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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, May 17, 2021
87th Legislature, Number 58
The House convenes at 1 p.m.

Nine bills are on the General State Calendar for second reading consideration today. The bills analyzed in today's *Daily Floor Report* appear on the following page.

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

Alma Allen
Chairman

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Monday, May 17, 2021

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SUBJECT: Requiring a peace officer to request and render aid for an injured person

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

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

0 nays

SENATE VOTE: On final passage, April 22 — 31-0

WITNESSES: For — Koretta Brown, Alliance For A New Justice System; Chris Jones, Combined Law Enforcement Associations of Texas; Rebecca Bernhardt, Innocence Project of Texas; Mike Miller, Warriors For Ranchers; (*Registered, but did not testify*: Juan Salinas, AT&T; Chas Moore, Austin Justice Coalition; TJ Patterson, City of Forth Worth; James Parnell, Dallas Police Association; David Sinclair, Game Warden Peace Officers Association; Collin Craig, Houston Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Tom Maddox, Sheriffs Association of Texas; Alycia Castillo, Texas Criminal Justice Coalition; Joshua Houston, Texas Impact; Mitch Landry, Texas Municipal Police Association; John Chancellor, Texas Police Chiefs Association; Idona Griffith; Lorri Haden; Vanessa MacDougal)

Against — None

On — Warren Burkley, Austin Justice Coalition; Kathy Mitchell, Just Liberty; Brian Baxter, Texas Department of Public Safety

DIGEST: SB 2212 would require a peace officer who encountered an injured person while discharging the officer's official duties to immediately and as necessary request emergency medical services personnel to provide the person with emergency medical services and while waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skill and training.

The peace officer would not be required to request emergency medical services or provide first aid or treatment if making the request or providing the treatment would expose the officer or another person to a risk of bodily injury or if the officer was injured and physically unable to make the request or provide the treatment.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

SB 2212 would be a first step toward establishing a statewide duty for peace officers to render aid to injured persons encountered while discharging their official duties. Currently, many law enforcement agencies in Texas have policies that require peace officers to request and render aid to an injured person, but there is no statewide requirement for peace officers to take such action. The bill would bring the law into alignment with public expectations of officers in their role as public servants and first responders, as many members of the public may assume that peace officers already have a duty to render aid. The bill would provide reasonable exceptions to protect both officers' and the public's health and safety.

CRITICS SAY:

The exception in SB 2212 could leave too much to an officer's discretion and potentially cause confusion about when the duty was triggered. Because the severity of risk to the officer is not defined, the exception is ambiguous. The bill should clarify that an officer would not be required to request emergency medical services or provide first aid if such actions would clearly and immediately expose the officer or another person to an imminent threat of serious bodily injury.

SUBJECT: Creating the Texas Produced Water Consortium

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — T. King, Bowers, Kacal, Larson, Lucio, Paul, Price, Ramos, Walle, Wilson

0 nays

1 absent — Harris

SENATE VOTE: On final passage, March 30 — 30-1 (Hall)

WITNESSES: For —Steven Walden, Texas Desalination Association; Zacariah Hildenbrand; (*Registered, but did not testify*: Scott Anderson, Environmental Defense Fund; Shauna Sledge, North Texas GCD, Prairielands GCD, and Upper Trinity GCD; William Stevens, Panhandle Producers and Royalty Owners Association; Jason Modglin, Texas Alliance of Energy Producers; Mark Vickery, Texas Association of Manufacturers; Justin Yancy, Texas Business Leadership Council; Charlie Leal, Texas Farm Bureau; Ryan Paylor, Texas Independent Producers & Royalty Owners Association; C.J. Tredway, Texas Oil & Gas Association; Trace Finley, WaterBridge Resources; Carlos Rubinstein)

Against — None

On — Alex Ortiz, Sierra Club Lone Star Chapter; Christy Bratcher, Texas Tech University; (*Registered, but did not testify*: Paul Dubois, Railroad Commission; John Dupnik, Texas Water Development Board)

DIGEST: CSSB 601 would create the Texas Produced Water Consortium (TPWC) to gather information resources to study the economic, environmental, and public health considerations of beneficial uses of fluid oil and gas waste. The commission established by the bill would be a consortium consisting of Texas Tech University (TTU), the agency advisory council, the stakeholder advisory council, the technical and economic steering committee, and private entities.

Advisory entities. The agency advisory council created by the bill would be composed of representatives of:

- the Texas Department of Agriculture;
- the General Land Office;
- the Texas Parks and Wildlife Department;
- the Railroad Commission of Texas;
- the State Energy Conservation Office;
- the Texas Commission on Environmental Quality;
- the Texas Economic Development and Tourism Office; and
- the Texas Water Development Board.

Each state agency would be required to select a representative to serve on the agency advisory council of the TPWC by October 1, 2021. The agency advisory council would be required to meet as often as was necessary to ensure the consortium met the bills requirements and advise the consortium on matters related to the subject matter expertise of the agencies represented, including matters related to the regulation and permitting of and treatment standards for fluid oil and gas waste.

The bill would define "fluid oil and gas waste" to mean waste containing salt or other mineralized substances, brine, hydraulic fracturing fluid, flowback and produced water, or other fluid that arises out of or is incidental to the drilling for or production of oil or gas.

Treatment standards could include a fit for purpose requirement and regulations necessary for the protection of public health and the environment.

The stakeholder advisory council established by the bill would be composed of representatives of:

- the oil and gas industry;
- agricultural and industrial water users;
- environmental interests;
- fluid oil and gas waste recycling operators;

- public water utilities;
- landowners and owners of groundwater rights;
- commercial water recyclers and midstream water companies; and
- other appropriate interests or industries.

TTU would be required to appoint members to the stakeholder advisory council from members of the consortium to advise the consortium on matters related to research, investigation, and contract development.

The bill also would establish a technical and economic steering committee composed of members appointed by TTU to provide technical, economic, and scientific expertise. The technical and economic steering committee would have to determine the feasibility of proposals for research or investigation by the consortium and decide which proposals the consortium would accept for research and investigation.

Consortium duties. The consortium would be tasked with studying the economic, environmental, and public health considerations of beneficial uses of fluid oil and gas waste and technology needed for those uses. After October 1, 2022, the research and investigation goals of the consortium would have to be directed by its members. TTU could disband the consortium if the university determined that it lacked sufficient membership.

Report. By September 1, 2022, the consortium would be required to produce a report that included:

- suggested changes to laws and administrative rules to better enable beneficial uses of fluid oil and gas waste, including specific changes designed to find and define beneficial uses for such waste outside of the oil and gas industry;
- suggested guidance for establishing fluid oil and gas waster permitting and testing standards;
- a technologically and economically feasible pilot project for state participation in a facility designed and operated to recycle fluid oil and gas waste;

- an economic model for using fluid oil and gas waster in a way that was economical and efficient and that protected public health and the environment.

The bill would require TTU to:

- provide staff and other necessary resources for the consortium's activities;
- consult with the New Mexico Produced Water Research Consortium and its advisory board on research, data, and any other matter related to the consortium;
- solicit participation from specified stakeholder groups, including the oil and gas industry, water users and utilities in the state, environmental interests, and landowners; and
- coordinate with other members of the state university system and state agencies to provide necessary resources for the consortium to meet the bill's requirements.

Funding. The agency advisory council and TTU would be required to collaborate to create a fee structure that established membership costs at various levels for private entities that could contribute money to the consortium for research and investigation. Membership costs could include contributions of equipment or other resources in lieu of money. Money paid by private entities as membership costs could be used only for research and investigation conducted by the TPWC.

The consortium could not receive state money, except for state money appropriated to TTU to meet the bill's report requirements and resources provided by TTU and other state university system entities or state agencies. The consortium could accept gifts and grant money, equipment, or other resources necessary to accomplish its duties.

Access to data. Membership in the consortium would entitle a private entity to access data produced by the TPWC's investigation in an amount proportionate to its level of membership. A private entity's access to the consortium's data would have to be governed by a membership contract

between TTU and the entity that described the data that would be released to the private entity.

The TPWC would be required to make information about its work available to the public on a website maintained by TTU. The information could not be privileged, proprietary, or confidential.

The TPWC would be required to implement the bill's provisions only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money specifically for that purpose, the consortium could, but would not be required to, implement the bill's provisions using other appropriations available for that purpose.

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:

CSSB 601 would help to ensure an adequate future water supply for Texas by creating a consortium to study the feasibility of transforming millions of gallons of waste water into a viable and clean water source that meets standards for industry, agricultural, and potable uses in the state.

Millions of excess acre-feet of produced water, a byproduct of oil and gas production, is currently disposed of through subsurface injection, which is expensive, removes water from the water cycle, and is associated with induced seismicity earthquakes.

The bill would lay the groundwork for purifying produced water by forming the Texas Produced Water Consortium (TPWC), a consortium of industry, agricultural, environmental, and other interests housed at Texas Tech University to study the economic and technological feasibility of treating produced water. Research in this field is currently fragmented, with different groups working on different parts of the process. The TPWC would provide a common foundation for interested parties to work together to find a solution that could help supply water to parts of Texas that have suffered from repeated droughts.

CSSB 601 would ensure that Texas leads the nation in research and innovation in purifying produced water and could create a new industry and jobs, while developing a vital new water source for Texas.

CRITICS SAY:

The bill's provisions on treatment standards and necessary regulations for produced water established by the consortium's agency advisory council should expressly require protection of public health and the environment.

OTHER CRITICS SAY:

CSSB 601 would expand government beyond its proper scope. It is the role of the oil and gas industry, which produces the waste water and could profit if cost-effective beneficial uses for it are found, to conduct this type of research.

SUBJECT: Excluding certain payment processing services from sales and use tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — Meyer, Thierry, Button, Cole, Guerra, Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

1 absent — Martinez Fischer

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — John Christian, Ryan LLC; Dino Marcaccio, Texas Tax Group; Sarah Bevers, United Supermarkets; (*Registered, but did not testify*: James LeBas, AECT and IBAT; Robert Howden, Texas Credit Union Association; Susan Ross, Texas Dental Association; Matt Burgin, Texas Food and Fuel Association; Troy Alexander, Texas Medical Association; Kelsey Streufert, Texas Restaurant Association; Jim Sheer, Texas Retailers Association; Dale Craymer, Texas Taxpayers and Research Association; Morris Wilkes, United Supermarkets; Mark Vane, Walmart)

Against — None

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

BACKGROUND: Tax Code sec. 151.0101 includes data processing services as services subject to sales and use taxes. Under sec. 151.0035, "data process services" includes word processing, data entry, data retrieval, data search, information, compilation, payroll and business accounting data production, and other computerized data and information storage or manipulation.

DIGEST: CSSB 153 would exclude from data processing services subject to sales and use taxes:

- services exclusively to encrypt electronic payment information for acceptance onto a payment card network to comply with the Payment Card Industry Security Standards Council; and
- settling of an electronic payment transaction by certain methods as specified in the bill.

"Settling of an electronic payment transaction" would mean the authorization, clearing, or funding of a payment made by a credit card, debit card, gift card, stored value card, electronic check, virtual currency, loyalty program currency such as points or miles, or a similar method. The term would not include charges by a marketplace provider.

Methods of settling of an electronic payment that would be excluded from being considered data processing services would include settling by:

- a downstream payment processor or point of sale payment process that routed electronic payment information;
- a licensed person who was engaged in the business of money transmission;
- a federally insured financial institution or affiliate;
- a person who had entered into a sponsorship agreement with a federally insured financial institution for the purpose of settling electronic payments; or
- a payment card network that allowed a person to accept a specific brand of debit or credit card by routing information and data to settle a payment.

The bill would take effect October 1, 2021, and would not apply to tax liability accruing before that date.

SUPPORTERS SAY:

CSSB 153 would clarify existing tax practices by excluding merchant credit and debit card processing services from being considered as taxable data process services. While it has been the standing practice by the comptroller to consider these practices as a financial process not subject to tax, recent audits have led to some question about whether these payment processing services actually were excluded from data processing services under law. This has raised concern among businesses that would have to

face hundreds of millions of dollars in additional sales and use taxes each year. By specifying that credit and debit card payment services were not taxable, CSSB 153 would clarify current law and comptroller opinions and prevent businesses from being significantly burdened by extra taxes.

CRITICS SAY: No concerns identified.

SUBJECT: Re-designating the UT Health San Antonio campus extension in Laredo

COMMITTEE: Higher Education — favorable, without amendment

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

0 nays

2 absent — P. King, Raney

SENATE VOTE: On final passage, March 31 — 31-0

WITNESSES: None

BACKGROUND: Education Code ch. 74, subch. M allows the board of regents of The University of Texas System to exercise any power granted to the board in establishing and operating the campus extension of The University of Texas Health Science Center at San Antonio in Laredo. It sets out provisions for the extension's finances, facilities, and supervision by the Texas Higher Education Coordinating Board.

DIGEST: SB 884 would re-designate the Laredo campus extension of The University of Texas Health Science Center at San Antonio as a multi-institution center of The University of Texas System. The board of regents of the UT system could assign responsibility for management of the center to a component institution of the system.

Operating costs of the center would be paid from available funds from any public or private entity. An amount appropriated from the funds established for the component institutions of The University of Texas System could be used to maintain, operate, and conduct health education programs and other related work at the multi-institution center.

The primary purpose of the multi-institution center would be to host educational activities, conduct and facilitate research, and engage in community outreach. Component institutions of the system could use the

center in accordance with its primary purpose to provide undergraduate and graduate medical and dental education, including residency training programs, and other levels of health education work in collaboration with any public institution of higher education considered appropriate by the board of regents.

Education Code sec. 74.705, a provision subjecting the campus extension to the continuing supervision of the Texas Higher Education Coordinating Board and the board's rules, would be repealed.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

SB 884 would help better serve the health care and higher education needs of Laredo and the surrounding region by re-designating the UT Health Science Center at San Antonio campus extension in Laredo as a multi-institution center of the UT system.

The mission of the campus extension in Laredo is not sufficiently being fulfilled. Remote management by UT Health San Antonio has not provided the level of oversight needed for the extension to effectively perform its intended functions, and re-designating the campus as a multi-institution center of the UT system would allow the creation of innovative new programs and efficient management. These changes would provide greater access to training for health care providers and higher education opportunities for residents of Laredo and the surrounding region, who are currently underserved in these areas.

CRITICS SAY:

No concerns identified.

SUBJECT: Revising offense of injury to a child, elderly or disabled individual

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

0 nays

2 absent — A. Johnson, Murr

SENATE VOTE: On final passage, April 19 — 30-1 (Springer), on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify*: Eric Carr, African American Police Officers League Texas PAC; DeAndre Hutchison, Afro American Police Officers League; Jennifer Tharp, Comal County Criminal District Attorney; Frederick Frazier, Dallas Police Association/FOP716 State FOP Director; James Parnell, Dallas Police Association; David Sinclair, Game Warden Peace Officers Association; Ray Hunt, HPOU; Erleigh Wiley, Kaufman County Criminal District Attorney; Lindy Borchardt, for Sharen Wilson, Tarrant County Criminal District Attorney; Tom Maddox, Sheriffs Association; Mitch Landry, Texas Municipal Police Association; John Chancellor, Texas Police Chiefs Association; Bruce Owdley)

Against — None

BACKGROUND: Penal Code sec. 22.04 makes injury to a child, elderly individual, or disabled person a crime. Under sec. 22.04(a) it is an offense to intentionally, knowingly, recklessly, or with criminal negligence by act or intentionally, knowingly, or recklessly by omission, cause a child, elderly individual, or disabled individual serious bodily injury; serious mental deficiency, impairment, or injury; or bodily injury.

Under sec. 22.04 (a-1), a person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, boarding home facility, intermediate care facility for persons with an intellectual or developmental disability, or other

institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes a child, elderly individual, or disabled individual who is a resident of the home or facility serious bodily injury, serious mental deficiency, impairment, or injury, or bodily injury.

Under sec. 22.04(b), an omission is conduct constituting an offense under this section if an individual has a legal or statutory duty to act or had assumed care, custody, or control of a child, elderly individual, or disabled individual. Under sec. 22.04(d), an individual has assumed care, custody, or control if the individual has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for a child, elderly individual, or disabled individual. An individual acting during the individual's capacity as owner, operator, or employee of a group home or facility is considered to have accepted responsibility for protection, food, shelter, and medical care for the child, elderly individual, or disabled individual who is a resident of the group home or facility.

Depending on the circumstances and harm caused, offenses are first-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000), second-degree felonies (two to 20 years in prison and an optional fine of up to $10,000), or third-degree felonies (two to 10 years in prison and an optional fine of up to $10,000),

DIGEST: SB 1354 would revise the conditions that define whether an individual can be considered to have assumed the care, custody, or control of a child, elderly individual, or disabled individual as it relates to committing the criminal offense of injury to such persons.

The provision that helps determine whether someone has assumed the care, custody, or control of someone would be revised so that it no longer required a reasonable person to believe that an individual had accepted responsibility for all four elements of protection, food, shelter, or medical care. The bill instead would establish that an individual had assumed care, custody, or control of a child or elderly or disabled individual if a reasonable person would conclude that the person had accepted the

responsibility for one of the elements of protection, food, shelter, or medical care.

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

SUPPORTERS SAY:

SB 1354 would better protect children, elderly individuals, and disabled individuals by clarifying when someone could be assumed to have the care, custody, and control of another. SB 354 could help prosecutors and law enforcement authorities address situations like one found in an unlicensed group home in Harris County in which more than 30 individuals with mental and physical disabilities were found in deplorable conditions that threatened their health and safety.

Current provisions could present a roadblock to protecting those who need it and to holding accountable those mistreating children, elderly, and disabled individuals because establishing that someone has assumed the care, custody, and control of someone requires having to prove someone has assumed all four elements of protection, food, shelter, and medical care. SB 354 would make it clear that providing any one of these elements would be enough to establish that someone had assumed the care, custody, and control of another. The bill would be in line with other Texas laws that protect the vulnerable from abuse and mistreatment.

CRITICS SAY:

Current law sufficiently covers situations in which children, elderly individuals, and disabled individuals are abused and injured. Individuals being abused in group homes would be covered by current law provisions that allow those responsible for abuse or injury in these homes to be subject to criminal prosecution.

SUBJECT: Exempting firearm safety equipment from sales and use tax

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — Meyer, Thierry, Button, Cole, Guerra, Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

1 absent — Martinez Fischer

SENATE VOTE: On final passage, April 19 — 30-1 (Hughes), on Local and Uncontested Calendar

WITNESSES: For — Gyl Switzer, Texas Gun Sense; (*Registered, but did not testify*: Leesa Ross, Lock Arms for Life; David Reynolds, Texas Chapter of the American College of Physicians; Dan Finch, Texas Medical Association; Clayton Travis, Texas Pediatric Society; Jennifer Allmon, The Texas Catholic Conference of Bishops)

Against — (*Registered, but did not testify*: Kirk Broaddus; Susana Carranza; Roberta Coffin; Dorothy Ann Compton; Carol Edwards; Georgia Keysor; Robert Norris)

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

DIGEST: SB 313 would exempt the sale, storage, use, or other consumption of firearm safety equipment from sales and use taxes. "Firearm safety equipment" would include a gun lock box, gun safe, barrel lock, trigger lock, or another item designed to ensure the safe handling or storage of a firearm.

The bill would take effect September 1, 2021, and would not affect tax liability accruing before that date.

SUPPORTERS SAY: SB 313 would exempt firearm safety equipment from sales and use taxes, which would promote responsible gun ownership and save lives. By exempting safety equipment from the tax, gun owners would be incentivized to purchase child-proof safety locks, loading indicators that show whether a firearm is loaded with ammunition, and other tools that would prevent accidental gun deaths. As the state has seen a spike in gun purchases over the past year, such an incentive would be especially useful for the increasing number of first-time gun owners. While there is a slight cost to state revenue, making safety equipment more affordable could save lives and thus make the bill worth more than its modest cost.

CRITICS SAY: SB 313 would create a tax preference that could distort the free market, amounting to the government favoring a certain sector over others. The bill also may not lead to actual savings for customers since business may increase prices in response to increased demand.

OTHER CRITICS SAY: By exempting certain firearm equipment from sales and use taxes, SB 313 could incentivize the purchase of more guns and potentially decrease public safety.

NOTES: According to the Legislative Budget Board, the bill would cost about $1.6 million to general revenue through fiscal 2023.

SUBJECT: Prohibiting HOA regulation of certain religious displays

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — C. Turner, Cain, Crockett, Lambert, Ordaz Perez, Shine

0 nays

3 absent — Hefner, Patterson, S. Thompson

SENATE VOTE: On final passage, April 6 — 31-0

WITNESSES: *On House companion bill, HB 1569:*
For — Jonathan Covey, Texas Values Action; Shannon Jacquette, Texas Catholic Conference of Bishops; Nancy Kozanecki, HOA Reform Coalition of Texas; (*Registered, but did not testify*: Mary Castle and Gregory McCarthy, Texas Values Action; Julia Parenteau, Texas Realtors; Thomas Parkinson, Jason Vaughn)

Against — Tara Devine, Majestic Hills Homeowners Association; Alison Woss, Avery Ranch Homeowners Association and Ingleside; (*Registered, but did not testify*: John Krueger, Associa; Doug Plas, Texas Community Associations Advocates; Matt Simpson, ACLU of Texas)

BACKGROUND: Property Code sec. 202.018 prohibits a property owners' association from enforcing or adopting a restrictive covenant that prohibits a property owner or resident from displaying or affixing on a dwelling entry one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief. The law does not prohibit the enforcement or adoption of a covenant that, to the extent allowed by the Texas and U.S. constitutions, prohibits a display that is in a location other than the entry door or door frame or extends past the outer edge of the door frame or that has a total size of greater than 25 square inches.

DIGEST: SB 581 would prohibit a property owner's association from enforcing or adopting a provision in a dedicatory instrument, including a restrictive covenant, that prohibited a property owner or resident from displaying or

affixing on the owner's or resident's property or dwelling one or more religious items the display of which was motivated by the owner's or resident's sincere religious belief. The bill would remove the provision that limited the prohibition on enforcement to the entry of the owner's or resident's dwelling.

The bill would not prohibit a property owners' association from enforcing or adopting a provision in a dedicatory instrument that, to the extent allowed by the state and U.S. constitutions, prohibited the display on a resident's property of a religious item that:

- threatened the public health or safety;
- violated a law other than a law prohibiting the display of religious speech;
- contained language, graphics, or any display that was patently offensive to a passerby for reasons other than its religious content;
- was installed on property owned or maintained by the property owners' association or owned in common by association members;
- violated any applicable building line, right-of-way, setback, or easement; or
- was attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture.

The bill would repeal a provision relating to the authority of an owner or resident to use a material or color to make an unauthorized alteration to an entry door or door frame in the context of displaying or affixing a religious item and a provision authorizing a property owners' association to remove religious items displayed in violation of a restrictive covenant.

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:

SB 581 would correct an unintended consequence of legislation enacted a decade ago that protects the rights of homeowners to display religious items on their front door or door frame. That law was enacted to protect the rights of homeowners of the Jewish faith to display mezuzahs on the

entryways to their homes. Some homeowners' associations have determined that the law permits them to force homeowners to remove any religious display that is not affixed to a homeowners' front door. There have been instances of homeowners being told to take down a small cross from their front yard.

SB 581 would fix what amounts to a ban on religious speech by homeowners' associations and would recognize that for many people, their freedom to express their religion extends beyond the interior of their home. The bill is appropriately crafted to remove a substantial burden that does not further a compelling interest by prohibiting homeowners' associations from interfering with a person's constitutionally protected right to place traditional religious displays on their property. It would not prevent a homeowners' association from removing religious displays placed on common property or areas that are owned or maintained by the association.

While some have expressed concern over the type or size of religious displays that could be placed in a yard, the bill retains statutory language prohibiting any display that is patently offensive to a passerby for reasons other than its religious content.

CRITICS SAY:

SB 581 could burden members of a homeowners' association who serve on the association's governing board with having to investigate complaints about religious displays, and it could be difficult to determine when a display was motivated by the owner's sincere religious beliefs. The purpose of homeowners' associations is to maintain property in a neighborhood for enhanced property values, and the bill could lead to disputes or litigation over large or controversial displays and their impact on property values.

NOTES:

The House companion bill, HB 1569 by Schofield, was left pending in the House Committee on Business and Industry.

SUBJECT: Requiring certain facilities to disclose Alzheimer's care certification status

COMMITTEE: Human Services — favorable, without amendment

VOTE: 6 ayes — Frank, Hinojosa, Hull, Neave, Noble, Shaheen

1 nay — Klick

2 absent — Meza, Rose

SENATE VOTE: On final passage, March 29 — 30-1 (Springer)

WITNESSES: *On House companion bill, HB 413:*
For — Sydney Thomas, Alzheimer's Association; (*Registered, but did not testify*: Amanda Fredriksen, AARP; Patricia Ducayet, Office of the State Long-Term Care Ombudsman; Diana Martinez, Texas Assisted Living Association; Dan Finch, Texas Medical Association)

Against — None

On — Michelle Dionne-Vahalik, Health and Human Services Commission; Kevin Warren, Texas Health Care Association; (*Registered, but did not testify*: Andy Vasquez, Health and Human Services Commission)

BACKGROUND: Health and Safety Code sec. 242.040 requires the Department of Aging and Disability Services (DADS) to establish a system for certifying nursing facilities and related institutions that meet certain standards for the specialized care and treatment of people with Alzheimer's disease and related disorders.

Sec. 242.202 requires an institution that advertises the provision of services for Alzheimer's disease and related disorders to disclose to prospective residents the nature of its care or treatment. The disclosure must include whether the institution is certified by DADS for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders.

Sec. 247.029 requires DADS to establish a classification and license for an assisted living facility that advertises personal care services to residents who have Alzheimer's disease or related disorders. Facilities are required to disclose whether they hold that license.

The 84th Legislature in 2015 enacted SB 200 by Nelson, which abolished certain agencies, including DADS, and transferred their functions to the Health and Human Services Commission (HHSC). On September 1, 2017, the functions of DADS were transferred to HHSC, and HHSC began regulating long-term care facilities.

DIGEST:

SB 383 would require nursing facilities to provide a written notice to each facility resident disclosing whether or not the facility was certified by the Department of Aging and Disability Services (DADS) for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders. This notice also would have to be provided to each person applying for services from the facility or the person's next of kin or guardian.

The bill would require assisted living facilities to provide written notice to each facility resident disclosing whether or not the facility held a license issued by DADS for the provision of personal care services to residents with Alzheimer's disease or related disorders.

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.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

SB 383 would strengthen consumer protections and transparency by requiring nursing homes and assisted living facilities to provide written notice to current and prospective residents on whether or not the facilities were certified to provide specialized Alzheimer's care. Clarifying existing disclosure requirements would help prevent fraudulent or deceptive advertising toward vulnerable populations with Alzheimer's and related disorders.

Hundreds of thousands of Texans have been diagnosed with Alzheimer's, and the state has one of the highest number of Alzheimer's-related deaths in the country. However, few licensed nursing facilities in the state are certified for the care of Alzheimer's patients. Facilities that market themselves as "memory care" facilities and are not licensed by the state for Alzheimer's care may be giving consumers a false impression of their qualifications.

By clarifying the requirement that facilities must disclose their Alzheimer's care certification status to current and prospective residents, SB 383 would ensure that families were sufficiently informed about facilities' qualifications when looking for appropriate long-term care for their loved ones.

CRITICS SAY:

SB 383 could duplicate existing disclosure requirements for nursing homes and assisted living facilities by requiring them to disclose to prospective residents whether they were certified for the care of Alzheimer's patients. In addition, families currently may request information on a facility's services when they are deciding which facility would provide the best care for their loved ones.

OTHER CRITICS SAY:

To improve transparency efforts, SB 383 also should require "memory care" facilities that advertise the provision of memory care services to disclose to current and prospective residents whether or not a facility is certified to provide specialized care and treatment to persons with Alzheimer's disease and related disorders.

NOTES:

The House companion bill, HB 413 by Perez, was reported favorably from the House Committee on Human Services on April 9 and sent to the House Committee on Calendars on April 22.

SUBJECT: Requiring vendors for fingerprinting services to meet contract requirement

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

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

0 nays

SENATE VOTE: On final passage, April 21 — 30-1 (Creighton)

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Michelle Farris, Texas Department of Public Safety)

DIGEST: SB 922 would require the Department of Public Safety (DPS) to include certain provisions in a contract with a vendor to provide fingerprinting services throughout the state for use in accessing criminal history record information. The contractual provisions would:

- require notice to the public of a permanent closure of a location accessible to the public that provided fingerprinting services at least 45 days before the location closed;
- require a mobile unit to provide fingerprinting services in or as near as practicable to the area of a location accessible to the public that permanently closed until a replacement location was opened in that area at full capacity if the closure would cause the vendor to not meet contractual coverage requirements; and
- allow DPS to contract with a second vendor to provide fingerprinting services or to provide fingerprinting services by other means if it determined that the original vendor had not fulfilled the contract in a reasonable manner.

DPS annually would have to review and prepare a report on the services provided by the vendor under the contract that included a determination on the vendor's ability to adequately address the need for fingerprinting services throughout this state based on:

- the availability of fingerprinting appointments, including any wait times; and
- a study of the miles required to travel to receive fingerprinting services and whether there were short-term or chronic gaps in coverage in certain areas of the state.

DPS would have to provide the report to the governor and the Legislature.

The bill would take effect September 1, 2021, and apply only to a contract for which DPS first advertised or otherwise solicited bids, proposals, offers, or other qualifications or made a similar solicitation on or after that date.

SUPPORTERS SAY:

SB 922 would ensure that Texans across the state had access to fingerprinting services by revising contracts for fingerprinting services entered into by the Department of Public Safety (DPS). Currently, DPS partners with a third party vendor to provide criminal history checks through an electronic fingerprinting service, which is used by various employers and licensing agencies across the state. Included in the contract is a requirement that the vendor have an operating facility within a 50-mile radius of a prospective Texas consumer. However, it has been found this requirement often is not met and these locations often have unacceptable wait times and close without notice.

The bill would address these issues by requiring the vendor to provide sufficient notice to the public before a location closed and administer a mobile unit in the area of a facility that had closed and by allowing DPS to contract with a second vendor should the original vendor not fulfill its contractual obligations.

CRITICS SAY:

No concerns identified.