of the Open Meetings Act. Currently, a statute of limitations is not established for these actions, which can cause undue financial harm to third parties or delay development projects if an action is not brought on a decision in a timely manner.

While the default limitations period under the Civil Practice and Remedies Code is four years, the bill would set a two-year limitations period, which would be more equitable for all involved parties by ensuring that citizens would have ample opportunity to bring forth their claim while protecting third parties from undue harm.

OPPONENTS SAY:

CSHB 1784 could negatively affect government transparency. One of the protections citizens have to ensure that government business is conducted with public awareness is the ability to bring action against a governmental body alleged to be in violation of the Open Meetings Act. The time an individual would have to discover and investigate an alleged violation would be cut in half, thereby reducing the efficiency of the act.

The default four-year limitations period already is reasonable and is not known to be taken advantage of by complainants.

SUBJECT: Allowing firearm silencers if curio, relic, or complying with federal law

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

WITNESSES: For — Rick Briscoe, Open Carry Texas; David Matheny, Silencer Shop; Michael Cargill, Texans For Accountable Government; Alice Tripp, Texas State Rifle Association; (*Registered, but did not testify*: CJ Grisham, Open Carry Texas; Charles Cotton; William Farrell; Thomas Parkinson)

Against — (*Registered, but did not testify*: Danielle King)

BACKGROUND: Penal Code, sec. 46.05 makes it an offense to knowingly possess, manufacturer, transport, repair, or sell certain prohibited weapons, unless the item is registered in the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or classified as a curio or relic by the U.S. Department of Justice. The prohibited items include firearm silencers. Possession of prohibited silencers is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000).

DIGEST: CSHB 1819 would allow firearm silencers to be possessed, manufactured, transported, repaired, or sold if they were classified as a curio or relic by the U.S. Department of Justice or if possessed, manufactured, transported, repaired, or sold in compliance with federal law.

The bill would take effect September 1, 2017, and would apply to offenses committed on or after that date.

NOTES: A companion bill, SB 842 by Perry, was referred to the Senate State Affairs Committee on February 27.

SUBJECT: Allowing the Kickapoo Traditional Tribe to hunt certain deer year-round

COMMITTEE: Culture, Recreation and Tourism — favorable, without amendment

VOTE: 6 ayes — Frullo, Faircloth, Fallon, Gervin-Hawkins, Krause, Martinez

0 nays

1 absent — D. Bonnen

WITNESSES: For — Rolando Garza and Jaime Iracheta, Kickapoo Traditional Tribe of Texas; (*Registered, but did not testify*: Romey Swanson, Hill Country Conservancy; Rene Trevino, Kickapoo Traditional Tribe of Texas; Patrick Tarlton, Texas Deer Association)

Against — David Sinclair, Game Warden Peace Officers Association; David Yeates, Texas Wildlife Association; John Shepperd, Texas Foundation, Texas Coalition for Conservation; (*Registered, but did not testify*: Marko Barrett, Whitney Klenzendorf, Bill Knolle, and Tom Vandivier, Texas Wildlife Association; Matthew Schnupp, Texas Wildlife Association, King Ranch, Inc.; Steve Lewis; Walt Smith; David Synatzske)

On — (*Registered, but did not testify*: Ellis Powell and Clayton Wolf, Texas Parks and Wildlife Department)

BACKGROUND: Parks and Wildlife Code, sec. 42.002 governs license requirements for hunting. Sec. 61.057 governs regulations on hunting antlerless deer.

DIGEST: HB 1891 would allow documented members of the Kickapoo Traditional Tribe of Texas who hold a resident hunting license to hunt antlerless white-tailed deer for religious ceremonial purposes on any day of the year between one-half hour before sunrise and one-half hour after sunset.

The bill would require members of the Kickapoo Traditional Tribe of Texas to notify a local game warden, deputy game warden, or special game warden of the Texas Parks and Wildlife Department at least 24

hours before hunting during the offseason and comply with all other Parks and Wildlife Code provisions and proclamations.

The bill would take immediate effect if finally passed by a two-thirds vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

HB 1891 would allow the Kickapoo Traditional Tribe to practice their religious ceremonies, including baptisms, funerals, and masses throughout the year, which would protect the tribe's right to religious freedom.

The bill would allow about 50 licensed hunters in the Kickapoo tribe to hunt antlerless white-tailed deer, which is sustainable and would not endanger the state's deer population.

The two other federally recognized tribes in the state would not request the same exception for hunting licenses, as the Kickapoo Traditional Tribe is the only tribe that uses deer hunting for religious purposes.

Any concerns related to the geographic area that the Kickapoo Traditional Tribe would be allowed to hunt, including chronic waste disease surveillance and containment zones, could be addressed in an amendment.

OPPONENTS SAY:

HB 1891 would set a precedent for special groups or communities to receive additional allowances and restrictions. The bill also would lift restrictions on bag and season limits, which could endanger the deer population.

OTHER OPPONENTS SAY:

The bill would allow members of the Kickapoo Traditional Tribe to hunt anywhere in the state, which could pose challenges for hunting enforcement and management, especially if the tribe hunted in chronic waste disease surveillance and containment zones. The hunting should be limited to areas traditionally hunted by the tribe.

Members of the Kickapoo Traditional Tribe would have to notify deputy and special game wardens before hunting. These types of game wardens are not commissioned and do not have sufficient authority or access to communication needed to circulate information on the notification. The

notification requirement should be limited to local game wardens, who are the best equipped to monitor this activity.

NOTES: A companion bill, SB 880 by Uresti, was reported favorably from the Senate Agriculture, Water and Rural Affairs Committee on May 3.