HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Friday, May 07, 2021
87th Legislature, Number 51
The House convenes at 10 a.m.
Part Two

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

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

The following House committees were scheduled to meet today: Public Education; Land and Resource Management; Corrections; Human Services; Pensions, Investments and Financial Services; Higher Education; and State Affairs.

Alma Allen
Chairman
87(R) - 51

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Friday, May 07, 2021

87th Legislature, Number 51

Part 2

SUBJECT: Expanding, funding, regulating adult high school charter school program

COMMITTEE: Public Education — committee substitute recommended

VOTE: 13 ayes — Dutton, Lozano, Allen, Allison, K. Bell, Bernal, Buckley, M. González, Huberty, King, Meza, Talarico, VanDeaver

0 nays

WITNESSES: For — Traci Berry, The Excel Center for Adults; Norberto Ponce; (*Registered, but did not testify*: Shannon Meroney, BASF Corporation; Taylor Landin, Greater Houston Partnership; Addie Gomez, KIPP Texas Public Schools; Jessica Shopoff, Learn4Life; Grover Campbell, TASB; J.D. Hale, Texas Association of Builders; Barry Haenisch, Texas Association of Community Schools; Lori Henning, Texas Association of Goodwills; Mike Meroney, Texas Association of Manufacturers; Casey McCreary, Texas Association of School Administrators; Chris Noonan, Texas Chemical Council; Starlee Coleman, Texas Public Charter School Association; Erin Valdez, Texas Public Policy Foundation; Molly Weiner, United Ways of Texas; Knox Kimberly, Upbring; Daniela Rubio, Austin Achieve; Annemarie Donnelly; Amanda List)

Against — None

On — Josh Sanderson, Equity Center; (*Registered, but did not testify*: Eric Marin, Leonardo Lopez, Monica Martinez, and Heather Mauze, Texas Education Agency)

BACKGROUND: Education Code sec. 29.259 establishes an adult high school diploma and industry certification charter school program to provide services and instruction below the college level for adults by a nonprofit entity. Under sec. 29.259(b) the education commissioner is required to establish the program as a strategy for meeting industry needs for a sufficiently trained workforce.

Under sec. 29.259(d) the commissioner may grant a charter under the program to a single nonprofit entity to provide an adult education program for certain individuals to successfully complete a high school program that can lead to a diploma and career and technology education courses that can lead to industry certification. Under sec. 29.259(g), individuals who are 18 to 50 years old are eligible for the program if they have failed to complete the curriculum requirements for high school graduation or failed to perform satisfactorily on an assessment instrument required for high school graduation.

Concerns have been raised about the number of Texans lacking a high school diploma and adequate job training. Some have suggested that expanding and investing in the successful adult charter school program providing high school diploma and job training would help address these challenges.

DIGEST: CSHB 1942 would expand the adult high school diploma and industry certification charter school program, create an advisory committee to make recommendations on the program to the education commissioner, and establish a regulatory and funding framework for the program. The bill would change the name of the program to the Adult High School Charter School Program, and the purposes of the program would be expanded to include strengthening the economic and educational prosperity of the state.

Advisory committee. The bill would create an advisory committee to make recommendations to the education commissioner on a secondary exit-level assessment tool adopted or developed for the program and the accountability framework for the program.

The committee would be composed of the following seven members:

- one member appointed by the governor;
- one member appointed by the lieutenant governor;
- one member appointed by House speaker;
- one member appointed by the education commissioner;
- one member appointed by the executive director of the Texas Workforce Commission;

- one member appointed by the commissioner of higher education; and
- the superintendent of the charter school currently operating under the program.

The governor would designate the presiding officer, and all members appointed to the committee would have to have experience or expertise in adult or workforce education.

Number of charters. The bill would expand the number of charters that could be granted under the program from a single charter under current law to a total of six charters that could be granted according to a timeline established by the bill.

A nonprofit entity, other than the entity granted a charter under current law, would not be entitled to an automatic grant of a charter under this subchapter on the basis that it held a charter for or operated a different type of charter schools.

The commissioner could not grant more than two charters in a calendar year or more than six charters total under the program. No charters could be granted before September 1, 2023. Two charters could be granted before September 1, 2024, and an additional four could be granted before September 1, 2026. An entity previously granted a charter under the program would not count toward this limit.

The bill would limit enrollment in an adult education program operated under a charter to no more than 350 students in the first two years after the charter was granted. A charter previously granted under the program would not be subject to this limit, regardless of whether that charter was transferred to another entity.

The bill would eliminate a requirement that an entity receiving a charter agree to commit at least $1 million to the adult education program.

Adult education program. The bill would revise requirements for the program's instructional model and would require that the model be approved by the commissioner. The bill also would establish new requirements that the programs provide access to career and technical courses that lead to an industry certification, career readiness training, postsecondary counseling, and job-placement services, and for them to provide transportation assistance.

In addition to current authority for entities granted a charter to partner with public junior colleges, the bill would allow them to partner with a provider or organization approved by the Texas Workforce Commission.

Assessment instrument. The bill would allow TEA, working with the advisory committee, to develop the currently required standardized secondary exit-level assessment instrument.

The bill would require TEA for a school year before the 2025-2026 year, to adopt and administer the Algebra I, English II, and biology end-of-course assessment instruments as the required exit-level assessment required for the program.

Accountability. The accountability framework that the TEA commissioner currently is responsible for developing and adopting for the program would be revised. The bill would establish specific items that had to be measured, as well as revise the current performance measures and require that they be used for any school year before the 2024-2025 school year. The commissioner would be required to adopt a separate accountability framework for adult education programs located in a correctional facility.

The commissioner would be authorized to revoke a charter to operate an adult education program granted if the charter failed to meet the minimum performance standards for three consecutive school years after its first year of operation.

Funding. The bill would revise statutes governing the funding of adult education programs. Funding for a school year before 2023-2024, would be provided as it was for a program operating under current law for the 2020-21 school year.

After that, specific provisions governing funding for students 26 and older would be eliminated and Foundation School Fund funding for all students would be determined as it is under current law for those under 26. The bill would establish provisions to determine the average daily attendance of an adult education program operating under the bill and for reporting for and receiving the compensatory allotment. The bill also would make entities granted a charter under the bill entitled to an annual allotment provided in accordance with a schedule established by the commissioner under provisions in the bill.

Other provisions. A nonprofit entity granted a charter under current law would continue to be valid if the bill were enacted. The entity would have to apply to renew the charter to continue operating on or after September 1, 2025. An entity granted a charter under current law could transfer the charter to another nonprofit entity subject to the approval of the commissioner of education. To the extent of any conflict, HB 1942 would prevail over another act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

The bill would repeal certain requirements related to the commissioner adopting rules relating to implementing and administering certain reporting and evaluating provisions of current law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of about $1.6 million to general revenue through fiscal 2023.

SUBJECT: Updating provisions governing calculation of child support

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 — (*Registered, but did not testify*: Daniel Collins, El Paso County)

Against — Cecilia Wood

On — Joel Rogers, Office of the Attorney General - Child Support Division; Taran Champagne

BACKGROUND: Family Code sec. 154.062 requires a court to calculate net resources for the purpose of determining child support liability. Under this section, resources include:

- 100 percent of all wage and salary income and other compensation for personal services;
- interest, dividends, and royalty income;
- self-employment income;
- net rental income; and
- all other income actually being received, including severance pay, and pension, retirement, and certain government benefits.

Sec. 154.125 governs the application of certain guidelines to net resources for the determination of child support obligations. Guidelines for support of a child under that section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than $7,500 or the adjusted amount determined to reflect inflation, whichever is greater. If the obligor's monthly net resources are under that amount, the court must apply a specified schedule in rendering the child support order.

Sec. 154.129 allows a court to use an alternative method of computing child support for children in more than one household by applying certain percentages to the obligor's net resources.

It has been suggested that it is necessary to modify applicable provisions of the Texas Family Code to bring them into compliance with the new federal regulations for the calculation of child support payments.

DIGEST:

CSHB 2952 would amend the Family Code to specify that courts had to rely on actual evidence of an obligor's resources when determining child support amounts, prohibit courts from considering incarceration as intentional unemployment or under employment for the purposes of establishing or modifying child support, and adjust the schedule of child support guideline percentages for low-income obligors.

Imputation of income. The bill would require the court, to the extent possible, to rely on evidence of a party's resources when applying child support guidelines. In the absence of evidence of a party's resources, the court would have to consider relevant background circumstances regarding the obligor, including the obligor's assets, residence, employment, earnings history, job skills, educational attainment, literacy, age, health, criminal history, barriers to employment, and record of seeking work. The court also would have to consider job opportunities and the prevailing wage in the obligor's community and whether there were employers willing to hire the obligor.

Incarceration. The court would be prohibited from considering incarceration as intentional unemployment or underemployment when establishing or modifying a support order. The bill would specify that incarceration of a child support obligor in a local, state, or federal jail or prison for more than 180 days would be a material and substantial change of circumstances for the modification of child support.

Child support guidelines. The bill would amend Family Code sec. 154.125 so that guidelines for the support of a child were designed to apply to situations in which the obligor's monthly net resources were not greater than the maximum amount to which statutory guidelines were applicable, as most recently published by the Texas attorney general's office in the Texas Register.

If an obligor's monthly net resources were not greater than the maximum amount and were equal to or greater than $1,000, the court would apply the child support guidelines established under current law. If the obligor's monthly net resources were less than $1,000, the court would be required to apply the schedule of low-income child support guidelines established by the bill in rendering the order.

The bill would amend provisions governing an alternative method of computing support for children in more than one household so that the court could use adjusted guidelines for determining child support if an obligor's monthly net resources were not greater than the maximum amount and were equal to or greater than $1,000. If the obligor's monthly net resources were less than $1,000, the court could determine the amount of child support for such children by applying the applicable percentage under the low-income multiple family adjusted guidelines established by the bill to the obligor's net resources.

Medical, dental support. Under the bill, the court would retain jurisdiction to confirm the total amount of child support, medical support, and dental support arrearages and render cumulative money judgments for past due support under certain circumstances.

If a motion for enforcement of child support requested a money judgment for arrearages, the court would have to render separate cumulative judgments for child support, medical support, and dental support arrears as specified in the bill.

Other provisions. Under the bill, the time frame for requesting a hearing to contest the validity or enforcement of an out-of-state support order would be changed to 30 days, rather than 20 days.

CSHB 2952 would require court ordered spousal support, when coupled with child support obligations, to be paid through the Attorney General's state disbursement unit (SDU). This requirement would apply only to a maintenance order rendered on or after the bill's effective date. An obligor subject to a spousal support order rendered before the bill's effective date could choose to remit payments to the SDU, and the SDU would be required to accept those payments.

The bill would amend a provision in the Property Code to require a disclaimer of an interest in property to contain a sworn statement regarding whether the disclaimant was a child support obligor whose disclaimer was barred under current law.

The bill would specify that, if enacted, it would not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provided for the support of a child rendered before the effective date.

The bill would take effect September 1, 2021, and would apply only to a support order or suit rendered on or after the effective date.

SUBJECT: Reinstating Medicaid for certain children placed in juvenile facilities

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Frank, Hinojosa, Klick, Meza, Neave, Noble, Rose, Shaheen

0 nays

1 absent — Hull

WITNESSES: For — (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Tammy Narvaez, Harris County Commissioners Court; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Matthew Lovitt and Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; Alison Mohr Boleware, National Association of Social Workers-Texas Chapter; Russell Schaffner, Tarrant County; Kate Murphy, Texans Care for Children; Sara Gonzalez, Texas Hospital Association; Joshua Houston, Texas Impact; Lauren Rose, Texas Network of Youth Services; Jennifer Allmon, The Texas Catholic Conference of Bishops; Julie Wheeler, Travis County Commissioners Court; Ashley Harris, United Ways of Texas; Knox Kimberly, Upbring; Sarah Garcia)

Against — None

On — (*Registered, but did not testify*: Janie Contreras, Texas Health and Human Services Commission)

BACKGROUND: Human Resources Code sec. 32.0264 requires that, to the extent allowed under federal law, the Health and Human Services Commission (HHSC) suspend a child's eligibility for Medicaid during the period a child is placed in a juvenile facility.

Concerns have been raised regarding the inability to use Medicaid dollars to pay for inpatient stays at medical facilities for children placed in juvenile facilities, and interested parties have suggested that a requirement to reinstate Medicaid coverage in such limited situations would save taxpayer dollars.

DIGEST:

HB 1664 would require the Health and Human Services Commission (HHSC) to reinstate a child's eligibility for Medicaid if during the period the child was placed in a juvenile facility, the child was hospitalized or became an inpatient in another type of medical facility. The reinstatement would be for the period of the child's stay at the inpatient facility.

HHSC would have to adopt rules necessary to implement the bill's provisions, including rules on the procedure for reinstating a child's eligibility for Medicaid.

The bill would take effect September 1, 2021.

SUBJECT: Establishing retainage requirements for public works construction projects

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 13 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

WITNESSES: For — Fred Dodd, CSA Construction, Inc; Perry Fowler and Clayton Utkov, Texas Water Infrastructure Network; (*Registered, but did not testify*: CJ Tredway, Independent Electrical Contractors of Texas; Randy Cubriel, Nucor; Eric Woomer, Precast Concrete Manufacturers of Texas, Texas Crane Owners Association, and Mechanical Contractors Association of Texas; Jennifer Fagan, Texas Construction Association; Ryan Skrobarczyk, Texas Nursery and Landscape Association; Adam Leggett, Texas Water Infrastructure Network; Chris Keffer, Vortex Infrastructure; Fred Shannon)

Against — (*Registered, but did not testify*: Brie Franco, City of Austin)

On — Matt Phillips, Brazos River Authority; Tom Oney, Lower Colorado River Authority; Stephanie Gharakhanian, Workers Defense Action Fund; (*Registered, but did not testify*: Clay Schultz, Texas Water Development Board)

BACKGROUND: Government Code ch. 2252 governs contracts with governmental entities, and subch. B contains provisions on retainage used in contracts for public works projects. "Retainage" is defined by sec. 2252.031 to mean the part of a public works contract payment withheld by a governmental entity to secure performance of the contract.

Sec. 2252.032 requires governmental entities to:

- deposit in an interest-bearing account the retainage of a public works contract that provides for retainage of more than 5 percent of the periodic contract payment; and

- pay the interest earned on the retainage to the prime contractor on completion of the contract.

Concerns have been raised that current law does not specify the amount of retainage allowed on certain public works contracts or terms for its release and that varying practices across the state and have resulted in protracted disputes.

DIGEST: CSHB 692 would establish limits on retainage for certain public work projects governed by Government Code ch 2252 and provisions governing when retainage could be withheld and how it would be handled in cases of disputes.

Contracts, records. The bill would require governmental entities to include in each public works contract a provision that established the circumstances under which the project would be considered substantially complete and under which the entity could release all or a portion of the retainage for substantially completed portions of the project or fully completed and accepted portions.

Governmental entities also would have to maintain an accurate record of the retainage withheld on periodic contract payments and the retainage released to the prime contractor for a public works contract.

Amount of retainage. If the value of a public works contract was $1 million or more, a governmental entity could not withhold retainage of more than 5 percent of the contract, and the rate of retainage could not exceed 5 percent for any item in a bid schedule or schedule of values for the project, including materials and equipment delivered on-site to be installed.

For a competitively awarded contract of $10 million or more and for a contract awarded using a method other than competitive bidding, a governmental entity and prime contractor could agree to deposit in an interest-bearing account the retainage withheld on periodic contract payments.

If the prime contractor entered into subcontracts, the prime contractor could not withhold from a subcontractor a greater percent of the retainage than the percent withheld from the prime contractor by the governmental entity under the bill's provisions. Subcontractors who entered into contracts with another subcontractor for labor or materials could not withhold a greater percent of retainage than the percent that could be withheld from the first subcontractor.

The 5 percent retainage limit on certain contracts would not apply to a governmental entity that received certain financial assistance under the Water Code for a project that was formally approved by the Texas Water Development Board. For these projects, governmental entities would be required to deposit in an interest-bearing account the retainage withheld under a public works contract that provided for retainage of more than 5 percent of the periodic contract payments.

Paying, withholding of retainage. Governmental entities could not withhold retainage after a project was completed, including during the warranty period. Governmental entities also could not withhold retainage to require the prime contractor, after completion of the contract, to perform work on manufactured goods or systems that were specified by a designer and properly installed by the contractor.

For competitively awarded contracts valued over $10 million and contracts awarded other than through competitive bidding, governmental entities also would be required to pay to the prime contractor upon completion any remaining retainage withheld and the interest earned on the retainage.

Disputes, final cures. A governmental entity could withhold retainage if there was a bona fide dispute between the entity and the prime contractor and the reason for the dispute was that labor, services, or materials provided by the prime contractor or a subcontractor was not in compliance with the contract or if the surety on an outstanding surety bond did not agree to releasing the retainage.

If there was no bona fide dispute between the governmental entity and the prime contractor and neither party was in default under the contract, the prime contractor would be entitled to:

- cure any noncompliant labor, services, or materials; or
- offer the governmental entity a reasonable amount of money as compensation for any noncompliant labor, services, or materials that could not be promptly cured.

These sections could not be construed to limit a person who was a party to a public works contract from pursuing another remedy available to the person under other law or to limit the withholding of any offsets from retainage as provided by the terms of the public works contract.

A project would be considered formally approved if the project was the subject of a resolution approving an application for financial assistance adopted by the Texas Water Development Board before September 1, 2019, for any part of the project's financing.

Other provisions. CSHB 692 would apply only to a contract under Subchapter B, Chapter 2252, Government Code that was entered into on or after the bill's effective date.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUBJECT: Reducing penalty for unlawfully carrying a handgun on certain premises

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Collier, K. Bell, Cason, Cook, Crockett, Murr, Vasut

2 nays — Hinojosa, A. Johnson

WITNESSES: For — (*Registered, but did not testify*: Dustin Cox, GRAV; Cindi Castilla, Texas Eagle Forum; Terri Hall; Thomas Parkinson)

Against — (*Registered, but did not testify*: Jay Propes, Everytown for Gun Safety; Aimee Mobley Turney, League of Women Voters of Texas; Mary Lynn Rice-Lively, Frances Schenkkan, and Louis Wichers, Texas Gun Sense; Aldo Caldo; Deana Johnston; Tony LaMarr)

BACKGROUND: Penal Code secs. 30.06 and 30.07 make it a class C misdemeanor punishable by fine of up to $200 for a handgun license holder to either conceal or openly carry a handgun on another's property without effective consent if the license holder received oral or written notice that entry on the property by a license holder with a handgun was forbidden. If after entering the property the license holder was given oral communication and subsequently failed to depart, the offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

Under secs. 46.035(b)(4), (b)(5), and (c) it is a crime for a handgun license holder to intentionally, knowingly, or recklessly carry a handgun, whether it is concealed or openly carried:

- on the premises of a hospital or nursing facility;
- in an amusement park; or
- at an open meeting of a governmental entity.

An offense is a class A misdemeanor. These offenses do not apply if the license holder was not given effective notice under secs. 30.06 or 30.07.

DIGEST:

HB 854 would reduce the penalty from a class A misdemeanor to a class C misdemeanor punishable by a fine not to exceed $200 for the offense committed if a handgun license holder carried a handgun, regardless of whether it was concealed or openly carried, on the premises of a hospital or nursing facility, in an amusement park, or at an open meeting of a governmental entity.

The offense would be a class A misdemeanor if it was shown that after entering the property, the license holder was personally given oral notice that entry on the property was forbidden and subsequently failed to depart.

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

SUPPORTERS SAY:

HB 854 would align the penalty for unlawfully carrying a handgun by a license holder on the premises of a hospital or nursing facility, in an amusement park, or at an open meeting of a governmental entity with the penalties applied when a license holder carried openly or concealed on other premises and it was forbidden. Revising the penalty under the bill would treat these locations the same under the law as other private property with regard to offenses of license holders carrying handguns on premises without effective consent.

Penal Code secs. 30.06 and 30.07 allow property owners to provide notice that carrying a handgun on the property is forbidden. An offense is a class C misdemeanor, except if the license holder received oral notice and failed to depart, in which case it is a class A misdemeanor. Some have noted that the penalty for unlawfully carrying a handgun on the premises under the bill where secs. 30.06 and 30.07 notices must be given, remains a class A misdemeanor in all cases. The bill simply would harmonize penalties for hospitals, nursing homes, amusement parks, and rooms holding open meetings with other premises that may post secs. 30.06 and 30.07 signs.

The bill would align with the spirit of other state firearms laws that protect law-abiding gun owners by providing them a chance to leave a gun-free zone when notified that the possession of a handgun on the premises was prohibited. In instances where a person forgot he or she was carrying a handgun and entered premises where it was prohibited, a person should not be subject to a harsher penalty for genuinely making a mistake. The bill would provide the gun owner an opportunity to leave, ensuring that actions made without ill intent were not overly criminalized. The bill would retain the enhanced penalty of a class A misdemeanor in the event the person refused to depart, which would punish bad actors effectively.

CRITICS SAY:

HB 854 would inappropriately lower the penalty for the unauthorized carrying of a handgun in hospitals, nursing facilities, amusement parks, and open meetings of governmental bodies. These locations are frequented by families and contain vulnerable populations. The current penalty of a class A misdemeanor provides more of a deterrent to carrying weapons into such locations. This change could decrease public safety by resulting in more people carrying handguns in these premises.

SUBJECT: Providing illness or injury leave for firefighters and police officers.

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 7 ayes — Coleman, Stucky, Anderson, Cason, Lopez, Spiller, J. Turner

0 nays

2 absent — Longoria, Stephenson

WITNESSES: For — Matthew Sapp, Frisco Firefighters Association; (*Registered, but did not testify*: Chris Jones and Charley Wilkison, Combined Law Enforcement Associations of Texas; Michelle Wittenburg, Dallas Fire Fighters Association; Frederick Frazier, Dallas Police Association/FOP716 State FOP Director; Ray Hunt, HPOU; Jimmy Rodriguez, San Antonio Police Officers Association; Jose Rodriguez, Texas Municipal Police Association; Glenn Deshields, Texas State Association of Fire Fighters; Jeremy Payne)

Against — (*Registered, but did not testify*: Brie Franco, City of Austin; Peter Zanoni, City of Corpus Christi; TJ Patterson, City of Fort Worth; Rick Ramirez, City of Sugar Land; Ender Reed, Harris County Commissioners Court; Monty Wynn, Texas Municipal League)

BACKGROUND: Concerns have been raised that firefighters and police officers who take leave to recover from an injury or illness may be at risk of losing their jobs.

DIGEST: CSHB 2242 would require counties and municipalities to provide firefighters and police officers a leave of absence for an illness or injury related to their line of duty. The leave would be with full pay for a period commensurate with the nature of the illness or injury, and would continue for at least one year if necessary.

At the end of the one-year period, the county's or municipality's governing body would be able to extend the leave at full or reduced pay. If the year at full pay and any extensions had expired, the employee would be placed on temporary leave.

If the leave was not extended or the employee's salary was reduced to less than 60 percent of their regular monthly salary, the employee could retire on pension until able to return to duty. If pension benefits were not available to a police officer or firefighter who was temporarily disabled by a line of duty illness or injury and the year of full-pay leave and any extensions had expired, the employee could use accumulated sick leave, vacation time, and other accrued benefits before being placed on temporary leave.

A firefighter or police officer who was temporarily disabled by an injury or illness not related to the person's line of duty could use accumulated sick leave, vacation time, and other accrued benefits before being placed on temporary leave or have another firefighter or police officer volunteer to do the person's work while the person was temporarily disabled.

If able, a firefighter or police officer could return to light duty while recovering from a temporary disability. If medically necessary, the light duty could continue for at least one year. After recovery from a temporary disability, a firefighter or police officer would have to be reinstated at the same rank and seniority held before going on temporary leave. Another firefighter or police officer could voluntarily do the work of an injured firefighter or officer until the person returned to duty.

Any collective bargaining, meet and confer, or similar agreement providing a benefit for an ill or injured employee would be required at a minimum to comply with the bill's provisions.

The bill would take effect September 1, 2021, and would apply only to a collective bargaining, meet and confer, or other agreement entered into on or after that date.

SUBJECT: Requiring health plans to disclose certain preauthorization information

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Sanford

2 nays — Paul, Romero

WITNESSES: For — Ezequiel Silva, Texas Medical Association; Lillian Timon, Texas MGMA; (*Registered, but did not testify*: Allison Greer, CHCS; Kyle Frazier, Patient Choice Coalition of Texas; David Reynolds, Texas Chapter of the American College of Physicians; Kaden Norton, Texas Chiropractic Association; Clayton Stewart, Texas Medical Association; Bobby Hillert, Texas Orthopaedic Association; Michael Grimes, Texas Radiological Society; Khrystal Davis, Texas Rare Alliance; Bonnie Bruce and Michael Warner, Texas Society of Anesthesiologists; Price Ashley, Texas Society of Pathologists)

Against — Jamie Dudensing, Texas Association of Health Plans; (*Registered, but did not testify*: Patricia Kolodzey, Blue Cross Blue Shield of Texas; Eric Glenn, Superior Health Plan; Shannon Meroney, Texas Association of Health Underwriters; Calvin Tillman)

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

BACKGROUND: Insurance Code sec. 843.348 governs the preauthorization process used by health maintenance organizations for health care services.

Sec. 1301.135 governs the preauthorization process used by insurers of preferred provider benefit plans for medical care and health care services.

DIGEST: CSHB 4012 would require a health maintenance organization (HMO) and a preferred provider benefit plan insurer that preauthorized an enrollee's health care service to disclose certain information to the enrollee.

Disclosure. The bill would require an HMO or insurer to provide a disclosure to the enrollee at the time the HMO or insurer issued a determination preauthorizing the service if the service:

- would be provided at a licensed medical facility;
- was elective; and
- was required to be preauthorized as a condition of payment by the HMO or insurer for the service.

Under the bill, "licensed medical facility" would mean a licensed hospital, ambulatory surgical center, or a birthing center. "Elective" would mean non-emergent and able to be scheduled at least 24 hours in advance.

The required disclosure would have to include certain information, including:

- a statement of the name and network status of the licensed medical facility and any facility-based provider that the HMO or insurer reasonably expects would provide and bill for the preauthorized services;
- a statement that the actual charges and payment for the services and the enrollee's financial responsibility for the services could vary; and
- a statement that the enrollee could be personally liable for the amount charged for services provided to the enrollee depending on the enrollee's health benefit plan coverage.

The disclosure also would have to include an itemized estimate of the payments that the HMO or insurer would make to the licensed medical facility and to each facility-based provider for the preauthorized service; and the enrollee's cost-sharing responsibility for the preauthorized service.

Including a general statement in the required disclosure that some facility-based providers could be out-of-network would not satisfy the bill's requirements.

The bill would take effect January 1, 2022, and would apply only to a health benefit plan issued or renewed on or after the effective date.

SUPPORTERS SAY:

CSHB 4012 would improve price transparency and could reduce surprise medical bills for consumers by requiring health plans to disclose certain health care cost information for preauthorized services in addition to the network status of a provider and facility.

Currently, preauthorization requirements are burdensome for health care providers and can delay patients' access to health care services they need. Additionally, health care prices often are opaque, leaving consumers without sufficient information to make decisions on health care services. The bill would increase a patient's access to health care cost information, empowering them to make more informed decisions about their health care for preauthorized services.

CRITICS SAY:

CSHB 4012 could duplicate existing transparency requirements of certain federal regulations. Also, preauthorizations are unrelated to cost, and instead, evaluate whether a requested health care service is medically necessary and appropriate for a particular patient. Preauthorizations should not be used for price transparency efforts.

SUBJECT: Authorizing the issuance of digital tags for the taking of certain animals

COMMITTEE: Culture, Recreation and Tourism — committee substitute recommended

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

0 nays

WITNESSES: For — (*Registered, but did not testify*: Kevin Davis, Deer Breeders Corporation; Elise Richardson, Texas Deer Association)

Against — Tom Vandivier, Texas Wildlife Association

On — (*Registered, but did not testify*: Justin Halverson, Texas Parks and Wildlife)

BACKGROUND: Parks and Wildlife Code sec. 42.010 establishes requirements for how tags are regulated and issued to licensed hunters for animals and birds allowed by law to be killed during each year or season.

Interested parties note that several states have passed laws allowing hunters to electronically tag game animals in addition to using physical tags that have the potential to fall off. Some have called for providing the statutory authority to the Texas Parks and Wildlife Commission to allow such tags.

DIGEST: CSHB 3081 would allow the Texas Parks and Wildlife Commission to develop and implement a program for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals.

A program developed in accordance with the bill could:

- provide for the issuance of digital tags to a hunting license holder;

- allow a person using a digital tag to create a digital record at the time of the taking of an animal that included information required by the Texas Parks and Wildlife Department; and
- require a person using a digital tag to create the digital record as soon as possible after taking the animal and retain the record at all times before the carcass was finally processed.

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.

NOTES: According to the Legislative Budget Board, the bill would have no impact to general revenue through fiscal 2023, but would have a negative impact to the TPWD game, fish, and water safety account of $712,806 in fiscal 2022 and $543,578 in fiscal 2023.

SUBJECT: Creating fund to improve, modernize state agency information technology

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 23 ayes — Bonnen, M. González, Ashby, C. Bell, Capriglione, Dean, Dominguez, Gates, Holland, Howard, A. Johnson, Jarvis Johnson, Morrison, Raney, Rose, Schaefer, Stucky, E. Thompson, Toth, VanDeaver, Walle, Wilson, Wu

0 nays

4 absent — Julie Johnson, Minjarez, Sherman, Zwiener

WITNESSES: For — Luis Acuna, Texas 2036; (*Registered, but did not testify*: Servando Esparza, TechNet; Nora Belcher, Texas e-Health Alliance; Dana Harris, The Greater Austin Chamber of Commerce; Calvin Tillman; Al Zito)

Against — None

On — (*Registered, but did not testify*: Amanda Crawford, Texas Department of Information Resources)

BACKGROUND: It has been noted that due to underinvestment and neglected information resources infrastructure, state agencies are working with antiquated computer systems, leaving them more vulnerable to cybersecurity threats. Although many state agencies submit funding requests to implement modernization projects, they go unfunded due to other state priorities. Some have suggested creating a special state fund for improving and modernizing state agency information resources to address this issue.

DIGEST: CSHB 4018 would create the technology improvement and modernization fund to be used to improve and modernize state agency information resources, including legacy system and cybersecurity projects.

The fund could not be used to replace money appropriated to a state agency for operating and maintaining state agency information resources or to reduce the amount of money appropriated to a state agency for those purposes.

The fund would be a special fund in the state treasury outside the general revenue fund and would consist of:

- money transferred or deposited at the direction of the Legislature;
- money received from the federal government for the purposes of improving and modernizing state agency information resources;
- gifts, donations, and grants; and
- interest earned on the investment of money in the fund.

Statute governing the disposition of interest on investments would not apply to the fund.

The bill would create the Joint Oversight Committee on Investment in Information Technology Improvement and Modernization Projects to review investment and funding strategies for related projects.

The six-member committee would be composed of three members of the Senate appointed by the lieutenant governor and three members of the House appointed by the speaker. The presiding officer would alternate annually between a member of the Senate and a member of the House.

The committee biennially would have to provide a written report to the Legislature that identified existing and planned projects to improve or modernize state agency information resources technology and the method of funding for each project. The report also would have to include a determination of the amount necessary to fully fund each project to completion and strategies to ensure a long-term investment solution was in place, including strategies to access the full amount of available federal money and use information gathered by the Department of Information Resources to improve the management, oversight, and transparency of future projects.

The committee would have the powers of a joint committee and could obtain funding in the same manner. Rules adopted by the 87th Legislature for the administration of joint committees would apply to the extent they were consistent with the bill.

The oversight committee would be abolished September 1, 2026.

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.

NOTES: According to the Legislative Budget Board, the fiscal implications of the bill could not be determined as the amount of federal funds could not be estimated.

SUBJECT: Expanding conditions under which insurers can do business electronically

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Sanford

1 nay — Romero

1 absent — Paul

WITNESSES: For — John Marlow, Chubb; Jon Schnautz, National Association of Mutual Insurance Companies; (*Registered, but did not testify*: Jay Thompson, AFACT; Joe Woods, American Property and Casualty Insurance Association; Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; Lee Loftis, Independent Insurance Agents of Texas; Jennifer Cawley, Texas Association of Life and Health Insurers; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions)

Against — None

On — (*Registered, but did not testify*: Kimberly Donovan, Office of Public Insurance Counsel; Luke Bellsnyder, Texas Department of Insurance)

BACKGROUND: Insurance Code sec. 35.003 allows an entity regulated by the Texas Department of Insurance (TDI) to conduct business electronically to the same extent that the entity is authorized to conduct business otherwise if each party to the business consents to conduct the business electronically.

It has been suggested that the current requirement that entities regulated by the TDI must provide specific long-form documents to obtain affirmative consent from consumers in order to conduct business electronically is overly burdensome for both insurers and consumers.

DIGEST: CSHB 4210 would allow an entity regulated by the Texas Department of Insurance to conduct business electronically without receiving affirmative consent from other parties to the business if each other party had been given notice by the entity that the business would be conducted electronically and had not requested that the business be conducted in a nonelectronic form.

In cases in which the entity did not seek affirmative consent to the electronic conducting of business, the entity could deliver a written communication electronically to another party if that party had not requested that communication be delivered in paper or another non-electronic form.

Before receiving written communication electronically, the party would have to be provided a clear and conspicuous statement including notice of:

- the party's right to request written communication in nonelectronic form and any conditions or consequences imposed by such a request;
- whether the party's request or lack thereof applied only to a specific transaction or to identified categories of written communication;
- the procedure for making such a request; and
- other applicable notice requirements under current statute.

The bill would take effect September 1, 2021, and would apply only to business conducted on or after that date.

SUBJECT: Creating period of reliance for affidavits attesting to a homestead property

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — C. Turner, Hefner, Crockett, Lambert, Ordaz Perez, Patterson, S. Thompson

0 nays

2 absent — Cain, Shine

WITNESSES: For — Steven Streiff, Texas Land Title Association; (*Registered, but did not testify*: Aaron Day, Texas Land Title Association)

Against — None

BACKGROUND: Property Code sec. 52.0012 allows a judgment debtor to file an affidavit to serve as a release of record of a judgment lien on a homestead property. A bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or a mortgagee for value may rely conclusively on an affidavit if it included evidence that the judgment debtor sent a notice to the judgment creditor as provided by the statute. An affidavit would not release a lien if the judgment creditor files a contradicting affidavit asserting that the affidavit filed by the judgment debtor is untrue or another reason exists as to why the judgment lien attaches to the property.

Concerns have been raised that while the Texas Constitution protects a person's homestead from being foreclosed on a judgment lien, there can be difficulties in identifying a homestead and any lien attached to the property. Some have suggested establishing a period during which parties can rely with certainty on a homestead affidavit filed by a judgment debtor attesting to the fact that a property is their homestead.

DIGEST: CSHB 3115 would provide that a judgment debtor filing an affidavit to release a judgment lien on homestead property also could file a certificate of mailing. The certificate would have to be substantially in the same form as established by the bill.

If the judgment debtor had filed a certificate of mailing, a bona fide purchaser or a mortgagee for value or a successor or their assign could rely conclusively on the affidavit for the 90-day period beginning on the date the certificate was filed.

The bill would establish a 30-day deadline after the date the certificate was filed for a judgment creditor to file a contradicting affidavit in the county's real property records in order for the debtor's affidavit to no longer serve as release of record of the judgment lien. A creditor could make an assertion that the certificate was untrue in their contradicting affidavit.

CSHB 3115 also would revise the time frame that a judgment debtor had to send notification of an affidavit to a judgment creditor such that notice could be provided after the affidavit was filed rather than 30 days or more before it was filed.

The bill would take effect September 1, 2021, and would apply only to an abstract of judgment lien recorded and indexed on or after that date.

SUBJECT: Requiring disciplinary information to be reported to PEIMS, parents

COMMITTEE: Public Education — committee substitute recommended

VOTE: 12 ayes — Dutton, Lozano, Allen, Allison, K. Bell, Bernal, Buckley, Huberty, K. King, Meza, Talarico, VanDeaver

0 nays

1 absent — M. González

WITNESSES: For — Arati Singh, Austin ISD; Vanessa Beltran, Girls Empowerment Network; Chloe Latham Sikes, Intercultural Development Research Association; Precious Azuree and Jameila "Meme" Styles, MEASURE; Andrew Hairston, Texas Appleseed; Steve Miller, United States Christian Leadership Organization; Sheila Craig; Dhiya Dhandapani; Cleo Wadley; (*Registered, but did not testify*: Warren Burkley, Austin Justice Coalition; Christine Bryan, Clarity Child Guidance Center; Jennifer Toon, Coalition of Texans with Disabilities; Steven Aleman, Disability Rights Texas; Lisa Flores, Easterseals Central Texas; Micaela Williams, Spark Change Project; Maggie Luna, Statewide; Alycia Castillo, Statewide Leadership; Katie Mitten, Texans Care for Children; Dena Donaldson, Texas AFT; Barry Haenisch, Texas Association of Community Schools; Paige Williams, Texas Classroom Teachers Association; Linda Litzinger, Texas Parent to Parent; Carrie Griffith, Texas State Teachers Association; Emma Shaw, Texas Legislative Education Equity Coalition; Christel Erickson-Collins, Undoing Racism Round Rock; Ashley Harris, United Ways of Texas; and 10 individuals)

Against — (*Registered, but did not testify*: Grover Campbell, TASB; Jennifer Drabbant)

On — Melody Parrish, Texas Education Agency; (*Registered, but did not testify*: Eric Marin, Texas Education Agency)

BACKGROUND: Education Code sec. 48.008 requires each school district to participate in the Public Education Information Management System (PEIMS) and provide through the system information required for the administration of the Education Code. The commissioner of education is required to ensure that the system provides useful, accurate, and timely information on student demographics and academic performance, personnel, and school district finances, among other functions.

Education Code sec. 37.0011(a) defines "corporal punishment" to mean the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force as a means of discipline. Under sec. 37.0011(b), if a school district board of trustees adopts a disciplinary policy under which corporal punishment is permitted as a method of student discipline, an educator may use corporal punishment to discipline a student unless the student's parent or guardian or other person having lawful control over the student has previously provided a written, signed statement prohibiting the use of corporal punishment as a method of student discipline. To prohibit the use of corporal punishment as a method of student discipline, each school year a student's parent or guardian or other relevant party must provide a separate written, signed statement to the board of trustees of the school district in the manner established by the board.

Interested parties note that recent studies have indicated students from certain racial groups are disciplined at higher rates than other students, but current data collection and reporting practices do not provide sufficient information on school discipline disaggregated by race and gender. Some have called for each public school district to include certain disaggregated information regarding disciplinary measures in its PEIMS report in order to improve understanding of and help address discrepancies in disciplinary outcomes.

DIGEST: CSHB 3485 would require that certain information on disciplinary measures by school districts be reported to the Public Education Information Management System (PEIMS) and for parents to be provided notification of a school district's policy toward corporal punishment.

PEIMS. The bill would require each school district to include in the district’s PEIMS report the total number, disaggregated by race, ethnicity, gender, and status as receiving special education services, of:

- incidents of uses of corporal punishment, if the district permitted the use of corporal punishment;
- reports to local law enforcement;
- suspensions, disaggregated by the number of students who received only one out-of-school suspension during the year, more than one out-of-school suspension during the year, and one or more in-school suspensions;
- changes in school placement, including placement in a juvenile justice alternative education program or a disciplinary alternative education program;
- discretionary and mandatory expulsions, including expulsions arising under a zero-tolerance policy adopted by the district;
- arrests; and
- referrals to a truancy court.

The Texas Education Agency (TEA) would be required to aggregate the data required under the bill by state, region, district, and campus in an annual report that was readily understandable by an individual. TEA would have to make the report publicly available on the agency's website and provide the report to each school district.

Each school district would be required to provide annually to each student's parent, guardian, or other person having lawful control over a student enrolled in the district for whom the district had an email address a notice by email that included:

- a copy of the report;
- a summary that compared the aggregate data collected for the district campus and for the state, region, and other campuses in the district; and
- the link to the report on TEA's website.

The commissioner would have to adopt rules as necessary to implement the bill's provisions, including rules to ensure compliance with the Family Educational Rights and Privacy Act of 1974.

Notice to parents. CSHB 3485 would require that, if a school district board of trustees adopted a policy under which corporal punishment was permitted as a method of student discipline, not later than the beginning of each school year the district would have to provide to each student's parent, guardian, or other relevant party for whom the district had an email address a notice by email that included:

- a statement of that person's right to prohibit the use of corporal punishment by the district against the student;
- the district's policy on the use of corporal punishment and the definition of corporal punishment;
- the procedure, in a format that was readily understandable by an individual, for the parent, guardian, or other person to prohibit the use of corporal punishment; and
- a conspicuous statement that a new written, signed statement would have to be submitted by a student's parent, guardian, or other relevant party to the district each school year to prohibit the use of corporal punishment against the student during that school year.

The bill would apply beginning with the 2021-2022 school year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

HOUSE RESEARCH ORGANIZATION bill digest 5/7/2021

HB 2912 (2nd reading)
Vasut, et al.
(CSHB 2912 by Smith)

SUBJECT: Authorizing certain legal actions against property owners' associations

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

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

0 nays

1 absent — Dutton

WITNESSES: For — Jay Blint; (*Registered, but did not testify*: Nancy Kozanecki, HOA Reform Coalition of Texas; Nicholas Chu, Justices of the Peace and Constables Association; David Kahne)

Against — Weston Ray, TCAA; (*Registered, but did not testify*: John Krueger, Associa; Kevin Autin, Crystal Falls Homeowners Association)

BACKGROUND: Property Code, ch. 209, otherwise known as the Residential Property Owners Protection Act, governs homeowners associations.

Concerns have been raised regarding the lack of available remedies for an owner when an association board member violates the Residential Property Owners Protection Act or a dedicatory instrument.

DIGEST: CSHB 2912 would authorize an owner to bring an action against a property owners' association for a violation of the Residential Property Owners Protection Act or of the association's dedicatory instruments committed by a board member acting in the member's official capacity.

Remedies. The owner could file a petition against the association requesting relief for the violation with the justice of the peace of a justice precinct where all or part of the property governed by the association was located. The prevailing party in such an action would be entitled to a judgment for court costs and reasonable attorney's fees incurred in connection with the action.

If the justice of the peace found that the board member had committed a violation while acting individually or with other board members, the justice could grant one or more of the following remedies:

- a judgment ordering the association to immediately remove the board member from the board;
- a judgment against the association for damages incurred by the owner resulting from the violation; or
- a judgment allowing the owner to deduct the amounts awarded in damages resulting from the violation or court costs and reasonable attorney's fees incurred in connection with the action from any future regular or special assessments payable to the association.

Notice. On or before the 10th business day before the date an owner brought an action against an association, the owner would be required to send written notice to the association of the owner's intent to bring the action. The notice would be required to describe the alleged violation with sufficient detail and would have to be sent as specified under the bill to the mailing address of the association or authorized representative as reflected on the most current management certificate.

The bill would take effect September 1, 2021, and would apply only to a violation that occurred on or after that date.

SUBJECT: Exempting certain entities from real estate licensing requirements

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — S. Thompson, Kuempel, Darby, Fierro, Geren, Goldman, Hernandez

0 nays

4 absent — Ellzey, Guillen, Huberty, Pacheco

WITNESSES: For — None

Against — None

On — Chelsea Buchholtz, Texas Real Estate Commission; Lori Levy, Texas Realtors; (*Registered, but did not testify*: Tony Slagle, Texas Real Estate Commission)

BACKGROUND: Occupations Code sec. 1101.355 imposes certain additional eligibility requirements on business entities holding real estate broker licenses and sales agent licenses.

Concerns have been raised that requiring certain entities operated by real estate professionals to obtain redundant licenses undermines the benefits of operating as a limited liability or S corporation.

DIGEST: CSHB 2998 would specify that a business entity would not have to be licensed under Occupations Code ch. 1101 if the entity:

- received compensation on behalf of a licensed broker or sales agent that was earned by the license holder while engaged in real estate brokerage;
- performed no other acts of a broker;
- was a limited liability company or an S corporation;
- was registered with the Texas Real Estate Commission; and

- was at least 51 percent owned by the license holder on whose behalf the entity received compensation.

The commission would have to adopt rules providing for the registration of a business entity.

The bill would take effect January 1, 2022.

SUBJECT: Modifying eligibility for individuals with disabilities to vote by mail

COMMITTEE: Elections — committee substitute recommended

VOTE: 5 ayes — Cain, Clardy, Jetton, Schofield, Swanson

4 nays — J. González, Beckley, Bucy, Fierro

WITNESSES: For — Bill Sargent; (*Registered, but did not testify*: Gerald Welty, Convention of States; Alan Vera, Harris County Republican Party Ballot Security Committee; Chad Ennis, Texas Public Policy Foundation; Robert L. Green, Travis County Republican Party Election Integrity Committee; and six individuals)

Against — Chase Bearden, Coalition of Texans with Disabilities; Emily Eby, Texas Civil Rights Project; Glen Maxey, Texas Democratic Party; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; David Weinberg, Brennan Center for Justice; Cindy Ji, Children's Defense Fund Texas; Anthony Gutierrez, Common Cause Texas; Joanne Richards, Common Ground for Texans; Jeff Miller, Disability Rights Texas; Daniel Collins, El Paso County; Ender Reed, Harris County Commissioners Court; Cinde Weatherby, League of Women Voters of Texas; Anne Mazuca, Secure Democracy; Phil Bunker, Teamsters JC 58; Joshua Houston, Texas Impact; Chloe Goodman, Workers Defense Action Fund; and nine individuals)

On — Christina Adkins, Texas Secretary of State

BACKGROUND: Election Code sec. 82.002 allows qualified voters who have a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health to vote early by mail, including a voter who is expected or likely to be confined for childbirth on Election Day.

DIGEST: CSHB 3920 would specify certain circumstances that would not constitute sufficient cause to entitle a qualified voter to vote early by mail under Election Code sec. 82.002, including:

- a lack of transportation;
- a sickness that did not otherwise prevent the voter from leaving the voter's residence; or
- a requirement to appear at the voter's place of employment on election day.

An applicant would have to affirmatively indicate that the applicant agreed with the statement, "I have a sickness or physical condition that prevents me from appearing at the polling place on election day without a likelihood of needing personal assistance or injuring my health."

The bill would remove "expected" from "expected or likely" regarding the conditions for eligibility to vote early by mail because of confinement for childbirth on Election Day.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 3920 would clarify existing law by explicitly stating reasons an individual would not be able to vote early by mail in the Election Code. There have been documented cases of individuals abusing the state's provisions allowing individuals with a sickness or certain physical conditions to vote early by mail. The bill would prevent such abuses by delineating circumstances under which a voter would not be qualified to vote in this manner.

The bill would not hamper the ability of individuals with disabilities who were genuinely entitled to vote early by mail to do so but simply would prevent the abuse of Texas' early vote by mail provisions.

CRITICS SAY:

CSHB 3920 could place an unnecessary burden on individuals with disabilities and illnesses that entitled them to vote by mail. Individuals with certain disabilities and chronic illnesses do not always know when their illnesses will affect them. It also could put at risk individuals who were expected, but were not deemed likely, to be confined for childbirth on Election Day.

SUBJECT: Requiring governmental entity to display emergency notices online

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Paddie, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson

0 nays

2 absent — Hernandez, Smithee

WITNESSES: For — (*Registered, but did not testify*: Thomas Parkinson)

Against — (*Registered, but did not testify*: Tammy Narvaez, Harris County Commissioners Court)

BACKGROUND: Government Code sec. 2051.152 as added by Acts 2019, 86th Legislature, Regular Session, ch. 1029, requires a political entity that has the authority to impose a tax and maintains a website to post certain information on the website, including the political subdivision's contact information, its elected officers, and notices about elections and meetings of governmental bodies, among other information.

Interested parties have noted that recent events, including Winter Storm Uri, have demonstrated the need for clear and effective communication from governmental entities during an emergency. Some have called for these entities to post certain emergency notices and other information on their websites to better assist the public.

DIGEST: HB 3838 would require an applicable governmental entity to post in a prominent location on the home page of the entity's website each emergency notification issued by the entity and any other official notice issued by the entity, including notices regarding the entity's ability or inability to provide services the entity normally provides to the public.

The bill would take effect September 1, 2021.

SUBJECT: Labeling requirements for certain plant-based food products

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Klick, Allison, Coleman, Collier, Jetton, Oliverson, Price, Smith

1 nay — Zwiener

2 absent — Guerra, Campos

WITNESSES: For — Dustin Dean, Texas and Southwestern Cattle Raisers Association; Brandi Richards, Texas Cattle Feeders Association; Shalene McNeill; Rhonda Miller; (*Registered, but did not testify*: Josh Winegarner, Texas Cattle Feeders Association; Joy Davis, Texas Farm Bureau; Brandon Gunn, Texas Pork Producers Association; JC Essler, Texas Poultry Federation)

Against — Brett Christoffel, All Y'alls Foods; Dan Colegrove, Alliance for Plant Based Inclusion; Jessica O'Connell, Beyond Meat; Oscar Rodriguez, Texas Association of Broadcasters; (*Registered, but did not testify*: Chuck Mains, Impossible Foods; Bryan Hebert, Plant Based Foods Association; Kathy Grant, The Good Food Institute)

On — Stephen Pahl, Department of State Health Services

BACKGROUND: Health and Safety Code ch. 433 establishes the Texas Meat and Poultry Inspection Act, which is governed by the Department of State Health Services. Sec. 433.003 defines several types of animal-based food products.

Sec. 433.005 establishes that a livestock or poultry product is misbranded if:

- any part of its labeling is false or misleading;
- it is offered for sale under the name of another food; and

- it is an imitation of another food, unless its label bears the word "imitation" immediately followed by the name of the food imitated, among other specified provisions.

DIGEST: CSHB 316 would expand the categories of misbranded food products and add certain definitions under the Texas Meat and Poultry Inspection Act.

Misbranding. A livestock, poultry product, analogue product, or cell-cultured product would be misbranded if:

- for an analogue product of meat or poultry, its label did not bear immediately before product name certain terms, including "analogue," "meatless," "plant-based," or "made from plants;" or
- for a cell-cultured product, its label did not bear immediately before the product name certain terms, including "cell-cultured" or "lab-grown."

Definitions. The bill would define several terms, including "meat," "analogue product," and "cell-cultured product."

"Meat" would mean part of the muscle of cattle, sheep, swine, or goats that was skeletal and the portions of bone that normally accompany the muscle tissue. Among other things, the term would exclude cell-cultured, plant-based, or insect-based food products.

"Analogue product" would mean a food product derived by combining processed plant products, insects, or fungus with additives to approximate the texture, flavor, appearance or other aesthetic qualities or the chemical characteristics of any specific type of meat, meat food product, poultry, or poultry product.

"Cell-cultured product" would mean a food product derived by engineering muscle tissue fibers from animal cells in a laboratory or similar setting.

DSHS requirements. The bill would require the Department of State Health Services (DSHS) to consider certain characteristics in determining whether a certain food product was misbranded due to misleading labeling or advertising.

Other provisions. The bill would make certain conforming changes under current law.

As soon as practicable after the bill's effective date, the executive commissioner of the Health and Human Services Commission would have to adopt rules to implement the bill's provisions.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 316 would strengthen consumers' understanding of purchased food products by requiring clear, accurate labels of plant-based products. By codifying the definition of "meat," the bill would prevent plant-based companies from potentially misleading consumers about the way they market their meat alternatives. The bill is necessary to ensure food products are accurately labeled as animal-based or plant-based, which would help Texans make informed decisions about food they choose to consume.

CRITICS SAY:

CSHB 316 could duplicate existing food labeling requirements of certain federal and state regulations. Codifying the definition of "meat" and requiring additional labeling is unnecessary because food products from plant-based companies already are clearly marketed as meat substitutes.

SUBJECT: Modifying eligibility to be a candidate for or serve as an officer of a party

COMMITTEE: Elections — favorable, without amendment

VOTE: 5 ayes — Cain, Clardy, Jetton, Schofield, Swanson

4 nays — J. González, Beckley, Bucy, Fierro

WITNESSES: For — (*Registered, but did not testify*: Alicia Bell, Grassroots Gold; Alan Vera, Harris County Republican Party Ballot Security Committee; Marty Rhymes, Republican Club of Gregg County; Christina Drewry, Texas Nationalist Movement; Karen Brooks, Justin Ead, Terry Lynch, Fran Rhodes, Rebecca Rodgers, and Candelario Torres, True Texas Project; Manfred Wendt, Young Conservatives of Texas; Jordan Clements, Young Conservatives of Texas-UT; and 26 individuals)

Against — Wes Benedict; (*Registered, but did not testify*: Rene Perez, Libertarian Party of Texas; Elizabeth Miller, Libertarian Party of Texas, SdD10; Rosemarie Clouston and Glen Maxey, Texas Democratic Party; and 16 individuals)

On — (*Registered, but did not testify*: Christina Adkins, Texas Secretary of State; Robert L. Green, Travis County Republican Party Election Integrity Committee)

BACKGROUND: Under Election Code sec. 161.005(a), to be eligible to be a candidate for or to serve as a county or precinct chair of a political party, a person must be a qualified voter of the county and not be a candidate for nomination or election to, or be the holder of, an elective office of the federal, state, or county government. Sec. 161.005(c) exempts county or precinct chairs of political parties with state organizations that nominate by convention from these requirements.

DIGEST: HB 1987 would specify that the requirements in Election Code sec. 161.005(a) applied to the eligibility to be a candidate for or to serve as an officer, not just a county or precinct chair, of a political party. The bill would retain the requirement that a person be a qualified voter of the county to be eligible to be a candidate for or to serve as a county or precinct chair.

The bill would repeal the exception to sec. 161.005(a) for county or precinct chairs of parties with state organizations that nominate by convention.

The bill would take effect September 1, 2021, and would apply only to a candidate for nomination or election to an office the term of which began on or after that date.

SUPPORTERS SAY: HB 1987 would provide parity between local and state political party officials and treat political parties in the state equally by standardizing the requirements to serve as a party officer. This would help to ensure that parties in Texas were controlled by the grassroots at all levels, not by the elected officials from those parties. The bill would not seek to punish third parties that nominate by convention, but would simply apply the same standards to all political parties in Texas.

CRITICS SAY: HB 1987 would unfairly disadvantage third parties by removing the ability of individuals affiliated with parties that nominate by convention to simultaneously serve in the party and run for office. Third parties that nominate by convention have fewer individuals available to serve as officials and run for office on the party ticket. The bill would make it even more difficult for these parties to field candidates by removing their exemption from the Election Code.

SUBJECT: Requiring notice of disputed amounts regarding certain invoices

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Paddie, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson

0 nays

2 absent — Hernandez, Smithee

WITNESSES: For — Sewall C. "Spike" Cutler, Independent Electrical Contractors of Texas; (*Registered, but did not testify*: Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; CJ Tredway, Independent Electrical Contractors of Texas; Eric Woomer, Texas Construction Association)

Against — None

BACKGROUND: Government Code sec. 2251.042 requires a governmental entity to notify a vendor of an error in an invoice submitted for payment by the vendor within 21 days after the invoice was received.

It has been noted that governmental entities are not required to give a vendor specific notice of the amount in an invoice an entity considers erroneous. Concerns have been raised that the absence of such specific notice does not provide sufficient clarity for vendors and enables government entities to withhold all funds owed to a vendor until the dispute is resolved.

DIGEST: HB 1476 would require a governmental entity to notify a vendor of any disputed amount in an invoice submitted for payment by the vendor within 21 days after receiving the invoice. The notice would have to include a detailed statement of the disputed amount. The governmental entity would be able to withhold from required payments no more than 110 percent of the disputed amount.

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

SUBJECT: Prohibiting oral releases for automobile insurance claims

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul, Romero, Sanford

0 nays

WITNESSES: For — Ware Wendell, Texas Watch; John (Lin) McCraw; (*Registered, but did not testify*: Darren Whitehurst, Texas Automobile Dealers Association; Jacob Smith)

Against — Jon Schnautz, National Association of Mutual Insurance Companies; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Daniel Hodge, Al Boenker Insurance; Joe Woods, American Property and Casualty Insurance Association; John Marlow, Chubb; Susan Ross, State Farm Insurance)

On — (*Registered, but did not testify*: Jay Thompson, AFACT; Kimberly Donovan, Office of Public Insurance Counsel; Luke Bellsnyder, Texas Department of Insurance)

BACKGROUND: It has been suggested that people injured by motorists need protection from predatory practices engaged in by automobile insurers that seek to persuade injured motorists to settle and release their legal claims for an amount insufficient to compensate their losses.

DIGEST: CSHB 1793 would prohibit a claimant and another individual or entity, including an insurer writing personal or commercial automobile insurance in the state, from entering into an oral release for claims arising from property damage or an injury for which an insurer could be liable under an automobile insurance policy. A release made in exchange for money or other consideration paid in relation to such claims would not be enforceable unless the contract was in writing.

The bill would take effect September 1, 2021, and would apply only to a contract entered into on or after January 1, 2022.

SUBJECT: Requiring agreements for dual credit programs to include advising

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 9 ayes — Murphy, Pacheco, Cortez, Frullo, Muñoz, Ortega, Parker, Raney, J. Turner

0 nays

2 absent — P. King, C. Turner

WITNESSES: For — Chris Walters, Texas 2036; (*Registered, but did not testify*: Todd Williams, Commit Partnership; Chloe Latham Sikes, Intercultural Development Research Association; Patrick Brophey, North Texas Commission; Charles Gaines, Raise Your Hand Texas; Dustin Meador, Texas Association of Community Colleges; Mike Meroney, Texas Association of Manufacturers; Justin Yancy, Texas Business Leadership Council; Gilbert Zavala, The Greater Austin Chamber of Commerce; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Priscilla Camacho, Alamo Colleges District)

BACKGROUND: Under Education Code sec. 28.009, school districts are required to implement a program for students to earn the equivalent of at least 12 semester credit hours of college credit in high school. These programs can include dual credit programs. Sec. 28.009(b-2) establishes several requirements for agreements between a school district and a public institution of higher education to provide a dual credit program.

Some have suggested that providing academic advising to students enrolled in dual credit programs would help ensure students get the guidance and support necessary to succeed in these programs.

DIGEST: HB 4403 would require that an agreement between a school district and public institutions of higher education to provide a dual credit program designate at least one employee of the district or institution to provide academic advising to students enrolling in a dual credit course. The advising would have to be provided before the student began the course.

To the extent of any conflict, HB 4403 would prevails over another act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

The bill would apply to agreements to provide dual credit programs entered into on or after September 1, 2021.

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: Prohibiting prior authorization for antipsychotic drugs under Medicaid

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Frank, Hinojosa, Hull, Meza, Neave, Noble, Rose, Shaheen

0 nays

1 absent — Klick

WITNESSES: For — Phillip Balfanz, Federation of Texas Psychiatry; Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; (*Registered, but did not testify*: Dennis Borel, Coalition of Texans with Disabilities; Sebastien Laroche, Methodist Healthcare Ministries of South Texas, Inc.; Alison Mohr Boleware, National Association of Social Workers-Texas Chapter; Julia Hatcher, Texas Association of Family Defense Attorneys; Patricia Shipton, Texas Healthcare and Biosciences Institute; Cesar Lopez, Texas Hospital Association; Dan Finch, Texas Medical Association; Kevin Stewart, Texas Nurses Association and Texas Psychological Association; Thomas Parkinson)

Against — None

On — Laurie Vanhoose, Texas Association of Health Plans; (*Registered, but did not testify*: Ryan Van Ramshorst, Health and Human Services Commission)

BACKGROUND: Government Code sec. 531.073(a) establishes that the executive commissioner of the Health and Human Services Commission (HHSC), in the rules and standards governing the Medicaid vendor drug program and the child health plan program, must require prior authorization for the reimbursement of a drug that is not included in the appropriate preferred drug list adopted by HHSC for those programs, except for any drug exempted from prior authorization requirements by federal law or for any antiretroviral drug used to treat HIV or AIDS.

Concerns have been raised that requiring prior authorization for antipsychotic drugs for adult patients with serious mental illness is burdensome to physicians and providers and can potentially prevent patients with serious mental illness from receiving essential medications.

DIGEST:

CSHB 2822 would prohibit the executive commissioner of the Health and Human Services Commission (HHSC), in the rules and standards governing the vendor drug program, from requiring prior authorization for a nonpreferred antipsychotic drug that was included on the vendor drug formulary and prescribed to an adult patient if :

- during the preceding year, the patient was prescribed and unsuccessfully treated with a 14-day treatment trial of and antipsychotic drug that was included on the appropriate preferred drug list and for which a single claim was paid;
- the patient had previously been prescribed and obtained prior authorization for the nonpreferred antipsychotic drug and the prescription was for the purpose of drug dosage titration; or
- subject to applicable regulations, the patient had previously been prescribed and obtained prior authorization for the nonpreferred antipsychotic drug and the prescription modified the dosage, dosage frequency, or both, of the drug as part of the same treatment for which the drug was previously prescribed.

The executive commissioner, in the rules and standards governing the vendor drug program and as part of the requirements under a contract with a Medicaid managed care organization (MCO), would have to require, to the maximum extent possible as specified by the bill, automation of clinical prior authorization for each drug in the antipsychotic drug class.

The executive commissioner also would have to ensure that at the time a nonpreferred or clinical prior authorization edit was denied, a pharmacist was immediately provided a point-of-sale return message clearly specifying certain information necessary to submit a prior authorization request, and instructing the pharmacist to dispense, subject to applicable law, a 72-hour supply of the prescription.

The bill would apply the same prohibition on requiring prior authorization for a nonpreferred antipsychotic drug to an outpatient pharmacy benefit plan maintained by an MCO.

The bill's prohibition would not affect:

- the authority of a pharmacist to dispense the generic equivalent or interchangeable biological product of a prescription drug in accordance with applicable law;
- any drug utilization review requirements prescribed by state or federal law;
- or clinical prior authorization edits to preferred and nonpreferred antipsychotic drug prescriptions.

HHSC would be required to seek to amend existing contracts with MCOs to comply with the bill's provisions before the effective date, but to the extent of a conflict, the contract provisions entered into before the effective date would prevail.

The bill would take effect September 1, 2021, and would apply to contracts between HHSC and an MCO entered into or renewed on or after that date.