



The Top Underpublicized Bills of the 80th Texas Legislature

By Carl S. Richie, Jr.

ABOVE

*House Chamber, Courtesy of the State Preservation Board, Austin, Texas.
Photographer Eric Beggs, P7.C3.e1#1, 1/95*

Last fall, when asked by a client to handicap the 80th Texas Legislature, I responded in professional baseball terms — it would be a Double A session.

“There are no pressing statewide issues like tort reform or electric deregulation screaming for consideration and a federal court is not pointing a gun at the Legislature’s head to coerce it to act,” I said. “After all, we resolved school finance last spring. The only major issue is the state’s budget, and we have plenty of money to go around with a \$14.2 billion surplus.”

The 80th Texas Legislature did indeed turn out to be a Double A session — *acrimony and acronyms*. The acrimony started the very first day of the legislative session with a challenge to House Speaker Tom Craddick. Although Craddick survived the challenge, the acrimony continued throughout the session. The volume was turned up to fever pitch in the last three days of the session with another failed attempt to oust Craddick. As the session drew to a close, in the final questions, four different House members announced their candidacy for speaker in 2009. During the final days of the session, the House parliamentarian and assistant parliamentarian resigned.

While the Legislature has adjourned, the acrimony persists in the lower chamber as several House members have filed requests with the Texas Office of the Attorney General (OAG) to opine on the speaker’s authority under the Texas Constitution, state statutes, and House rules. Yet another House member has announced his candidacy for speaker in 2009.

But the acrimony was not limited to the House of Representatives. In the upper chamber, senators expressed their dissatisfaction with the lieutenant governor when the Senate exhausted most of a day meeting in various caucuses. In addition, both the House and Senate went ballistic over Gov. Rick Perry’s executive order requiring girls in the sixth grade to be tested for human papillomavirus (HPV).

The acronyms component of the session included the aforementioned HPV, CHIP, TSU, TTC, TXU, and TYC.¹ While these issues dominated the attention of the media and bloggers, the Legislature was busy restoring funding to social services that were cut in 2003 due to the \$10 billion deficit the state faced that year. In addition to the budget process, the Legislature addressed many local issues. The following are a few issues that were underpublicized, but merit attention.

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H.B. 716 — effective Sept. 1, 2007

MORTGAGE FRAUD

(REP. BURT SOLOMONS/SEN. KIP AVERITT)

The Financial Crimes Enforcement Network (an agency under the U.S. Department of the Treasury) recently released statistics showing that the number of mortgage fraud incidents is increasing, with Texas ranking in the top 10 for mortgage foreclosures. The consequences of mortgage fraud to the residential lending industry vary from monetary losses to criminal and administrative actions. As a result, consumers can face higher loan rates and fees, stolen identities, and impaired credit ratings.

H.B. 716 establishes a mortgage fraud task force within OAG. More important, the legislation criminalizes mortgage fraud offenses and creates a funding stream for the task force. Further, the legislation requires each applicant for a home loan to be notified of penalties for making false or misleading written statements. The legislation also requires reporting of suspected fraudulent activities.

H.B. 2061 — effective March 28, 2007

LIABILITY OF COUNTY AND DISTRICT CLERK DISCLOSURE

(REP. JIM KEFFER/SEN. TOMMY WILLIAMS)

H.B. 2061 was adopted by the Legislature to address an opinion released by Attorney General Greg Abbott requiring county and district clerks to redact Social Security numbers from documents that are available to the public on the Internet. The opinion also provided that releasing documents without editing the Social Security numbers would make clerks subject to criminal liabilities under state law.

Clerks around the state reacted to the opinion by limiting access to public records citing that they do not have the resources to redact every Social Security number present. As a result, title insurance companies, the banking and real estate industries, and other industries that rely on daily access to such records encountered difficulty conducting day-to-day business.

H.B. 2061 addresses these issues by providing that county clerks are not liable for disclosing a document filed with the county or district clerk that contains a Social Security number. Additionally, the bill requires an individual to provide a written request to have all but the last four digits of the Social Security number removed. Finally, the bill requires clerks to accept documents for filing even if the Social Security number is displayed and the clerk is not required to confirm that a Social Security number has been redacted from a document.

S.B. 1154/H.B. 1766/H.B. 1767 — all effective Sept. 1, 2007

SCRAP METAL THEFT

(SEN. JOHN CARONA/REP. AARON PENA)

Texas, like other states, is experiencing an increase in theft of metals, such as copper, bronze, and brass. Copper, in particular, has become a prime target as the price of copper has increased

significantly in the past year. The problem has escalated so much that the Legislature adopted three different bills this session.

S.B. 1154 was passed to curtail thieves from turning to secondhand dealers to sell stolen metals. The bill requires more rigorous records to be kept regarding the sale of secondhand metals and further defines what materials are regulated. The bill also increases the penalty for sellers who falsify records or knowingly sell stolen regulated materials.

H.B. 1766 provides that theft of a wiring cable that consists of at least 50 percent aluminum, bronze, or copper metals, and has a value of less than \$20,000, is a state jail felony.

Additionally, H.B. 1767 addresses specific cases of vandalism and other acts of criminal mischief relating to communications equipment (such as traffic signals) due to the increase in value of the wires and cables in those devices. The bill makes it a third-degree felony for any criminal mischief act on transportation communication equipment or devices causing an economic loss less than \$100,000.

S.B. 288 — effective June 15, 2007

REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS

(SEN. JANE NELSON/REP. DIANE DELISI)

The 79th Legislature directed the Texas Department of State Health Services (DSHS) to establish a 14-member advisory panel of consumers, infection control professionals, and health care facility leaders to study and make recommendations for the collecting and reporting of health care-associated infections.

S.B. 288 codifies the panel's key findings. First, the bill grants rulemaking authority to the DSHS executive commissioner to establish the Advisory Panel on Health Care-associated Infections to guide the implementation, development, maintenance, and evaluation of a new reporting system.

Second, the bill requires health care facilities to report health care-associated infections to DSHS. Further, the department must publish reports relating to these infections and provide education and training to a health care facility.

Third, the bill prohibits public infection rates from being used in a civil action or being admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

Finally, the bill uses existing enforcement provisions to keep hospitals compliant with reporting health care-associated infections in the form of inspections; denial of application; suspension, revocation, probation, or re-issuance of a license; or civil penalty in an amount determined by the district court to be issued each day a violation occurs.

H.B. 3876 — effective Sept. 1, 2007

REGULATING THE PRACTICE OF DENTISTRY

(REP. JOSE MENENDEZ/REP. FRED BROWN/SEN. CHRIS NICHOLS)

Under current law, the State Board of Dental Examiners regulates licensed dentists but has limited authority over dental

clinics that employ dentists to perform dental services. This limited jurisdiction prevents dentists from obtaining patient records, which, in turn, prevents the board from investigating complaints from the public and hinders dentists' ability to answer questions regarding the care provided to their patients.

H.B. 3876 addresses the limited access by the board to dental records. The new law makes a significant change to proceedings in a suit involving a health care liability claim against a dentist for injury or death to a patient.

The bill authorizes any entity providing dental services to designate a dental custodian of records who will provide records to the board or to a dentist who has provided dental treatment and to comply with other laws regulating dental patient records.

The new law also makes a significant procedural change to health care liability lawsuits against a dentist by prohibiting a member of the board from serving as an expert witness in a suit unless the member receives approval of the dental board or executive committee.

S.B. 1119 — effective Sept. 1, 2007

RED-LIGHT CAMERAS

(SEN. JOHN CARONA/REP. JIM MURPHY)

Although red-light camera systems, created to photograph and ticket individuals who run red lights, have been popping up in major Texas cities, current law does not address or regulate their use. Additionally, the use of such systems by municipalities has been criticized by the media and members of the public as a way to generate money rather than enhance public safety.

The Legislature adopted S.B. 1119 to address these issues and create guidelines for red-light camera use by municipalities. S.B. 1119 establishes the statutory framework under which red-light camera systems will operate to ensure the system is not being used as a source to generate revenue. The bill restricts contracts between municipalities and vendors so that compensation is not based on the number of citations issued. Also, the new law requires a traffic engineering study to include a history of accidents, frequency of red-light violations, and similar traffic engineering and safety criteria to be conducted prior to camera placement in a particular area.

H.B. 1751 — effective Jan. 1, 2008

ADMISSION FEE FOR SEXUALLY ORIENTED BUSINESSES

(REP. ELLEN COHEN/SEN. ROYCE WEST)

Approximately 2 million sexual assault victims live in Texas. Research shows only 20 percent of those victims report the assault to the proper authorities and just 10 percent seek medical care. To encourage sexual assault victims to seek help, the Legislature adopted H.B. 1751 to cover the costs of programs relating to sexual assault prevention, intervention, and research provided by state, local, and nonprofit agencies.

To that end, H.B. 1751 assesses a \$5 fee on each customer admitted to a sexually oriented business that provides live nude entertainment or performances. The bill authorizes the attorney general to implement the new law and requires that the fee be remitted to the comptroller to be deposited to the credit of the sexual assault program fund.

H.B. 1355 — effective Sept. 1, 2007

DOG ATTACKS ON PERSONS

(REP. DAN GATTIS/SEN. ELLIOTT SHAPLEIGH)

Current law penalizes dog owners whose dog injures or causes serious bodily injury or death. H.B. 1355 strengthens those laws to address the current rate of dog attacks in Texas.

The legislation requires dog owners, regardless of whether their dog has been declared dangerous, to secure their dog on their property. Previously, owners were required to secure their dog only if animal control declared the dog dangerous with evidence that the dog was aggressive or had injured someone in the past.

The new law raises the penalty by providing that a dog owner is held criminally responsible upon the first attack by a dog that causes serious bodily injury or death at a location other than the dog owner's property in an unprovoked attack in which the dog owner failed to secure the dog. The crime is punishable by a third-degree felony for serious bodily injury and a second-degree felony for death. The bill provides defense to prosecution for many professionals that deal with dogs on a regular basis.

NOTES

1. Children's Health Insurance Program, Texas Southern University, Trans-Texas Corridor, Texas Utilities, and Texas Youth Commission.

CARL S. RICHIE, JR.

is the principal of Carl S. Richie, Jr., Attorney at Law, P.L.L.C. He has 24 years' experience in the legislative or executive branches of local, state, and federal government.

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