HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • https://hro.house.texas.gov

HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, April 29, 2021
87th Legislature, Number 45
The House convenes at 10 a.m.
Part Three

Five bills are on the Major State Calendar and 49 bills are on the General State Calendar for second reading consideration today. The bills analyzed or digested in Part Three of today's *Daily Floor Report* are listed on the following page.

The following House committees were scheduled to meet today: Insurance; Agriculture and Livestock; Higher Education; State Affairs; Elections; Appropriations; Juvenile Justice and Family Issues; Natural Resources; Criminal Jurisprudence; County Affairs; and Homeland Security and Public Safety.

Analyses for postponed bills and all bills on second reading can be found online on TLIS and at https://hro.house.texas.gov/BillAnalysis.aspx.

Alma Allen
Chairman
87(R) - 45

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

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Part 3

SUBJECT: Rules on continuing education programs for fire alarm device installation

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Oliverson, Vo, J. González, Israel, Paul, Romero, Sanford

2 nays — Hull, Middleton

WITNESSES: For — Cindy Giedraitis, National Fire Sprinkler Association; Kelly Ryan, Texas Burglar & Fire Alarm Association; (*Registered, but did not testify*: Bill Kelly, Mayor's Office for City of Houston)

Against — None

BACKGROUND: Insurance Code ch. 6002 regulates the certification, sale, servicing, installation, and maintenance of fire detection and alarm devices. The commissioner of the Texas Department of Insurance is allowed to adopt rules to administer ch. 6002, including rules deemed necessary to administer the chapter through the state fire marshal.

Sec. 6002.159 allows the commissioner to adopt procedures for certifying continuing education programs. Participation in the continuing education programs is voluntary.

Interested parties note that, because participation in continuing education programs for fire detection and alarm device installation is voluntary, licensed fire alarm technicians may not be properly trained. Suggestions have been made to grant authority to the commissioner of insurance for determining the appropriate level of participation in certified continuing education programs.

DIGEST: CSHB 2885 would replace a provision in current law regarding voluntary participation in the continuing education program by allowing the commissioner of the Texas Department of Insurance (TDI) to adopt a rule that required up to eight hours of continuing education for any license renewal period.

The bill would prohibit the TDI commissioner from adopting a rule that excluded or devalued a signed or otherwise substantially verifiable certification of training that was:

- applicable to the areas of work authorized by the relevant license; and
- issued by a training program or school that was nationally recognized or authorized under the Occupations Code or Education Code.

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.

SUBJECT: Requiring the payment of certain insurance deductibles

COMMITTEE: Insurance — committee substitute recommended

VOTE: 6 ayes — Oliverson, Vo, Hull, Middleton, Paul, Sanford

3 nays — J. González, Israel, Romero

WITNESSES: For — Sarah Burns-Ramon and Paul Ramon, Roofing Contractors Association of Texas; Brian Haden, Texas Association of Public Insurance Adjusters; (*Registered, but did not testify*: Anne O'Ryan, AAA Texas; Ware Wendell, Texas Watch; Dustin Guess; Melanie Knox; David Longoria)

Against — Carl Isett, Texas Independent Roofers Association; (*Registered, but did not testify*: Petrus Wassdorf, JFerg Roofing; Sawyer Hennig, Texas Roofer and Consumer Association; Frank Fuentes, U.S. Hispanic Contractors Association)

On — Jennifer Jackson, Attorney General; Luke Bellsnyder, Texas Department of Insurance

BACKGROUND: Insurance Code sec. 707.004 allows an insurer that issues a property insurance policy with replacement cost coverage to refuse to pay a claim under the policy until the insurer receives reasonable proof that the policyholder has paid any applicable deductible.

Business and Commerce Code sec. 27.02(c) makes it an offense for a person who sells goods and services to advertise or promise to provide a good or service to a person insured under a property insurance policy in a transaction in which the seller will, without the insurer's consent:

- pay, waive, or otherwise decline to charge or collect the insured's deductible;
- provide a rebate or credit in connection with the sale of the good or service that will offset all or part of the insured's deductible; or

- in any other manner assist the insured in avoiding monetary payment of the required insurance deductible.

It is also an offense under that section for a seller to provide a good or service to a person insured under a property insurance policy knowing that the insured will pay for the good or service with the proceeds of a claim under the policy and, without the insurer's consent, pay or decline to collect the deductible, provide a rebate or credit that will offset the deductible, or otherwise assist the insured in avoiding payment of the deductible.

In order to prevent certain anti-competitive behavior, some have called for prohibiting insurers from waiving a policyholder's deductible in exchange for the use of a preferred or recommended contractor.

DIGEST:

CSHB 1433 would prohibit an insurer from waiving a deductible owed by a policyholder under a property insurance policy in exchange for the policyholder's use of the insurer's preferred or recommended contractor for the relevant claim.

The bill also would amend Insurance Code sec. 707.004 to require, rather than allow, an insurer that issued a property insurance policy with replacement cost coverage to refuse to pay a claim under the policy until the insurer received reasonable proof of payment by the policyholder of any applicable deductible.

The bill would amend Business and Commerce Code sec. 27.02(c) to remove references to a person selling goods or services paid for by insurance proceeds obtaining consent from an insurer to engage in certain conduct that was otherwise prohibited.

The bill would take effect September 1, 2021, and would apply only to an insurance policy delivered, issued for delivery, or renewed on or after that date.

SUBJECT: Requiring certain health plans to cover scalp cooling systems

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Oliverson, Vo, J. González, Hull, Israel, Paul, Romero, Sanford

1 nay — Middleton

WITNESSES: For — Melissa Bourestom, Dignitana; Nancy Brougham; Sarah Koller; Rebecca Munoz; Julie Nangia

Against — Jamie Dudensing, Texas Association of Health Plans; Bill Hammond, Texas Employers for Insurance Reform; (*Registered, but did not testify*: John McCord, NFIB; Megan Herring, Texas Association of Business; Jennifer Cawley, Texas Association of Life & Health Insurers)

On — (*Registered, but did not testify*: Jenny Blakey, OPIC; Luke Bellsnyder, Texas Department of Insurance)

BACKGROUND: Interested parties report that some patients forego chemotherapy due to fear of losing their hair. Suggestions have been made to increase access to scalp cooling, which interested parties suggest is an effective way to combat chemotherapy-induced hair loss and is approved by the U.S. Food and Drug Administration for use during cancer treatment.

DIGEST: CSHB 1588 would require certain health benefit plans to provide coverage for scalp cooling for certain cancer patients.

Definitions. The bill would define "scalp cooling" as a system, application, or procedure approved by the U.S. Food and Drug Administration for reducing hair loss in an individual undergoing chemotherapy treatment.

Applicability. The bill would apply only to certain health plans issued by a specified organization, including:

- a plan issued by a health maintenance organization;

- a small employer health plan subject to the Health Insurance Portability and Availability Act; and
- a consumer choice of benefit plan.

The bill would apply only to a health plan issued or renewed on or after January 1, 2022.

Exemptions. The bill would not apply to a qualified health plan if a determination was made under 45 C.F.R. Section 155.170 that:

- the bill required the plan to offer benefits in addition to the essential health benefits required under 42 U.S.C. Section 18022(b); and
- the state was required to defray the cost of mandated benefits.

Required coverage. Under the bill, a health plan would have to provide coverage for scalp cooling:

- for an enrollee who was undergoing or had undergone cancer treatment; and
- that was determined by the enrollee's treating physician to be appropriate for the enrollee in connection with the cancer treatment's side effects.

The required coverage would have to be provided in an appropriate manner as determined in consultation with the treating physician and enrollee, and the coverage could be subject to annual deductible, copayments, and coinsurance consistent with other benefits provided under the health plan.

The bill would prohibit the required coverage from being subject to annual dollar limits.

Other provisions. The bill would allow a health plan to require prior authorization for scalp cooling in the same manner that the plan required prior authorization for other health benefits.

The bill would take effect September 1, 2021.

SUBJECT: Limiting law enforcement agency use of force by drone; adopting policy

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — White, Bowers, Goodwin, Harless, Hefner, E. Morales, Patterson, Schaefer, Tinderholt

0 nays

WITNESSES: For — (*Registered, but did not testify*: Shelia Franklin, True Texas Project; Julie Campbell; Russell Parish; Chris Woolsey; Paul Yamarick)

Against — Dylan Price; Gary Zimmerman; (*Registered, but did not testify*: Louis Wichers, Texas Gun Sense; and seven individuals)

BACKGROUND: Some have raised concerns about the potential misuse of new drone technology and noted that lawmakers should consider what their potential law enforcement uses should be.

DIGEST: CSHB 1758 would require each law enforcement agency to adopt a written policy on the agency's use of force by means of a drone and update the policy as necessary.

A drone would mean an unmanned aircraft, watercraft, or ground vehicle or a robotic device that was controlled remotely by a human operator or operated autonomously through computer software or other programming.

An agency would have to submit the policy to the Texas Commission on Law Enforcement (TCOLE) by January 1 of each even-numbered year. An agency would have to adopt a policy and first submit it to TCOLE by January 1, 2022.

Under the bill, the use of force, including deadly force, involving a drone would be justified only if:

- the actor was employed by a law enforcement agency;

- the use of force would have been justified under other state law and did not involve the use of deadly force by means of an autonomous drone; and
- before the use of force occurred, the law enforcement agency employing the actor adopted and submitted a policy to TCOLE as required by the bill and the use of force conformed to the policy.

The bill would take effect September 1, 2021.

SUBJECT: Extending the deadline for applications related to certain cemeteries

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 7 ayes — Deshotel, Leman, Burrows, Craddick, Romero, Spiller, Thierry

0 nays

2 absent — Biedermann, Rosenthal

WITNESSES: None

BACKGROUND: Concerns have been raised that rapid population growth and state restrictions on new cemeteries within certain distances of cities have made it difficult for families to bury their loved ones close to their homes and local churches.

DIGEST: HB 1910 would extend from September 1, 2020, to September 1, 2024, the deadline by which nonprofit organizations could file a written application with the governing body of a municipality located wholly or partly in a county with a population of more than 3.3 million (Harris County) to establish or use a cemetery located within the municipality.

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.

SUBJECT: Specifying provisions regarding certain deduction for motor vehicle taxes

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 — None

Against — None

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

BACKGROUND: For the purpose of determining taxes imposed on the sale, rental, or use of a motor vehicle, under Tax Code sec. 152.002, a person may deduct a motor vehicle's fair market value from the total consideration paid for a replacement vehicle if the person is in the business of selling, renting, or leasing motor vehicles, obtains the certificate of title, and uses the vehicle for business or personal purposes.

DIGEST: HB 2627 would specify that the fair market value deduction for a replacement motor vehicle obtained by a person in the business of selling, renting, or leasing motor vehicles was applicable only with respect to vehicles titled and used in Texas.

The bill would be a clarification of existing law and would not imply that existing law could be construed as inconsistent with this 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.

SUBJECT: Revising insurer and provider practices in preferred provider benefit plans

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul, Sanford

1 nay — Romero

WITNESSES: For — Michael Honea, Glen Rose Medical Center; Ezequiel Silva, Texas Medical Association; Adam Bruggeman, Texas Orthopaedic Association; Jeff Lyle; (*Registered, but did not testify*: Jim Pitts, Baylor Scott White; Daniel Chepkauskas, Patient Choice Coalition; Tom Banning, Texas Academy of Family Physicians; Tommy Engelke, Texas Agricultural Cooperative Council; David Reynolds, Texas Chapter of the American College of Physicians; Cameron Duncan, Texas Hospital Association; Clayton Stewart, Texas Medical Association; Adrienne Trigg, Texas Medical Equipment Providers Association; Bobby Hillert, Texas Orthopaedic Association; Jill Sutton, Texas Osteopathic Medical Association; Bonnie Bruce, Texas Society of Anesthesiologists; John Henderson, Torch)

Against — Jamie Dudensing, Texas Association of Health Plans; (*Registered, but did not testify*: Patricia Kolodzey, Blue Cross Blue Shield of Texas; Bill Hammond, Texas Employers for Insurance Reform)

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

BACKGROUND: Insurance Code sec. 1301.066 prohibits an insurer from taking certain retaliatory actions against a physician or health care provider, including terminating the physician's or provider's participation in the preferred provider benefit plan or refusing to renew the physician's or provider's contract, because the physician or provider has:

- on behalf of the insured, reasonably filed a complaint against the insurer; or

- appealed an insurer's decision.

Sec. 1301.1052 requires an insurer to give a preferred provider who disagrees with an insurer's request for a refund an opportunity to appeal that request. Sec. 1301.132 requires an insurer to give a physician or health care provider who disagrees with an insurer's request to recover an overpayment an opportunity to appeal that request. The insurer may not attempt to recover the payment until all appeal rights are exhausted.

Interested parties note that there may be significant gaps in state law regarding claim payments, audits, appeals, and remedies for health care providers, leaving providers vulnerable. Suggestions have been made to address certain regulatory gaps in preferred provider benefit plans.

DIGEST:

CSHB 2929 would revise certain provisions relating to retaliatory actions, clean and audited claims, completed audits, and opportunities for post-audit appeals in preferred provider benefit plans.

Retaliatory actions. The bill would expand the retaliatory actions an insurer could not take against a physician or provider to include:

- implementing measurable penalties in the contract negotiation process;
- engaged in an unfair or deceptive practice;
- arbitrarily reduced the physician's or provider's fees on the insurer's fee schedule; and
- otherwise made changes to material contractual terms that were adverse to the physician or provider.

Completed audits. The bill would prohibit an insurer from recovering a payment on an audited claim until a final audit was completed.

Appeals after audit. The bill would require an insurer to provide a reasonable mechanism for a preferred provider's request to appeal an insurer's request to recover a refund or provider overpayment.

Review of audits. The bill would require the commissioner of the Texas Department of Insurance by rule to establish procedures for a preferred provider to submit a request for the department to review certain audits conducted by an insurer. The department's review of an audit would be a contested case under Government Code ch. 2001.

The bill would take effect September 1, 2021, and would apply only to a claim for payment made on or after the effective date.

SUBJECT: Imposing use tax on property transferred into state by purchaser's affiliate

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Meyer, Thierry, Button, Cole, Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

2 absent — Guerra, Martinez Fischer

WITNESSES: For — None

Against — None

On — Jim Allison, County Judges and Commissioners Association of Texas; (*Registered, but did not testify*: Karey Barton, Comptroller of Public Accounts)

BACKGROUND: Under Tax Code sec. 151.105, tangible personal property that is shipped or brought into the state by a purchaser is presumed, in the absence of evidence to the contrary, to have been purchased from a retailer for storage, use, or consumption in this state.

Concerns have been raised that, because use tax is only imposed on property that is purchased from a retailer, a purchaser may transfer the property in such a way that does not substantially change the ownership, but allows the purchaser to avoid paying use tax. Some have called for tax to be paid on property that is transferred between affiliated entities and used in Texas.

DIGEST: HB 2626 would impose a use tax on the sales price paid by the purchaser of tangible personal property that was shipped or brought into Texas by an affiliate of the purchaser. The bill would remove the presumption that the property was purchased from a retailer.

For the purposes of the bill, "affiliate" would mean an entity that would be classified as a member of the purchaser's group for franchise tax purposes.

The bill would take effect September 1, 2021.

SUBJECT: Relating to the settlement of certain claims on behalf of a minor.

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Leach, Davis, Dutton, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

WITNESSES: For — Jon Schnautz, National Association of Mutual Insurance Companies (NAMIC); George Christian, Texas Civil Justice League; (*Registered, but did not testify*: Joe Woods, American Property and Casualty Insurance Association; Tristan Castaneda Jr, Hochheim Praire Casualty Insurance Company; Lee Parsley, Texans for Lawsuit Reform)

Against — None

On — (*Registered, but did not testify*: Tiffany Roper, Department of Family and Protective Services)

BACKGROUND: Property Code sec. 141.008 authorizes certain persons who hold property of or owe a liquidated debt to a minor without a guardian to make an irrevocable transfer to a custodian for the benefit of the minor.

Concerns have been raised regarding the significant expenses and amounts of time often spent when trying to reach small settlements involving minors. The lengthy court process sometimes prevents involved parties from receiving settlements in a timely manner, further congesting courts and creating burdens for all parties.

DIGEST: CSHB 903 would allow a person with legal custody of a minor to enter into a settlement agreement on behalf of the minor with a person against whom the minor had a claim if:

- a guardian or guardian ad litem had not been appointed for the minor;
- the total amount of the settlement was $25,000 or less;

- the money to be paid would by paid under applicable provisions of the bill; and
- the person entering into the settlement agreement on behalf of the minor completed an affidavit or verified statement attesting that, after a reasonable inquiry, to the best of the person's knowledge, the minor would be fully compensated by the settlement, or that there was no practical way to obtain additional settlement amounts.

If an attorney was representing the person entering into the settlement on behalf of the minor, the attorney would be required to maintain the affidavit or verified statement attesting to the adequacy of the settlement until the second anniversary of the date after the minor turned 21.

Settlement funds. Money payable to a minor under a settlement agreement would have to be deposited into the registry of the court in which the civil action asserting the settled claim was filed, or if no claim was filed, into the registry of a court in which the claim could have been filed. A court order would not be required to make such a deposit.

Money deposited into the court registry could not be withdrawn, removed, paid out, or transferred to any person, including the minor, except pursuant to a court order, upon the minor turning 18, or on the minor's death.

If the settlement money was to be paid by the payment of premium to purchase an annuity, the payment would have to be made by direct payment to the annuity provider with the minor designated as the sole beneficiary of the annuity.

Binding effect of settlement. The signature of the person entering the settlement agreement on behalf of the minor would be binding on the minor without the need for further court action and would have the same force and effect as if the minor were a competent adult entering into the agreement.

Liability. A person acting in good faith on behalf of a minor would not be liable to the minor for the settlement money or for any other claim arising out of the settlement.

The person with whom the minor settled the claim would not be liable to the minor for any claim arising from the settlement if that person had settled in good faith.

Other provisions. A person holding debt incurred under a settlement agreement made under the provisions of the bill would not be authorized to make an irrevocable transfer to a custodian for the benefit of the minor.

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

SUBJECT: Amending certain provisions for Texas Windstorm Insurance Association

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Oliverson, Vo, Hull, Israel, Middleton, Paul, Romero, Sanford

1 nay — J. González

WITNESSES: For — Greg Smith, City of Corpus Christi; Sally Bakko, City of Galveston; Stephen Alexander and Ryan Brannan, Coastal Windstorm Insurance Coalition; (*Registered, but did not testify*: Ben Molina, City of Corpus Christi; Ned Muñoz, Texas Association of Builders; Robert Flores, Texas Association of Mexican-American Chambers of Commerce (TAMACC); Ginny Cross, United Corpus Christi Chamber of Commerce)

Against — Jay Thompson, Afact; Joe Woods, American Property and Casualty Insurance Association; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Anne O'Ryan, Auto Club Indemnity; Jon Schnautz, National Association of Mutual Insurance Companies)

On — (*Registered, but did not testify*: Kenneth Lovoy, Office of Public Insurance Counsel; Luke Bellsnyder, Texas Department of Insurance; James Murphy, Texas Windstorm Insurance Association)

BACKGROUND: Insurance Code ch. 2210 governs the Texas Windstorm Insurance Association (TWIA), a nonprofit insurance provider of windstorm and hail insurance for residential and commercial property owners in designated coastal counties who are unable to purchase coverage in the private insurance marketplace. TWIA operates with regulation and oversight from the Texas Department of Insurance (TDI).

Sec. 2210.452 governs the authorized uses of the catastrophe reserve trust fund. At the end of each calendar year or policy year, TWIA must use the net gain from its operations, including all premium and other revenue in excess of incurred losses, operating expenses, public security obligations,

and public security administrative expenses, to make payments to the trust fund, procure reinsurance, or use alternative risk financing mechanisms.

Sec. 2210.4521 requires TWIA's board to, at least once each 12-month period, determine a sufficient balance for the trust fund to meet cash flow requirements in funding the payment of insured losses. Sec. 2210.453 requires the association to maintain total available loss funding in an amount not less than the maximum loss for the association for a catastrophe year with a probability of one in 100.

Sec. 2210.611 permits certain excess revenue collections and investment earnings to be deposited in the catastrophe reserve trust fund.

Interested parties suggest that additional reforms to TWIA are needed to improve its administration and ensure that it operates effectively and efficiently.

DIGEST:

CSHB 769 would revise certain provisions relating to the Texas Windstorm Insurance Association's (TWIA) headquarters and the catastrophe reserve trust fund.

Location and proposed rates. The bill would require the association's headquarters to be located in a first or second tier coastal county by January 1, 2023.

The bill would prohibit TWIA's board of directors from voting on a proposed rate filing if there was a vacancy on the board.

Catastrophe Reserve Trust Fund. The bill would revise certain provisions under Insurance Code sec. 2210.452 by removing the requirement that TWIA use its net operational gain to make payments to the trust fund to procure reinsurance or use alternative risk financing mechanisms. The bill would require TWIA to pay public security obligations, giving priority to the obligations with the highest interest rates.

The bill also would remove TWIA's authority to deposit certain excess revenue collections into the catastrophe reserve trust fund.

Probable loss. Among other specified provisions, in determining the probable maximum loss, the association:

- could not consider the cost of providing loss adjustments;
- to the extent possible, would have to contract with any disinterested third parties necessary to execute any hurricane risk simulation models that were executed in the preceding storm season;
- would have to provide to a third party executing a hurricane risk simulation model any necessary information;
- could not use a combination of hurricane risk simulation models to determine the probable maximum loss; and
- could only use the hurricane risk simulation model that produced the lowest probable maximum loss.

Other provisions. The bill would revise certain dates relating to required reports and studies in addition to TWIA's legislative funding and funding structure oversight board.

By the 60th day after the bill's effective date, the Texas Department of Insurance would have to amend TWIA's plan of operation to conform to the bill's provisions.

The bill would take effect September 1, 2021.

SUBJECT: Authorizing court reporters to take depositions

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Leach, Julie Johnson, Krause, Middleton, Schofield, Smith

0 nays

3 absent — Davis, Dutton, Moody

WITNESSES: For — Mellony Ariail and Steve Bresnen, Texas Court Reporters Association; Karen Usher, Texas Deposition Reporters Association; (*Registered, but did not testify*: Guy Herman, Statutory Probate Courts of Texas as Presiding Judge; Amy Bresnen, Kim Cherry, and Gale Fiasco, Texas Court Reporters Association; Keith Oakley, Texas Deposition Reporters Association; Jim Perdue, Texas Trial Lawyers Association)

Against — None

BACKGROUND: Code of Criminal Procedure art. 39.03 allows a court to appoint, order, or designate one of the following persons before whom a deposition in a criminal case shall be taken: a district judge, a county judge, a notary public, a district clerk, or a county clerk.

In response to pandemic-related court closures, the Texas Supreme Court and Office of Court Administration authorized and purchased new technology tools to make remote court reporting feasible, and it has been suggested that changes to state law be made to allow remote court reporting to continue after the emergency orders expire. Interested parties say that expanding the conditions under which a certified court reporter could take a witness deposition to include remote options, such as videoconferencing, would increase efficiencies.

DIGEST: CSHB 2579 would authorize a court reporter to take a witness deposition in a criminal case. The bill would establish that a court reporter could comply with the Texas Rules of Appellate Procedure relating to filing notes in a criminal case by electronically filing the untranscribed notes

created by the court reporter using computer-aided software with the trial court not later than the 20th day after the expiration of the time the defendant was allotted to perfect the appeal.

A court reporting firm representative or a court reporter who reported a deposition for a case would be required to complete and sign a deposition certificate, known as the further certification. The deposition certificate would have to include certain statements, dates, and charges as specified in the bill.

The bill would authorize an official court reporter of a court of record to conduct the deposition of witnesses, receive, execute, and return commissions, and make a certificate of the proceedings in any court, rather than in any county in the court's judicial district.

Witness oaths. CSHB 2579 would authorize a shorthand reporter to administer oaths to witnesses as follows:

- in a jurisdiction outside this state if the reporter was at the same location as the witness and the witness was or could be a witness in a case filed in this state; and
- at any location authorized in a reciprocity agreement between this state and another jurisdiction; and
- without being at the same location as a witness or potential witness in a case filed in Texas if the reporter was physically located in Texas at the time the oath was administered or both the witness and the reporter were located in a jurisdiction that had an applicable reciprocity agreement with Texas.

The identity of a witness who was not in the physical presence of a shorthand reporter could be proven by certain statements under oath or on the record as specified in the bill or by the witness's presentation for inspection by the court reporter of an official document issued by this state or certain other jurisdictions.

A shorthand reporter to which the requirements applied would have to state on the record and certify in each transcript of the deposition the physical location of the witness and the reporter.

Definitions. CSHB 2579 would update definitions of "shorthand reporter" and "court reporter" to harmonize with applicable certification requirements. The bill would update a provision relating to the use of electronic court recording equipment to clarify that the operation of that equipment by a person who engaged in shorthand reporting but was not certified as a court reporter would be neither sanctioned nor prohibited by certification requirements associated with the titles or designations "court recorder," "court reporter," or "shorthand reporter."

The bill would take effect September 1, 2021, and would only apply to a deposition taken in a criminal case after that date.

SUBJECT: Requiring a DPS database for defendants subject to alcohol monitoring

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

VOTE: 9 ayes — White, Bowers, Goodwin, Harless, Hefner, E. Morales, Patterson, Schaefer, Tinderholt

0 nays

WITNESSES: For — (*Registered, but did not testify:* Jennifer Szimanski, CLEAT; Noel Johnson, JPCA; Jimmy Rodriguez, San Antonio Police Officers Association; AJ Louderback, Sheriffs Association of Texas; Dee Chambless, Smith County Republican Women; Johnathan Dallas Reed, Texas Municipal Police Association; Shelia Franklin, True Texas Project; and seven individuals)

Against — (*Registered, but did not testify*: Elizabeth Doyel)

On — Jason Hester, Texas Department of Public Safety

BACKGROUND: Interested parties note that compliance with court-ordered alcohol monitoring would increase if there were a database for peace officers to determine if a driver pulled over during a traffic stop was required to have an ignition interlock device due to the driver's involvement with an alcohol or drug offense.

DIGEST: HB 2733 would require courts, magistrates, and judges to provide the Texas Department of Public Safety (DPS) with information about defendants who were restricted as a condition of bond, conviction, or community supervision to operating a motor vehicle with an ignition interlock device or required to use any other alcohol monitoring device. DPS would be required to maintain this information in a database that could be made available to a peace officer through a mobile data terminal. The database would have to be created before January 1, 2022.

Database. The database would include name, birth date, and driver's license number for each defendant subject to an ignition interlock

restriction or alcohol monitoring requirement in a format that allowed a law enforcement agency to make the information available to a peace officer through a mobile data terminal. The database would have to promptly reflect certain updated information as specified in the bill.

A defendant's name would have to be removed upon the expiration or termination of the restriction or requirement.

In lieu of creating the database, DPS could comply by incorporating the database requirement into an existing database or electronic record system it maintained.

Reporting requirements. HB 2733 would require a peace officer to make a report to DPS if the officer had reasonable cause to believe that a person had violated a condition of bond, a condition of community supervision, or a court order restricting the person to the operation of a motor vehicle equipped with an ignition interlock device or alcohol monitoring through another device.

The Texas Department of Criminal Justice would no longer have to require local probation departments to provide DPS with information about persons prohibited from operating a motor vehicle without an alcohol monitoring device.

HB 2733 would apply only to a court order for an ignition interlock device or other alcohol monitoring device, an indictment or information, or a restriction that was imposed on or after January 1, 2022.

The bill would take effect September 1, 2021.

SUBJECT: Making assault as part of a mass shooting aggravated assault

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

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

0 nays

1 absent — Murr

WITNESSES: For — M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; (*Registered, but did not testify*: Jennifer Szimanski, CLEAT; Frederick Frazier, Dallas Police Association/FOP716 State FOP; Traci Bennett and Brian Middleton, Fort Bend County District Attorney's Office; John McGalin, Houston Police Department; Ray Hunt, HPOU; Aimee Mobley Turney, League of Women Voters of Texas; Tiana Sanford, Montgomery County District Attorney's Office; James Smith, San Antonio Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Tom Maddox, Sheriffs Association of Texas; Mary Lynn Rice-Lively, Frances Schenkkan, and Louis Wichers, Texas Gun Sense; John Wilkerson, Texas Municipal Police Association; David Kohler; Thomas Parkinson; LaTonya Whittington)

Against — (*Registered, but did not testify*: Terri Hall; Deana Johnston)

BACKGROUND: Under Penal Code sec. 22.02, the offense of aggravated assault is committed if an individual commits assault and causes serious bodily injury to another or uses or exhibits a deadly weapon during the commission of the assault. Offenses can be second-degree felonies (two to 20 years in prison and an optional fine of up to $10,000) or first-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000).

Under Penal Code sec. 3.03(b), if an individual is found guilty of more than one offense arising out of the same criminal episode the sentences may run concurrently or, under certain circumstances, the sentences may

be served consecutively.

Concerns have been raised that the punishment for mass shootings does not fit the crime and should be increased.

DIGEST:

CSHB 2781 would make committing an assault as part of a mass shooting an aggravated assault punished as a first-degree felony.

"Mass shooting" would be defined to mean a person's discharge of a firearm to cause serious bodily injury or death, or to attempt to cause serious bodily injury or death, to four or more persons:

- during the same criminal transaction; or
- during different criminal transactions but pursuant to the same scheme or course of conduct.

If in a single criminal action, an individual was convicted of more than one offense of aggravated assault that came out of the same criminal episode, the sentences would run consecutively if each was a conviction of assault as part of a mass shooting.

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

SUBJECT: Providing for removal of discriminatory provisions by amendment

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — C. Turner, Hefner, Crockett, Lambert, Ordaz Perez, Patterson

0 nays

3 absent — Cain, Shine, S. Thompson

WITNESSES: For — Leah Burton, CAI San Antonio; Nancy Kozanecki, HOA Reform Coalition; David Kahne (*Registered, but did not testify*: John Krueger, Associa; Jay Propes, Spectrum Association Management; Shannon Jaquette, Texas Catholic Conference of Bishops; Mia McCord, Texas Conservative Coalition; Joshua Houston, Texas Impact; Julia Parenteau, Texas Realtors)

Against — None

BACKGROUND: Concerns have been raised that currently available methods for amending deed restrictions in this state make it impractical for communities who wish to remove certain discriminatory content from their deed restrictions to do so.

DIGEST: CSHB 1202 would provide specified methods to dedicatory instruments to remove discriminatory content.

Definitions. "Dedicatory instrument" would have the meaning assigned by Property Code sec. 202.001 to include any document governing the establishment, maintenance, or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term would include instruments subjecting real property to restrictive covenants.

"Discriminatory provision" would mean a restrictive covenant that was void under state law and that prohibited the occupancy by or the sale,

lease, conveyance, or transfer of real property or interest in real property to a person because of race, color, religion, or national origin.

Property subject to a property owners' association. The governing body of a property owners association would be able to amend a dedicatory instrument to remove a discriminatory provision by a majority vote on its own motion or that of any other member of the association.

The governing body of a property owners association under a dedicatory instrument that allowed for the circulation of a petition would be required to amend a dedicatory instrument to remove a discriminatory provision if a petition to remove the provisions was circulated in accordance with the instrument's provisions and regardless of any threshold for approval under the instrument, was approved by the owners of at least 10 percent of the relevant lots or units.

An amendment under these provisions would effective if it indicated its adoption under the relevant statute with specific reference to the statute, was filed in the relevant county records, and, in the case of a dedicatory instrument without petition provisions, was signed by the majority of the association's governing body.

Property not subject to a property owners' association. Property owners under a dedicatory instrument that did not establish an association would be able to form a committee of at least three members for the sole purpose of amending the instrument to remove a discriminatory provision. The committee would be required to file written notice of its formation with the county clerk. The notice would have to contain:

- a statement that an amendment committee had been formed to remove a discriminatory provision;
- the name and address of each committee member;
- a reference to the real property records, map, or plat records where the relevant dedicatory instrument was recorded and the name of the subdivision or development, as applicable; and
- a copy of the proposed amendment indicating the deletion of the discriminatory provision from the original restrictive covenant or restating the original covenant without the provision.

Before filing the notice, each committee member would have to sign it in the presence of a notary or other authorized official. The notice would be recorded with its filing date in the county's real property records. No later than 30 days after filing, the committee would have to provide a copy of the notice to the property owners subject to the dedicatory instrument by one of various means described by the bill.

A property owner subject to the instrument would be able to file an objection to the proposed amendment if it was :

- signed by the owners of at least 25 percent of the relevant units or lots; and
- filed with any county clerk with which the committee notice was filed no later than 90 days after the notice filing.

If no such objection were filed, the proposed amendment would be effective from the day it was filed. A committee that did not file an amendment before the 120th day after filing notice of the committee's formation would be dissolved, and any amendment filed thereafter would be void.

Other provisions. Any amendment that amended any provision other than a discriminatory provision would be void. The bill would apply to any dedicatory instrument, regardless of when the instrument was recorded.

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.

SUBJECT: Including burglary of vehicles as a common nuisance activity

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Leach, Davis, Dutton, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

WITNESSES: For — Robert Miklos, City of Mesquite; (*Registered, but did not testify*: TJ Patterson, City of Fort Worth; M. Paige Williams, Dallas Criminal District Attorney John Creuzot; George Craig, Houston Police Department; Susana Carranza; Idona Griffith; Vanessa MacDougal; Thomas Parkinson; Gregg Vunderink)

Against — None

BACKGROUND: Under Civil Practice and Remedies Code sec. 125.0015, a person who maintains a place to which people habitually go for certain purposes — including prostitution, the sale or use of narcotics, illegal gambling, aggravated offenses, and other crimes — and who knowingly tolerates the activity and fails to make reasonable attempts to abate the activity maintains a common nuisance. Under Chapter 125, a common nuisance can be addressed through various remedies, including through a suit to abate the nuisance.

Under Penal Code sec. 30.04, a person commits burglary of a vehicle if, without the effective consent of the owner, the person breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.

There have been reports that certain areas in Texas are struggling with recurring burglary of vehicles in certain locations. Including burglary of vehicles as an activity that could constitute maintenance of a common nuisance could address concerns by encouraging property owners to take effective preventative measures.

DIGEST:

HB 3338 would establish that a person who maintained a place to which persons habitually went to engage in the burglary of vehicles and who knowingly tolerated and failed to make reasonable attempts to abate the activity would maintain a common nuisance.

The bill would take effect September 1, 2021, and would apply only to a cause of action that accrued on or after that date.

SUBJECT: Placing burden of proof on party seeking public beach easement

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Leach, Davis, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

1 absent — Dutton

WITNESSES: For — Marie Robb, City of Galveston District Six; J David Breemer, Pacific Legal Foundation; (*Registered, but did not testify*: Sally Bakko, City of Galveston)

Against — None

On — (*Registered, but did not testify*: David Land, Texas General Land Office)

BACKGROUND: Under Natural Resources Code sec. 61.020, in a suit or administrative proceeding regarding access to public beaches, a showing that the area in question is located in the area from mean low tide to the line of vegetation is prima facie evidence that the line of the littoral owner does not include the right to prevent the public from using the area and that there is a common law right or easement in favor of the public for ingress and egress to the sea. The determination of the location of the line of vegetation by the commissioner of the General Land Office would constitute prima facie evidence of the landward boundary of the area subject to the easement until a court adjudication established otherwise.

Some have suggested that there should be a burden of proof on the party seeking to establish that there is a common law right or easement in favor of the public for ingress or egress to the sea.

DIGEST: HB 4172 would place the burden of proof on the party seeking to establish that an area was subject to a public beach easement or that the title of the

littoral owner did not include the right to prevent the public from using the area for ingress and egress to the sea.

The bill would remove provisions establishing that a showing that the area was located from mean low tide to the line of vegetation was prima facie evidence of an easement and that the determination of the line constituted prima facie evidence of the landward boundary of the area until a court adjudication established otherwise.

The bill would take effect September 1, 2021, and apply only to a suit or administrative proceeding filed on or after that date.

SUBJECT: Creating a youth pretrial intervention program

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 9 ayes — Neave, Swanson, Cook, Frank, Leach, Ramos, Talarico, Vasut, Wu

0 nays

WITNESSES: For — Minister Dominique Alexander, Next Generation Action Network; Rachana Chhin, Texas Catholic Conference of Bishops; (*Registered, but did not testify*: Matthew Lovitt, National Alliance on Mental Illness (NAMI) Texas; Shea Place, Texas Criminal Defense Lawyers Association; Suzi Kennon, Texas PTA)

Against — None

On — Andrea Bode and Amber Givens, Texas Probation Association; (*Registered, but did not testify*: Stephanie Mitchell-Huff)

BACKGROUND: Interested parties note that pretrial diversion programs serve as an effective rehabilitation option for certain offenders under the age of 18. Some have called for the state to develop a youth pretrial intervention program as a specialty court for nonviolent first-time offenders.

DIGEST: CSHB 3315 would create a pretrial intervention program for offenders under the age of 18. The bill would establish program eligibility requirements for youthful offenders and authorize a fee for participation. Youth who successfully completed the program would have their criminal case dismissed by the court and their criminal record expunged.

The commissioners court of a county would be required to establish a youth pretrial intervention program as a specialty court for persons arrested for or charged with an offense that was punishable as a class B misdemeanor or any higher category of offense, other than an offense that was ineligible for judge-ordered community supervision.

Program characteristics. The bill would define the essential characteristics of a youth pretrial intervention program to mean the following:

- the integration of services in the processing of cases in the judicial system;
- the use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;
- early identification and prompt placement of eligible participants in the program;
- access to a continuum of alcohol, controlled substance, mental health, and other related treatment and rehabilitative services;
- careful monitoring of treatment and services to program participants;
- a coordinated strategy to govern program responses to participants' compliance;
- ongoing judicial interaction with program participants;
- monitoring and evaluation of program goals and effectiveness;
- continuing interdisciplinary education to promote effective program planning, implementation, and operations;
- development of partnerships with public agencies and community organizations; and
- inclusion of a participant's family members who agreed to be involved in the treatment and services provided to the participant under the program.

If a defendant successfully completed a youth pretrial intervention program, after a hearing in the youth pretrial intervention court at which that court determined dismissal was in the best interest of justice, the court in which the criminal case was pending against a participant would be required to dismiss the case against the defendant. The youth pretrial intervention court would have to provide the court in which the criminal case was pending information about the dismissal and include all the information required about the defendant for a petition for the expunction of criminal records.

Expunction. A district court could, with the consent of the attorney representing the state, enter an order of expunction on behalf of the defendant. If the trial court in which the participant's criminal case was pending was not a district court, the court could, with the consent of the attorney representing the state, forward the appropriate dismissal and expunction information to enable a district court with jurisdiction to enter an order of expunction on behalf of the defendant. An order of expunction would be entered not later than the 30th day after the date the court dismissed the case or received the information regarding the dismissal, as applicable. The court that entered the expunction order could not charge a fee or assess any cost for the expunction.

Eligible youth. A defendant would be eligible to participate in a youth pretrial intervention program only if:

- the defendant was younger than 18 years of age at the time of the offense; and
- the defendant had not previously been convicted of or placed on deferred adjudication community supervision for an offense other than a traffic offense that was punishable by fine only.

The court in which the criminal case was pending would be required to allow an eligible defendant to choose whether to participate through the youth pretrial intervention program or otherwise through the criminal justice system.

Program duties. A youth pretrial intervention program would be required to:

- ensure that a defendant eligible for participation in the program was provided legal counsel before electing to proceed through the program and while participating in the program;
- allow a participant to withdraw from the program at any time before a trial on the merits had been initiated; and
- provide a participant with a court-ordered individualized treatment plan indicating the services that would be provided to the participant.

A program could allow a participant to comply with the court-order plan through internet-base communications.

In the county or counties in which eligible defendants reside, the program would be required to make, establish, and publish local procedures to ensure maximum participation.

Length of participation. The bill would establish limits on the length of participation in the program and of community service based on the level of offense. A program participant charged with an offense punishable as:

- a class B misdemeanor could not be required to spend more than one year in the program and perform more than 24 hours of community service as part of the program;
- a class A misdemeanor or state jail felony could not be required to spend more than two years in the program and perform more than 24 hours of community service;
- a third-degree felony could not be required to spend more than three years in the program and perform more than 50 hours of community service;
- a second-degree felony could not spend more than four years in the program and perform more than 75 hours of community service;
- a first-degree felony could not spend more than five years in the program and perform more than 100 hours of community service.

Program supervision. The community supervision and corrections department serving the county in which a program was operated would be required to supervise the program participants.

A program that accepted placement of a defendant could transfer responsibility for supervising the defendant's participation to another youth pretrial intervention program that was located in the county where the defendant worked or resided. A transfer of supervision could occur only with the consent of both youth pretrial intervention programs and the defendant. A defendant who consented to the transfer would have to abide by all the rules, requirements, and instructions of the program that

accepted the transfer. Transferred participants who failed to successfully complete the program would be returned to the responsibility of the program that initiated the transfer.

Reimbursement fee. A youth pretrial intervention program could collect from program participants a reasonable reimbursement fee in addition to a testing, counseling, and treatment reimbursement fee in an amount necessary to cover the costs of any testing, counseling, or treatment performed or provided by the program.

Reimbursement fees collected could be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator. Fees would be required to be based on the participant's ability to pay and used only for purposes specific to the program.

Other provisions. The bill would amend the definition of specialty court in the Government Code to include a youth pretrial intervention program.

The bill also would amend the Code of Criminal Procedure art. 55.01(a) governing the right to expunction of all criminal records by adding persons who successfully completed a youth pretrial intervention program.

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

SUBJECT: Allowing the use of MDD project funds outside a district

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 7 ayes — Cortez, Holland, Bernal, Campos, Gates, Jarvis Johnson, Morales Shaw

1 nay — Slaton

1 absent — Minjarez

WITNESSES: For — Ray Tipton, Brownwood Municipal Development District; Ken Becker, Sweetwater Economic Development MDD; (*Registered, but did not testify*: Steve Edwards, 3M; Will McAdams, Associated Builders and Contractors of Texas; Joe Morris, Brown County Legislative Committee; Carlton Schwab, Texas Economic Development Council; Daniel Hutson)

Against — None

On — (*Registered, but did not testify*: Leslie Brock, Office of Attorney General)

DIGEST: HB 1554 would allow a municipal development district (MDD) to use money in a development project fund to pay costs related to a development project outside the district if the board determined that the project would provide an economic benefit to the district and the project was approved by, as applicable:

- the municipality that created the district;
- each municipality in whose corporate limits or extra-territorial jurisdiction (ETJ) the project was located; and
- the commissioners court of the county in which the project was located, if the project was not located in a municipality or its ETJ.

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:

HB 1554 would encourage economic development, especially in rural areas of the state, by allowing a municipal development district (MDD) to develop projects outside of the district under certain circumstances. Many larger companies in rural Texas are outside the boundaries of any MDD, and under current law MDDs would not be able to develop projects related to such companies regardless of the positive return on investment and economic revitalization they might provide. HB 1554 would free MDDs to pursue projects outside their boundaries while guaranteeing public involvement, transparency, and approval by local elected officials who could be held accountable by voters.

HB 1554 would simply provide a permissive tool for economic development programs that already exist in statute. Additionally, the bill would not enable an MDD to expand its taxing authority. Allowing an MDD to incentivize industries' continued development in a region would provide a major public benefit to citizens of the area.

CRITICS SAY:

HB 1554 would expand the scope of taxpayer-funded development projects, which would not be an appropriate government activity.

NOTES:

The author plans to offer a floor amendment that would require MDD projects outside the district to be located in the ETJ of the municipality that created the district and would remove references to approval by the commissioners court of the county for MDD projects not located in a municipality or its ETJ.