

Texas Department of
Mental Health and Mental Retardation

Don A. Gilbert, M.B.A.
Commissioner

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Opinion Committee



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The Honorable Dan Morales
Attorney General of Texas
Price Daniel Sr. Building
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Austin, Texas 78711

RQ-1030
FILE # MH-39896-97
I.D. # 39896

Dear General Morales:

Texas Health and Safety Code, Chapter 597, "Capacity of Clients to Consent to Treatment," was enacted in 1993. Section 597.055 provided that the chapter would expire on August 31, 1997. This year, the Texas Legislature enacted Senate Bill 85 ("SB 85") which amended certain sections of Chapter 597 and repealed §597.055, the section with the expiration provision. *Act of May 16, 1997, 75th Leg., R.S., ch. 451, 1997 Tex. Sess. Law Serv. 1747 (Vernon).*

Although §11 of SB 85 contains an emergency clause purporting to make the bill effective upon passage, the bill passed the House of Representatives by a *non-record* vote. Pursuant to Article III, §39 of the Texas Constitution, a bill takes effect on the ninety-first day after adjournment of the legislative session in which it is enacted, unless the legislature declares an emergency and the bill passes both houses with at least a two-thirds *record* vote. See Halfert v. San Saba Springs Land and Livestock Ass'n, 34 S.W. 639 (Tex. 1896). Thus, SB 85 was not effective until the ninety-first day after adjournment of the 75th Texas Legislature, or September 1, 1997.

Therefore, your opinion is respectfully requested on the following questions:

- Did Texas Health and Safety Code, Chapter 597, expire on August 31, 1997 in accordance with §597.055?
- What effect did SB 85, including the repeal of §597.055, have on the status of Chapter 597?

Sincerely,

Don Gilbert
Commissioner

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