HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 13, 2021
87th Legislature, Number 33
The House convenes at 10 a.m.
Part Two

Four bills are on the Major State Calendar and 16 bills are on the General State Calendar for second reading consideration today. The bills analyzed in Part Two of today's *Daily Floor Report* are listed on the following page.

The following House committees were scheduled to meet today: Business and Industry; Human Services; Public Education; Natural Resources; Land and Resource Management; House Administration; Insurance; and Transportation.

Alma Allen
Chairman
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HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Tuesday, April 13, 2021

87th Legislature, Number 33

Part 2

SUBJECT: Imposing motor vehicle rental taxes on marketplace rental providers

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer, Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

WITNESSES: For — Don Schwent, EAN Holdings, LLC; (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Clifford Sparks, City of Dallas; TJ Patterson, City of Fort Worth; Dean McWilliams, Dallas-Fort Worth International Airport; Amanda Schar, Harris County Houston Sports Authority; Monty Wynn, Texas Municipal League)

Against — Amber Knott, Expedia Group; Stephen Shur, Travel Technology Association; Adam Goldman, Turo; (*Registered, but did not testify*: Bradford Shields, Getaround Inc.)

On — Karey Barton, Comptroller of Public Accounts; (*Registered, but did not testify*: Chris Tjon, Comptroller of Public Accounts)

BACKGROUND: Tax Code ch. 152 governs state taxes on the sale, rental, and use of motor vehicles. Sec. 152.026 imposes a tax of 10 percent of the gross rental receipts from the rental of a motor vehicle for 30 days or less. For a vehicle rented more than 30 days, the tax rate is 6.25 percent. The motor vehicle retail sales tax of 6.25 percent is not due on a motor vehicle as long as it is registered as a rental vehicle.

Local Government Code ch. 334, subch. E allows a municipality or county to impose a short-term motor vehicle rental tax. The tax generally may not exceed 5 percent of the gross rental receipts. The owner of a vehicle subject to the tax must collect the tax by adding it, along with the state gross rental receipts tax, to the rental charge.

DIGEST:

HB 2415 would impose state and local motor vehicle rental taxes on rentals conducted through marketplace rental providers.

A "marketplace rental provider" would be defined as a person who:

- operated a marketplace by which the owner of a motor vehicle listed, marketed, or advertised the vehicle for rental by others for consideration in the state;
- facilitated the vehicle rental by communicating between the owner and renter the terms of agreement; and
- directly or indirectly collected or processed the receipts or rental charges paid by the renter for the vehicle owner.

The bill would require a marketplace rental provider to collect, report, and pay the gross rental receipts tax and the short-term motor vehicle rental tax on vehicles rented through the provider unless the vehicle owner elected to do so. Providers generally would be subject to collection, reporting, payment, and record-keeping requirements established under current law. The bill also would require providers to register as retailers with the comptroller.

HB 2415 would require a marketplace rental provider to certify to the owner of a vehicle rented through the provider that the provider had collected, reported, and paid the applicable gross rental receipts and short-term motor vehicle rental taxes. An owner who in good faith accepted the certification would not be required to collect, report, or pay the taxes.

The owner of a vehicle rented through a marketplace rental provider could elect to report and pay the rental taxes if the owner registered as a retailer with the comptroller and informed the provider in writing of the election. The provider then would forward the collected taxes to the owner.

The bill would require a marketplace rental provider to send the owner of a rented vehicle a report each month that showed the amount of tax collected, reported, and paid. The provider would not be required to send the report to an owner who elected to report and pay the tax.

The bill would take effect October 1, 2021, and apply only to a rental agreement entered into on or after that date.

SUPPORTERS SAY:

HB 2415 would apply consistent rules on vehicle rental obligations to all car rental companies, including new peer-to-peer rental platforms. Many vehicle owners using peer-to-peer platforms are unaware of their tax obligations under current law. This means that the state and cities and counties that have opted into a local rental tax are not able to collect all the revenue they are due, underfunding public services like community venues. The bill would outline the tax obligations of marketplace rental providers clearly, creating a mechanism to collect these taxes and ensuring that all vehicle rental service providers were treated equally.

Last session, the Legislature began imposing sales and use taxes on remote marketplace providers, such as online websites through which individuals may offer taxable items for sale. HB 2415 would continue to apply existing tax obligations to marketplace providers by ensuring that such providers collected vehicle rental taxes. These are taxes that are already due, according to the comptroller's office, and should be paid by marketplace rental providers such as peer-to-peer platforms in the same manner as other taxes.

While some claim that peer-to-peer platforms are not marketplace providers, they operate similarly to other popular online or app-based websites through which sellers may offer a good or service. Peer-to-peer platforms are in the business of renting cars in the same manner as other traditional vehicle rental companies, which qualifies them as rental companies. Because peer-to-peer platforms provide the same service to the same base of customers, they should be taxed equally to traditional rental companies.

The bill would not impose a tax on the vehicle owner but on the marketplace provider. An individual renting out a vehicle through peer-to-peer services could request a waiver on their vehicle sales tax if they collected the rental tax and otherwise qualified. But because this waiver is intended for business purposes, the individual would have to pay a use tax when driving the car for personal use.

Critics who say the bill should remove the vehicle sales tax waiver are misinformed. This is standard practice for assets purchased for business

purposes, and taxing those vehicles again would amount to double taxation.

The bill would not impose new obligations on a third party travel website that facilitated vehicle rentals. Rental taxes still could be collected and remitted by rental car companies as provided by law.

CRITICS SAY:

HB 2415 incorrectly would categorize peer-to-peer car rental platforms as marketplace providers and as vehicle rental companies. These apps do not sell taxable goods nor do they own the vehicles that are being rented by individuals but instead simply facilitate communications between two people. While the service should be taxed, the bill wrongly would impose a vehicle rental tax of 10 percent.

The bill would impose an unfair additional tax on Texans who agreed to rent their personal vehicles to other individuals. While rental car companies are exempt from the motor vehicle sales tax under current law, that exemption does not extend to individuals renting out their own cars. The tax scheme under the bill would amount to double taxation on these individuals' vehicles, including both sales and rental taxes, creating an uneven playing field and stifling competition.

If the Legislature did choose to impose rental taxes on individuals renting out their personal vehicles, it also should repeal the motor vehicle sales tax exemption for rental companies to create an equal tax burden.

OTHER CRITICS SAY:

The scope of HB 2415 should be narrowed to only include peer-to-peer vehicle rental platforms. The bill's definition of "marketplace rental provider" could wrongly include traditional car bookings on third party travel websites, which should not have to collect and remit the rental tax.

NOTES:

According to the Legislative Budget Board, HB 2415 would increase general revenue related funds by $61.1 million through fiscal 2022-23.

SUBJECT: Removing a cap on park bonds issued by water districts in certain counties

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 9 ayes — Deshotel, Leman, Biedermann, Burrows, Craddick, Romero, Rosenthal, Spiller, Thierry

0 nays

WITNESSES: For — Auggie Campbell, Association of Water Board Directors - Texas; Ellen Hughes, Fort Bend Municipal Utility District No. 23; Deborah January-Bevers, Houston Wilderness; Tricia Brasseaux, The Howard Hughes Corporation; (*Registered, but did not testify*: Trey Lary, Allen Boone Humphries Robinson LLP; Scott Stewart, American Council of Engineering Companies of Texas; Brent Luck, American Society of Landscape Architects; Bradley Pepper, Greater Houston Builders Association; Diana Miller, Schwartz, Page & Harding, LLP; Howard Cohen, Utility Development Advisory Corporation)

Against — None

DIGEST: CSHB 1410 would allow water districts located partly or entirely in Bastrop, Bexar, Waller, Travis, Williamson, Harris, Galveston, Brazoria, Montgomery, or Fort Bend counties to issue for the development and maintenance of parks and other recreational facilities property tax-supported bonds exceeding 1 percent of the value of the taxable property in the district if the district had:

- a ratio of debt to certified assessed valuation of 10 percent or less;
- a credit rating that conformed to Texas Commission on Environmental Quality (TCEQ) rules;
- a credit enhanced rating on the district's proposed bond issue that conformed to TCEQ rules; or
- a contract with a political subdivision or entity acting on its behalf under which the subdivision or entity agreed to provide to the district taxes or other revenues.

CSHB 1410 would eliminate the prohibition on the amount of the outstanding principal on bonds and other obligations issued to finance parks and recreational facilities exceeding:

- 1 percent of the value of taxable property in districts making payments under the contract, if the obligations were supported by contract taxes; or
- the estimated cost of the relevant park plan.

CSHB 1410 also would establish that a city's written consent to the inclusion of its land in a water district could restrict the purposes for which the district issued bonds to the purposes authorized by law for the district. This change in law would not affect municipal resolutions or ordinances that constitute written consent adopted before the effective date of the bill.

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, 2021.

SUPPORTERS SAY:

CSHB 1410 would help provide more parks and green spaces to communities that wanted them by removing, under certain circumstances, the cap that limits the amount of bonds municipal water districts can issue for developing recreational facilities to 1 percent of the value of taxable property in the district.

Living near high-quality recreational infrastructure such as parks and other green spaces provides significant value to a community, including improved aesthetics, space for exercise, and increased home values for residents. Beyond their recreational function, these spaces can expand flood and erosion controls and improve air and water quality.

The current restriction on bonds for recreational purposes does not apply to the financing of other district investments, such as water or sewage infrastructure or roads. CSHB 1410 would provide fiscally healthy districts more flexibility in financing for parks and recreation while ensuring that any bond could only exceed the 1 percent cap if it met certain criteria of financial viability.

CRITICS SAY:

No concerns identified.

SUBJECT: Allowing Texas veterans to hunt or fish for one day without a license

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

VOTE: 9 ayes — K. King, Gervin-Hawkins, Burns, Clardy, Frullo, Israel, Krause, Martinez, C. Morales

0 nays

WITNESSES: For — Blake Siebrecht, Brothers-Sisters Of Our Military Adventures (BOOM Adventures); (*Registered, but did not testify*: Anna Alkire; Beth Maynard; Ruth York)

Against — None

On — Justin Halverson, Texas Parks and Wildlife

BACKGROUND: Parks and Wildlife Code chs. 42 and 46 govern general hunting licenses and fishing licenses, respectively. The chapters establish the requirements to obtain a license and contain provisions for issuing licenses to Texas residents and nonresidents. The chapters also set the required fees necessary to obtain a license.

DIGEST: HB 1728 would authorize the Texas Parks and Wildlife Department (TPWD) to select and cooperate with one or more nonprofits that exclusively served veterans of the United States armed forces to promote hunting and fishing by those veterans. A selection of a nonprofit would have to be approved by the Texas Parks and Wildlife Commission. A veteran who was a resident of this state and who was served by a selected nonprofit would be authorized to hunt or fish on one day without holding the required license if accompanied by a representative of the nonprofit who holds the appropriate license. Such a veteran would not be required to hold a hunting or fishing license if acting in accordance with the provisions of the bill.

The commission would be required to adopt rules establishing criteria under which TPWD could select a nonprofit partner under this section and

guidelines under which a representative of or a veteran served by a nonprofit would be authorized to engage in hunting or fishing activities under the provisions of the bill.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

HB 1728 would allow nonprofits exclusively dedicated to assisting veterans to better accomplish their mission by removing the costly burden of obtaining a license for one-day hunting or fishing trips for veterans who are accompanied by a representative of the nonprofit who holds the appropriate license. Veterans often struggle to adjust to civilian life and face higher rates of suicide and mental health issues such as post-traumatic stress disorder. The high number of veterans living in Texas makes this a particularly important issue for the state. Some veteran-serving nonprofit organizations have found success in outreach efforts by introducing veterans to hunting and fishing and pairing them with individuals who can empathize with their experiences.

Under current law, a veteran who accompanies a nonprofit license holder on a one-day hunting or fishing trip is required to obtain a license. While these nonprofits typically pay the cost of the activity itself, the veteran is often required to pay the fee to obtain the license. This cost can make the activity prohibitive for some veterans. Introducing veterans to new activities and allies they can empathize with can be an important part of veterans outreach. In some cases, it can be a life-changing or even lifesaving experience. Veterans should not miss out on this platform to receive needed help because they cannot afford a license.

Allowing the Texas Parks and Wildlife Department (TPWD) to partner with certain nonprofits would not present a significant cost to the state and the bill would not create a mandate to partner with nonprofits. The rulemaking authority granted under the bill would give the Texas Parks and Wildlife Commission the necessary authority to ensure that the partnership program functioned as intended. The bill would grant no permanent authorization to hunt or fish. After a veteran's one-day trip, any further hunting or fishing by the veteran would require a license.

Texas has a large veteran population, and the bill appropriately focuses on allowing nonprofits to help serve their needs. Other states would be free to follow Texas' example and enable their own veteran populations to enjoy the rewarding outdoor experiences that hunting and fishing can provide.

CRITICS SAY:

The partnership program created by the bill could be adapted to serve all U.S. veterans by allowing veterans who are not residents of Texas to hunt or fish for one day with a Texas license holder.

SUBJECT: Allowing deputies and constables to perform duties between terms

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 8 ayes — Coleman, Stucky, Anderson, Longoria, Lopez, Spiller, Stephenson, Turner

1 nay — Cason

WITNESSES: For — Brian Hawthorne, Sheriffs Association of Texas (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Rick Hill, Noel Johnson, Sammy Knapp, Carlos Lopez, Jama Pantel, Justices of the Peace and Constables Association of Texas; Julie Wheeler, Travis County Commissioners Court)

Against — None

DIGEST: HB 1049 would allow reappointed sheriff's deputies, reserve deputies, and reserve deputy constables to continue to perform their duties before retaking the official oath of office and would require that they retake the oath as soon as possible after being reappointed.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: HB 1049 would clarify an ambiguity in current statute about the authority of reappointed sheriff's department officers in the period between the official end of a preceding term and the beginning of a new term of office.

Under current law, reappointed deputies and constables are required to retake the oath of office before performing their duties. As a matter of established practice, departments try to administer the oath to all personnel at or near midnight of New Year's Eve, since terms expire at that point. However, for many medium-sized and large departments, assembling all personnel at the same time is unfeasible, resulting in many instances across the state of reappointed deputies being out on duty without having retaken the oath of office. This situation creates the possibility that the authority for any police action taken by a reappointed

deputy before retaking the oath could be legally challenged. Deputies and constables should never have to operate under a cloud of ambiguity regarding their legal authority, and HB 1049 is needed to ensure the integrity of that authority.

Current statute makes it difficult for sheriff's departments to follow the letter of the law, and HB 1049 would remove this unreasonable burden by clarifying the authority of reappointed deputies and constable between terms, while still requiring the retaking of the oath of office as soon as reasonably possible.

CRITICS SAY:

HB 1049 is unnecessary because current law does not impose an unreasonable burden on sheriff's departments. Even if the oath of office cannot be administered to all deputies and constables in a department simultaneously, there have been no serious issues resulting from the current practice.

SUBJECT: Establishing a credit based on time in jail toward certain fines and costs

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Vasut

1 nay — Murr

WITNESSES: For — Daron Babcock, Bonton Farms; Charles Reed, Dallas County Commissioners Court; Emily Gerrick, Texas Fair Defense Project; Derek Cohen, Texas Public Policy Foundation; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; M Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Justin Keener, for Doug Deason, Americans for Prosperity, and Libre Initiative; Traci Berry, Goodwill Central Texas; Kathy Mitchell, Just Liberty; Amanda List, Texas Appleseed; Lori Henning, Texas Association of Goodwills; Alycia Castillo, Texas Criminal Justice Coalition; Jennifer Allmon, The Texas Catholic Conference of Bishops)

Against — None

BACKGROUND: Under Code of Criminal Procedure art. 45.014(e), before a justice of the peace or municipal judge may issue an arrest warrant for a defendant's failure to appear at the initial court setting, the justice or judge must provide a defendant with notice that includes the date and time that the defendant must appear before the judge, the name and address of the court, and information regarding alternatives to payment of any fine or costs owed.

Code of Criminal Procedure art. 45.041 requires a judge or justice to credit a defendant upon discharge for time spent in jail between arrest and sentencing for a fine-only misdemeanor. The credit is applied to the fine and costs associated with the misdemeanor at a rate of $100 or more for each period served, and a period can not be less than 8 hours or more than 24 hours, as specified by the convicting court in the judgment of the case.

DIGEST:

HB 569 would require a justice or judge, when imposing a fine and costs in a case involving a fine-only misdemeanor, to credit a defendant for any time the defendant was confined in jail or prison while serving a sentence for another offense if that confinement occurred after the commission of the misdemeanor. The credit would have to be applied to the amount of the fine and costs at the rate of $200 for each day of confinement.

Under the bill, the notice required by Code of Criminal Procedure art. 45.041 to be given to a defendant before an arrest warrant can be issued would have to include a statement that the defendant could be entitled to a credit toward any fine or costs owed if the defendant was confined in jail or prison after the commission of the offense for which the notice was given.

The bill would take effect September 1, 2021, and would apply to a defendant who was sentenced on or after that date, regardless of whether the offense was committed before, on, or after that date.

SUPPORTERS SAY:

HB 569 would remove financial burdens that formerly incarcerated individuals often face upon discharge by applying a credit for each day spent in jail to certain outstanding traffic tickets and misdemeanors punishable by fine.

Currently, a municipal judge or justice of the peace is required to credit an individual for time served between the time of the individual's arrest and sentencing for a related fine-only misdemeanor at a rate of $100 or more per period, which is then applied toward fines and costs associated with the offense. HB 569 would add a new category for which justices and judges must apply credit for time served toward fines and costs, requiring credit at a rate of $200 per day for any time an individual was confined in jail or prison while serving a sentence for a separate offense, as long as the confinement occurred after the offense associated with the outstanding fines and costs was committed. This would ensure consistency across jurisdictions and would reduce outstanding debts for more formerly incarcerated individuals, yielding higher rates of successful reentry.

Upon release from incarceration, many people go home to find out that they have outstanding tickets, fines, and warrants for fine-only

misdemeanors, which can preclude the person from securing a driver's license or identification necessary to find employment and pay off their debts. This can lead to formerly incarcerated individuals sometimes driving to work without a license or ID in order to pay off their outstanding debts at the risk of receiving another ticket, which can result in further debt and the possibility of more jail time related to warrants for arrest. This cycle of compiling debt and warrants for arrest related to that debt costs localities time and money and makes successful reintegration into the community for formerly incarcerated individuals extremely difficult.

Currently, jurisdictions across the state implement different practices regarding jail credits for fine-only misdemeanors or tickets due to the absence of specific laws covering this area. Some formerly incarcerated individuals are able to obtain help to navigate the system and address outstanding fines, but others are unable to access helpful resources or are subject to a jurisdiction that may not credit individuals for time served on a sentence. HB 569 would standardize the practice of crediting these formerly incarcerated people for time spent in jail across the state, clearing up confusion on applicable standards for courts and allowing formerly incarcerated individuals to move forward with reentry. Further, consistent application of this credit for time served would reduce outstanding fines and costs, reducing the need for arrest warrants and the resulting jail time associated with unpaid fines, ultimately saving counties money that would otherwise be spent on incarcerating individuals.

CRITICS SAY:

HB 569 could reduce the revenue associated with various court costs, fines, and fees that are imposed on defendants who would be eligible for jail credit toward those costs under the bill.

Judges and justices currently have discretion when deciding whether to provide credit for jail time served after commission of a fine-only misdemeanor toward the fines and costs associated with that misdemeanor or ticket. HB 569 would remove this discretion by requiring that a judge provide the jail credit at a rate of $200 per day for fine-only misdemeanors or tickets.

SUBJECT: Requiring agencies to publish brief summary of proposed rules on website

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson

0 nays

1 absent — Smithee

WITNESSES: For — (*Registered, but did not testify*: Cyrus Reed, Lone Star Chapter Sierra Club; Annie Spilman, NFIB; Tray Bates, Texas Realtors; Shelia Franklin and Sheena Rodriguez, True Texas Project; Thomas Parkinson; Ruth York)

Against — (*Registered, but did not testify*: Brian McDowell)

DIGEST: HB 1322 would require a state agency to publish a plain-language summary of a proposed rule on its website or another generally accessible website at the time it filed a 30-day notice of the proposed rule.

The bill would take effect September 1, 2021, and would apply only to a proposed rule for which notice was filed on or after that date.

SUPPORTERS SAY: HB 1322 would promote transparency by requiring state agencies to publish plain-language summaries of proposed rules on their websites. Currently, agencies are only required to publish proposed rules in the Texas Register, but many Texans do not know to look there or where to find it. The bill would improve access to this important public information.

CRITICS SAY: No concerns identified.

SUBJECT: Requiring a microchip scan of animals in the custody of an animal shelter

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 9 ayes — Coleman, Stucky, Anderson, Cason, Longoria, Lopez, Spiller, Stephenson, J. Turner

0 nays

WITNESSES: For — Cathy Gleason, Farmers to Felons; Stacy Sutton Kerby, Texas Humane Legislation Network; Katie Jarl, Texas Pets Alive; (*Registered, but did not testify*: Daniel Collins, El Paso County; Thamara Narvaez, Harris County Commissioners Court; Brian Hawthorne, Sheriffs Association of Texas; Julie Wheeler, Travis County Commissioners Court; Hilary Shurtleff; Jason Vaughn)

Against — None

DIGEST: HB 604 would require any animal shelter or releasing agency, including an animal rescue organization, to scan any animal placed in its custody for a microchip as soon as practicable.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: HB 604 would help reunite families with their pets, protect property rights, and create significant savings for shelters and rescue organizations by legally requiring a common best practice of animal shelters.

Many Texans have invested in microchip technology to assist in locating their lost or stolen pets and assume that any shelter or rescue organization that finds a pet will scan it for a chip. Unfortunately, not all shelters do so. Since state law seals animal adoption records, owners whose pets are adopted out have no further recourse for recovery. HB 604 would help prevent the situation of a pet being adopted out or even euthanized before its owner was able to claim it by requiring the prompt scan of the animal for an identifying microchip.

While some have expressed concern that the bill will impose extra costs on smaller shelters that do not already have a scanner, purchasing a scanner will ultimately save shelters money by reducing the number of animals being housed for extended periods. Additionally, multiple private organizations are available to help cover the costs of purchasing scanners for shelters and organizations that do not already have them.

CRITICS SAY:

HB 604 would impose a financial burden on some animal shelters. Scanning a pet for a microchip is a best practice, but many smaller shelters do not already have a scanner. A better approach would be to start a program that provides scanners to these shelters before legally requiring microchip scanning.

SUBJECT: Creating a voluntary certification program for recovery housing

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Klick, Guerra, Allison, Campos, Coleman, Collier, Jetton, Oliverson, Price, Smith

0 nays

1 absent — Zwiener

WITNESSES: For — Lee Johnson, Texas Council of Community Centers; Elizabeth Henry; (*Registered, but did not testify*: Alison Mohr Boleware, National Association of Social Workers -Texas Chapter; Devin Driver, Texas Criminal Justice Coalition; Ashley Harris, United Ways of Texas; Marci Purcell)

Against — None

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

DIGEST: CSHB 544 would establish minimum standards for a voluntary certification program for recovery houses through the Health and Human Services Commission. The bill would specify responsibilities of credentialing organizations, prohibit certain actions by certified recovery houses, and exempt several entities that could not seek certification as a recovery house.

The bill would define "recovery house" as a shared living environment that promoted sustained recovery from substance use disorders by integrating residents into the surrounding community and providing a setting that connected residents to supports and services that promoted sustained recovery from substance use disorders, was centered on peer support, and was free from alcohol and drug use.

"Credentialing organization" would mean an organization approved by HHSC that affirmed a recovery house satisfied certification criteria.

Voluntary certification standards. The bill would require HHSC to adopt minimum standards for certification as a recovery house that were consistent with quality standards from the National Alliance for Recovery Residences. The commission's standards would have to:

- require that a certified recovery house be managed by an administrator who satisfactorily completed the training specified in the bill; and
- prohibit a certified recovery house from providing personal care services defined under Health and Safety Code sec. 247.002.

Credentialing organizations. HHSC would have to authorize at least one credentialing organization to develop and administer a voluntary certification program for recovery housing.

A credentialing organization would have to:

- establish recovery house certification requirements that included, at minimum, certification standards adopted by HHSC;
- establish procedures to administer recovery house certification, including application, certification, recertification, and discipline, and to assess fees and monitor recovery houses and staff, among other provisions;
- provide training to recovery house administrators and staff regarding the adopted certification standards;
- develop a code of ethics; and
- provide information to HHSC for an annual report.

The bill would require a certified recovery house to notify the credentialing organization that issued its certification by the fourth business day after the recovery house administrator resigned, was terminated, or left the position for any other reason. The credentialing organization could revoke a recovery house's certification if the house had not been managed by a trained administrator for longer than 30 days.

If a certified recovery house violated the bill's provisions, the credentialing organization could suspend the certification for six months while the organization conducted an audit of the recovery house. After the completed audit, the organization could implement a corrective action plan or revoke the license.

Exclusions. Under the bill, certain facilities would not be eligible for certification as a recovery house, including:

- a chemical dependency treatment facility licensed under Health and Safety Code ch. 464, subch. A;
- a boarding home facility as defined by Health and Safety Code sec. 260.001;
- an entity qualified as a community home under Human Resources Code ch. 123;
- a family violence shelter center as defined by Human Resources Code sec. 51.002; and
- a hotel as defined by Tax Code sec. 156.001, among other entities specified in the bill.

Prohibitions. The bill would prohibit a recovery house administrator, employee, or agent from offering to pay or agreeing to accept remuneration to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency.

A recovery house could not advertise or cause to be advertised in any manner false, misleading, or deceptive information about the recovery house. A municipality or county could not adopt or enforce an ordinance, order, or other regulation that prevented a recovery house from operating in a residential community.

The following two provisions would take effect September 1, 2023. CSHB 544 would prohibit a non-certified recovery house from receiving state money. The bill also would prohibit certain entities from referring an individual to a non-certified recovery house, including:

- a state agency as defined by Government Code sec. 2054.003;
- an organization receiving money from this state;
- a facility licensed under Health and Safety Code Title 4, subtitle B;
- a chemical dependency treatment facility licensed under Health and Safety Code ch. 464, subch. A; and
- a health care professional licensed under Occupations Code Title 3.

Report. The bill would require HHSC to prepare an annual report that included:

- the total number of certified recovery houses;
- the number of recovery houses certified in the last year;
- any issues regarding the certification or recertification process;
- the number of certified recovery houses that had a certification revoked within the last year; and
- the reasons for revoking a recovery house's certification.

Unless otherwise stated, the bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 544 would better protect vulnerable individuals with substance use disorders by establishing a voluntary certification program for recovery houses. The bill would allow recovery homes to adopt nationally recognized standards and would empower consumer choice.

Currently, individuals in recovery often have difficulty distinguishing between fraudulent businesses claiming to be recovery housing and legitimate housing options. Requiring the inclusion of disciplinary procedures, a code of ethics, and training as part of the credentialing organization's procedures would improve oversight of recovery homes. The bill would help ensure individuals living in recovery homes were treated ethically and had access to evidence-based treatment, leading to better health outcomes.

By delaying the time frame in which funding and referrals could only be received by or occur for certified recovery homes, the bill would give recovery homes more time to meet new standards in the voluntary

certification program and ensure that housing remained available. Limiting referrals only to certified recovery homes would help substance use treatment providers appropriately identify and refer individuals to quality recovery homes providing supportive living environments and promoting long-term recovery.

CRITICS SAY:

No concerns identified.

NOTES:

The committee substitute differs from the bill as filed by specifying that Health and Safety Code sec. 469.0110 and sec. 469.0111 would take effect September 1, 2023. These provisions limit funding and referrals only to certified recovery homes.

SUBJECT: Prohibiting property owners' associations from restricting pool enclosures

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 9 ayes — C. Turner, Hefner, Cain, Crockett, Lambert, Ordaz Perez, Patterson, Shine, S. Thompson

0 nays

WITNESSES: For — Christi Brown and Mark Brown, Judah Brown Project; Jamie Corbett; Debbie Orsak; (*Registered, but did not testify*: Will McAdams, Associated Builders and Contractors of Texas; Annette Courtney, Judah Brown Project; Julia Parenteau, Texas Realtors; Ethan Armstrong)

Against — Connie Heyer, Texas Community Association Advocates; (*Registered, but did not testify*: Vanessa MacDougal)

DIGEST: CSHB 67 would prohibit a property owners' association from adopting or enforcing a provision in a dedicatory instrument that prohibited or restricted a property owner from installing a swimming pool enclosure that conformed to state or local safety requirements.

"Swimming pool enclosure" would mean a fence that surrounded a water feature, including a swimming pool or spa; consisted of transparent mesh or clear panels set in metal frames; was not more than six feet tall; and was designed to not be climbable.

The bill would allow a property owners' association to adopt and enforce a provision establishing limitation to the appearance of a swimming pool enclosure, including limitations on permissible colors, provided that the provision did not prohibit an enclosure that was black and consisted of transparent mesh set in metal frames.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: CSHB 67 would prohibit property owners' associations from restricting the installation of swimming pool enclosures, allowing homeowners to

take precautions to save lives by building a fence around their pools and spas. According to the Centers for Disease Control and Prevention, accidental drowning is the No. 1 cause of death among children one to four years old, and most drownings occur in home swimming pools. This bill would support homeowner rights to safeguard their property and prevent young children from accessing their pool without supervision.

CSHB 67 would not restrict a property owners' association from adopting a rule related to the appearance of the swimming enclosure, as long as they did not deny the approval of a black enclosure or one made of transparent mesh. This would allow associations to maintain uniformity in water feature enclosures within their communities.

CRITICS SAY:

No concerns identified.

SUBJECT: Increasing punishment for improper sexual activity with person in custody

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut

0 nays

WITNESSES: For — Brian Hawthorne, Sheriffs' Association of Texas; (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association and State FOP; James Parnell, Dallas Police Association; Quint Balkcom, Game Warden Peace Officer's Association; Ray Hunt, Houston Police Officers' Union; Kristen Lenau, Texas Association Against Sexual Assault; John Wilkerson, Texas Municipal Police Association; Julie Wheeler, Travis County Commissioners Court)

Against — None

On — (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Penal Code sec. 39.04 (a)(2) makes it an offense to engage in improper sexual activity with a person in custody or under supervision. The offense can be committed by officials of correctional facilities or juvenile facilities, employees of these facilities, other persons who work at these facilities, volunteers at the facilities, or peace officers.

The offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) unless committed against an individual in the Texas Juvenile Justice Department or a juvenile in a correctional facility, in which case it is a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000).

DIGEST: HB 376 would increase to a second degree felony the penalty for improper sexual activity with a person in custody who is not in a juvenile facility or a juvenile in a correctional facility.

The bill would take effect September 1, 2021, and would apply to offenses committed on or after that date.

SUPPORTERS SAY:

HB 376 would make the punishment for improper sexual activity with a person in custody better fit the crime by increasing the punishment to a second-degree felony. This is a serious crime that warrants a more serious felony punishment than that set under current law.

The bill would establish the same punishment for improper sexual activity with a person in custody as that for sexual assault and the punishment currently set in Penal Code sec. 21.12 for improper relationships between an educator and a student. Offenses involving those in custody and students both involve situations with an imbalance of power in which true consent cannot be given and should carry the same punishment. HB 376 is consistent with the state's duty to protect those in custody. The bill would both deter the crime and ensure that if the crime occurred, it would be appropriately punished.

CRITICS SAY:

HB 376 is unnecessary because the offense of improper sexual activity with a person in custody already is punished as a felony and circumstances involving rape would fall under the sexual assault statutes, which generally are second-degree felonies.