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# HOUSE RESEARCH ORGANIZATION

## daily floor report

Monday, April 29, 2019  
86th Legislature, Number 54  
The House convenes at 10 a.m.  
Part Two

One bill is on the Major State Calendar and 64 bills are on the General State Calendar for second reading consideration today. The bills analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.



Dwayne Bohac  
Chairman  
86(R) - 54

## HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Monday, April 29, 2019

86th Legislature, Number 54

Part 2

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- SUBJECT:** Expanding placement options for veterans treatment court programs
- COMMITTEE:** Corrections — committee substitute recommended
- VOTE:** 9 ayes — White, Allen, Bailes, Bowers, Dean, Morales, Neave, Sherman, Stephenson
- 0 nays
- WITNESSES:** For — Jessica Frazier, Comal County District Attorney's Office; Kathleen Hamilton; (*Registered, but did not testify:* Alexandra Guio, Dallas County Criminal District Attorney John Creuzot; Tiana Sanford, Montgomery County District Attorney's Office; Anthony Elizondo)
- Against — None
- BACKGROUND:** Government Code ch. 124 allows counties to establish veterans treatment court programs for certain individuals who are arrested for, charged with, convicted of, or placed on deferred adjudication community supervision for any misdemeanor or felony offense. These programs provide certain services to defendants who are placed in them by a court.
- Government Code sec. 124.006 allows a veterans treatment court program that accepts placement of a defendant to transfer the defendant to another program located in the county where the defendant works or resides. If a defendant's criminal case is pending in a county that does not operate a veterans treatment court program, the court may place the defendant in a program in the county where the defendant works or resides. A defendant's supervision may be transferred only with the consent of both veterans treatment court programs, if applicable, and the defendant.
- Some have noted that allowing the transfer of a veteran's case from one veterans treatment court program to another is beneficial but that some veterans reside in counties that do not accept case transfers or that do not accept felony or misdemeanor cases.
- DIGEST:** CSHB 2481 would allow a veterans treatment court program to transfer

the supervision of a defendant's case to a program in a county adjacent to the county in which the defendant worked or resided. If a defendant were charged with an offense in a county that did not operate a veterans treatment court program, the court in which the criminal case was pending could place the defendant in a program in a county adjacent to where the defendant worked or resided.

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, 2019.

SUBJECT: Extending the deadline for filing a wage claim from 180 days to one year

COMMITTEE: International Relations and Economic Development — favorable, without amendment

VOTE: 6 ayes — Anchia, Blanco, Larson, Metcalf, Perez, Raney

1 nay — Cain

2 absent — Frullo, Romero

WITNESSES: For — Caitlin Boehne, Equal Justice Center; Stephanie Gharakhanian and Caharon Medina, Workers Defense Action Fund; (*Registered, but did not testify*: Lauren Oertel, Austin Justice Coalition; Jonathan Lewis, Center for Public Policy Priorities; Charley Wilkison, Combined Law Enforcement Associations of Texas; Fatima Menendez, Mexican American Legal Defense and Educational Fund; Samantha Robles, Progress Texas; Currie Hallford, Texas Political & Legislative Committee/CWA; Rene Lara, Texas AFL-CIO; Ted Raab, Texas AFT; Portia Bosse, Texas State Teachers Association; Laura Monroy; Susan Motley; Edward Sills; Amanda Weems)

Against — (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas; Annie Spilman, NFIB; James Hines, Texas Association of Business; Pamela Bratton, Texas State Council of Society for Human Resource Management)

On — (*Registered, but did not testify*: Chuck Ross, Texas Workforce Commission)

BACKGROUND: Labor Code sec. 61.051 sets a 180-day deadline for an employee who is unlawfully denied payment of wages to file a wage claim with the Texas Workforce Commission. The deadline is counted from the date that the wages claimed became due for payment.

DIGEST: HB 399 would extend the deadline for filing a wage claim with the Texas Workforce Commission to the first anniversary after the date the wages

claimed became due for payment, up from 180 days.

The bill would take effect September 1, 2019, and would apply to a claim for wages that became due for payment on or after March 5, 2019.

**SUPPORTERS  
SAY:**

HB 399 would give shortchanged workers a more reasonable amount of time to make a wage claim. Workers may need more time to put together the necessary paperwork to make a claim, or an employer could deceive a worker for months that the worker will be paid until the deadline for filing a claim to recover all or part of the stolen wages has passed.

The bill's practical effect would be limited because only a small percentage of the population that experienced wage theft would need to file after the current 180-day timeframe.

**OPPONENTS  
SAY:**

Extending the deadline for filing a wage claim could invite a larger number of claims to be filed, which would increase the administrative burden on the Texas Workforce Commission and contribute to larger, less efficient government.

**SUBJECT:** Allocating a portion of certain mixed beverage taxes to drug court account

**COMMITTEE:** Appropriations — committee substitute recommended

**VOTE:** 19 ayes — Zerwas, Longoria, C. Bell, G. Bonnen, Buckley, Capriglione, Cortez, M. González, Hefner, Howard, Jarvis Johnson, Miller, Minjarez, Rose, Sheffield, Sherman, J. Turner, VanDeaver, Walle

3 nays — Schaefer, Toth, Wilson

5 absent — S. Davis, Muñoz, Smith, Stucky, Wu

**WITNESSES:** For — Paul White, 159th District Court and Texas Association of Specialty Courts; Julie Turnbull, Texas Association of Specialty Courts and Dallas District Attorneys Office; (*Registered, but did not testify*: Cheri Siegelin, Texas Correctional Employees-Huntsville; Marc Levin, Texas Public Policy Foundation)

Against — None

On — (*Registered, but did not testify*: Ender Reed, Harris County Commissioners Court)

**BACKGROUND:** Government Code sec. 123.001 governs drug court programs, which focus on specific issues and try to treat underlying issues of criminal defendants. Under Code of Criminal Procedure art. 102.0178, fees assessed on certain intoxication and drug convictions are deposited in the drug court account in the general revenue fund. Money in the account can be appropriated only to the Office of the Governor's Criminal Justice Division for distribution to drug court programs. Government Code sec. 123.004 also authorizes drug courts to collect fees from participants.

**DIGEST:** CSHB 1243 would require the comptroller to deposit 1 percent of the taxes received for the mixed beverage gross receipts tax and the mixed beverage sales tax to the credit of the drug court account in general revenue.

The bill would take effect September 1, 2019.

**SUPPORTERS  
SAY:**

CSHB 1243 would provide a consistent source of funding for Texas drug courts to ensure they continue their successful and cost-savings efforts to treat and rehabilitate offenders involved with substance abuse. These efforts can include diverting people from the criminal justice system before a trial or coupling probation and treatment.

While drug courts are funded through a variety of sources, more state funding is needed to support the programs and to ensure access to the courts statewide. The Office of the Governor's Criminal Justice Division distributed about \$4.5 million to drug courts in fiscal 2018, and historically funding requests have greatly exceeded available revenue. Local resources can vary, and small and rural counties especially can have trouble recovering court costs or program fees for the courts. The drug court account generated about \$2.1 million in 2018, covering only a small portion of the need and requiring the Criminal Justice Division to use other criminal justice funds to provide for the courts.

The state should provide more funding for the state's approximately 75 drug courts because of their successful record of reducing recidivism. These courts have proven more effective than incarceration in having participants remain arrest free and in putting them back in the workforce. While the bill would have a cost to general revenue, this would be offset by significant savings in criminal justice and health care costs and by reduced victimization.

To ensure that funding is reliable and meets the state's needs, it is necessary to allocate a source of funding for the drug court account. It would be appropriate to accomplish this by transferring a portion of certain alcohol taxes. These courts deal with substance abuse issues, and in a 2018 survey Texas judges identified alcohol as the top type of addiction prevalent in their courts.

**OPPONENTS  
SAY:**

The state should not allocate funds currently going to general revenue for specific purposes because it would reduce budgeting flexibility. If the Legislature wants to increase funding for drug courts, it should do so through the appropriations process, during which it can evaluate and

balance spending requests and can spend general revenue as well as other funds.

NOTES: According to the Legislative Budget Board, the bill would result in a negative impact of \$24 million in general revenue related funds through fiscal 2020-21.

SUBJECT: Paying the cost of a high school equivalency exam for test takers over 21

COMMITTEE: International Relations and Economic Development — committee substitute recommended

VOTE: 6 ayes — Anchia, Frullo, Blanco, Perez, Raney, Romero

1 nay — Cain

2 absent — Larson, Metcalf

WITNESSES: For — Richard Farias, Alamo Colleges District; Chandra Villanueva, Center for Public Policy Priorities; Helen Vera, San Antonio College; Deborah Middleton; Sabrina Renteria; Luis Enrique Rincon; (*Registered, but did not testify*: Priscilla Camacho, Dallas Regional Chamber; Traci Berry, Goodwill Central Texas; Caroline Joiner, Rackspace; Sophie Torres, San Antonio Hispanic Chamber of Commerce; Lori Henning, Texas Association of Goodwills; Mike Meroney, Texas Association of Manufacturers; Thomas Parkinson)

Against — None

On — Kerry Ballast, Texas Workforce Commission

BACKGROUND: 19 TAC part 2, ch. 89, subch. C allows authorized contracted testing centers to administer high school equivalency examinations under applicable state law and rules of the State Board of Education.

DIGEST: CSHB 441 would require the Texas Workforce Commission to pay the cost of one high school equivalency examination on behalf of any individual at least 21 years old taking the examination from an approved test vendor contracted by the State Board of Education, including an exam that was administered in multiple parts.

The bill would take effect September 1, 2019.

SUPPORTERS CSHB 441 would help low-wage earners to advance their careers or

**SAY:** continue their education by subsidizing the cost of one high school equivalency examination. For those who have not finished high school or obtained an equivalency diploma, employment opportunities are limited and an examination fee of \$137 can be a significant barrier. By eliminating this barrier, the bill would assist people trying to advance their education, which in turn would reduce their reliance on government benefits, promote workforce development, and result in a more educated adult population.

CShB 441 would tackle the principal barrier facing many seekers of a high school equivalency certification, cost, while also providing motivation. Because the bill only would cover the cost of one test attempt, exam takers would have a financial incentive to succeed on the first attempt. The bill's fiscal note represents a minimal investment that would be worthwhile in view of the bill's anticipated social and economic impact.

**OPPONENTS SAY:** CShB 441's objective could be accomplished instead by creating a reimbursement program that paid test takers for the cost of their test only if they passed. This would incentivize test takers to succeed.

**NOTES:** According to the Legislative Budget Board, the bill would have a negative impact of about \$1.6 million on general revenue related funds though fiscal 2020-21.

- SUBJECT:** Requiring written consent to use psychoactive drugs in nursing homes
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 6 ayes — Frank, Hinojosa, Klick, Meza, Miller, Noble
- 1 nay — Clardy
- 2 absent — Deshotel, Rose
- WITNESSES:** For — Amanda Fredriksen, AARP; Patricia Ducaet, State Long-Term Care Ombudsman; Jerry Tindel; (*Registered, but did not testify:* Aaron Gregg, Alzheimer's Association; Monica Ayres, Citizens Commission on Human Rights Texas; Kyle Piccola, The Arc of Texas)
- Against — Liam Fry, Austin Geriatric Specialists, TMDA; Lara Cline, Texas Healthcare Association; Michael Krol, Texas Medical Association; Michelle Coffey; Haiyan Liu; Vishal Malpani; P. Duncan Murray; (*Registered, but did not testify:* Betsy Madru, Houston Methodist; David Thomason, LeadingAge Texas; Jon Opelt, Texas Alliance for Patient Access)
- On — (*Registered, but did not testify:* David Kostroun, Health and Human Services Commission)
- BACKGROUND:** Health and Safety Code sec. 242.505(b) specifies that a person may not administer psychoactive medication to a resident of a convalescent or nursing facility unless the resident is having a medication-related emergency or the person authorized to consent on the behalf of the resident has consented to the prescription.
- Health and Safety Code sec. 242.505(c) states that consent to the prescription of psychoactive medication is valid only if it is given voluntarily without coercive or undue influence; if the resident and/or person authorized to consent on behalf of the resident are notified that consent may be revoked; and if the consent is evidenced in the resident's clinical record. The person prescribing the medication or that person's

designee also must notify the resident and/or authorized surrogate of:

- the specific condition to be treated;
- the beneficial effects expected from the medication;
- the probable significant side effects or risks of the medication; and
- the proposed course of the medication.

**DIGEST:**

CSHB 2050 would specify that consent to the prescription of an antipsychotic or neuroleptic medication to a resident of a nursing facility, convalescent facility, or other related institution would be valid only if it was given in writing on a form prescribed by the Health and Human Services Commission by a resident or by a person authorized to consent on behalf of the resident.

The bill also would require the original or a copy of written consent for the prescription of any psychoactive medication to be evidenced in the resident's clinical record.

The bill would take effect September 1, 2019.

**SUPPORTERS  
SAY:**

CSHB 2050 would protect patients in nursing homes and long-term care facilities and prevent the abuse of antipsychotic and neuroleptic medication by ensuring that written and informed consent was received prior to the prescription of these drugs to a patient.

The bill would protect patients in nursing homes and long-term care facilities by creating a high threshold for obtaining and documenting informed consent prior to the prescription of antipsychotic and neuroleptic drugs, which can be harmful if administered to a patient that was not diagnosed with psychosis. The bill would not burden nursing homes and long-term care facilities because consent to prescribe psychoactive drugs is already required under statute.

CSHB 2050 also would reduce the potential for the abuse of antipsychotic and neuroleptic drugs in nursing homes by increasing the requirements for their use. These drugs have been misused as quick fixes for behavioral problems, rather than treatments for a diagnosed mental health disorder. Requiring that residents or their authorized designees provide written and

informed consent to receive these drugs would prevent the overuse and inappropriate use of potentially dangerous medications.

Requiring written consent would not impose a time-consuming burden on nursing homes, as the form could be faxed or emailed to a facility. Providing this written consent would help to ensure that patients were treated with the best quality of care.

OPPONENTS  
SAY:

CSHB 2050 would burden nursing homes and long-term care facilities and could prevent patients from receiving needed medical care in a timely fashion by increasing the requirements for consent to the prescription of antipsychotic and neuroleptic drugs.

The bill would burden nursing homes by unnecessarily expanding requirements for consent to receive certain drugs. Nursing homes and similar facilities already are required to receive informed consent from residents or their authorized designees before prescribing antipsychotic or neuroleptic drugs. Sufficient protections are in place under current statute.

CSHB 2050 could prevent the timely provision of medical care to residents of long-term care facilities by adding a time-consuming step to the consent process. When a patient experiences a mental health episode, it is crucial for caretakers to provide medical intervention as soon as possible. Requiring them to add the process of obtaining written consent, in addition to existing consent requirements, would be impractical and could result in harm to the resident.

As rural facilities continue to close, families are forced to send their loved ones to clinics far away from home to receive needed care. Adding the requirement for written consent to be obtained by the designees of a resident if the resident was unable to provide consent themselves could seriously delay needed medical treatment for these patients.

OTHER  
OPPONENTS  
SAY:

While informed consent is necessary for the administration of certain drugs to patients, CSHB 2050 would address an issue that could be better addressed at the physician-patient level than at a facility level.

SUBJECT: Revising definition of bet to exclude prizes in fantasy game or contest

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — T. King, Goldman, Geren, Guillen, Harless, Hernandez, S. Thompson

0 nays

4 absent — Herrero, K. King, Kuempel, Paddie

WITNESSES: For — (*Registered, but did not testify*: Neal T. "Buddy" Jones, Dallas Cowboys Football Club, Texas Rangers Baseball Club, Inc.; Stacie Stern, FanDuel Group; Jay Howard, Houston Astros; Eddie Solis, Houston Texans; Laura Dixon, Spurs Sports and Entertainment; Scott Ward, Texas Fantasy Sports Alliance; Saurabh Sharma, Young Conservatives of Texas)

Against — (*Registered, but did not testify*: Rob Kohler, Christian Life Commission of the Baptist General Convention of Texas; Dan Mays, Kickapoo Traditional Tribe of Texas; Nicole Hudgens, Texas Values Action)

BACKGROUND: Penal Code ch. 47 governs offenses related to gambling and defines illegal gambling. Under sec. 47.02(a)(1), it is a crime to bet on the results of a game or contest or on the performance of a participant in a game or contest. Offenses are class C misdemeanors punishable by a maximum fine of \$500. Penal Code sec. 47.02(b) provides a three-pronged defense to prosecution for gambling when:

- the gambling was in a private place;
- no one received economic benefit other than personal winnings; and
- except for the advantage of skill or luck, the risks of losing and chances of winning were the same for all participants.

Penal Code sec. 47.01(1) defines "bet" as an agreement to win or lose

something of value solely or partially by chance. The section lists things that are not considered bets, including an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance.

**DIGEST:** HB 2303 would amend the Penal Code definition of "bet" so that it did not include an offer of a prize, award, or compensation to participants in a fantasy or simulated game or contest.

The bill would define "fantasy or simulated game or contest" as a bona fide contest, reflecting the knowledge and skill of the participants, in which:

- participants assembled a fictional sports team of actual professional or amateur athletes to compete against other fictional sports teams assembled by other participants for a prize, award, or compensation;
- the value of a prize, award, or compensation was established before the beginning of the game or contest;
- the outcome of the game or contest was determined by the accumulated statistical performances of the individual athletes on a participant's fictional sports team; and
- the outcome of the game or contest was not based solely on the score, point spread, or performance of a single professional or amateur team or athlete.

The bill would include in the current description of prizes that are not considered bets an offer of a prize, award, or compensation to participants, as well as contestants, in a bona fide contest for the determination of skill, speed, strength, or endurance.

The bill would take effect September 1, 2019, and would apply to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

HB 2303 would clarify state law to confirm that fantasy sports are skilled-based games and therefore not illegal under Texas gambling laws. Current laws do not specifically reference fantasy sports, and it would be best to clearly state that they are not considered illegal betting so that Texans who

play these games would not be accused of illegal activity.

Fantasy sports games allow players to form teams of professional or amateur athletes and have them compete based on the performance statistics of real players, which clearly falls into the category of skill-based games. The games require in-depth knowledge and strategy to play, and prizes and awards from these games should be excluded from the definition of an illegal bet.

Because HB 2303 would not expand gambling in Texas, there is no need to amend the Constitution. The bill is narrowly drawn and deals only with fantasy sports competitions, which it clearly defines as having to reflect the knowledge and skill of participants. The bill would not involve sports betting such as wagering on the outcome of a Sunday football game, but simply would clarify definitions so Texans playing in their office fantasy sports pool were not exposed to criminal liability.

HB 2303 would be similar to provisions made by many other states as well as the U.S. Congress, which in 2006 made it clear that participating in fantasy sports that met certain specific criteria was not illegal gambling.

HB 2303 is narrowly drawn to address one small, discrete issue and would not be the place to address concerns about Native American gaming in the state.

**OPPONENTS  
SAY:**

HB 2303 would expand gambling in Texas, something that cannot be done without amending the Texas Constitution. Art. 3, sec. 47(a) of the Texas Constitution requires the Legislature to prohibit lotteries and gift enterprises, and the Constitution has been amended to allow the state lottery, charitable bingo and raffles, sports team charitable raffles, and wagering at racetracks on horse and dog races. If fantasy sports wagering is to be legalized, it also should be done through amending the Constitution.

HB 2303 is not needed to protect the average Texan playing fantasy sports that comply with current Texas law. A 2016 Texas attorney general opinion pointed this out, saying that it likely would not be considered illegal gambling if participants bet as part of a season-long fantasy sports

league that met the criteria under Penal Code sec. 47.02 for a defense to prosecution: that the gambling was done in a private place with no one receiving economic benefit other than personal winnings and that, except for skill or luck, the risks of losing and chances of winning were the same for all participants.

The footprint of gambling in Texas should not be expanded, and HB 2303 would open the door to legalizing other forms of gambling by amending the definition of a bet.

**OTHER  
OPPONENTS  
SAY:**

HB 2303 should include specific language allowing the Kickapoo Traditional Tribe of Texas to offer fantasy sports so it can have the same opportunities as other Texans. Gaming operations by the Kickapoos are governed by the federal Indian Gaming Regulatory Act (IGRA), and the tribe currently operates what is categorized as a Class II gaming facility on its reservation in Eagle Pass. Offering fantasy sports could increase the tribe's revenues and allow it to fund important services and programs. Depending on decisions to be made by federal regulators, the tribe could need an agreement with the state to offer fantasy sports. By including authorization for the tribe to offer only what is being described in HB 2303, the bill could ensure that decisions were made on the state level and that fantasy sports offerings by the tribe were limited to what is happening elsewhere in the state.

SUBJECT: Allowing construction while air quality permit amendment was pending

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Lozano, E. Thompson, Blanco, Kacal, Kuempel, Morrison, J. Turner

2 nays — Reynolds, Zwiener

WITNESSES: For — Jeff Saitas, Valero; (*Registered, but did not testify*: Carolyn Brittin, Associated General Contractors of Texas, Highway, Heavy; Mike Meroney, BASF Corporation; Price Ashley, Cheniere Energy; Steve Perry, Chevron USA; Bill Oswald, Koch Companies; Neal T. Buddy Jones, Marathon Petroleum Inc.; Randy Cubriel, Nucor; Stephen Minick, Republic Services; Mia Hutchens, Texas Association of Business; Mark Vickery, Texas Association of Manufacturers; Sam Gammage, Texas Chemical Council; Shana Joyce, Texas Oil and Gas Association; Perry Fowler, Texas Water Infrastructure Network)

Against — Adrian Shelley, Public Citizen; Cyrus Reed, Sierra Club Lone Star Chapter; (*Registered, but did not testify*: Rita Beving, Texas Landowners for Eminent Domain Reform)

On — (*Registered, but did not testify*: Robert Martinez and John Minter, Texas Commission on Environmental Quality)

BACKGROUND: Health and Safety Code ch. 382, the Texas Clean Air Act, was established with the purpose of safeguarding the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants. The act is enforced by the Texas Commission on Environmental Quality (TCEQ).

Sec. 382.0518 requires a person planning the construction or modification of a facility that may emit air contaminants to obtain a permit or permit amendment from the TCEQ before construction begins.

Sec. 382.004 allows a person who submits an application for an air quality

permit for a modification of or lesser change to an existing facility to, at the person's own risk and to the extent permissible under federal law, begin construction on the modification or change after the application is submitted and before TCEQ has issued the permit.

**DIGEST:** CSHB 2726 would amend Health and Safety Code sec. 382.004 to allow a person who submitted an application for a permit amendment, to, at the person's own risk and to the extent permissible under federal law, begin construction related to the application after the executive director of the Texas Commission on Environmental Quality (TCEQ) had issued a draft permit including the permit amendment.

TCEQ would adopt rules to implement the bill's provisions.

The bill would take effect January 1, 2020, and would apply only to applications for permit amendments filed with the TCEQ on or after that date.

**SUPPORTERS SAY:** CSHB 2726 would appropriately amend and clarify current law to allow applicants for permit amendments under the Texas Clean Air Act to make a business decision about whether or not to bear the risk of beginning construction on their facilities while waiting for a permit to be issued by the Texas Commission for Environmental Quality (TCEQ).

Because the word "facility" as used in the Texas Clean Air Act is defined differently than in federal law, existing statute that would allow individuals to make these business decisions while waiting for an air quality permit has been interpreted in a way that has made the statute ineffective. CSHB 2726 would clarify that applicants for permit amendments could begin construction related to the application they had submitted to the TCEQ. This would streamline the construction process and make it possible for applicants to begin work without unnecessary delays if they decided that was the right business risk to take.

The amended statute would only apply to minor source permit applications and would not affect the environmental review process or the notice and opportunity for a contested case hearing process.

OPPONENTS  
SAY:

CSHB 2726 would allow facilities to begin construction while their permit amendment applications were being reviewed. This could frustrate the feedback process between applicants and the TCEQ, which was designed to improve pollution control and protect public health and safety. Engineers at TCEQ can work with permit applicants during the permit application review process to make needed improvements to the permit, such as improving a facility's pollution control strategies. Allowing construction to begin before this review was complete could weaken the oversight process. Also, minor permit amendments are sometimes the subject of contested case hearings, and allowing construction to begin while such hearings were ongoing could limit the opportunity to improve the facility or its permits as part of the hearing process.

SUBJECT: Creating a form authorizing organ donation by state living center residents

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Leach, Farrar, Julie Johnson, Krause, Meyer, Neave, White

0 nays

2 absent — Y. Davis, Smith

WITNESSES: For — Brenda Strama, Donate Life Texas; Al Mersiovsky; (*Registered, but did not testify*: Shayne Woodard, Donate Life Texas)

Against — None

On — (*Registered, but did not testify*: Laura Braly, Health and Human Services Commission)

BACKGROUND: Health and Safety Code ch. 692A, the Revised Uniform Anatomical Gift Act, allows the court-appointed guardian of an individual to authorize or refuse to authorize an anatomical gift on behalf of the individual before the prospective donor's death.

Interested parties have noted that when the guardian of an individual in a state-supported living center dies and no replacement guardian is designated, the state is not allowed to make an anatomical gift in the event of the resident's death.

DIGEST: HB 2734 would require the executive commissioner of the Health and Human Services Commission to prescribe a form that the guardian of a resident of a state-supported living center could sign authorizing the center to make an anatomical gift on behalf of the resident if the guardian predeceases the resident. The bill would not prevent a successor guardian of the resident from executing a separate document under the Revised Uniform Anatomical Gift Act that superseded the previous form.

The executive commissioner would be required to prescribe this form by

December 1, 2019.

The bill would take effect September 1, 2019.

**NOTES:**

The author intends to introduce a floor amendment that would allow the anatomical gift authorization form to apply even if the guardian did not predecease the resident.

- SUBJECT:** Reducing STAAR testing in grades 3 through 8
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 13 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver
- 0 nays
- WITNESSES:** For — (*Registered, but did not testify:* Andrea Chevalier, Association of Texas Professional Educators; Jacque Benestante, Autism Society of Texas; Traci Berry, Goodwill Central Texas; Laurie Filipelli, League of Women Voters of Texas; Paige Williams, Texas Classroom Teachers Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Suzi Kennon, Texas PTA; Jerod Patterson, Texas Rural Education Association; Dustin Cox; Felicia Miyakawa)
- Against — (*Registered, but did not testify:* Drew Scheberle, The Greater Austin Chamber of Commerce)
- On — Kara Belew, Texas Public Policy Foundation; (*Registered, but did not testify:* Hannah LaPorte, IDEA Public Schools; Pablo Barrera, TCSA; Chris Jones, Tyson Kane, Eric Marin, and Monica Martinez, Texas Education Agency; Dee Carney, Texas School Alliance; Heather Smith)
- BACKGROUND:** Using the STAAR instrument, public school students in grades 3 through 8 are assessed every year in reading and mathematics. Students in grades 4 and 7 take a writing test; students in grade 5 take a science test; and students in grade 8 take science and social studies tests. Federal law requires states to test students yearly in math and English/language arts.
- DIGEST:** CSHB 2983 would reduce STAAR testing requirements for students in grades 3 through 8 who met certain performance thresholds. The bill would eliminate the requirement that all students in grades 4, 6, and 7 be assessed in mathematics and reading. It also would move the grades 4 and 7 writing exams to grades 5 and 8.

Under the bill, students in grade 3 would take math and reading exams; students in grade 5 would take math, reading, science, and writing exams; and students in grade 8 would take math, reading, science, social studies, and writing exams.

The Texas Education Agency (TEA) would determine for each periodic statewide test and each test administered in grade 6 for retesting purposes a minimum satisfactory adjusted scale score, designed to predict within a 3 percent margin of error that a student would achieve satisfactory performance on an exam in the same subject the following year. Students in grades 3 and 5 who did not achieve the satisfactory score on their math or reading exams would be required to take the same subject-area tests in grades 4 and 6. Students in grade 7 who had not achieved the satisfactory score during their grade 6 retests would have to take the same subject-area tests in grade 7.

CSHB 2983 would give school districts and charter schools discretion to administer the appropriate grade-level tests to students who were not required to test in order to determine whether students were performing at a satisfactory level. These optional tests would be administered in the same manner and at the same cost as those administered to students who were required to test. TEA could not count the scores of students administered optional tests for campus or district accountability measures.

If any portion of the bill violated federal testing requirements, the commissioner of education would be required to seek waivers from the conflicting federal requirements. In seeking a waiver, the commissioner would have to submit all relevant data, including data relating to:

- the likelihood that a student who achieved a score on an exam that was equal to or greater than the minimum satisfactory adjusted scale score would in subsequent years perform satisfactorily on exams in the same subject;
- the costs associated with ongoing assessment of students who had proven likely to perform successfully on subsequent exams; and
- the benefit of redirecting resources from assessing students who had proven likely to perform successfully on subsequent exams toward enabling lower performing students to perform successfully

on exams after one school year.

The bill would take effect on any date not later than September 1, 2021, on which the education commissioner obtained any necessary waiver from the federal government or received notification from the U.S. Department of Education that a waiver was not required. A waiver or notification would have to be published in the Texas Register. The bill would apply beginning with the first school year that began after the act took effect.

**SUPPORTERS  
SAY:**

CSHB 2983 would lower the testing burden on schools and students by allowing high-performing elementary and middle school students to skip STAAR testing in grades 4, 6, and 7 if they had performed satisfactorily on their exams in previous grades. This would allow these students to focus their time and energy on learning new concepts instead of taking STAAR exams that they were expected to pass with a great deal of statistical certainty.

Texas has long been a leader in standardized testing and school accountability, and the state has accumulated data which demonstrates that a student who performs well on a test one year will likely perform as well in the next year. School districts would have the option to test any student at any grade level in the years they were not required to test in order to ensure they were keeping pace, but those scores would not count toward campus or district accountability.

A similar bill enacted by the 83rd Legislature in 2013 was signed into law but expired in 2017 after the U.S. Department of Education did not grant a waiver from federal testing requirements. CSHB 2983 would reinstate the expired statutory language so that a waiver request again could be presented to federal authorities.

While the bill would have costs associated with developing new writing exams, those costs would be partially offset by savings from eliminating the grade 4 and 7 writing exams.

**OPPONENTS  
SAY:**

CSHB 2983 would require the education commissioner to request a waiver from federal testing requirements in order to allow the state to eliminate certain testing requirements, which would be both inappropriate

and likely ineffective. Texas should not retreat from annual testing requirements for all students in grades 3 through 8. Federal law requires annual assessments in math and reading at every grade, and there is no indication the U.S. Department of Education would grant Texas a waiver of those requirements.

CSHB 2983 could create a stigma for lower-performing students who had to retest in grades 4, 6, or 7. Despite the efforts of schools to keep this information confidential, students could easily determine who was required to retest and who was not, which could lead to the some students being labeled.

Moving the current STAAR writing exams from grades 4 and 7 to grades 5 and 8 would require the development of unnecessary and costly new exams.

**NOTES:**

According to the Legislative Budget Board, the bill would have a negative impact of \$2.9 million to general revenue related funds through fiscal 2020-21 for the Texas Education Agency to develop new writing assessments for grades 5 and 8.

SUBJECT: Adding clarifying information to a notice of injured employee rights

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Martinez Fischer, Darby, Beckley, Collier, Landgraf, Moody,  
Parker, Patterson

0 nays

1 absent — Shine

WITNESSES: For — William Lawson, Texas Chiropractic Association; (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas; Rene Lara, Texas AFL-CIO; Jeff Cunningham, Texas Chiropractic Association; Jennifer Deakins and Tommy Lucas, Texas Optometric Association)

Against — None

On — Amy Lee, Texas Department of Insurance Division of Workers' Compensation; (*Registered, but did not testify*: Fred Bosse, American Property Casualty Insurance Association; Andria Franco, Office of Injured Employee Counsel)

DIGEST: HB 741 would require a notice to an injured employee by the public counsel of the Office of Injured Employee Counsel to inform the employee that the employee had the right to choose a treating doctor, including a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who was licensed and authorized to practice.

The public counsel would have to adopt the amended notice by December 1, 2019.

The bill would take effect September 1, 2019.

SUBJECT: Establishing a fair market valuation process for certain utility acquisitions

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland,  
Hunter, P. King, Parker, E. Rodriguez, Smithee, Springer

0 nays

1 absent — Raymond

WITNESSES: For — Robert Laughman, Aqua America; (*Registered, but did not testify*:  
Terry Franks and Buddy Garcia, Aqua Texas; Jamaal Smith, City of  
Houston, Office of the Mayor; Matthew Bentley, San Jose Water Group  
dba Canyon Lake Water Service Company; Jess Heck, SouthWest Water  
Company)

Against — (*Registered, but did not testify*: Jamaal Smith, City of Houston,  
Office of the Mayor)

On — (*Registered, but did not testify*: Tammy Benter, Public Utility  
Commission of Texas)

BACKGROUND: Water Code sec. 13.301 requires a utility that provides water or sewer  
services, on or before the 120th day before the effective date of an  
acquisition of certain water or sewer systems, to file a written application  
with the Public Utility Commission (PUC) and give public notice of the  
action.

If an acquired public utility facility or system was constructed with the aid  
of customer contributions through specific surcharges, the public utility  
may not sell or transfer any of its assets or controlling interest, unless the  
utility provides a written disclosure on the contributions to the purchaser  
before the date of the sale or transfer. The disclosure must contain the  
total dollar amount of the contributions and a statement that the  
contributed property or capital cannot be included in invested capital or  
allowed depreciation expense in rate-making proceedings.

Some have expressed concerns that a water utility may not be able to recover investments made to acquire a water or wastewater system, which inhibits mutually beneficial transactions. Stakeholders suggest removing those barriers to investment by creating an optional fair market valuation process.

**DIGEST:** HB 3542 would establish a process by which a Class A public utility providing retail water or sewer service could acquire a retail public utility, or the facilities of a utility, as the result of a voluntary arm's-length transaction.

**Notice of intent.** Under the bill, the acquiring utility and the selling utility could agree to determine the fair market value of the selling utility or facilities. Both utilities would have to notify the Public Utility Commission (PUC) of their intent to determine the fair market value.

The PUC would maintain a list of experts qualified to conduct economic valuations of utilities. Within 30 days of receiving a notice of intent to determine fair market value, PUC would select three experts from the list to perform the valuation.

**Valuation.** Each selected expert would perform an appraisal in compliance with Uniform Standards of Professional Appraisal Practice, employing the cost, market, and income approaches, to determine the fair market value of the utility or facility. The experts jointly would retain a licensed engineer to conduct an assessment of the tangible assets of the selling utility or facilities. Each valuation expert would incorporate the engineer's assessment into the appraisal and provide the completed appraisal to both the acquiring and selling utilities in a reasonable and timely manner. The fair market value would be the average of the three valuation expert appraisals.

The original sources of funding for any part of the water or sewer assets of the selling utility would not be relevant to determine the value of the selling utility's assets. The costs of service would have to be incorporated into the revenue requirement of the acquiring utility's next rate base case proceeding.

**Prohibited conduct.** A valuation expert could not derive any material financial benefit from the sale, other than service fees, or be an immediate family member of a director, officer, or employee of either utility.

**Fees.** A fee paid to a utility valuation expert could be included in the transaction and closing costs associated with the utility acquisition. The fee could not exceed the lesser of 5 percent of the fair market value or an amount approved by PUC.

**Rate base determination.** The ratemaking rate base of the selling utility would be either the purchase price negotiated by the utilities or the fair market value, whichever was less. The bill would require the selling utility's ratemaking rate base to be incorporated into the rate base of the acquiring utility during the utility's next rate base case in a proceeding before the regulatory authority.

**Application for acquisition.** If the utilities used valuation experts to determine the fair market value, the acquiring utility would have to submit as attachments to an application for acquisition:

- copies of the three appraisals;
- the agreed-to purchase price;
- the ratemaking rate base;
- transaction and closing costs that would be included in the rate base; and
- a tariff containing a rate equal to the existing rates of the selling utility at the time of acquisition.

Upon approval of an application for acquisition, PUC would have to issue an order including the ratemaking rate base of the selling utility and any additional conditions for the acquisition.

A tariff submitted in an acquisition application would have to remain in effect until PUC approved new rates as part of a rate base case proceeding.

**Post-acquisition costs.** The acquiring utility's post-acquisition improvements would accrue an allowance of funds used during construction after the date the cost was incurred until either four years after the date the asset entered into service or the inclusion of the asset in the next rate base case, whichever was earlier.

HB 3542 would define "allowance of funds used during construction" as an accounting practice that recognized the capital costs, including debt and equity funds, that were used to finance the construction costs of an improvement to a selling utility's assets by the acquiring utility.

Depreciation of an acquiring utility's post-acquisition improvements would be deferred for book and ratemaking purposes.

The bill would take effect September 1, 2019.

SUBJECT: Repealing the Driver Responsibility Program, increasing certain fines

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — Nevárez, Paul, Burns, Calanni, Goodwin, Israel, Lang, Tinderholt

0 nays

1 absent — Clardy

WITNESSES: For —Nick Hudson, American Civil Liberties Union of Texas; Robert Johnston, Anderson County; Troy Bazan and Arthur Ramirez, Goodwill Central Texas; John Barton, Justices of the Peace and Constables Association of Texas; James Dickey, Republican Party of Texas; Maureen Milligan, Teaching Hospitals of Texas; Mary Mergler, Texas Appleseed; Dudley Wait, Texas EMS Alliance; Ronald Stewart, Texas EMS, Trauma and Acute Care Foundation; Emily Gerrick, Texas Fair Defense Project; John Hawkins, Texas Hospital Association; Murray Agnew, Texas Sheriff's Association; Tom Flanagan; Brandon Marshall; (*Registered, but did not testify*: Butch Oberhoff, Acadian Ambulance of Texas; Chas Moore, Austin Justice Coalition; Frank McStay, Baylor Scott and White Health; Linda Townsend, CHRISTUS Health; TJ Patterson, City of Fort Worth; Jim Allison, County Judges and Commissioners Association of Texas; Charles Reed, Dallas County Commissioners Court; Priscilla Camacho, Dallas Regional Chamber; Roberto Haddad, Doctors Hospital at Renaissance; Traci Berry, Goodwill Central Texas; Cate Graziani, Grassroots Leadership and Texas Advocates for Justice; Taylor Landin, Greater Houston Partnership; Meghan Weller, HCA Healthcare; Scott Henson and Kathleen Mitchell, Just Liberty; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Ryan Ambrose, Memorial Herman Health System; Joshua Massingill, Prison Fellowship Ministries; Christopher Lutton, San Antonio Police Department; Brian Hawthorne and Micah Harmon, Sheriffs' Association of Texas; Russell Schaffner, Tarrant County; Rick Thompson, Texas Association of Counties; Lori Henning, Texas Association of Goodwills; Kathryn Freeman, Texas

Baptists Christian Life Commission; Windy Johnson, Texas Conference of Urban Counties; Douglas Smith, Texas Criminal Justice Coalition; Marcus Mitias, Texas Health Resources; Jennifer Erschabek, Texas Inmate Families Association; Andrew Cates, Texas Nurses Association; Stephanie Franklin, The Liberty Project of Texas; Noel Johnson, TMPA; Stacy Suits, Travis County Constable Precinct 3; Andrew Smith, University Health System; Kenton Ham; Read King)

Against — Jessica Boston, Texas Association of Business; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Joe Woods, American Property Casualty Insurance Association)

On — Jay Thompson, Association of Fire and Casualty Companies in Texas and National Insurance Crime Bureau; Bryan Sudan, Tarrant County Sheriff; Tommy Hansen, Texas Auto Burglary and Theft Prevention Authority; Tony Rodriguez, Texas Department of Public Safety; (*Registered, but did not testify*: Bryan Wilson, Automobile Burglary and Theft Prevention Authority and Texas Department of Motor Vehicles; Jane Guerrero, Texas Department of State Health Services)

**BACKGROUND:** Transportation Code ch. 708 establishes the Driver Responsibility Program (DRP), which requires the Department of Public Safety to assess surcharges on drivers for certain traffic offenses in addition to any other penalties and court fees. Drivers have 105 days to pay surcharges or enter into an installment plan before their driver's license is suspended.

Under Health and Safety Code sec. 780.002, 49.5 percent of revenues from the Driver Responsibility Program is deposited to the Designated Trauma Facility and Emergency Medical Services Account, which funds designated trauma facilities, county and regional emergency medical services, trauma-care systems, and certain graduate-level medical and nursing education programs. Another 49.5 percent of DRP revenue is deposited to the general revenue and 1 percent may be used by DPS for program administration.

**DIGEST:** CSHB 2048 would repeal the Driver Responsibility Program (DRP), increase state traffic and intoxicated driver fines, increase the vehicle

insurance fee, and direct funds to the Designated Trauma Facility and Emergency Medical Services (EMS) Account.

**Program repeal.** CSHB 2048 would repeal the DRP and require the Department of Public Safety (DPS) to reinstate any driver's license that was suspended as of the bill's effective date if the license was only suspended for failure to pay a program surcharge.

The bill would make conforming changes to statutes that cited the program and would require DPS to re-designate the offenses that constituted a moving violation that had been listed under the DRP's provisions. A moving violation would not include an offense committed before September 1, 2003.

**State traffic fines.** CSHB 2048 would increase the state traffic fine from \$30 to \$50. A municipality or county could retain 4 percent, rather than 5 percent, of collected fines as a service fee.

The bill would increase from 67 percent to 80 percent the amount of collected fines deposited to the general revenue fund, and decrease the amount of fines deposited to the Trauma Facility and EMS Account from 33 percent to 20 percent.

**Intoxicated driver fines.** CSHB 2048 would require a person convicted of an offense for operating a motor vehicle while intoxicated to pay a fine of:

- \$3,000 for the first conviction within 36 months;
- \$4,500 for a subsequent conviction within 36 months; or
- \$6,000 for a conviction if it was shown that the person's alcohol concentration level was 0.16 or more.

An officer collecting these fines in a case in a justice, county, or district court would have to keep separate records of the collected money, deposit the money in the county treasury, and submit a report of collected fines to the comptroller each quarter.

The custodian of money in a municipal or county treasury could deposit

money collected as a fine for driving while intoxicating into an interest-bearing account. The custodian would keep records of the money and remit the money to the comptroller by the last day of the month following a quarter.

A county or municipality could retain 4 percent of the collected money as a service fee and could retain any accrued interest. Money collected under these provisions would be subject to audit by the comptroller, and money spent would be subject to audit by the state auditor.

Out of the fines collected for the offense of driving while intoxicated, 80 percent would be deposited to the general revenue fund and 20 percent would be deposited to the Designated Trauma Facility and EMS Account.

**Motor vehicle insurer fees.** The fee for the issuance of motor vehicle insurance policies would be increased from \$2 to \$4 multiplied by the total number of motor vehicle years of insurance for issued policies.

Out of collected fees, 20 percent would be appropriated to the Automobile Burglary and Theft Prevention Authority, 20 percent to the general revenue fund, and 60 percent to the Designated Trauma Facility and EMS Account.

The bill would take effect September 1, 2019, and apply to any surcharge pending on that date, regardless of when the surcharge was imposed.

**SUPPORTERS  
SAY:**

CSHB 2048 would repeal the unpopular and unfair Driver Responsibility Program (DRP) and ensure a new stream of revenue for the Designated Trauma Facility and Emergency Medical Services (EMS) Account. While originally intended to hold bad drivers accountable for risky behavior, the DRP actually holds low-income Texans in a cycle of mounting debt and has generated inadequate funds for the trauma account. The bill would release Texans from debt by repealing the DRP and would reinstate any suspended driver's licenses, allowing individuals affected by the program to get back to work and to their lives.

CSHB 2048 also would ensure a sustainable revenue source for the Trauma Facility and EMS Account, which offsets the uncompensated

trauma care costs for the approximately 130,000 Texans who are hospitalized in trauma centers each year. Instead of being funded by the ineffectual DRP, the trauma account would receive money from an increase in state traffic fines, fines for driving while under the influence or intoxicated, and automobile insurance policy fees. These fines and fees are all related to the operation of vehicles or the reckless use of a vehicle, so it would be appropriate to use them to fund the trauma account, which supports individuals harmed in motor vehicle collisions.

Concerns that CSHB 2048 would target the insurance industry are unfounded, since the modest increase in automobile insurance fees would spread the responsibility to fund the trauma account fairly to all drivers in the state. This mechanism also would ensure that the Automobile Burglary and Theft Prevention Authority received funds necessary for statewide operations, which include investigating and enforcing car thefts, and for expansion of the authority.

**OPPONENTS  
SAY:**

While the DRP should be repealed, CSHB 2048 unfairly would target the automobile insurance industry to cover the costs of the Designated Trauma Facility and Emergency Medical Services Account. The Legislature already increased the fee on insurance policies in 2011, and these costs are ultimately placed on customers, who should not have this burden. This also would make insurers in Texas less competitive than those of other states by taxing in-state insurance policies at a higher rate.

**NOTES:**

According to the Legislative Budget Board, the bill would have a positive impact of \$9.9 million to general revenue related funds and \$6.8 million to the Designated Trauma Facility and Emergency Medical Services Account in fiscal 2020-21.

The comptroller estimates that the bill would increase local government revenue by \$4.1 million each year.

- SUBJECT:** Reporting the age of first-time inmates formerly in foster care
- COMMITTEE:** Corrections — favorable, without amendment
- VOTE:** 9 ayes — White, Allen, Bailes, Bowers, Dean, Morales, Neave, Sherman, Stephenson
- 0 nays
- WITNESSES:** For — Ellen Stone, Texas Appleseed; Allison Franklin, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Fatima Mann, Community Advocacy and Healing Project; Eric Kunish, National Alliance on Mental Illness-Austin; Will Francis, National Association of Social Workers-Texas; Joshua Houston, Texas Impact; Lauren Rose, Texas Network of Youth Services)
- Against — None
- On — (*Registered, but did not testify*: Jason Clark, Texas Department of Criminal Justice)
- BACKGROUND:** Government Code sec. 501.023 requires the Texas Department of Criminal Justice (TDCJ) to submit to the governor, lieutenant governor, House speaker, and the relevant committees of the Legislature an annual report that summarizes statistical information concerning the total number of inmates who have at any time been in the foster care system.
- DIGEST:** HB 1191 would require the Texas Department of Criminal Justice (TDCJ) to report statistical information on the number of inmates, disaggregated by age, who previously were in foster care and were imprisoned for the first time.
- TDCJ would need to send this information by December 31 of each year to the governor, lieutenant governor, and each member of the Legislature and publish it on its website.
- The bill would take effect September 1, 2019.

SUBJECT: Allowing deferred adjudication for certain first intoxication offenses

COMMITTEE: Corrections — committee substitute recommended

VOTE: 9 ayes — White, Allen, Bailes, Bowers, Dean, Morales, Neave, Sherman,  
Stephenson

0 nays

WITNESSES: For — Jennifer Tharp, Comal County Criminal District Attorney; Laura Nodolf, Midland County District Attorneys Office; Jaime Gutierrez, Mothers Against Drunk Driving; (*Registered, but did not testify*: Eric Carcerano, Chambers County District Attorney’s Office; Ron Lewis, Coalition of Ignition Interlock Manufacturers; Alexandra Guio, Dallas County Criminal District Attorney John Creuzot; Brandy Nannini, Responsibility.org; Reginald Smith and Douglas Smith, Texas Criminal Justice Coalition; Mike Gomez, Texas Municipal Police Association)

Against — None

On — Allen Place, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify*: Carey Green, Texas Department of Criminal Justice; Mollee Westfall)

BACKGROUND: Under Code of Criminal Procedure art. 42A.102, deferred adjudication is a form of probation under which a judge, after receiving a plea of guilty or no contest, postpones the determination of guilt while the defendant serves probation. It can result in the defendant being discharged and dismissed upon successful completion of the probation.

Art. 42A.102(b) lists numerous offenses and circumstances under which judges are prohibited from granting deferred adjudication. These include defendants charged with driving while intoxicated, driving while intoxicated with a child passenger, flying while intoxicated, boating while intoxicated, assembling or operating an amusement ride while intoxicated, intoxication assault, and intoxication manslaughter.

Penal Code sec. 49.09 establishes increased penalties for certain intoxication offenses, including driving while intoxicated and boating while intoxicated, if the person had a previous conviction for certain intoxication offenses. Penalties also can be enhanced under this section if offenses have certain other elements, such as causing serious bodily injury or death.

Government Code sec. 411.081 governs orders of nondisclosure. Under this section, if a person placed on deferred adjudication receives a discharge and fulfills certain requirements, the person may petition the court for an order of nondisclosure. Orders of nondisclosure prohibit criminal justice agencies from disclosing to the public criminal history record information related to the offense.

Some have noted that the lack of ability to offer deferred adjudication for certain first-time intoxication offenses with low blood alcohol level can hinder the ability of prosecutors to craft appropriate penalties and could result in some pleading guilty to lesser crimes, making it more difficult to address repeat offenders.

**DIGEST:**

CSHB 3582 would allow judges to grant deferred adjudication for certain driving while intoxicated and boating while intoxicated offenses, would require that defendants in these cases install ignition interlock devices, and would establish procedures for defendants in these cases to ask a court for an order of nondisclosure of the criminal record information related to deferred adjudication.

**Deferred adjudication.** The bill would allow judges to grant deferred adjudication for first-time driving- and boating-while-intoxicated offenses, unless at the time of the offense the defendant held a commercial driver's license or a commercial learner's permit or the defendant's alcohol concentration was 0.16 or more.

Deferred adjudication would continue to be prohibited for the other intoxication offenses for which it is currently prohibited. The bill would add a new prohibition on deferred adjudication for any of the intoxication offenses that qualify for an increased penalty under Penal Code sec. 49.09.

**Ignition interlock device.** Judges granting deferred adjudication for driving or boating while intoxicated would have to require defendants as a condition of probation to have an ignition interlock device installed on their vehicle or the vehicle they most regularly drive. Judges also would have to require that the defendant not operate any motor vehicle that was not equipped with that device, unless the judge found that the restriction would not be in the best interest of society. These provisions would apply regardless of whether the defendant would be required to have an ignition interlock device installed if convicted of the offense.

A judge could also impose payment schedule for the device after determining the defendant was unable to pay for the device. A judge also could reduce the cost to indigent defendants by ordering the installation charge waived and a 50 percent reduction of the monthly monitoring fee. Reductions would not apply to fees that may be assessed if the ignition interlock device detects alcohol on the breath of the person attempting drive.

**Orders of nondisclosure.** The bill would establish procedures for applying for and granting orders of nondisclosure of criminal history records for defendants placed on deferred adjudication for misdemeanors for driving or boating while intoxicated.

The procedures would apply only if the defendant were placed on deferred adjudication for driving or boating while intoxicated and there was no affirmative finding by the judge that it was not in the best interest of justice for the defendant to have an automatic order of nondisclosure.

Individuals could ask the court for an order of nondisclosure if they:

- received a discharge and dismissal of the deferred adjudication;
- met current requirements for not having a conviction during the term of deferred adjudication or a waiting period and other requirements and for not having previous convictions for certain offenses; and
- had not been previously convicted of or placed on deferred adjudication for another offense, other than a traffic offense punishable only by fine.

Courts would be required to issue the order after notice to the state, an opportunity for a hearing, and a determination that the person was entitled to file the petition and that an order of nondisclosure was in the best interest of justice. As an exception to this, courts could not issue orders of nondisclosure if the prosecutor gave the court evidence that the offense resulted in a motor vehicle accident involving another person, including a passenger.

The bill would establish two waiting periods before a person could ask the court for an order of nondisclosure. The waiting period would be two years after the successful completion of the deferred adjudication, if the person successfully complied for at least six months with the requirement to drive only a vehicle with an ignition interlock device. The waiting period would be five years after the successful completion of the deferred adjudication, if the court had not ordered the person to comply with a six-month requirement to drive only a vehicle with an ignition interlock device.

**Other provisions.** The bill would add driving while intoxicated with a child passenger to the list of offenses in Penal Code ch. 49.09 that can carry enhanced penalties if the defendant has certain other previous offenses.

For the purpose of enhancing penalties for certain intoxication and alcoholic beverage offenses, a deferred adjudication for driving or boating while intoxicated would be considered a conviction.

The bill would take effect September 1, 2019, and would apply only to offenses committed on or after that date and to the eligibility for deferred adjudication for offenses committed on or after that date.

**SUBJECT:** Allowing protections for firefighters who are under investigation

**COMMITTEE:** Urban Affairs — committee substitute recommended

**VOTE:** 9 ayes — Button, Shaheen, J. González, Goodwin, E. Johnson, Middleton, Morales, Patterson, Swanson

0 nays

**WITNESSES:** For — John Riddle, Texas State Association of Firefighters

Against — (*Registered, but did not testify:* Julie Acevedo, Texas Fire Chiefs Association)

On — John Carlton, Texas State Association of Fire and Emergency Districts

**BACKGROUND:** Government Code ch. 614 subch. B governs complaints against firefighters. Sec. 614.021(b) states that the subchapter does not apply to firefighters who are covered under a meet and confer or collective bargaining agreement if that agreement includes provisions relating to the investigation of, and disciplinary action resulting from, a complaint against a firefighter.

Local Government Code sec. 143.123 governs investigations of firefighters in municipalities with populations of 1.5 million or more. Sec. 143.312 governs investigations in municipalities with populations of 460,000 or more that operate under a city manager form of government and are not governed by sec. 143.123.

Both sections include protections for firefighters who are the subjects of administrative investigations by a municipality for alleged misconduct that could result in punitive action. These protections include, among others, prohibitions on:

- punishing the individual being investigated for missing work time due to the investigation;

- interrogating or conducting any part of the investigation at the individual's home without the individual's permission;
- interrogating the individual for an unreasonably long period; and
- assigning to the investigation the complainant, the decision-maker regarding disciplinary action, or anyone with a personal involvement in the alleged misconduct.

**DIGEST:** CSHB 1895 would prohibit a city from taking punitive action against a firefighter unless an investigation was conducted in accordance with Local Government Code sec. 143.123 or 143.312 or other applicable law.

Cities that were not governed by one of those sections or another substantially similar investigation requirement would have to adopt and comply with procedures substantially identical to those required by Local Government Code sec. 143.312.

The bill would not apply to an investigation of a firefighter for alleged offenses that involved family violence or were punishable as a felony or class A or class B misdemeanor.

CSHB 1895 would apply to firefighters employed by municipalities regardless of whether they were covered by a meet and confer or collective bargaining agreement under Local Government Code chs. 143 or 174.

The bill would go into effect September 1, 2019, and would apply only to investigations initiated by a city on or after the effective date.

**SUPPORTERS  
SAY:**

CSHB 1895 would ensure that firefighters were not punished without an investigation or treated unfairly during the process of that investigation. The bill would guarantee that the rights and protections currently enjoyed by firefighters who work in large cities were extended to those who worked in smaller ones.

Current law establishes that some meet and confer or collective bargaining agreements clearly supersede certain sections of code. Concerns that the bill would overturn contracts between firefighters and their cities are unfounded.

OPPONENTS  
SAY:

CSHB 1895 should clarify that contract provisions would be protected, as it does not clearly establish which section of statute would take precedence. Otherwise, the bill could affect protections for firefighters in contracts that some city departments and unions have reached together through meet and confer or collective bargaining agreements.

**SUBJECT:** Creating the Texas Rural Water Advisory Council

**COMMITTEE:** Agriculture and Livestock — committee substitute recommended

**VOTE:** 9 ayes — Springer, Anderson, Beckley, Buckley, Burns, Fierro, Meza, Raymond, Zwiener

0 nays

**WITNESSES:** For — Stan Kitzman, Brookshire-Katy Drainage District; Troy Allen, Delta Lake Irrigation District; (*Registered, but did not testify:* Michael Booth and Ilissa Nolan, Booth, Ahrens and Werkenthin; Maia Corbitt, Texans for Clean Water; Monty Wynn, Texas Municipal League; Jennifer Emerson, Texas Rural Water Association)

Against — None

On — (*Registered, but did not testify:* Mandi Hughes, COCW; Dan Hunter, Texas Department of Agriculture)

**DIGEST:** CSHB 1868 would establish the Texas Rural Water Advisory Council to assist the Texas Department of Agriculture (TDA).

**Duties.** The council would assist TDA in assessing the existence of, effectiveness of, or need for rural water initiatives on windblown and waterborne litter and illegal dumping in rural communities, agricultural pesticide runoff, rainwater harvesting, rural water use, and other topics.

The council would identify and evaluate best management practices and their feasibility, costs, and benefits for municipal, commercial, industrial, and agricultural properties as they relate to the above initiatives.

The council also would evaluate the jurisdiction and effectiveness of law enforcement, the role of state funding for incentive programs, and appropriate state oversight and community support efforts regarding rural water initiatives.

**Guide and report.** The council would publish a guide on best management practices for use by state agencies, counties, municipalities, and other political subdivisions responsible for rural water initiatives.

The council also would deliver a report on rural water initiatives to the lieutenant governor, House speaker, and relevant legislative committees. The report would contain legislative recommendations to implement best management practices.

The guide and report would be due November 1 of even-numbered years.

**Organization.** The council would consist of 15 members, appointed as specified in the bill, who would serve staggered two-year terms.

The council would meet at least twice each year and could meet at other times considered necessary by the agriculture commissioner.

The council would be administratively attached to the Office of Water within TDA, and TDA would provide staff necessary to carry out the council's duties. Other agencies would be required to provide assistance, including necessary support staff, if requested by the council.

The bill would exempt the council from provisions regarding size, composition, or duration of an advisory council established in Government Code ch. 2110.

The council could accept gifts from any source to carry out its duties.

The bill would take effect September 1, 2019.

- SUBJECT:** Requiring criminal history record checks for massage therapists
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 10 ayes — T. King, Goldman, Geren, Guillen, Harless, Hernandez, K. King, Kuempel, Paddie, S. Thompson
- 0 nays
- 1 absent — Herrero
- WITNESSES:** For — Amy Monsivais, El Paso County Attorney's Office; (*Registered, but did not testify*: Bill Kelly, City of Houston Mayor's Office; Steve Bresnen, El Paso County; Will Francis, National Association of Social Workers-Texas Chapter)
- Against — None
- On — (*Registered, but did not testify*: Brian Francis, Texas Department of Licensing and Regulation)
- BACKGROUND:** Occupations Code sec. 455.1525 requires the Texas Department of Licensing and Regulation to conduct a criminal background check on massage therapy license applicants.
- Interested parties have noted that some establishments around the state claiming to offer massage therapy services have been reported to be connected with human trafficking operations and suggest that a lack of sufficient regulatory oversight may allow bad actors to take advantage of the system.
- DIGEST:** CSHB 2747 would require criminal history record information checks for all licensed massage therapists and license applicants; require massage establishments to post signs with information on human trafficking; and require massage therapy licenses to include a photograph of the therapist. The bill also would prohibit anyone from residing on the premises of a

massage establishment.

**Criminal history record information checks.** The Texas Department of Licensing and Regulation (TDLR) would have to require massage therapy license applicants to submit fingerprints to TDLR or the Department of Public Safety (DPS) for the purposes of obtaining criminal history record information from DPS and the FBI. TDLR could not issue a license to a person who did not submit fingerprints.

TDLR would have to conduct a criminal history record information check for each license applicant using fingerprints and any information provided by DPS, the FBI, and any other criminal justice agency.

TDLR could enter into an agreement with DPS to administer a criminal history background check and authorize DPS to charge the applicant a fee to cover the costs.

If the applicant was an entity, fingerprints would have to be submitted for each person who:

- personally or constructively held, including as the beneficiary of a trust, at least 10 percent of the entity's outstanding stock or more than \$25,000 of its fair market value;
- had controlling interest in the entity;
- had a direct or indirect participating interest through shares, stock, or otherwise, regardless of whether voting rights were included, of more than 10 percent of the profits, proceeds or capital gains of the entity;
- was a member of the board of directors or other governing body of the entity; or
- served as an elected officer or general manager of the entity.

By September 1, 2021, TDLR would have to obtain criminal history record information for each person licensed as a massage therapist if that person had not undergone a fingerprint background check on their initial license application. TDLR could suspend the license of a person who did not provide the necessary information.

Massage establishments would be prohibited from allowing any individual, including a student, license holder, or employee, to reside on the premises unless the establishment was exempt from the license requirement.

**Signage.** Posted massage therapy licenses would have to include a photograph of the massage therapist. Massage establishments would have to be in compliance with this requirement by January 1, 2020.

Massage establishments and schools would be required to display a sign concerning services and assistance available to victims of human trafficking. The sign would have to be in English, Spanish, Korean, Mandarin, and any other language required by the Texas Commission of Licensing and Regulation (TCLR). The sign also would have to include a toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking and be displayed in a conspicuous place clearly visible to the public. TCLR would have to establish by rule requirements regarding the posting of signs. Massage establishments would have to be in compliance with these requirements by April 1, 2020.

TCLR would have to adopt rules necessary to implement the signage requirements by March 1, 2020.

The bill would take effect September 1, 2019, and would apply only to a license application submitted on or after the effective date.

SUBJECT: Creating a joint legislative committee on the issuance of driver's licenses

COMMITTEE: House Administration — committee substitute recommended

VOTE: 8 ayes — Geren, Anchia, Anderson, Ortega, Parker, Sanford, Sherman, E. Thompson

0 nays

3 absent — Howard, Flynn, Thierry

WITNESSES: None

BACKGROUND: Some have noted that the Legislature could benefit from having a focused, deliberate examination of current programs to administer the driver's license program and related programs.

DIGEST: CSHB 2025 would establish a Joint Oversight Committee on the Issuance of Driver's Licenses and Other Forms of Identification.

The committee would review the administration and implementation of the Department of Public Safety's duties to:

- issue driver's licenses;
- issue personal identification certificates;
- issue election identification certificates; and
- register voters during the issuance or renewal of a driver's license or personal identification certificate.

The committee would be required to review plans and receive updates from state and local governmental entities involved in administering and implementing these duties.

The committee would have eight members, including four senators appointed by the lieutenant governor and four members of the House of Representatives appointed by the speaker. The chair of the committee would alternate biennially between a senator and a House member, with

the House speaker appointing the initial chair.

The committee would have to report to the Legislature biennially on:

- the appropriations and expended funds to administer and implement the duties described above during a period determined by the committee;
- current technological and operational deficiencies in the administration and implementation of those duties;
- the amount of time the interaction between the department and a customer currently takes when issuing a driver's license, personal identification certificate, or election identification certificate; and
- recommendations relating to the improvement and optimization of the administration and implementation of the department's duties, including necessary funding and timelines to implement the committee's recommendations.

The committee would operate under the rules adopted by the 86th Legislature for joint committees created by proclamation to the extent they did not conflict with CSHB 2025. The committee would be abolished September 1, 2029.

Appointments to the committee would have to be made within 30 days of the bill's effective date.

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, 2019.

**SUBJECT:** Enforcing prohibition on payment card skimmers at gas stations

**COMMITTEE:** Pensions, Investments, and Financial Services — committee substitute recommended

**VOTE:** 10 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Gutierrez, Lambert, Leach, Longoria, Wu

0 nays

1 absent — Stephenson

**WITNESSES:** For — Melodie Durst, Credit Union Coalition of Texas; Jeff Headley, Houston Police Department; Stephen Scurlock, Independent Bankers Association of Texas; Matt Burgin, Texas Food and Fuel Association; Adam Colby, Tyler Police Department; Steven Webster, WEX Inc. (*Registered, but did not testify*: Rita Ostrander, Combined Law Enforcement Associations of Texas; Ray Hunt, Houston Police Officers Union; Christopher Lutton, San Antonio Police Department; Jim Skinner, Sheriffs' Association of Texas; Celeste Embrey, Texas Bankers Association; Jeff Huffman, Texas Credit Union Association; Mike Gomez, Texas Municipal Police Association; Shana Joyce, Texas Oil and Gas Association)

Against — None

On — Brad Schuelke, Texas Attorney General's Office; Tim Kleinschmidt, Texas Department of Agriculture (*Registered, but did not testify*: John Bohannon, Office of the Attorney General; Jessica Escobar, Texas Department of Agriculture; Steve Bruno, Texas Department of Licensing and Regulation)

**DIGEST:** CSHB 2945 would provide enforcement mechanisms against payment card skimming at gas stations, grant the attorney general rulemaking authority over gas station merchants, establish a reporting and investigation process for skimmers, establish civil and criminal penalties, and create a fusion center for the purpose of countering card skimmers.

**Rulemaking.** CSHB 2945 would require the attorney general to establish reasonable policies and procedures that identified best practices for merchants who used unattended payment terminals on motor fuel dispensers, such as fuel pumps. These best practices would include procedures to prevent the installation of a skimmer on a payment terminal, to find and remove a skimmer, and to report the discovery of a skimmer to the Texas Department of Agriculture (TDA).

In adopting the rules, the attorney general would have to consider emerging technology, merchants' compliance costs, and any impact the policies and procedures could have on consumers.

**Fraud fusion center.** Under the bill, law enforcement agencies or other designated governmental agencies could collaborate with the attorney general to establish a payment fraud fusion center. This center would be established in the city of Tyler.

The center would serve as the state's primary entity for the planning, coordination, and integration of the capabilities of law enforcement agencies and other governmental agencies to respond to criminal activity that is related to payment fraud, including through the use of skimmers. The purpose of the center would be to maximize the ability of law enforcement agencies and other governmental agencies to detect, prevent, and respond to criminal activities related to payment fraud.

The center could collaborate with federal agencies in the performance of its duties, and would be required to assist law enforcement agencies, other agencies, and merchants in their efforts to develop and implement strategies to detect skimmers, effectively respond if a skimmer was found, and prevent payment fraud.

The attorney general would be required to appoint a director to supervise and manage the center. The director would be under the supervision and direction of the attorney general.

The attorney general would be required to adopt by rule reasonable policies and procedures necessary to implement the fraud fusion center. A

municipality's police department could provide facilities and administrative support to a payment fraud fusion center established in the municipality. The payment fraud fusion center would be allowed to accept gifts, grants, and donations to carry out the purpose of the center.

**Discovery of skimmer.** If a service technician discovered a skimmer on the unattended payment terminal of a merchant's motor fuel dispenser, the technician or the technician's employer would be required to immediately notify the merchant.

If a merchant discovered the skimmer or was notified of the skimmer by a service technician or other person, the merchant would be required to:

- immediately disable, or cause to be disabled, the fuel pump on which the skimmer was discovered and notify a law enforcement agency that a skimmer has been detected;
- take appropriate measures to protect the fuel pump from being tampered with until the law enforcement agency arrived; and
- report the discovery of the skimmer to TDA within 24 hours.

An interested person also could submit a report of the discovery of a skimmer to TDA. The bill would define interested persons to include a law enforcement agency, financial institution, member of the public, or any other interested person.

**Investigation of skimmer report.** On receipt of a report of a potential skimmer from an interested party, the TDA would be required to immediately notify the fraud fusion center and share the report with the center. TDA and the center would coordinate with law enforcement agencies to conduct an investigation of the report.

TDA could inspect, directly or in coordination with a law enforcement agency, the motor fuel dispenser that was the subject of the report. A merchant would be required to cooperate with the department or law enforcement agency during an investigation of a skimmer discovered at the merchant's place of business and to permit the department or agency to inspect and alter the fuel pump that was the subject of the report as necessary.

**Confidentiality.** Information from a skimmer report or that was prepared or compiled by TDA in connection with a skimmer report or investigation would be confidential and would not be subject to disclosure under the state's public information laws. Such information could be disclosed to the attorney general, a law enforcement agency, the fraud fusion center, a financial institution that could be impacted by the use of the skimmer, or another person if permitted or required by other law or a court order.

On the dismissal or final resolution of a report or investigation under the bill, information from a skimmer report or investigation would be subject to disclosure under public information laws.

The attorney general could disclose information made confidential under the bill to the public if the attorney general determined that the disclosure would further a law enforcement purpose.

**Enforcement.** If after an investigation the attorney general had reason to believe that a merchant had an unattended payment terminal at a fuel pump at the merchant's place of business on which a skimmer had been installed and the merchant was in violation of a rule adopted by the attorney general under this bill, the attorney general would have to notify the merchant of the violation.

The attorney general could order the merchant to take corrective action as necessary, including the implementation of best practices and the training of employees to detect skimmers.

**Civil penalties.** A merchant who willfully violated a rule adopted by the attorney general related to skimmers would be liable to the state for a civil penalty in an amount not to exceed \$5,000.

A merchant who negligently failed to make a skimmer report within the required time or who had had at least three skimmer reports made within a two-year period as a result of the merchant's failure to comply with requirements under the bill would be liable to the state for a civil penalty of at least \$1,000 but not more than \$5,000 for each violation.

The attorney general could bring an action to recover a civil penalty imposed under the bill.

**Criminal penalties.** A person would commit a class C misdemeanor (maximum fine of \$500) if the person refused to allow an inspection of a motor fuel dispenser at the merchant's place of business following the report of a skimmer.

A person would commit a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the person negligently or recklessly disposed of a skimmer that was installed on the unattended payment terminal of a motor fuel dispenser by another person.

A person would commit a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if, knowing that an investigation was ongoing or that a criminal proceeding had been commenced and was pending, the person disposed of a skimmer that was installed on the unattended payment terminal of a motor fuel dispenser by another person.

The bill would take effect September 1, 2019.

**NOTES:**

According to the Legislative Budget Board, the bill would have a negative impact of \$1.2 million on general revenue related funds through fiscal 2020-21

- SUBJECT:** Regulating certain off-highway and neighborhood vehicles
- COMMITTEE:** Transportation — favorable, without amendment
- VOTE:** 9 ayes — Canales, Landgraf, Bernal, Y. Davis, Hefner, Krause, Leman, Martinez, Ortega
- 0 nays
- 4 absent — Goldman, Raney, Thierry, E. Thompson
- WITNESSES:** For — Bill Orton, Matagorda County; Denise Fortenberry, Matagorda County Attorney; (*Registered, but did not testify*: Randy Cain, City of Dallas; Jeff Heckler, ETukUSA; CJ Grisham)
- Against — (*Registered, but did not testify*: Richard Hardy, Specialty Vehicle Institute of America and Recreational Off Highway Vehicle Association)
- On — Linda G. Bridge, Tax Assessor-Collectors Association; (*Registered, but did not testify*: Jeremiah Kuntz, Texas Department of Motor Vehicles; Jo Heselmeyer and Steve Moninger, Texas Department of Public Safety)
- BACKGROUND:** Some have suggested that state law should be clarified on the operation of off-highway vehicles and the authority of a local government to allow all-terrain vehicles and golf carts on local roads.
- DIGEST:** HB 1548 would amend certain statutory provisions regarding the registration, titling, and operation of off-highway vehicles, golf carts, and neighborhood electric vehicles.
- Certificate of title.** HB 1548 would specify that an off-highway vehicle, including an all terrain, utility, or recreational off-highway vehicle, would be subject to titling requirements under the Certificate of Title Act.
- Vehicle registration, license plates.** HB 1548 would prohibit the Texas

Department of Motor Vehicles (TxDMV) from registering a neighborhood electric vehicle or off-highway vehicle for operation on a highway regardless of vehicle alterations.

A person could operate an unregistered off-highway vehicle, neighborhood electric vehicle, or golf cart on a highway only if the vehicle displayed a license plate. TxDMV would have to establish procedures to issue license plates for those vehicles. TxDMV could charge a maximum fee of \$10 for the cost of a license plate, and revenues would be deposited to the credit of the TxDMV fund. A license plate for an off-highway vehicle, neighborhood electric vehicle, or golf cart would not expire and could not be transferred to a subsequent vehicle owner. The bill also would allow TxDMV to charge an administrative fee to cover the costs of issuing plates for a neighborhood electric vehicle, golf cart, or off-highway vehicle, if necessary.

A registered off-highway vehicle owned by the state, a county, or a city and operated on a public beach or highway to maintain public safety would be exempt from provisions related to operation on a highway and certain equipment and safety requirements.

The bill would specify that a registered off-highway vehicle was not subject to inspection.

**Equipment requirements.** HB 1548 would exempt all golf carts, neighborhood electric vehicles, and off-highway vehicles from certain vehicle equipment standards and requirements.

Golf carts, neighborhood electric vehicles, or off-highway vehicles operated at a speed of not more than 25 miles per hour would be required to display a slow-moving-vehicle emblem when operated on a highway.

**Operation on public off-highway vehicle land.** HB 1548 would prohibit a person from operating an off-highway vehicle on land owned or leased by a governmental entity in an area not open to vehicular traffic, unless the land was public off-highway vehicle land and operated in compliance with certain statutes. The bill would define "public off-highway vehicle land" as land on which off-highway recreation was authorized under the

off-highway vehicle trail and recreational area program.

Certain statutory prohibitions, such as the prohibition on a person under 14 years old operating an off-highway vehicle without adult supervision, would extend to the operation of a vehicle on public off-highway vehicle land. Certain requirements for safety apparel also would apply to an off-highway vehicle on public off-highway vehicle land or highway.

**Operation in master planned community.** HB 1548 would allow an unregistered off-highway vehicle to be operated in certain master planned communities as specified in the bill.

**Operation on beaches.** HB 1548 would specify that a neighborhood electric vehicle or golf cart could be operated on a public or private beach that was open to vehicular traffic.

**Operation on a highway.** An unregistered off-highway vehicle could be operated on a highway for which the posted speed limit was no more than 35 miles per hour, if the vehicle was operated:

- during the day;
- no more than two miles from the location where it was usually parked; and
- for transportation to or from a golf course.

The Texas Department of Transportation, a city, or a county could prohibit the operation of an unregistered off-highway vehicle on a highway if the governing body or department determined it necessary in the interest of safety.

The governing body of a city or county could authorize the operation of an unregistered off-highway vehicle on a highway with a speed limit under 35 miles per hour within its boundaries or unincorporated area, respectively.

The bill would allow an unregistered off-highway vehicle, neighborhood electric vehicle, or golf cart to cross a highway at an intersection with a highway that had a speed limit under 35 miles per hour.

**Agricultural, utility, or law enforcement operation.** HB 1548 would specify that an unregistered off-highway vehicle operated for certain agricultural, utility, or law enforcement purposes would not have to display a license plate and the driver would not have to hold a driver's license.

**Violations.** HB 1548 would specify that certain class C misdemeanor offenses (maximum fine of \$500) for statutory violations regarding the operation of off-highway vehicles would apply to a violation committed on public off-highway vehicle land or a beach. This would apply only to an offense committed on or after the bill's effective date.

**Financial responsibility requirement.** HB 1548 would exempt an off-highway vehicle from the statutory requirement to establish financial responsibility through certain insurance policies or bonds.

The bill would take effect September 1, 2019.

SUBJECT: Updating, enforcing pre-emption statutes on firearms and other items

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

VOTE: 6 ayes — Nevárez, Paul, Burns, Clardy, Lang, Tinderholt

2 nays — Goodwin, Israel

1 absent — Calanni

WITNESSES: For — Tara Mica, National Rifle Association; Rick Briscoe, CJ Grisham, and John Swicegood, Open Carry Texas; Michael Cargill, Texans for Accountable Government, Log Cabin Republicans; Bradley Hodges; Eric Schafer; (*Registered, but did not testify*: Elysse Brenner, Empowered 2A; Angela Smith, Fredericksburg Tea Party; Rachel Malone, Gun Owners of America; Justin Delosh and Amos Postell, Lone Star Gun Rights; James Dickey, Republican Party of Texas; Walter West II (RET), Republican Party of Texas, Texas Senate District 4, and Veterans; Terry Holcomb, Texas Carry; Alice Tripp, Texas State Rifle Association; Jason Vaughn, Texas Young Republicans; Stephanie Franklin, The Liberty Project of Texas; and 51 individuals)

Against — Elva Mendoza, Moms Demand Action for Gun Sense in America; Gyl Switzer, Texas Gun Sense; (*Registered, but did not testify*: Jo DePrang, Children's Defense Fund-Texas; Clifford Sparks, City of Dallas; Bill Kelly, City of Houston Mayor's Office; Christopher Lutton, City of San Antonio; Elizabeth Crosby, Melanie Greene, Christine Hinkle, Melissa Holmes, Miste Hower, Laura Legett, Cristina Legrand, Dana Mielke, Vonnie Neufeld, Jennifer Price, Nora Redfern, Hilary Whitfield, and Jennifer Zoghby, Moms Demand Action for Gun Sense in America; Chris Frandsen, Texas League Of Women Voters; Holly Hayes; Tom Henry; Janet Janssen; Maria Person)

BACKGROUND: Local Government Code sec. 229.001(a) and sec. 236.002(a) prohibit a municipality or county, respectively, from regulating the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm or air gun supplies.

Under sec. 229.001(b), the prohibition under sec. 229.001(a) does not affect the authority a municipality has under another law to regulate or require certain activities related to firearms, air guns, ammunition and supplies, and other weapons.

DIGEST:

HB 3231 would revise existing pre-emption statutes relating to municipality and county regulatory authority of firearms, air guns, knives, ammunition, or firearm or air gun supplies. The bill also would establish a civil remedy for a person adversely affected by a municipality's or county's violation of certain limitations on authority.

**Prohibition on regulations.** HB 3231 would add the possession or carrying of or commerce in firearms, air guns, knives, ammunition, or firearm or air gun supplies and accessories to the list of activities a municipality or county was prohibited from regulating under Local Government Code sec. 229.001(a) or sec. 236.002(a), respectively.

The bill would make void an ordinance, resolution, rule, or policy adopted or enforced by a municipality or county or an official action, including in any legislative, police power, or proprietary capacity, taken by an employee of a municipality or county in violation of Local Government Code sec. 229.001(a) or sec. 236.002(a).

**Municipal authority.** Under the bill, the prohibition under Local Government Code sec. 229.001(a) would not affect the authority a municipality had under other law to regulate the carrying of a firearm by a person licensed to carry a handgun.

A municipality's authority to adopt or enforce a generally applicable zoning ordinance, land use regulation, fire code, or business ordinance would not be affected unless the ordinance or regulation was designed or enforced to effectively restrict or prohibit the lawful manufacture, sale, purchase, transfer, or display of firearms, firearm accessories, or ammunition.

HB 3231 would not affect a municipality's authority to regulate or prohibit an employee's carrying or possession of a firearm, accessory, or

ammunition in the course of official duties, except that such a regulation could not violate current law relating to employee transportation or storage of certain firearms or ammunition.

The bill would specify that a municipality's authority to regulate the use of firearms, air guns, or knives in the case of an insurrection, riot, or natural disaster to protect public health and safety would not authorize the seizure of firearm or air gun supplies or accessories from an individual lawfully carrying or possessing them.

**County authority.** The bill would except from the prohibition on county regulations under Local Government Code sec. 236.002(a) a county's authority to:

- require a resident or public employee to be armed for personal or national defense, law enforcement, or other purpose under law;
- regulate the discharge of firearms or air guns on lots that were 10 acres or smaller and located in the unincorporated area of the county in a subdivision;
- regulate the carrying of a firearm by a person licensed to carry a handgun;
- adopt or enforce a generally applicable land use regulation, fire code, or business regulation; or
- regulate or prohibit an employee's carrying or possession of a firearm, accessory, or ammunition in the course of official duties, except that such a regulation could not violate current law relating to employee transportation or storage of certain firearms or ammunition.

A county order or regulation designed or enforced to effectively restrict or prohibit the lawful manufacture, sale, purchase, transfer, or display of firearms, firearm accessories, or ammunition would be void.

**Civil remedy.** A person adversely affected by a municipality or county in violation of the bill could file suit against the municipality or county. The court would have to award a plaintiff who prevailed actual damages, equitable relief as determined by the court, and reasonable expenses,

including attorney's fees, court costs, and expert witness fees.

The bill would take effect September 1, 2019.

**SUPPORTERS  
SAY:**

HB 3231 would ensure more uniform treatment of firearms and ammunition across the state. By updating existing firearms pre-emption statutes and applying provisions that currently affect cities to counties, the bill would protect the rights of lawful gun owners and firearm retailers.

The bill would not affect a city's or county's legitimate authority to regulate the discharge of firearms or create and enforce other related ordinances. The civil penalties under the bill would provide entities the incentive to comply with state law, ensuring authority was not misused and that pre-emption laws were enforced consistently throughout the state. To avoid the penalties, the bill simply would require a city or county to refrain from adopting a regulation intended to restrict gun owners and businesses from engaging in lawful activities. In a suit, plaintiffs still would have to meet their burden of proof and convince the court and jury that it would be appropriate to award damages or other requested relief.

**OPPONENTS  
SAY:**

HB 3231 could have a chilling effect on a city's or county's authority to adopt ordinances and regulations related to firearms, air guns, knives, ammunition, or firearm or air gun supplies and accessories. The bill would allow people to challenge ordinances or regulations that effectively restrict gun rights. This vague standard would invite litigation and expand liability for cities and counties, which would be costly for local taxpayers. In effect, cities and counties likely would choose not to pass any regulations that could affect firearms in any way, even if explicitly authorized by law, for fear of legal liability.

- SUBJECT:** Expanding deferral of past-due property taxes for U.S. armed forces
- COMMITTEE:** Ways and Means — favorable, without amendment
- VOTE:** 8 ayes — Burrows, Guillen, Bohac, Murphy, Noble, E. Rodriguez, Shaheen, Wray
- 0 nays
- 3 absent — Cole, Martinez Fischer, Sanford
- WITNESSES:** For — Cheryl Johnson, Galveston County Tax Office; (*Registered, but did not testify*: Dana Harris, Austin Chamber of Commerce; Lance Lowry, Texas Association of Taxpayers; Calvin Tillman; Al Zito)
- Against — (*Registered, but did not testify*: Aryn James, Travis County Commissioners Court)
- BACKGROUND:** Tax Code sec. 31.02 allows a person on active duty in the U.S. armed forces who is transferred out of state as a result of a war or a federally declared national emergency to pay delinquent property taxes without penalty or interest within 60 days after:
- the war or national emergency ends;
  - the member is discharged from active military service;
  - the member returns to the state for more than 10 days; or
  - the member returns to non-active duty status in the reserves.
- DIGEST:** HB 1883 would eliminate the requirement that there be a war or federally declared national emergency in order for a person on active duty in the U.S. armed forces who was transferred out of the state to temporarily defer payment of delinquent property taxes. All other requirements for deferral would remain in statute.
- The bill also would require that any taxes paid after the deferral period had expired would accrue interest at a rate of 6 percent for each year or portion of a year that the tax remained unpaid. No penalty would be

incurred.

The bill would take effect September 1, 2019, and would apply to penalties and interest on delinquent taxes paid on or after that date.

**NOTES:**

According to the Legislative Budget Board, the bill could result in reduced taxable property values, and the related costs to the Foundation School Fund could be increased through the operation of the school finance formulas.

SUBJECT: Providing course work to suspended students

COMMITTEE: Public Education — committee substitute recommended

VOTE: 13 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver

0 nays

WITNESSES: For — Mary Olison, Texas Alliance of Black School Educators; (*Registered, but did not testify*: Cynthia Humphrey, Association of Substance Abuse Programs; Jacquie Benestante, Autism Society of Texas; Chris Masey, Coalition of Texans with Disabilities; Lisa Flores and Jolene Sanders, Easter Seals Texas; Lauren Rangel, Easter Seals Central Texas; Hannah LaPorte, IDEA Public Schools; Greg Hansch, National Alliance on Mental Illness-Texas; Will Francis, National Association of Social Workers-Texas Chapter; Josette Saxton, Texans Care for Children; Christine Broughal, Texans for Special Education Reform; Deborah Fowler, Texas Appleseed; Morgan Craven, Texas Latino Education Coalition; Linda Litzinger, Texas Parent to Parent; Suzi Kennon, Texas PTA; Ashley Harris and Nataly Saucedo, United Ways of Texas; and eight individuals)

Against — (*Registered, but did not testify*: Jerod Patterson, Texas Rural Education Association)

On — (*Registered, but did not testify*: Pablo Barrera, TCOSA; Eric Marin, Melody Parrish, Chris Jones, and Monica Martinez, Texas Education Agency; Heather Smith)

BACKGROUND: Education Code sec. 37.005 allows a school principal or other appropriate administrator to suspend a student who engages in certain conduct identified in the student code of conduct. A suspension may not exceed three school days.

Some have noted that suspended students miss critical course work and that providing them with access to instructional materials could help them

academically.

**DIGEST:** CSHB 3012 would require school districts to provide students who were placed in in-school or out-of-school suspensions with an alternative means of receiving all course work for classes in the foundation curriculum that the student missed as a result of the suspension. A district would have to provide at least one option for receiving the course work that did not require the use of the internet.

The bill would apply beginning with the 2019-2020 school year.

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, 2019.