LEGISLATIVE UPDATE

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LEGISLATIVE UPDATE

I. INTRODUCTION

The 87th Legislature ended its regular session on May 31, 2021. According to the Texas Legislative Reference Library, a total of 7,148 bills and resolutions were introduced during the session.[1] 1,073 bills were passed and sent to Governor Abbott.[2] Of that total, 21 were vetoed.[3] The remainder have either been signed by the Governor or allowed to become law without signature.[4]

This paper summarizes legislative proposals that could have a noticeable impact on the practice of civil trial and appellate law in Texas. For more detailed information about each bill and additional background information about the same, please visit Texas Legislature Online at http://www.capitol.state.tx.us and/or subscribe to Jerry Bullard's e-newsletter by following the directions at the end of this article.

II. LEGISLATION THAT PASSED

A. Attorney's Fees

HB 1578 – Recovery of Attorney's Fees in Certain Civil Cases[5]

- **Summary:** HB 1578, filed by Rep. Brooks Landgraf (R – Odessa), amends section 38.001 of the Civil Practice & Remedies Code (CPRC) to include any type of organization as defined under the Business Organizations Code, but excludes "a quasi-governmental entity authorized to perform a function by state law, a religious organization, a charitable organization, or a charitable trust." [**Note**: Since 2014, Texas courts of appeals have consistently held that a trial court cannot order limited partnerships, limited liability companies, or limited liability partnerships to pay attorney's fees because section 38.001 of the CPRC does not permit such a recovery. See, e.g., *CBIF Limited Partnership, et al. v. TGI Friday's, Inc., et al.*, No. 05-15-00157-CV, 2017 WL 1455407 (Tex. App.—Dallas April 21, 2017, pet. denied) (mem. op.); *Alta Mesa Holdings, L.P. v. Ives*, 488 S.W.3d 438 (Tex. App.—Houston [14th Dist.] 2016, pet. denied); *Fleming & Associates, LLP v. Barton*, 425 S.W.3d 560 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). In response to these decisions, legislators filed bills in 2015, 2017, and 2019 to expand the scope of the statute to include all business organizations. However, the bills failed to pass.]
- *Effective date:* September 1, 2021. The changes in the law made by HB 1578 apply only to an award of attorney's fees in an action commenced on or after the effective date.

HB 2416 – Recovery of Attorney's Fees as Compensatory Damages[6]

- **Summary:** HB 2416, filed by Rep. Barbara Gervin-Hawkins (D – San Antonio), adds section 38.0015 to the CPRC and allows a person to recover reasonable attorney's fees from an individual, corporation, or other entity from which recovery is permitted under section 38.001 of the CPRC as compensatory damages in breach of a construction contract cases. However, HB 2416 does not create or imply a private cause of action or independent basis to recover attorney's fees.
- *Effective date*: September 1, 2021. The changes in the law addressed in HB 2416 apply only to a cause of action that accrues on or after the effective date.

B. Business

HB 1195 – Franchise Tax Treatment of Loans and Grants Under the CARES Act[7]

- **Summary:** HB 1195, filed by Rep. Charlie Geren (R – Fort Worth), makes PPP loans nontaxable for the Texas Franchise Tax. In response to the COVID-19 pandemic, Congress offered certain forgivable loans and grants and clarified that these loans and grants are not considered income for federal tax purposes. Accordingly, an update to Texas franchise tax law was needed to ensure businesses are not required to pay state franchise taxes on PPP loans and related grants.
- *Effective date:* May 8, 2021. The changes in the law addressed in HB 1195 apply to repots originally due on or after January 1, 2021.

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[1] Legislative Reference Library of Texas, 87th Legislature Bill Statistics (July 5, 2021).

[2] Id.

[3] Id.

[4] As a general rule, the governor has ten (10) days upon receipt of a bill to sign it, veto it, or allow the bill to become law without a signature. However, if a bill is sent to the governor within ten (10) days of final adjournment, he has until twenty (20) days after adjournment to act on the bill. If the governor neither signs nor vetoes the bill within the allotted time, the bill becomes law. TEXAS CONST. ART. IV, § 14.

[5] Act of May 31, 2021, 87th Leg., R.S., H.B. 1578 (to be codified as an amendment to TEX. CIV. PRAC. & REM. CODE ANN. §38.001).

[6] Act of May 27, 2021, 87th Leg., R.S., H.B. 2416 (to be codified at TEX. CIV. PRAC. & REM. CODE §38.0015).

[7] Act of April 27, 2021, 87th Leg., R.S., H.B. 1195 (to be codified at TEX. TAX CODE §171.1031).

C. Civil Liability/Causes of Action

HB 19 – Procedure, Evidence, and Remedies in Civil Actions Involving Motor Vehicle Accidents[8]

- **Summary:** HB 19, filed by Rep. Jeff Leach (R – Plano), amends the CPRC to provide specific procedural and evidentiary guidelines for cases arising out of commercial motor vehicle accidents. HB 19 addresses the following topics (among other things):

  - *Bifurcated trials*: Much like the bifurcation process under section 41.009 of the CPRC, if requested by a defendant, HB 19 requires a bifurcated trial in commercial motor vehicle accident actions when a claimant seeks to recover exemplary damages. Requests to bifurcate a trial must be brought on or before the later of: (1) the 120th day after the date the defendant bringing the motion files the defendant's original answer; or (2) the 30th day after the date a claimant files a pleading adding a claim or cause of action against the defendant bringing the motion. In the first phase of a bifurcated trial, the trier of fact will determine liability and the amount of compensatory damages. In the second phase, the trier of fact will determine liability for and the amount of exemplary damages.
  - *Violation of regulatory standards*: HB 19 provides that, in a civil action involving a commercial motor vehicle, a defendant's failure to comply with a regulation or standard is admissible into evidence in the first phase of a bifurcated trial only if, in addition to complying with other requirements of law: (1) the evidence tends to prove that failure to comply with the regulation or standard was a proximate cause of the bodily injury or death for which damages are sought; and (2) the regulation or standard is specific and governs, or is an element of a duty of care applicable to, the defendant, the defendant 's employee, or the defendant 's property or equipment when any of those is at issue in the action. However, nothing in HB 19 prevents a claimant from pursuing a claim for exemplary damages relating to the defendant's failure to comply with other applicable regulations or standards, or from presenting evidence on that claim in the second phase of a bifurcated trial.
  - *Direct actions against an employer:* Under HB 19, in a civil action involving a commercial motor vehicle, an employer defendant's liability for damages caused by the ordinary negligence of a person operating the defendant's commercial motor vehicle shall be based only on respondeat superior if the defendant stipulates that, at the time of the accident, the person operating the vehicle was: (1) the defendant's employee; and (2) acting within the scope of employment. If an employer defendant stipulates that the defendant's employee was acting within the scope of employment and the trial is bifurcated, a claimant may not, in the first phase of the trial, present evidence on an ordinary negligence claim against the employer defendant that requires a finding by the trier of fact that the employer defendant's employee was negligent in operating a vehicle as a prerequisite to the employer defendant being found negligent in relation to the employee defendant's operation of the vehicle. A claimant would not be prevented from pursuing: (1) an ordinary negligence claim against an employer defendant for another claim, such as negligent maintenance, that does not require a finding of negligence by an employee as a prerequisite to an employer defendant being found negligent for its conduct or omission, or from presenting evidence on that claim in the first phase of a bifurcated trial; or (2) a claim for exemplary damages arising from an employer defendant's conduct or omissions in relation to the accident that is the subject of the action, or from presenting evidence on that claim in the second phase of a bifurcated trial.

    Even when an employer stipulates to liability and the trial is bifurcated, if an employer-defendant is regulated by the Motor Carrier Safety Improvement Act of 1999 or Chapter 644 of the Transportation Code, a party may present any of the following evidence in the first phase of a trial that is bifurcated if the evidence is applicable to the defendant:

    - whether the employee who was operating the employer-defendant's commercial motor vehicle at the time of the accident that is the subject of the civil action: (A) was licensed to drive the vehicle at the time of the accident;

[8] Act of May 31, 2021, 87th Leg., R.S., H.B. 19 (to be codified as amendments to TEX. CIV. PRAC. & REM. CODE. §§72.002-.003 and adding §§72.015-.055, and by adding TEX. INS. CODE §38.005).

(B) was disqualified from driving the vehicle under 49 C.F.R. Section 383.51, 383.12, or 391.15 at the time of the accident; (C) was subject to an out-of-service order, as defined by 49 C.F.R. Section 390.5 at the time of the accident; (D) was driving the vehicle in violation of a license restriction imposed under 49 C.F.R. Section 383.95 or Section 522.043 of the Transportation Code, at the time of the accident; (E) had received a certificate of driver's road test from the employer-defendant as required by 49 C.F.R. Section 391.33; (F) had been medically certified as physically qualified to operate the vehicle under 49 C.F.R. Section 391.41; (G) was operating the vehicle when prohibited from doing so under 49 C.F.R. Section 382.201, 382.205, 382.207, 382.215, 395.3, or 395.5 or 37 T.A.C. Section 4.12, as applicable, on the day of the accident; (H) was texting or using a handheld mobile telephone while driving the vehicle in violation of 49 C.F.R. Section 392.80 or 392.82 at the time of the accident; (I) provided the employer-defendant with an application for employment as required by 49 C.F.R. Section 391.21(a) if the accident occurred on or before the first anniversary of the date the employee began employment with the employer defendant; and (J) refused to submit to a controlled substance test as required by 49 C.F.R. Section 382.303, 382.305, 382.307, 382.309, or 382.311 during the two years preceding the date of the accident; and

- whether the employer-defendant (A) allowed the employee to operate the employer's commercial motor vehicle on the day of the accident in violation of 49 C.F.R. Section 382.201, 382.205, 382.207, 382.215, 395.3, or 395.5 or 37 T.A.C. Section 4.12, as applicable, on the day of the accident; (B) had complied with 49 C.F.R. Section 382.301 in regard to controlled-substance testing of the employee-driver if: (i) the employee-drive was impaired because of the use of a controlled substance at the time of the accident; and (ii) the accident occurred on or before the 180th day after the date the employee began employment with the employer-defendant; (C) had made the investigations and inquiries as provided by 49 C.F.R. Section 391.23(a) in regard to the employee-driver if the accident occurred on or before the first anniversary of the date the employee driver began employment with the employer defendant; and (D) was subject to an out-of-service order, as defined by 49 C.F.R. Section 390.5.

If a civil action is bifurcated under Section 72.052, evidence admissible under the bill will be: (1) admissible in the first phase of the trial only to prove ordinary negligent entrustment by the employer-defendant to the employee who was driving the employer-defendant's commercial motor vehicle at the time of the accident; and (2) the only evidence that may be presented by the claimant in the first phase of the trial on the negligent entrustment claim.

- *Admissibility of visual depictions of all motor vehicle accidents*: Under HB 19, in civil actions involving a motor vehicle, a court may not require expert testimony for admission of evidence of a photograph or video of a vehicle or object involved in accident. If properly authenticated under the Texas Rules of Evidence, a photograph or video of a vehicle or object involved in an accident is presumed admissible, even if the photograph or video tends to support or refute an assertion regarding the severity of damages or injury to an object or person involved in the accident that is the subject of a civil action under HB 19.
- *Commercial Automobile Insurance Report.* The Texas Department of Insurance will be required to conduct a study each biennium on HB 19's effect on premiums, deductibles, coverage, and availability of coverage for commercial automobile insurance. A report of the results of the survey must be submitted to the Legislature no later than December 1 of each even-numbered year for the preceding biennium. This section of the bill will expire on December 31, 2026.

- *Effective date:* September 1, 2021. The changes in the law addressed in HB 19 apply only to a cause of action commenced on or after the effective date.

SB 6 – Liability for Certain Claims Arising During a Pandemic or Other Pandemic-Related Disaster[9]

- **Summary**: SB 6, filed by Sen. Kelly Hancock (R – North Richland Hills) and others, amends the Medical Liability Act and the CPRC to provide liability protection for healthcare providers, businesses that manufactured and distributed products related to a pandemic emergency, and individuals and businesses that continue to operate during a statewide pandemic emergency. More specifically, SB 6 does the following:

  - *Liability of Physicians, Health Care Providers, and First Responders During a Pandemic*: Except in a case of reckless conduct or intentional, wilful, or wanton misconduct, a physician, health care provider, or first responder is not liable for an injury, including economic and noneconomic damages, or death arising from care, treatment, or failure to provide care or treatment relating to or impacted by a pandemic disease or a disaster declaration related to a pandemic disease, if the physician, health care provider, or first responder proves by a preponderance of the evidence that: (1) a pandemic disease or disaster declaration related to a pandemic disease was a producing cause of the care, treatment, or failure to provide care or treatment that allegedly caused the injury or death; or (2) the individual who suffered injury or death was diagnosed or reasonably suspected to be infected with a pandemic disease at the time of the care, treatment, or failure to provide care or treatment.

    A physician, health care provider, or first responder may not use this showing as a defense to liability for negligent care, treatment, or failure to provide care or treatment if a claimant proves by a preponderance of the evidence that the respective diagnosis, treatment, or reasonable suspicion of infection with a pandemic disease at the time of the care, treatment, or failure to provide care or treatment was not a producing cause of the individual's injury or death.

    The provisions of SB 6 do not constitute a waiver of sovereign immunity of this state or governmental immunity of a political subdivision. A physician, health care provider, or first responder who intends to raise the defense described above must provide to a claimant specific facts that support such an assertion no later than the later of: (1) the 60th day after the date the claimant serves an expert report on the physician, health care provider, or first responder under Section 74.351; or (2) the 120th day after the date the physician, health care provider, or first responder files an original answer in the suit.

    This limitation applies only to a claim arising from care, treatment, or failure to provide care or treatment that occurred during a period beginning on the date that the president of the United States or the governor makes a disaster declaration related to a pandemic disease and ending the date that the declaration terminates.

  - *Pandemic Emergency Related Products*. A person who designs, manufacturers, sells, or donates a product described in SB 6 (e.g., clothing or equipment worn to minimize exposure to hazards of a pandemic disease; medical devices, equipment, and supplies used during a pandemic emergency or to treat individuals infected or suspected to be infected with a pandemic disease; drugs, medicines, and vaccines used to treat or prevent the spread of the disease; tests to diagnose or determine immunity to a pandemic disease; and commercial cleaning, sanitizing, or disinfecting supplies used to prevent the spread of a pandemic disease) is not liable for personal injury, death, or property damage caused by the product unless: (1) the person either had actual knowledge of a defect in the product when the product left the person's control, or acted with actual malice in designing, manufacturing, selling, or donating the product; and (2) the product presented an unreasonable risk of substantial harm.

    A person who designs, manufactures, labels, sells, or donates a product described in SB 6 during a pandemic emergency is not liable for personal injury, death, or property damage caused by a failure to warn or provide adequate instructions regarding the use of a product unless: (1) the person acted with actual malice in failing to warn or provide adequate instructions regarding the

[9] Act of May 31, 2021, 87th Leg., R.S., S.B. 6 (to be codified as amendments to TEX. CIV. PRAC. & REM. CODE §§51.014; 74.155; and §§148.001-.005).

use of the product; and (2) the failure to warn or provide adequate instructions regarding the use of the product presents an unreasonable risk of substantial harm.

A person is not liable for personal injury, death, or property damage caused by or resulting from the person's selection, distribution, or use of a product described in SB 6 during a pandemic emergency unless: (1) the person either had actual knowledge of a defect in the product when the person selected, distributed, or used the product, or acted with actual malice in selecting, distributing, or using the product; and (2) the product presented an unreasonable risk of substantial harm.

- *Liability for Causing Exposure to a Pandemic Disease*: A person is not liable for injury or death caused by exposing an individual to a pandemic disease during a pandemic emergency unless the claimant establishes that:

  (1) the person who exposed the individual: (a) knowingly failed to warn the individual of or remediate a condition that the person knew was likely to result in the exposure of an individual to the disease, provided that the person: (i) had control over the condition; (ii) knew that the individual was more likely than not to come into contact with the condition; and (iii) had a reasonable opportunity and ability to remediate the condition or warn the individual of the condition before the individual came into contact with the condition; or (b) knowingly failed to implement or comply with government-promulgated standards, guidance, or protocols intended to lower the likelihood of exposure to the disease that were applicable to the person or the person's business, provided that the person: (i) had a reasonable opportunity and ability to implement or comply with the standards, guidance, or protocols; and (ii) refused to implement or comply with or acted with flagrant disregard of the standards, guidance, or protocols; and

  (2) reliable scientific evidence shows that the failure to warn the individual of the condition, remediate the condition, or implement or comply with the government-promulgated standards, guidance, or protocols was the cause in fact of the individual contracting the disease.

A person is deemed to be in compliance with a government-promulgated standard, guideline, or protocol, if the person makes a good faith effort to substantially comply with at least one order, rule, or declaration. The amended bill also adds the Legislature to the list of those that may promulgate an order, rule, or authoritative declaration.

- *Expert Reports:* Claims for exposure to a pandemic disease must be supported by one or more expert reports. Unless the deadline is extended by written agreement of the parties, no later than the 120th day after the date a defendant files an answer to a claim for a pandemic disease exposure under SB 6, a claimant must serve on the defendant: (1) a report authored by at least one qualified expert that provides a factual and scientific basis for the assertion that the defendant's failure to act caused the individual to contract a pandemic disease; and (2) a curriculum vitae for each expert whose opinion is included in the report.

  A defendant must file an objection to the sufficiency of the report and serve the objection on the claimant no later than 21 days after the later of: (1) the date the report is served on the defendant; or (2) the date the defendant's answer to the claim is filed.

  If a court determines that a report does not represent an objective, good faith effort to provide a factual and scientific basis for the assertion that the defendant's failure to act caused the injured individual to contract a pandemic disease, the court may grant the claimant a single 30-day period to cure any deficiency in the report.

  If a sufficient report is not timely served, the court, on the defendant's motion, must enter an order: (1) dismissing the claim with respect to the defendant, with prejudice; and (2) awarding to the defendant reasonable attorney's fees and costs of court incurred by the defendant in the action.

  SB 6 does not require a single expert to address all causation issues with respect to all defendants. Further, a report required under SB 6: (1) is not admissible in evidence by

any party; (2) cannot be used in a deposition, trial, or other proceeding; and (3) cannot be referred to by any party during the course of the action, except in a proceeding to determine if a report is sufficient or timely.

After a claim to which SB 6 applies is filed, all claimants, collectively, can take no more than two depositions before the required expert report is served.

If, at the time of the injury or death caused by exposing an individual to a pandemic disease during a pandemic emergency, an order, rule, or declaration of the governor or an agency of the state establishing or applying standards, guidelines, or protocols related to a pandemic disease does not apply to a person under this section, and no other standards, guidelines, or protocols applicable to the person have been promulgated and adopted by a local governmental entity with jurisdiction over the person, the person is deemed to be in compliance with government-promulgated standards, guidelines, and protocols for purposes of the law.

- *Interlocutory Appeal.* A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that overrules an objection filed to an expert report or denies all or part of the relief sought in a motion to dismiss.
- *Educational Institutions.* SB 6 *e*xempts an educational institution from liability for equitable monetary relief arising from a cancellation or modification of a course, program, or activity of the institution if the cancellation or modification arose during a pandemic emergency and was caused, in whole or in part, by the emergency.

- *Effective date:* June 14, 2021. However, the amendments to the Medical Liability Act and Chapter 148 of the CPRC apply only to an action commenced on or after March 13, 2020, for which a judgment has not become final before the effective date. The amendments to section 79.0031 of the CPRC apply only to an action commenced on or after the effective date

D. Contractor Liability

SB 219 – Civil Liability and Responsibility for the Consequences of Defects in Plans, Specifications, or Related Documents for Construction and Repair of Real Property Improvements[10]

- **Summary:** SB 219, filed by Sen. Bryan Hughes (R – Mineola), amends the Business & Commerce Code to establish that a contractor (as defined under the bill) is not responsible for the consequences of defects in, and may not warranty the accuracy, adequacy, sufficiency, or suitability of, plans, specifications, or other design or bid documents for the construction (as defined under the bill), or repair of any improvement to real property provided to the contractor by the person with whom the contractor entered into the contract or another on that person's behalf. However, SB 219 does not apply to contracts for the construction or repair of a "critical infrastructure facility", which includes: (1) equipment, facilities, devices, structures, and buildings used or intended for use in the storage of certain natural resources and the gathering, transportation, treating, storage, or processing of CO^2; and (2) commercial airport facilities used for the landing, parking, refueling, shelter, or takeoff of aircraft, maintenance or servicing of aircraft, aircraft equipment storage, or navigation of aircraft.

  SB 219 also requires a contractor to make a written disclosure to the other contracting party of the existence of any known defect in the plans, specifications, or other design or bid documents discovered by the contractor before or during construction. A contractor must also disclose certain inaccuracies, inadequacies, and other insufficiencies, in addition to defects. Further, the bill includes provisions establishing the meaning of "ordinary diligence" and establishing that a disclosure by a contractor is made in the contractor's capacity as a contractor and not as a licensed professional. A contractor who fails to disclose conditions may be liable for defects that result from the failure to disclose. Further, SB 219 prohibits these protections from being waived by contract.

  SB 219 also amends the Government Code to prohibit an applicable governmental entity from requiring in a contract for engineering or architectural services related to the construction or

[10] Act of May 31, 2021, 87th Leg., R.S., S.B. 219 (to be codified at TEX. BUS. & COM. CODE §§59.001.003, 59.051-.052; TEX.CIV.PRAC. & REM. CODE §130.0021; and as an amendment to TEX.CIV.PRAC. & REM. CODE §130.004).

repair of an improvement to real property, or in a contract related to the construction or repair of an improvement to real property that contains engineering or architectural services as a component part, that such services be performed to a level of professional skill and care beyond that which would be provided by an ordinarily prudent engineer or architect with the same professional license under the same or similar circumstances. The bill does not prevent a party to a contract for engineering or architectural services from enforcing specific obligations in the contract that are separate from the standard of care.

Further, SB 219 includes provisions stating that the bill does not apply to the construction, repair, alteration, or remodeling of an improvement to real property if: (1) the construction, repair, alteration, or remodeling is performed under a "design-build" contract; and (2) the part of the plans, specifications, or other design or bid documents for which the contractor is responsible under the contract is the part alleged to be defective. SB 219 also provides that design services provided under a "design-build" contract will be subject to the same standard of care requirements provided in section 130.0021 of the CPRC.

- *Effective date:* September 1, 2021. The changes in the law addressed in SB 219 apply only to a contract entered into on or after the effective date.

HB 2086 – Appeals from an Interlocutory Order Denying a Motion for Summary Judgment by Certain Contractors[11]

- **Summary:** HB 2086, filed by Rep. Eddie Morales (D – Eagle Pass), amends Section 51.014 of the CPRC to authorize the interlocutory appeal of an order either granting or denying a motion for summary judgment filed by certain contractors. More specifically, a contractor is permitted to appeal the grant or denial of summary judgment cases arising out of the conduct of a contractor who constructs or repairs a highway, road, or street for the Texas Department of Transportation if, at the time of the personal injury, property damage, or death, the contractor was in compliance with contract documents material to the condition or defect that was the proximate cause of the personal injury, property damage, or death.
- *Effective date:* June 16, 2021.

E. Court Costs

SB 41 – Consolidation and Allocation of State Court Costs[12]

- **Summary:** SB 41, filed by Sen. Judith Zaffirini (D – Laredo), is an omnibus bill intended to: (1) simplify the civil filing fee and criminal court cost structure; (2) ensure that filing fees and court costs are going to support the judiciary; and (3) ensure that fees being collected for a purpose are actually being used for that intended purpose.
- *Effective date*: September 1, 2021.

F. Damages

HB 2064 – Amount of Hospital or Physician Liens on Certain Causes of Action or Claims[13]

- **Summary:** HB 2064, filed by Rep. Jeff Leach (R – Plano), amends section 55.004(b) of the Property Code to add a new subsection (3) and provides another method for calculating the amount of a hospital lien. Under HB 2064, a hospital lien will be the lesser of: (1) the amount of the hospital's charges for services provided to the injured individual during the first 100 days of the injured individual's hospitalization; (2) 50 percent of all amounts recovered by the injured individual through a cause of action, judgment, or settlement described by Section 55.003(a); or (3*) if the trier of fact specifies the amount awarded for hospital charges for services provided to the injured individual, the amount awarded by the trier of fact for the services provided to the injured individual by the hospital less the pro rata share of reasonable attorney's fees and expenses the injured individual incurred in pursing the claim."*
- *Effective date:* June 16, 2021.

[11] Act of May 31, 2021, 87th Leg., R.S., H.B. 2086 (to be codified as an amendment to TEX.CIV.PRAC. & REM. CODE §51.014).

[12] Act of May 31, 2021, 87th Leg., R.S., S.B. 41 (to be codified as an amendment to TEX. LOC. GOV'T CODE §§133.004 and 1133.151, and codified at TEX. LOC. GOV'T CODE §§135.001-.003, 135.051-.052, 135.101-.103, 135.151-.161; codified at TEX. GOV'T CODE §§22.229; codified as an amendment to §§25.00211-.00213, 25.0022, 25.0172, 25.0595, 25.1102, 25.1572, 25.2702, 51.302, 51.318, 51.607, 51.851, 411.0745; codified as amendments to TEX. LOC. GOV'T CODE §82.003, 118.051.-.052, 118.0545, 118.056, 118.059, 118.070, 118.101, 118.121, 133.051, 133.055, 133.058, 203.003, 291.008, 291.008, and 323.023; codified as amendments to TEX. CIV. PRAC. & REM. CODE § 12.005; TEX. CODE CRIM. PROC. ART. 102.017; TEX. FAM. CODE §54.041, 231.202; TEX. HEALTH & SAFETY CODE §571.018; AND TEX. HUM. RES. CODE §40.062).

[13] Act of May 31, 2021, 87th Leg., R.S., H.B. 2064 (to be codified as an amendment to TEX.PROP. CODE §55.004).

G. Healthcare Liability

SB 232 – Service of Expert Reports for Health Care Liability[14]

- **Summary:** SB 232, filed by Sen. Nathan Johnson (D – Dallas), amends Chapter 74 of the CPRC by adding a "preliminary determination for expert report requirement" (section 74.353) that includes the following elements:
  - On motion of a claimant filed no later than 30 days after the date the defendant's original answer is filed, a court may issue a preliminary determination regarding whether a claim made by the claimant is a health care liability claim.
  - If a court determines that a claim is a health care liability claim, the claimant shall serve an expert report as required by section 74.351 no later than the later of:
    (1) 120 days after the date each defendant's original answer is filed;
    (2) 60 days after the date the court issues the preliminary determination; or
    (3) a date agreed to in writing by the affected parties.
  - If a court does not issue a preliminary determination before the 91st day after the date that a claimant files a motion, the court shall issue a preliminary determination that the claim is a health care liability claim. A preliminary determination would be subject to interlocutory appeal by either the claimant or defendant.
  - If an interlocutory appeal results in an appellate court reversing a trial court's preliminary determination that a claim is not a health care liability claim, the claimant shall serve an expert report as required by Chapter 74 of the CPRC no later than 120 days after the date that the appellate court issues an opinion reversing the preliminary determination. A preliminary determination applies only to the issue of whether a claimant is required to serve an expert report under Chapter 74.
  - SB 232 also amends section 51.014 of the CPRC to add orders regarding preliminary determinations to the list of appealable interlocutory orders.
- *Effective date:* September 1, 2021. The changes in the law addressed in SB 232 apply to actions commenced on or after the effective date.

H. Judiciary/Judicial System

SJR 47 – Proposed Constitutional Amendment Changing the Eligibility Requirements for Certain Judicial Offices[15]

- **Summary:** SJR 47, filed by Sen. Joan Huffman (R – Houston) and others, proposes a constitutional amendment that would add the following eligibility requirements to serving as a judge or justice in Texas:
  - *District court judge:* In addition to being a U.S. citizen and Texas resident, a district court judge must have been a practicing lawyer or a judge of a Texas court, or both combined, for eight (8) years next preceding the judge's election, during which time the judge's license to practice law has not been revoked, suspended, or subject to a probated suspension. A person must have resided in the district in which the judge was elected for two (2) years next preceding the election and continue to reside in the district during the judge's term.
  - *Supreme Court Chief Justice or Justice:* In addition to being 35 years old; a U.S. citizen and Texas resident at the time of election; a practicing lawyer licensed in Texas for at least ten (10) years; or a practicing lawyer licensed in the State of Texas and judge of a state court or county court established by the Legislature by statute for a combined total of at least ten (10) years, the Chief Justice or Justice of the Supreme Court must not have had their license to practice law revoked, suspended, or subject to a probated suspension during the time period set forth above.
- *Effective date*: The amendment to the Texas Constitution with respect to appellate court justices and judges would take effect January 1, 2022, and apply only to a chief justice or other justice of the supreme court, a presiding judge or other judge of the court of criminal appeals, or a chief justice or other justice of a court of appeals who is first elected for a term that begins on or after January 1, 2025, or who is appointed on or after that date. The amendment to the Texas

[14] Act of May 19, 2021, 87th Leg., R.S., S.B. 232 (to be codified as amendments to TEX.CIV.PRAC. & REM. CODE §§51.014, 74.351, and 74.353.).

[15] Tex. S.J.R. 47, 87th Leg., R.S. (2021).

Constitution with respect to district judges would take effect January 1, 2022, and apply only to a district judge who is first elected for a term that begins on or after January 1, 2025, or who is appointed on or after that date.'

HB 3774 – Operation and Administration of and Practice and Procedure Related to Judicial Proceedings[16]

- **Summary:** HB 3774, filed by Rep. Jeff Leach (R – Plano), is an omnibus bill that will do, among other things, the following: (1) create new judicial district courts in certain counties (Bell, Cameron [juvenile], Denton, Harris, Hays, Hidalgo, McLennan, Smith, Tarrant [criminal], and Williamson); (2) create a new statutory probate court in Denton County; (3) create statutory county courts in certain counties (Kendall, McLennan, Montgomery, San Patricio, and Williamson); (4) create a county criminal court in Tarrant County; (5) address the transfer of cases from county courts to district courts; and (6) amend the Government Code to allow the Office of Court Administration (OCA) to allow public access to view information or documents in the state court document database and to charge a reasonable fee for additional optional features in the database.
- *Effective date*: Unless otherwise noted in the bill, the effective date will be September 1, 2021.

[16] Act of May 31, 2021, 87th Leg., R.S., H.B. 3774 (to be codified as amendments to TEX. GOV'T CODE §§22.0042; 24.129; 24.60022; 24.60027; 24.60027; 24.60030; 24.60025; 24.60026; 26.0028; 24.60029; 24.120; 24.60097; 24.60098; 24.60099; 25.00211; 25.0172; 25.0173; 25.0631; 25.0632; 25.0633; 25.1331-.1332; 25.1571-.1572; 25.1721; 25.1972; 25.2071-.2072; 25.2223; 25.2481; 26.006; 29.003; 43.137; 45.168; 54.1502; 54.2501-.2511; 54.2601-.2613; 51.3071; 51.403; 52.001; 52.011; 52.046; 61.003; 62.202; 72.031; 72.037; 72.151-.152; 72.154-.155; 72.157-.158; 121.003-.004; 124.003; 124.006; 154.101; 154.105; 154.112; 434.032; and 2254.002; TEX. CODE OF CRIM. PROC. ART. 4.01; 4.14; 11.07; 11.072; 38.01; 42.25; 45.0241; 45.0445; 66.252; 103.003; and 103.0081; TEX. LOCAL GOV'T CODE §292.001; TEX. FAM. CODE §6.712; 51.02; 51.04; 107.004; and 155.207; TEX. CIV. PRAC. & REM. CODE §§64.101; TEX. HUM. RES. CODE §§152.0941; 152.0991(a); and 152.2411; TEX. EST. CODE ANN. §§51.103; 1051.153; TEX. FAM. CODE ANN §§3.305).

I. Oil & Gas

HB 3794 – Oil & Gas Liens[17]

- **Summary:** HB 3794, filed by Rep. Charlie Geren (R – Fort Worth), repeals the first purchaser statute in the Business & Commerce Code and replaces it with Property Code provisions establishing oil and gas liens based on a first purchaser to pay the sales price. Each interest owner will have an oil and gas lien to the extent of the interest owner's interest in oil and gas rights. The lien will be automatically perfected without the need to file a financing statement or other record.
- *Effective date*: September 1, 2021.

SB 833 – Sales Tax Refund for Overpayments[18]

- **Summary:** SB 833, filed by Sen. Donna Campbell (R – New Braunfels), amends the Tax Code to authorize a person who files an oil or gas production tax first purchaser's or producer's report and who does not hold a permit under the Limited Sales, Excise, and Use Tax Act to obtain a refund for sales and use taxes paid in error to a permit holder by filing a claim for refund with the comptroller within the statute of limitations period for tax collection. SB 833 also authorizes the comptroller, by rule, to provide additional procedures for claiming the refund.
- *Effective date*: September 1, 2021.

SB 1259 – Cause of Action for Withholding Payments of Proceeds from Sale of Oil and Gas Production[19]

- **Summary:** SB 1259, filed by Sen. Brian Birdwell (R – Granbury), amends the Natural Resources Code to establish that a payee does not have a common law cause of action for breach of contract against a payor for withholding payments of proceeds from the sale of oil and natural gas production beyond time limits as authorized under applicable statutory provisions except, if in a dispute concerning the title, the contract requiring payment specifies otherwise.
- *Effective date*: May 24, 2021.

[17] Act of May 22, 2021, 87th Leg., R.S., H.B. 3794 (to be codified as amendments to TEX. BUS. & COM. CODE §9.109; 9.310; and 9.324; and codified at TEX. PROP. CODE 67.001-.017).

[18] Act of May 19, 2021, 87th Leg., R.S., S.B. 833 (to be codified at TEX.TAX CODE §151.4305).

[19] Act of May 12, 2021, 87th Leg., R.S., S.B. 1259 (to be codified as an amendment to TEX.NAT.RES.CODE §91.402).

J. Real Estate

SB 885 – Quitclaim Deeds[20]

- **Summary:** SB 885, filed by Sen. Bryan Hughes (R – Mineola), amends the Property Code to establish that, after the fourth anniversary of the date a quitclaim deed is recorded in the deed records of the applicable county, the deed does not affect the question of the good faith of a subsequent purchaser or creditor and does not constitute notice to a subsequent purchaser or creditor of any unrecorded conveyance of, transfer of, or encumbrance on the property.

  SB 885 also amends the CPRC to exclude a claim based on a quitclaim deed from the five-year limitations period for bringing suit to recover real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property, pays applicable taxes on the property, and claims the property under a duly registered deed.

- *Effective date*: May 24, 2021.

SB 1588 – Powers and Duties of Property Owner Associations[21]

- **Summary:** SB 1588, filed by Sen. Bryan Hughes (R – Mineola), modifies certain existing regulations and introduces new provisions relating to property owners' associations. New provisions include the following:

  - *Resale certificate fee cap*. SB 1588 caps a fee charged by a property owners' association to assemble, copy, and deliver a resale certificate to an owner at $375, and caps a fee to prepare and deliver a resale certificate update at $75.
  - *Damages*. SB 1588 specifies that if a property owners' association fails to deliver required information related to a subdivision before the fifth business day, rather than the seventh day, after the second request for the information was mailed or delivered, the owner can seek a judgment against the property owners' association for actual damages, instead of the $500 cap under current law. The bill also specifies that attorney's fees for which an owner sought a judgment against an association must be reasonable.
  - *Website*. SB 1588 requires a property owners' association to make the current version of the association's dedicatory instruments relating to the association or subdivision available on the homepage of a website available to association members that was maintained by the association or a management company on behalf of the association.
  - *Management certificates*. SB 1588 adds to the list of information a property owners' association will be required to record on a management certificate:

    - any amendments to a declaration;
    - the telephone number and email address of the person managing the association or the association's designated representative; and
    - the website address where the association's dedicatory instruments were located.

  A property owners' association will have to record an amended management certificate in each county in which any portion of a residential subdivision was located. By the seventh day after the date a property owners' association filed a management certificate or amended management certificate for recording, the association must electronically file the certificate or amended certificate with the Texas Real Estate Commission (TREC). TREC will only collect a certificate or amended certificate for the purpose of making the data accessible to the general public through a website. This provision takes effect December 1, 2021, and TREC will have to establish and make available the system necessary for electronic filing of management certificates by that date. A property owners' association that had recorded a management certificate or amended management certificate with a county clerk on or before December 1, 2021, will have to electronically file the most recently recorded certificate with TREC no later than June 1, 2022. With certain exceptions, a property owners' association and its officers, directors, employees, and agents will not be liable to any person for a delay in recording or failure to record a

[20] Act of May 12, 2021, 87th Leg., R.S., S.B. 885 (to be codified as amendments to TEX.CIV.PRAC. & REM. CODE §16.025 and TEX. PROP. CODE §13.006).

[21] Act of May 31, 2021, 87th Leg., R.S., S.B. 1588 (to be codified as amendments to TEX. PROP. CODE §§202.006; 202.018; 202.022-.023; 207.001; 207.003-.004; 207.006; 209.002; 209.004; 209.00505; 209.0051-.0052; 209.006; 209.0063-.0065; 209.007; and 209.015-.017).

management certificate with a county clerk's office or electronically file the certificate with TREC. An owner will not be liable for attorney's fees incurred by a property owners' association relating to the collection of a delinquent assessment against the owner or interest on the amount of a delinquent assessment if the fees were incurred by the association or the interest accrued during the period a management certificate was not recorded with a county clerk or electronically filed with TREC.

- *Architectural review authority*. SB 1588 defines an "architectural review authority" as the governing authority for the review and approval of improvements within a subdivision. Provisions related to an architectural review authority will apply only to a property owners' association that consisted of more than 40 lots and would not apply during a development period or during an period in which the declarant: appointed at least a majority of the members of the architectural review authority or otherwise controlled the appointment of the authority; or had the right to veto or modify a decision of the authority.
- *Authority membership restrictions*. A person cannot be appointed or elected to serve on an architectural review authority if the person is a current property owners' association board member, a current board member's spouse, or a person residing in a current board member's household.
- *Notice*. A decision by the architectural review authority denying an application or request by an owner for the construction of improvements in the subdivision can be appealed to the board. A written notice of the denial will have to be provided to the owner by certified mail, hand delivery, or electronic delivery. The notice must: describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and inform the owner that the owner could request a hearing on or before the 30th day after the date the notice was mailed.
- *Hearings*. The board will have to hold a hearing not later than the 30th day after the date the board received the owner's request for a hearing and will have to notify the owner of the date, time, and place of the hearing by the 10th day before the date of the hearing. Only one hearing will be required. During a hearing, the board or the designated representative of the property owners' association and the owner or the owner's designated representative will be provided the opportunity to discuss, verify facts, and resolve the denial of the owner's application or request for the construction of improvements, and the changes, if any, requested by the architectural review authority in the notice provided to the owner. The board or owner can request a postponement. If requested, a postponement will have to be granted for a period of not more than 10 days. Additional postponements can be granted by agreement of the parties. The property owners' association or the owner can make an audio recording of the meeting.
- *Open board meetings*. SB 1588 requires notices to members of a regular or special board meeting of a property owners' association to be provided at least 144 hours (instead of 72 hours) before the start of regular board meeting and at least 72 hours before the start of a special board meeting. Notice will have to be posted on the home page of any internet website available to association members maintained by the association, including a website maintained by a management company on behalf of the association. The bill specifies that a board cannot, unless in an open meeting for which prior notice to owners was given, consider or vote on the approval of any amendment of an annual budget.
- *Attorney's fees and collection costs*. SB 1588 specifies that certain attorney's fees, third party collection costs, and assessed fines to which a payment received by a property owners' association from an owner would be applied must be reasonable. The bill also changes from 30 days to 45 days the period in which an owner could cure a delinquency before further collection action was taken.
- *Credit reporting services*. SB 1588 requires a property owners' association to give written notice to an owner by certified mail before reporting any delinquency of an owner to a credit reporting service. A property owners' association or the association's collection agent cannot report any delinquent fines, fees, or assessments to a credit reporting service that were the subject of a pending dispute between the owner and the association. An association can report delinquent payment history assessments, fines, and fees of property owners within its

jurisdiction to a credit reporting service only if: (1) at least 30 business days before reporting to a credit reporting service, the association sent a detailed report of all delinquent charges owed; and (2) a property owner had been given the opportunity to enter into a payment plan. The bill's provisions relating to credit reporting applies only to a fine, fee, or assessment that became due on or after the bill's effective date.

- *Hearings*. SB 1588 requires that certain hearings related to dispute resolution be held before the board, rather than allowing such hearings to be held before a board-appointed committee. A property owners' association will have to provide to an owner a packet containing all documents, photographs, and communications relating to the matter the association intended to introduce at the hearing not later than 10 days before the hearing. If an association did not provide the information packet within the required period, an owner would be entitled to a 15-day postponement of the hearing. During a hearing, a member of the association board or the association's designated representative must first present the association's case against the owner. An owner or the owner's designated representative will be entitled to present the owner's information and issues relevant to the appeal or dispute.
- *Lease and rental applicants*. A property owners' association can request the following information be submitted to the association regarding a lease or rental applicant: contact information, including the name, mailing address, phone number, and email address of each person who would reside at a property in the subdivision under a lease; and the commencement date and term of the lease.

- *Effective date*: September 1, 2021, except as otherwise specified in the bill.

HB 2237 – Mechanic's, Contractor's, or Materialman's Liens[22]

- **Summary:** HB 2237, filed by Rep. Dustin Burrows (R – Lubbock), impacts subcontractors in numerus ways, including the following:
  - Establishes uniformity in the notice requirements by imposing the same notice obligation on all subcontractors regardless of with whom they have contracted. Rather than sending one notice to the owner and one to the general contractor, the single notice now required must be sent to both simultaneously. Additionally, HB 2237 prescribes the form of the notice to be given under both Section 53.056 (notice of derivative claimant) and 53.057 (notice of contractual retainage).
  - Adds alternative methods for delivery of the notices required to be sent under Sections 53.056 and 53.057 (as detailed below).
  - Eliminates the requirement that an architect, engineer or surveyor have a direct contractual relationship with the owner to be entitled to file a lien.
  - Eliminates an owner's ability to cut-off the time period in which lien claims can be perfected through the filing of an affidavit of completion or notice of termination or abandonment.
  - Shortens the deadline to bring suit to foreclose a lien to the first anniversary of the last day on which a claimant may file a lien affidavit under Section. 53.052.
  - Removes the requirement that the statutory lien waivers under Section 53.284 be notarized.

- *Effective date:* January 1, 2022. The changes in law made by HB 2237 apply only to an original contract entered into on or after the effective date. An original contract entered into before the effective date is governed by the law as it existed immediately before the effective date, and that law is continued in effect for that purpose.

K. Wills/Trusts

HB 654 – Relating to the Rule of Perpetuities[23]

- **Summary:** HB 654, filed by Rep. Eddie Lucio, III (D- Brownsville), amends section 112.036 of the Property Code to clarify that an interest in a trust must vest, if at all, no later than 300 years after the effective date, if the effective date is on or after September 1, 2021. A settlor of a trust may not direct that a real property asset be retained or refuse that a real property asset may be sold for a period longer than 100 years.
- *Effective date*: September 1, 2021.

[22] Act of May 31, 2021, 87th Leg., R.S., H.B. 2237 (to be codified as amendments to TEX.INS.CODE §3503.051; TEX.PROP. CODE §§53.003; 53.021-.023; 53.026; 53.052; 53.055-.057; 53.081-.082; 53.084; 53.101-.107; 53.155; 53.157-.158; 53.160; 53.173; 53.205-.208; 53.232; 53.238; 53.254-.255; and 53.281).

[23] Act of May 20, 2021, 87th Leg., R.S., H.B. 654 (to be codified as an amendment to TEX.PROP.CODE §112.036.).

III. LEGISLATION THAT FAILED

A. Attorneys/Practice of Law

SB 247 – Discrimination Against or Burdening Certain Constitutional Rights of an Applicant or Holder of a Law License[24] (Companion: ***HB 3940***)[25]

- **Summary:** The original version of SB 247, filed by Sen. Charles Perry (R – Lubbock), would have amended the State Bar Act to prohibit rules or policies that: (1) limit an applicant's ability to obtain a license to practice law in Texas, or a bar member's ability to maintain or renew the license, based on a sincerely held religious belief; or (2) burden an applicant's or bar member's free exercise of religion, freedom of speech regarding a sincerely held religious belief; membership in any religious organization; or freedom of association. However, such a prohibition would not apply to a State Bar rule or policy adopted or penalty imposed that results in a limitation or burden if the rule, policy, or penalty is: (1) essential to enforcing a compelling governmental purpose; and (2) narrowly tailored to accomplish that purpose.

  On the Senate floor, the bill was amended to provide that the State Bar could not enact rules or policies that burden a law license applicant's or bar member's "freedom of speech or expression that is protected by the United States or Texas Constitution, including speech regarding a sincerely held religious belief, a political ideology, or a societal view, and expressive conduct." However, such a prohibition would not apply to a rule, policy, or penalty that results in a limitation or burden if the rule, policy, or penalty "(1) is essential to enforcing a compelling governmental purpose and narrowly tailored to accomplish that purpose; or (2) restricts wilful expressions of bias or prejudice in connection with an adjudicatory proceeding."

  SB 247 also provides that, in an administrative hearing or a judicial proceeding under the Texas Uniform Declaratory Judgments Act, a person may assert as a defense that a prohibited bar rule, policy, or penalty violates the State Bar Act. However, the person may not raise the violation as a defense to an allegation of sexual misconduct or the prosecution of an offense.

  Rep. Briscoe Cain (R – Deer Park) filed a companion bill in the House (HB 3940).

- Bill Analysis for SB 247: Senate Research Center
- Bill Analysis for HB 3940: House Research Organization
- Status of SB 247**:** On March 8, State Affairs conducted a public hearing on SB 247: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 01:18:15 mark. Witnesses who registered a position or testified in favor of, on, or against SB 247 are listed here: Witness List. On March 15, by a 7-2 vote, the bill was voted favorably out of committee without amendment. On April 28, by a 19-12 vote, the Senate passed SB 247, as amended. The bill was forwarded to the House and referred to Judiciary & Civil Jurisprudence. On May 18, by a 5-2 vote, SB 247 was voted out of committee without any amendments.
- Status of HB 3940**:** On March 31, Judiciary & Civil Jurisprudence conducted a public hearing on HB 3940: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 2:25:55 mark. Those who registered a position or testified in favor of, on, or against HB 3940 are listed here: Witness List. Written comments submitted to the committee can be reviewed here. On April 16, by a 6-3 vote, the bill was voted out of committee.

SB 755 – Protection of a Client's Money and Property by an Attorney[26]

- **Summary:** SB 755, filed by Sen. Borris Miles (D – Houston), sought to amend the State Bar Act to require an attorney who received money or other property paid to settle a claim in which the client has an interest to immediately notify the client. Further, the attorney would have been permitted to pay a third person for a claim owed by the client using the money or property obtained for settlement, but only with the client's consent (unless another law requires the attorney to pay the claim to the person).

  An attorney who violated SB 755 could have been suspended from the practice of law for up to six months by a district court of the county in which the attorney resides or in which the act complained of occurred. Further, an attorney who violated SB 755 would be subject to civil liability for the violation. A person could have brought a civil action against the attorney to recover: (1)

[24] Tex. S.B. 247, 87th Leg., R.S. (2021).
[25] Tex. H.B. 3940, 87th Leg., R.S. (2021).
[26] Tex. S.B. 755, 87th Leg., R.S. (2021).

damages in an amount equal to the amount of money or value of the property received by the attorney; (2) interest at a rate not to exceed the judgment rate authorized in the most recent Texas Credit Letter published by the Office of Consumer Credit Commissioner; and (3) reasonable attorney's fees.

- Status: Referred to Jurisprudence on March 11.

HB 2393 – State Bar of Texas Elections[27] ***(Companion: SB 891)***[28]

- **Summary:** HB 2393, filed by Yvonne Davis (D – Dallas), south to amend the State Bar Act to reduce the number of Bar members required to support a petition to run for president-elect of the State Bar from five percent (5%) of total Bar membership to 500. HB 2393 would have also permitted electronic signatures on petitions.

  Sen. Sarah Eckhardt (D – Austin) filed a companion bill in the Senate (SB 891).

- Bill Analysis for HB 2393: House Research Organization
- Status of HB 2393**:** On April 14, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 3:59:50 mark. Individuals who registered a position or testified in favor of, on, or against HB 2393 are listed here: Witness List. Written comments submitted to the committee can be reviewed here. The committee considered a committee substitute that would reduce the petition signature requirement. On April 21, HB 2393, as amended (to reduce the number of required petition signature from five percent (5%) to one percent (1%) instead of only 500 signatures as originally proposed), was unanimously voted out of committee.
- Status of SB 891: Referred to State Affairs on March 11.

HB 2714 – Implicit Bias Training for Judges, Judicial Officers, Court Personnel, and Attorneys[29]

- **Summary:** HB 2714, filed by Rep. Ana Hernandez (D – Houston), would have required judges, certain court personnel, and attorneys to receive training or continuing education on implicit bias regarding racial, ethnic, gender, religious, age, mental disability, and physical disability and sexual harassment issues, and on bias-reducing strategies to address the manner in which unintended biases and sexual harassment issues undermine confidence in the legal system. There would have been different requirements for attorneys and the judiciary and other court-related personnel under the proposed law. Attorneys would have been required to complete one hour of continuing education for each compliance period. Those employed within the judicial branch would have been required to complete two hours of training every two years.
- Status**:** On April 14, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 2:05:00 mark. Individuals who registered a position or testified in favor of, on, or against HB 2714 are listed here: Witness List. Written comments submitted to the committee can be reviewed here. The bill was left pending.

HB 4543 – Firm Names Used by Licensed Attorneys[30]

- **Summary:** HB 4535, filed by Rep. Briscoe Cain (R – Deer Park), would have amended the State Bar Act to prohibit an attorney from using a firm name, letterhead, or other professional designation that is false, misleading, or deceptive. However, an attorney would have been permitted to practice under a trade name that: (1) did not imply a connection with a government agency or with a public or charitable legal services organization; (2) did not imply the firm is something other than a private law firm; and (3) was not false, misleading, or deceptive. The Supreme Court would have been required to modify its rules, as necessary, to comply with the new law as soon as practicable at the effective date, but could not adopt rules that conflicted with any provision the new law.
- Status**:** On April 21, Judiciary & Civil Jurisprudence conducted a public hearing on HB 4543: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 18:25 mark. One witness registered a position on the bill. The witness list has yet to be posted. The bill was left pending.

[27] Tex. H.B. 2393, 87th Leg., R.S. (2021).
[28] Tex. S.B. 891, 87th Leg., R.S. (2021).
[29] Tex. H.B. 2714, 87th Leg., R.S. (2021).
[30] Tex. H.B. 4543, 87th Leg., R.S. (2021).

B. Attorney's Fees

SB 808 – Attorney's Fees in Certain Civil Cases[31] ***(Companion: HB 3377)***[32]

- **Summary:** SB 808, filed by Sen. Bryan Hughes (R – Mineola), would have amended Chapter 38 of the CPRC to permit the recovery of attorney's fees from "another person". The original version of SB 808 would have expressly permitted either the claimant or the defendant to recover reasonable attorney's fees if the claimant or defendant prevails in an action for an oral or written contract. However, this provision was removed from the version voted out of committee.

  The companion bill in the House (HB 3377) was filed by Rep. Matt Krause (R – Fort Worth).

- Bill Analysis for SB 808: House Research Organization
- Bill Analysis for HB 3377: House Research Organization
- Status of SB 808: On March 15, State Affairs conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 33:20 mark. Witnesses who registered a position or testified in favor of, on, or against SB 808 are listed here . The bill, as amended, was voted out of committee (7-0-2) on March 22. On April 19, the Senate unanimously passed SB 808. The bill was referred to Judiciary & Civil Jurisprudence on April 21. On May 5, the committee unanimously voted SB 808 out of committee without any amendments. On May 18, the House unanimously passed SB 808, as amended. The sole amendment was to strike "another person" from the bill and replace it with "individual or organization," with "organization" being assigned the meaning given to it under the Business Organizations Code.
- Status of HB 3377**:** On March 31, Judiciary & Civil Jurisprudence conducted a public hearing on HB 3377: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 58:30 mark. Those who registered a position or testified in favor of, on, or against HB 3377 are listed here. Written comments submitted to the committee can be reviewed here. The bill was amended and unanimously voted out of committee on April 8. The committee amendments omitted provisions included in the original that authorized a prevailing party in an oral or written contract action to recover their attorney's fees.

HB 1162 – Recovery of Attorney's Fees in Certain Civil Cases[33]

- **Summary:** HB 1162, filed by Rep. Andrew Murr (R – Kerrville), would have amended section 38.001 of the CPRC to expressly state that prevailing parties are entitled to attorney's fees for the claims listed in Chapter 38.
- Status**:** On April 14, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 4:29:30 mark. One individual registered a position or testified in favor of, on, or against HB 1162. The witness list is here. However, written comments submitted to the committee can be reviewed here. The committee considered a committee substitute that would modify the original version to exempt cases brought under the Family Code, but it has yet to be posted or published. The bill was left pending.

HB 1358 – Recovery of Attorney's Fees in Certain Civil Cases[34]

- **Summary:** HB 1358, filed by Rep. Cody Vasut (R – Angleton), would have amended section 38.001 of the CPRC to provide that a person could recover reasonable attorney's fees "from an individual, an organization, the state, or an agency or institution of the state..". HB 1358 further provided that the term "organization" would have the meaning assigned by section 1.002 of the Business Organizations Code, which defines "organization" as "a corporation, limited or general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, savings and loan association, or other organization, regardless of whether the organization is for-profit, nonprofit, domestic, or foreign.

  Rep. Jessica Gonzalez (D – Dallas) filed an identical bill (HB 2020).[35]

- Status of HB 1358**:** Referred to Judiciary & Civil Jurisprudence on March 5.

[31] Tex. S.B. 808, 87th Leg., R.S. (2021).
[32] Tex. H.B. 3377, 87th Leg., R.S. (2021).
[33] Tex. H.B. 1162, 87th Leg., R.S. (2021).
[34] Tex. H.B. 1358, 87th Leg., R.S. (2021).
[35] Tex. H.B. 2020, 87th Leg., R.S. (2021).

- Status of HB 2020**:** On April 14, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 4:26:25 mark. Witnesses who registered a position or testified in favor of, on, or against HB 2020 are listed here: Witness List. The bill was left pending.

HB 2917 – Recovery of Attorney's Fees in Certain Civil Cases[36]

- **Summary:** HB 2917, filed by Rep. Mike Schofield (R – Katy), would have amended section 38.001 of the CPRC to provide that a person may recover reasonable attorney's fees "from an individual or organization". HB 2917 further provided that the term "organization" would have the meaning assigned by section 1.002 of the Business Organizations Code.
- Status**:** Referred to Judiciary & Civil Jurisprudence on March 18.

HB 3150 – Recovery of Attorney's Fees in Certain Civil Actions[37]

- **Summary:** HB 3150, filed by Rep. Morgan Meyer (R – Dallas), would have amended Chapter 38 of the CPRC to provide that a prevailing party would be permitted to recover all reasonable and necessary attorney's fees on claims listed in the statute. HB 3150 also provides that, in order to recover attorney's fees, the prevailing party must be represented by an attorney.
- Bill Analysis: House Research Organization
- Status**:** On April 6, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony about the bill begins around the 02:07:30 mark. You can see who registered a position or testified in favor of, on, or against HB 3150 here: Witness List. The bill was unanimously voted out of committee on April 21, but did not receive a House vote.

HB 3349 – Recovery of Attorney's Fees in Certain Civil Actions[38]

- **Summary:** HB 3349, filed by Rep. Jon Rosenthal (D – Houston), would have amended section 38.001 of the CPRC to add "other legal entity" to the statute and permit recovery of attorney's fees against such an entity provided that the entity is not the state, an agency or institution of the state, or a political subdivision of the state.
- Status**:** Referred to Judiciary & Civil Jurisprudence on March 22.

HB 3695 – Recovery of Attorney's Fees[39]

- **Summary:** HB 3695, filed by Rep. Julie Johnson (D – Dallas), would have amended section 38.001 of the CPRC to add "limited liability company, limited partnership, or any other type of corporate entity" and permit the recovery of attorney's fees against such entities.
- Status**:** Referred to Judiciary & Civil Jurisprudence on March 22.

C. Civil Liability/Causes of Action

HB 3 – State and Local Government Responses to a Pandemic Disaster[40]

- **Summary:** HB 3, filed by Rep. Dustin Burrows (R – Lubbock), would have addressed, among other things, how the state responds to pandemic disasters. Under the original version of HB 3, the bill would have affirmed the governor's ability to suspend state laws and allow for the preemption of local orders issued by county judges or mayors if they're inconsistent with state orders.

  HB 3 would have also provided liability protections for businesses operating during a pandemic so long as the business "knew of the risk of exposure or potential exposure … made a reasonable effort to comply with applicable federal, state, and local laws, rules, ordinances, declarations, and proclamations related to the pandemic disaster … and [if] the act or omission giving rise to the exposure or potential exposure was not wilful, reckless or grossly negligent." Liability protection would have extend to an officer or employee of a state or local agency, or a volunteer acting at the direction of an officer or employee of a state or local agency, by giving them the same liability protection afforded to a member of the Texas military order into active service (section 437.222 of the Texas Government Code) if the person is performing an activity related to sheltering or housing individuals in connection with the evacuation of an area stricken or threatened by a pandemic disaster.

[36] Tex. H.B. 2917, 87th Leg., R.S. (2021).
[37] Tex. H.B. 3150, 87th Leg., R.S. (2021).
[38] Tex. H.B. 3349, 87th Leg., R.S. (2021).
[39] Tex. H.B. 3695, 87th Leg., R.S. (2021).
[40] Tex. H.B. 3, 87th Leg., R.S. (2021).

HB 3 would have also required that actions taken during a pandemic disaster satisfy the religious freedom protections under state and federal law. Further, while the governor could suspend the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles during a pandemic disaster, the governor could not suspend or limit the sale or transportation of firearms and ammunition.

HB 3 would have also required local jurisdictions to receive approval from the secretary of state before altering voting procedures during a pandemic.

The version of HB 3 approved in committee included the following items:

The original bill authorized the Legislature to terminate a state of pandemic disaster at any time; but, the committee substitute would have limited that authorization to times when the Legislature is in a regular or special session and would establish the Pandemic Disaster Legislative Oversight Committee to act on a declaration of a state of pandemic disaster when the Legislature is not in session. The PDLOC would have been authorized to terminate at any time a state of pandemic disaster that is in effect for more than 30 days following the governor's renewal of the declaration or provisions of proclamations, orders, or rules issued or adopted by the governor or of orders issued by a political subdivision for the pandemic disaster declaration. Accounting for this additional authority to terminate provisions of an applicable proclamation, order, or rule, the bill would have required the governor, on termination of such a provision by the PDLOC, to issue an executive order rescinding those provisions.

The committee substitute also included a provision that would have prohibited the governor from declaring a new state of pandemic disaster based on the same or a substantially similar finding as a prior state of pandemic disaster that was terminated or not renewed by the Legislature or to circumvent a meeting of the PDLOC convened to review a state of pandemic disaster declaration.

The committee substitute included a provision that would have prohibited the presiding officer of the governing body of a political subdivision from issuing an order during a declared state of pandemic disaster or local state of pandemic disaster that required specific businesses or industries to close or distinguishes between types of businesses or industries in limiting operation capacities.

The committee substitute revised the original bill provisions granting immunity from civil liability to a business or an entity operating during a pandemic disaster in Texas with regard to an injury caused by exposing or potentially exposing an individual to a disease in the following ways: (1) removed as a requisite condition for triggering the immunity that, on the date of the exposure or potential exposure, the business or entity knew of the risk of exposure or potential exposure; and (2) changed the condition that the business or entity made a reasonable effort to comply with applicable federal, state, and local laws, rules, ordinances, declarations, and proclamations related to the pandemic disaster as follows: (a) removed the requirement that the business or entity made a reasonable effort to comply with federal laws, rules, ordinances, declarations, and proclamations; and (b) clarified that the state and local laws, rules, ordinances, declarations, and proclamations with which the business or entity must have made a reasonable effort to comply are those that are controlling.

The committee substitute also included provisions establishing that immunity from civil liability provided under the bill would have been in addition to the immunity and limitations of liability provided by other laws and that the bill provisions do not create a civil cause of action.

The committee substitute included a provision establishing that the governor could not exercise the same authority to address a declared state of pandemic disaster as is granted to the governor under the Texas Disaster Act of 1975 to address another type of disaster, with certain specified exceptions. Further, under the revised bill, limitations would have been placed on the governor’s power to issue executive orders, proclamations, or rules that have the effect of closing or limiting the operating capacity of a business or other entity, mandating the wearing of a face covering, or limiting surgeries or other procedures that a licensed health care professional or health care facility may perform.

The committee substitute revised the provisions of the original bill regarding local and interjurisdictional pandemic emergency management under the Texas Pandemic Response Act as follows: (1) omitted provisions authorizing local election officials to propose, and the secretary of state to approve, certain alterations of

voting procedures in response to a pandemic disaster; (2) removed the original bill authorization for a pandemic emergency management director to exercise the powers granted to the governor on an appropriate local scale and instead requires each director to perform the duties prescribed by the applicable emergency management plan and implement the state of pandemic proclamation and each executive order issued under the act; (3) provided for the preemption of municipal orders that are inconsistent with applicable county orders; and (4) required the governor to adopt rules and procedures necessary to determine whether a political subdivision's presiding officer has issued an order requiring the closure of a private business in response to a pandemic disaster for purposes of the limitation on property tax rates.

On the House floor, HB 3 was further amended to create the Texas Epidemic Public Health Institute at the University of Texas Health Science Center at Houston. That entity would have made recommendations to a 12-member legislative oversight committee that also would have been created if HB 3 became law. The committee, which would have consisted of the lieutenant governor and speaker — who would have served as joint chairs — and a number of committee chairs from both chambers, could in certain cases have terminated pandemic disaster declarations, orders or other rules issued by the governor or local governments. It could only act though when the Legislature was not convened for a regular or special session. Other amendments adopted by the House included one that would have prohibited local officials from issuing an order during a pandemic disaster that required businesses or industries to close; another that would have created an emergency management text system for warnings during a pandemic; and one that would have required the Legislature to convene for a special session if a disaster declaration lasts longer than 90 days.

- Bill Analysis: House Research Organization
- Fiscal Note: Legislative Budget Board
- Status**:** On March 11, State Affairs conducted a public hearing on HB 3: Notice. Those who are interested can watch the proceedings here: House Archived Video. Testimony on HB 3 begins around the 2:20:00 mark. Witnesses who registered a position or testified in favor of, on, or against HB 3 are listed here: Witness List. Written comments provided to the committee can be reviewed here. Handouts provided to the committee can be reviewed here. On May 4, the bill, as amended, was unanimously voted out of committee. By a vote of 104-39, the House passed HB 3, as amended. On May 20, State Affairs conducted a public hearing on HB 3: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 3:20 mark. The bill was left pending.

HB 2071 – Elimination of Limitations Periods for Suits for Personal Injury Arising from Certain Offenses against a Child[41]

- **Summary:** HB 2071, filed by Rep. Ann Johnson (D – Houston), would have amended section 16.003 of the CPRC to eliminate the statute of limitations for bringing a personal injury lawsuit for injuries to a child arising out of Penal Code violations for: (1) the sexual assault of a child; (2) the aggravated sexual assault of a child; (3) the continuous sexual abuse of young child or children; (4) sexual conduct with a trafficked child as defined under the Penal Code; (5) certain sexual trafficking of a child; (6) compelling prostitution by a child; or (7) indecency with a child.
- Status**:** Referred to Judiciary & Civil Jurisprudence on March 15.

HB 2782 – Business Civil Liability for COVID-19 Exposure[42]

- **Summary:** HB 2782, filed by Rep. Jay Dean (R – Longview), would have amended the CPRC to provide that a business entity or person who owns a business entity may not be held liable for injury or death caused by exposure to COVID-19 that occurred due to the entity's activities or operations, unless a claimant proves that the exposure was caused by gross negligence or wilful misconduct.
- Status**:** Referred to Judiciary & Civil Jurisprudence on March 17.

HB 3024 – Civil and Criminal Liability for Doxing[43] ***(Companion: SB 1691)***[44]

- **Summary:** HB 3024, filed by Rep. Gene Wu (D – Houston), would have amended the Penal Code and the CPRC to create a criminal offense and a civil cause of action for doxing. Under HB 3024,

[41] Tex. H.B. 2071, 87th Leg., R.S. (2021).
[42] Tex. H.B. 2782, 87th Leg., R.S. (2021).
[43] Tex. H.B. 3024, 87th Leg., R.S. (2021).
[44] Tex. S.B. 1691, 87th Leg., R.S. (2021).

a person would commit a doxing offense if the person: (1) intentionally posted another person's private personal information without the other person's consent; (2) the information was posted with the intent to promote or assist in the commission of an offense that would cause the person whose information is posted to suffer death, bodily injury, or stalking; or, with the intent that the information would be used to threaten harm or to harass any person and with reckless disregard that the posting would be reasonably likely to incite an attempt to cause the person to suffer death, bodily injury, or stalking; and, (3) the posting of the information: (a) was conducted with knowledge that the information would be used in the commission of an offense that would cause harm to the person whose information is posted or to a close relation to that person; (b) would have caused a reasonable person to suffer significant economic injury or mental anguish or to fear serious bodily injury or death for oneself or for a close relation to oneself; or (c) caused the person whose information is posted to suffer a substantial life disruption.

Doxing would have been a misdemeanor, but could have been elevated to a felony offense if an individual suffered death, physical injury, mental anguish or significant economic injury as a proximate result of conduct arising out of the posting.

A defendant who engaged in doxing (as defined under the Penal Code) would be liable for civil damages arising from the posting of the private personal information. A prevailing claimant would have been entitled to actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown, and reasonable attorney's fees. The claimant also could have recovered exemplary damages.

The Senate companion (SB 1691) was filed by Sen. Borris Miles (D – Houston). The bill was referred to Criminal Justice on March 26.

- Status**:** Referred to Criminal Jurisprudence on March 19.

HB 4213 – Appeal of a Sanction Issued by a Court Following a Ruling on a Motion to Recuse[45]

- **Summary:** HB 4213, filed by Rep. Andrew Murr (R – Kerrville), would have amended the CPRC and authorized an attorney or an attorney representing a party who: (1) filed a motion to recuse the court, and (2) was ordered to pay fees or expenses following the ruling to file a notice of appeal with the trial court no later than thirty days following the date of the applicable order. The appealing party (or attorney representing a party, as applicable) would have been entitled to have the sanctions order reviewed de novo by a jury or a judge. Selection of a jury would have occurred in accordance with the usual jury selection process for a civil jury trial. Under HB 4213, a jury determination would have been subject to appeal to the court of appeals having jurisdiction over the case.

  HB 4213 would have required the Supreme Court to promulgate changes to the Texas Rules of Civil Procedure to comply with the new law.

- Status: On April 21, Judiciary & Civil Jurisprudence conducted a public hearing on HB 4213: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 29:00 mark. Those who registered a position or testified in favor of, on, or against HB 4213 are listed here: Witness List. The bill was left pending.

HB 4481 – Civil Liability Arising from COVID-19[46]

- **Summary:** HB 4481, filed by Rep. Tom Oliverson (R – Houston), would have provided persons with immunity from civil liability for ordinary negligence for any personal injury or death arising from COVID-19 as long as the person acted "as an ordinary, reasonable, and prudent person would have acted under the same or similar circumstances." For purposes of this subsection, acting as an ordinary, reasonable, and prudent person included the adoption of reasonable safety measures. Under HB 4481, there would have been a rebuttable presumption that safety measures adopted by a person were reasonable if those measures conformed to the Centers for Disease Control and Prevention guidelines in existence at the time of an alleged exposure.

  The rebuttable presumption provided by this subsection did not alter the applicable standard of care for medical, legal, or other negligence cases. The changes in HB 4481 also did not apply

[45] Tex. H.B. 4213, 87th Leg., R.S. (2021).

[46] Tex. H.B. 4481, 87th Leg., R.S. (2021).

to an act or omission that constituted an intentional tort or wilful or reckless misconduct.

- Status: Referred to Judiciary & Civil Jurisprudence on March 29.

D. Contractor Liability

HB 3595 – Relating to Residential Construction Liability[47]

- **Summary:** HB 3595, filed by Rep. Jeff Leach (R – Plano), sought to amend Chapter 27 of the Texas Property Code (also known as the Residential Construction Liability Act) and would have, among other things, done the following: (1) reduced the statute of repose for residences from ten years to five; (2) clarified definitions of appurtenance, contractor, and economic damages; (3) allowed contractors to perform multiple inspections during the 35-day period after receiving notice of a complaint; and (4) provided for a dismissal of a claim instead of abatement if a claimant did not satisfy statutory requirements regarding the claim.
- Status: On April 6, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony about the bill begins around the 03:10:00 mark. Those who registered a position or testified in favor of, on, or against HB 3595 are listed here: Witness List. The bill was left pending.

E. Court Reporters/Recording of Court Proceedings

HB 228 – Use of an Electronic Recording Device to Report Court Proceedings[48]

- **Summary:** HB 228, filed by Rep. Andrew Murr (R – Kerrville), would have permitted the commissioners court of a county to exempt a court from the requirement imposed on the court's judge under section 52.041 of the Government Code (i.e., *Appointment of Official Court Reporter*) by authorizing the use of an electronic recording device to report the court's proceedings. The judge of a statutory county court or county court in that county by order could have claimed the exemption and provided for proceedings before the court to be reported using a good quality electronic recording device.

  By agreement, the commissioners court of each county within a judicial district could have exempted the district court from the requirement imposed on the court's judge under section 52.041 by authorizing the use of an electronic recording device to report the court's proceedings. By order, the judge could have claimed the exemption and provided for proceedings before the court to be reported using a good quality electronic recording device.

  If an electronic recording device was used to report a court proceeding, a court reporter would not have been required to be present during the proceeding to certify the record of the proceeding.

  The commissioners court of a county that by order had authorized (or the commissioners courts of a judicial district that had authorized) the use of an electronic recording device would have had to adopt a policy for the provision of a transcript on request or appeal in a proceeding reported using an electronic recording device. Such a policy could have provided for the imposition of fees associated with the preparation, reproduction, or mailing of a transcript for a proceeding reported using an electronic recording device. A policy that authorized the imposition of fees must have provided a mechanism for a person to object to the fee amounts.

  HB 228 would not have affected a person's rights under other law to request a proceeding before a court to be reported by a court reporter.

- Status: On March 17, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here (Part 1) and here (Part 2). In Part 1, testimony on HB 228 begins around the 1:08:25 mark. In Part 2, testimony begins around the 1:30:00 mark. Those who registered a position or testified in favor of, on, or against HB 228 are listed here: Witness List. Written comments provided to the committee can be seen here. The bill was left pending.

HB 1737 – Reporting of Depositions by Court Reporters and the Deposition Transcripts[49]

- **Summary:** HB 1737, filed by Rep. Joe Moody (D – El Paso), would have amended the Government Code to entitle a deponent and the attorneys of record and parties to a case in which a deposition was taken to obtain a copy of the deposition transcript from the court reporter or

[47] Tex. H.B. 3595, 87th Leg., R.S. (2021).
[48] Tex. H.B. 228, 87th Leg., R.S. (2021).
[49] Tex. H.B. 1737, 87th Leg., R.S. (2021).

court reporting firm, who could require payment of a reasonable fee before providing the transcript.

HB 1737 also would have required the reporter or firm to notify a deponent or attorney who requested a deposition transcript when it was available for review and allowed the deponent a period of at least 20 days to (1) review a secure digital copy of the transcript; and (2) provide a separate signed document listing any changes in form or substance the deponent desires to make to the transcript and the reasons for those changes.

HB 1737 would have also required the court reporter or court reporting firm to retain possession of the original deposition transcript during this review period and, on the earlier of the period's expiration or the receipt of the signed document, to promptly deliver the original transcript to the custodial attorney responsible for protecting the transcript's integrity. The bill would have made an attorney who took a deposition and the attorney's firm jointly and severally liable for a shorthand reporter's charges for the original transcript, the first copy of the transcript, and each additional copy of the transcript requested by the attorney.

HB 1737 specified that the circumstances under which a noncertified shorthand reporter could report an oral deposition included certain circumstances in which a certified shorthand reporter was not available to report the deposition in person or through remote technology.

- Bill Analysis: House Research Organization
- Status: On March 17, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. The testimony begins around the 3:29:20 mark. Those who registered a position or testified in favor of, on, or against HB 1737 are listed here: Witness List. Written comments provided to the committee can be reviewed here. The bill was unanimously voted out of committee on April 8 without amendments, but did not receive a House vote.

F. Damages

SB 207 – Recovery of Medical or Healthcare Expenses in Civil Actions[50] ***(Companion: HB 1617)***[51]

- **Summary:** SB 207, jointly filed by Sen. Charles Schwertner (R – Georgetown), Sen. Dawn Buckingham (R – Lakeway), and Sen. Donna Campbell (R – New Braunfels), sought to amend section 41.0105 of the CPRC to permit a party in an action in which a claimant sought recovery of medical or health care expenses to introduce certain types of evidence of the reasonableness of the amount charged for the medical or health care services provided to the claimant. The original bill was amended in committee and on the Senate floor to permit the following types of evidence:
  - In a civil action in which medical or health care expenses are actually paid by the claimant, or on the claimant's behalf, including amounts paid by a health benefit plan, workers' compensation insurance, an employer-provided plan, Medicaid, or Medicare, or another insurer or governmental payor, a claimant would be permitted to introduce in evidence only the amounts actually paid to the medical or health care facility or provider for the services provided to the person whose injury or death is the subject of the action.
  - In a civil action other than an action described above, a claimant would be permitted to introduce evidence that has a tendency to prove the fair and reasonable value of the necessary medical or health care services provided to the person whose injury or death is the subject of the action.
  - In any civil action in which a claimant seeks recovery of medical or health care expenses, a claimant would be permitted to introduce in evidence the amounts paid to a medical or health care facility or provider for services provided to the person whose injury or death is the subject of the action from a cafeteria plan or health savings account or by any person to satisfy a copayment or deductible.

  A claimant would have also been required, in any civil action in which a claimant sought recovery of medical or health care expenses, to disclose to all parties any formal or informal agreement under which the medical or health care facility or provider who provided the services sought to wholly or partly refund, rebate, or remit any amount of money or give anything of value to the claimant or anyone associated with the claimant.

[50] Tex. S.B. 207, 87th Leg., R.S. (2021).
[51] Tex. H.B. 1617, 87th Leg., R.S. (2021).

Further, a party who intended to controvert the reasonableness of the amounts charged or necessity for medical services would have only been required to serve notice of that intent instead of serving a copy of the counteraffidavit as currently required under CPRC section 18.001.
SB 207 also sought to add a new section 18.0011 to the CPRC that provided as follows:

- A party could not controvert the reasonableness of the charges for medical or health care services stated in an affidavit served under section 18.001 if the affidavit stated one of the following amounts as reasonable charges for the necessary medical or health care services provided by the facility or provider to the person whose injury or death was the subject of the civil action:

  (1) amounts actually received by the facility or provider from or on behalf of the claimant, including amounts received from a health benefit plan, workers' compensation insurance, an employer-provided plan, Medicaid, Medicare, or another insurer or governmental payor, for each medical or health care service provided by the facility or provider; or
  (2) amounts that, on the date the service was provided, did not exceed 150 percent of the maximum allowable reimbursement for each medical or health care service provided as determined by the commissioner of workers' compensation in accordance with Section 413.011, Labor Code.

- If an affidavit served by a health care facility or provider under section 18.001 complied with the section above and included a statement that the facility or provider did not intend to appear at trial to testify regarding the reasonableness of the facility's or provider's charges or the necessity for the facility's or provider's services, then: (1) a party could not seek to obtain through any pretrial discovery procedure information from the facility or provider about the reasonableness of the facility's or provider's charges or the necessity for the facility's or provider's services; and (2) the trial court had to exclude trial testimony by the facility or provider regarding the reasonableness of the facility's or provider's charges or the necessity for the facility's or provider's services unless:

  (A) the court found there was good cause to allow the testimony;
  (B) the testimony would not have unfairly surprised or unfairly prejudiced any party to the civil action; and
  (C) a party opposing admission of the testimony into evidence was given a reasonable opportunity to develop and present evidence relevant to the testimony to be offered by the facility or provider.

- An affidavit served by a health care facility or provider under Subsection (a) and the statements made in the affidavit could have been used only in the civil action in which the affidavit was served and not in other actions or for other purposes.
- An affidavit served under the new section 18.0011 would have had no effect except to prove the authenticity of the medical or health care records described by the affidavit if notice of intent to controvert the reasonableness of the amounts charged or necessity for medical or health care services was served as provided by this section.

The companion bill in the House, HB 1617, was filed by Rep. Greg Bonnen (R – Friendswood).

- Bill Analysis for SB 207**:** Senate Research Center
- Status of SB 207**:** On March 3, State Affairs conducted a public hearing on SB 207: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 2:30 mark. Those who registered a position or testified in favor of, on, or against SB 207 are listed here: Witness List. On April 7, by a 6-3 vote, SB 207 was voted out of committee. By a vote of 19-12, the Senate passed SB 2017 on April 20. The bill was forwarded to the House and referred to Judiciary & Civil Jurisprudence on April 26. On May 5, by a 5-4 vote, the Judiciary & Civil Jurisprudence voted SB 207 out of committee without any amendments.
- Status of HB 1617**:** On April 6, Judiciary & Civil Jurisprudence conducted a public hearing on a committee substitute for HB 1617: Notice. Those who are interested can watch the proceedings here. Testimony about the bill begins around the 01:10:45 mark. You can see who registered a

position or testified in favor of, on, or against HB 1617 here: Witness List. The committee substitute, which was left pending, was not posted.

HB 2925 – Affidavits Concerning Cost and Necessity of Services[52]

- **Summary:** HB 2925, filed by Rep. Harold Dutton (D – Houston), would have amended section 18.001 of the CPRC to add a new section a-1, which provided that, if a claimant offered into evidence a medical bill or other itemized statement of a medical or health care service and charge totaling $50,000 or less, an affidavit described by 18.001 (b) would not have been necessary to support a finding of fact by a judge or jury that the amount charged was reasonable or that the service was necessary.
- Status: Referred to Judiciary & Civil Jurisprudence on March 18.

G. Healthcare Liability

SB 1106 – Qualifications of Experts in Certain Health Care Liability Claims[53] ***(Companion: HB 2406)***[54]

- **Summary:** SB 1106, filed by Sen. Bryan Hughes (R – Mineola), would have amended the CPRC to provide that, in suits involving a health care liability claim against a chiropractor, a person could qualify as an expert witness on the issue of the causal relationship between an alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person was a chiropractor or physician and was otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence. The companion bill in the House, HB 2406, was filed by Rep. Yvonne Davis (D – Dallas).
- Bill Analysis for SB 1106: Senate Research Center
- Bill Analysis for HB 2406: House Research Organization
- Status of SB 1106**:** On April 19, State Affairs conducted a public hearing on SB 1106: Notice. Those who are interested can watch the proceedings here. Testimony about the bill begins around the 04:30 mark. Several witnesses registered a position or testified in favor of, on, or against SB 1106, but the list of witnesses has yet to be posted. The bill was left pending.
- Status of HB 2406**:** On March 31, Judiciary & Civil Jurisprudence conducted a public hearing on HB 2406: Notice. Those who are interested can watch the proceedings here. Testimony about the bill begins around the 03:27:20 mark. Witnesses who registered a position or testified in favor of, on, or against HB 2406 are listed here: Witness List. On April 8, the bill was unanimously voted out of committee without any amendments. On May 4, by a vote of 143-2, the House passed HB 2406. It was forwarded to the Senate and referred to State Affairs**.**

HB 501 – Liability Limits in a Health Care Liability Claim[55]

- **Summary:** HB 501, filed by Rep. Gene Wu (D – Houston), would have amended sections 74.301 and 74.302 of the CPRC and provided for an adjustment to the noneconomic damages caps based on the consumer price index (CPI). More specifically, the bill provided that, when there is an increase or decrease in the CPI, the liability limit prescribed by the noneconomic damage limitation sections would be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the CPI that measured the average changes in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone (CPI-W: Seasonally Adjusted U.S. City Average--All Items), between September 1, 2003, and the time at which damages subject to such limits were awarded by final judgment or settlement.
- Status**:** Referred to Judiciary & Civil Jurisprudence on March 1.

H. Insurance

HB 359 – Recovery under Uninsured and Underinsured Motorist Insurance Coverage[56] ***(Companion: SB 1935)***[57]

- **Summary:** HB 359, filed by Rep. Charlie Geren (R – Fort Worth) but joined by more than 75 other House members, would have amended the Insurance Code to, among other things, expressly: (1) define, at least to some degree, what constitutes sufficient notice under the Insurance Code for uninsured/underinsured motorists (UIM)

[52] Tex. H.B. 2925, 87th Leg., R.S. (2021).
[53] Tex. S.B. 1106, 87th Leg., R.S. (2021).
[54] Tex. H.B. 2406, 87th Leg., R.S. (2021).
[55] Tex. H.B. 501, 87th Leg., R.S. (2021).
[56] Tex. H.B. 359, 87th Leg., R.S. (2021).
[57] Tex. S.B. 1935, 87th Leg., R.S. (2021).

claims; (2) state that an insurer may not require, as a prerequisite to asserting a claim under UIM coverage, a judgment or other legal determination establishing the other motorist's liability or uninsured/underinsured status; (3) state that an insurer may not require, as a prerequisite to payment of UIM benefits, a judgment or other legal determination establishing the other motorist's liability or the extent of the insured's damages before benefits are paid; and (4) require an insurer to attempt, in good faith, to effectuate a prompt, fair, and equitable settlement of a claim once liability and damages have become reasonably clear. HB 359 also would have amended the Insurance Code to address when prejudgment began to accrue on UIM claims and when a claim for attorney's fees was considered to be "presented" for UIM claim purposes.

The companion (SB 1935) was filed by Sen. Bryan Hughes (R – Mineola). The bill was referred to Business & Commerce on April 1.

- Bill Analysis: House Research Organization
- Status: On April 13, Insurance conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony about the bill begins around the 09:15 mark. Those who registered a position or testified in favor of, on, or against HB 359 are listed here: Witness List. On April 27, the bill was unanimously voted out of committee without amendment. On May 7, by a vote of 126-15-2, the House passed HB 359 without any amendments.

HB 1682 – Disclosure by Liability Insurers and Policyholders to Third Party Claimants[58]

- **Summary:** HB 1682, filed in Rep. Matt Krause (R – Fort Worth), would have amended the Insurance Code and required an insurance carrier and a policyholder to disclose to a third party claimant certain information about the insurance coverage of the party against who a claim is being made. More specifically, HB 1682 would have required an insurance carrier to provide the claimant with a sworn statement of an officer or claims manager of the insurer that contained the following information for each policy known by the insurer that provides or may provide relevant coverage, including excess or umbrella coverage: (1) the name of the insurer; (2) the name of each insured; (3) the limits of liability coverage; (4) any policy or coverage defense the insurer reasonably believes is available to the insurer at the time the sworn statement is made; and (5) a copy of each policy under which the insurer provides coverage. An insurer that failed to comply with the request would have been subject to an administrative penalty up to $500. An insured who received such a request had to: (a) disclose to the claimant the name of and type of coverage provided by each insurer that provides or may provide liability coverage for the claim; and (b) forward the claimant's request to each insurer included in the disclosure.
- Status: On April 20, Insurance conducted a public hearing on HB 1682: Notice. Those who are interested can watch the proceedings here. Testimony about the bill begins around the 53:15 mark. Witnesses who registered a position or testified in favor of, on, or against HB 1682 are listed here: Witness List. The bill was left pending.

I. Judiciary/Judicial System

HB 1875 – Creation of a Business Court and a Court of Business Appeals[59]

- **Summary:** HB 1875, filed by Rep. Brooks Landgraf (R – Odessa), would have created a statewide specialized civil trial court and an appellate court to hear derivative actions on behalf of an organization and certain business-related litigation cases, such as actions against businesses, accusations of wrongdoing by businesses or their members, and disputes between businesses in which the amount in controversy exceeds $10 million. The proposed "business court" would not have jurisdiction over governmental entities (absent the government entity invoking or consenting to jurisdiction), personal injury cases, or cases brought under the Estates Code, Family Code, the DTPA, and Title 9 (Trusts) of the Property Code, unless agreed to by the parties and the court. Some of the other notable components of the bill were:
  - The business court would have been composed of seven (7) judges who are appointed by the governor for two (2) year terms. The judges had to have at least 10 years of experience in complex business law;
  - Parties would have had the right to a jury trial when required by the Constitution;
  - The court clerk would have been located in Travis County, but individual judges would

[58] Tex. H.B. 1682, 87th Leg., R.S. (2021).

[59] Tex. H.B. 1875, 87th Leg., R.S. (2021).

have been based in the county seat of their respective counties;
- Current venue rules would have applied, but cases could be heard in an agreed-upon county or where the court decided it would be more convenient or necessary;
- There would have been a removal procedure for cases filed in a district court;
- The business court would have been required to provide rates for fees associated with filings and actions in the business court, and such fees set at a sufficient amount to cover the costs of administering the business court system; and
- The Court of Business Appeals, which would have handled appeals from the business trial court, would have been composed of seven (7) justices appointed by the governor. Justices would have served two (2) year terms and heard cases in panels of three (3) randomly-selected justices. Appeals from the Business CA would have gone to the Supreme Court.

HB 1875 was similar (but not identical) to versions of the 2015 chancery court bill (HB 1603) that was voted out of committee (but failed to pass in the House), as well as the 2017 chancery court bill (HB 2594) and the 2019 business courts bill (HB 4149) that were filed but never voted out of committee.

- Bill Analysis: House Research Organization
- Fiscal Note: Legislative Budget Board
- Status**:** On April 6, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony about the bill begins around the 04:22:30 mark. You can see who registered a position or testified in favor of, on, or against HB 1875: Witness List. Written comments provided to the committee can be seen here. On April 21, by a 5-4 vote, the bill was voted out of committee without any amendments, but did not receive a House vote.

HB 1876 – Annual Base Salaries of State Judges and Justices[60]

- **Summary:** HB 1876, filed by Rep. Mike Schofield (R – Katy), would have amended the Government Code to provide for a cost-of-living adjustment for judicial salaries based on changes in the Consumer Price Index. Rep. Schofield also filed a similar bill (HB 1880)[61] that would accomplish the same result using a different formula.
- Fiscal Note: Legislative Budget Board
- Status of HB 1876**:** On March 17, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here: House Archive Video. Testimony on HB 1876 begins around the 1:00 mark. Witnesses who registered a position or testified in favor of, on, or against HB 1876 are listed here. The bill was left pending.
- Status of HB 1880**:** On March 17, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here: House Archive Video. Testimony on HB 1880 begins around the 32:15 mark. Witnesses who registered a position or testified in favor of, on, or against HB 1880 are listed here. The bill was left pending.

HB 3692 – Preparation of an Appellate Record in Civil and Criminal Appeals[62]

- **Summary:** HB 3692, filed by Rep. Julie Johnson (D – Dallas), would have amended Chapter 51 of the CPRC and Chapter 44 of the Code of Criminal Procedure to permit an appealing party to file an appendix with the court of appeals instead of a clerk's record. More specifically, HB 3692 sought to permit an appealing party in a criminal or civil appeal to notify the court of appeals within ten days of filing the notice of appeal that the party would file an appendix that replaced the clerk's record for the appeal. In a civil appeal, the appendix had to be filed with the appellant's brief no later than the 30th day after the later of: (1) the date that the party provided notice of its intent to file an appendix in lieu of a clerk's record; or (2) the date that a reporter's record, if any, was filed with the court of appeals. In a criminal appeal, the brief and appendix had to be filed no later than the 30th day after the earlier of: (1) the date the court clerk would have been required to file the clerk's record; or (2) the date that a reporter's record, if any, was filed with the court of appeals.

  An appendix filed under HB 3692 would have been required to contain a file-stamped copy of each document required by Rule 34.5 of the Texas Rules of Appellate Procedure, and any other item the party intended to reference in the appellant's brief.

[60] Tex. H.B. 1876, 87th Leg., R.S. (2021).

[61] Tex. H.B. 1880, 87th Leg., R.S. (2021).

[62] Tex. H.B. 3692, 87th Leg., R.S. (2021).

- Status: Referred to Judiciary & Civil Jurisprudence on March 22.

HB 4316 – Judicial Compensation for Marriage Ceremonies[63]

- **Summary:** HB 4316, filed by Rep. Jacey Jetton (R – Sugar Land), would have amended the Family Code and provided that "[a] current judicial officeholder commits an offense if the person knowingly agrees to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for conducting a marriage ceremony." A violation of the law proposed in HB 4316 would have been a Class B Misdemeanor.
- Status: Referred to Juvenile Justice & Family Issues on March 29.

SB 11 - Composition of the Court of Appeals Districts[64] ***(Companion: HB 339*** [65]***; Duplicate: HB 2613)***[66]

- **Summary:** As originally filed by Sen. Joan Huffman (R – Houston), SB 11 would have eliminated overlapping intermediate appellate court jurisdictions for certain counties located in the Fifth, Sixth, and Twelfth Courts of Appeals. More specifically, SB 11 would have provided that: (1) Hunt County would be solely within the jurisdiction of the Sixth Court of Appeals (instead of having concurrent jurisdiction with the Fifth Court of Appeals); (2) Gregg County and Rusk County would be solely within the jurisdiction of the Twelfth Court of Appeals (instead of having concurrent jurisdiction with the Sixth Court of Appeals); and (3) Upshur County and Wood County would be solely within the jurisdiction of the Sixth Court of Appeals (instead of having concurrent jurisdiction with the Twelfth Court of Appeals).

  The companion bill (HB 339) was filed by Rep. Phil King (R – Weatherford). Rep. Andrew Murr (R – Kerrville) filed a duplicate bill in the House (HB 2613).

- Bill Analysis for SB 11**:** Senate Research Center
- Status of SB 11: On April 1, Jurisprudence conducted a public hearing on a committee substitute for the bill: Notice. Those who are interested can watch the proceedings here: Senate Archive Video. Testimony begins around the 1:23:10 mark. Those who registered a position or testified in favor of, on, or against SB 11 are listed here: Witness List. The committee substitute would have done the following:

  - Reduced the number of courts of appeal from 14 into 7 districts (proposed COA district map);
  - Kept all 80 justices and all existing courthouses, but established additional courthouses in Midland, Lake Jackson, and Lubbock;
  - Each of the intermediate appellate court justices would have kept their places for the duration of their term; however, effective January 1, 2023, each justice place would be re-designated to one of the 7 new appellate districts and chief justices would be designated for each new district;
  - Only 5 justice places would have been designated to a different courthouse from where they currently sit. All places designated to a new courthouse would have expired in 2022, and filled by districtwide election in the new district during the 2022 election;
  - Sitting chief justices would have remained chiefs through the end of their terms. If a new COA included multiple chiefs, the chiefs would have been required to coordinate to carry out their responsibilities. The Chief Justice of the Supreme Court would resolve any dispute between the chiefs;
  - The Supreme Court would have been required to establish rules to the extent necessary to implement the bill; and
  - The changes in the law under SB 11 would have been effective September 1, 2021. New appellate court districts would have been created and justice places re-designated effective January 1, 2023.

  At the conclusion of the hearing, the committee voted the bill, as amended, out of committee by a 3-2 vote. The committee substitute was never posted for public viewing, but here is the version of CSSB 11 voted out of committee.

  On April 8, Sen. Huffman published a letter stating that SB 11 would not be moving forward at this time, but she will continue to develop a plan for the intermediate appellate

[63] Tex. H.B. 4316, 87th Leg., R.S. (2021).
[64] Tex. S.B. 11, 87th Leg., R.S. (2021).
[65] Tex. H.B. 339, 87th Leg., R.S. (2021).
[66] Tex. H.B. 2613, 87th Leg., R.S. (2021).

courts. On April 15, the committee formally reconsidered its decision to vote SB 11, as amended, out of committee. Those who are interested in watching the proceedings can do so here. The discussion about the bill and the motion to reconsider the same begins around the 2:44:20 mark.

- Status of HB 339**:** Referred to Redistricting on February 26.
- Status of HB 2613**:** Referred to Redistricting on March 17.

SB 690 – Conducting Remote Proceedings[67] ***(Companion: HB 3611)***[68]

- **Summary:** SB 690, filed by Sen. Judith Zaffirini (D – Laredo), would have amended the Government Code to expressly permit a court, on either its own motion or on the motion of any party, to: (1) conduct a hearing or other proceeding as a remote proceeding without the consent of the parties unless the U.S. Constitution or Texas Constitution requires consent; and (2) allow or require a judge, party, attorney, witness, court reporter, juror, or any other individual to participate in a remote proceeding, including a deposition, hearing, trial, or other proceeding. Under SB 690, "remote proceeding" would have meant any proceeding before a court in which one or more of the participants, including a judge, party, attorney, witness, court reporter, juror, or other individual, attends the proceeding remotely through the use of technology and the Internet

  Before a jury trial could be conducted as a remote proceeding, a court would have been required to: (1) consider on the record any motion or objection related to proceeding with the jury trial no later than the seventh day before the trial date, except that if the motion or objection was made later than the seventh day before the trial date, the court had to consider the motion or objection on the record as soon as practicable; and (2) ensure all prospective jurors have access to the technology necessary to participate in the remote proceeding.

  For purposes of any law requiring notice or citation of the time and place for a proceeding, notice of the remote means by which the proceeding would have been conducted and the method for accessing the proceeding through that remote means constituted notice of the place for the proceeding. If a remote proceeding was conducted away from the court's usual location, the court had to provide reasonable notice to the public and an opportunity to observe the proceeding.

  The Office of Court Administration (OCA) would have been required to provide guidance and assistance to the extent possible to a court conducting a remote proceeding.

  The companion bill in the House (HB 3611) was filed by Rep. Jeff Leach (R – Plano). As amended by Judiciary & Civil Jurisprudence, HB 3611 would have:
  - Amended section 21.009 of the Government Code by adding a definition of "remote proceeding", which would be defined as "a proceeding before a court in which one or more of the participants, including a judge, party, attorney, witness, court reporter, juror, or other individual, attends the proceeding remotely through the use of technology and the Internet.
  - Added a new section 21.013 that created an option for remote proceedings under the following parameters:
    - Except as limited by the U.S. and Texas constitutions, rules adopted by the Texas Supreme Court, or the provisions of HB 3611, a court could, on its own motion or on the motion of any party conduct a hearing or other proceeding as a remote proceeding; and allow or require a judge, party, attorney, witness, court reporter, juror, or any other individual to participate in a remote proceeding, including a deposition, hearing, trial, or other proceeding.
    - A court that elected to conduct a remote proceeding would have been required to: (1) provide adequate notice of the remote proceeding to the parties to the proceeding; (2) allow a party to file with the court a motion objecting to the remote proceeding and requesting an in-person proceeding not later than the 10th day after the date the party receives the notice; and (3) provide a method for a person described herein to notify the court that the person is unable to participate in the remote proceeding because the person is a person with a disability, lacks the required technology, or shows other good cause and: (A)

[67] Tex. S.B. 690, 87th Leg., R.S. (2021).
[68] Tex. H.B. 3611, 87th Leg., R.S. (2021).

provide an alternate method for the person to participate that accommodates the disability, lack of technology, or other situation; (B) allow the person to appear in person; or (C) conduct the proceeding as an in-person proceeding.

- On the court's receipt from any party to a proceeding of a motion objecting to the conduct of the proceeding as a remote proceeding and requesting an in-person proceeding, the court would have been required to consider the motion and grant the motion for good cause shown.
- In any contested adversarial or contested evidentiary criminal proceeding for an offense punishable by confinement, the prosecutor and defendant would have been required to agree for the proceeding to be conducted as a remote proceeding. If the prosecutor or defendant did not agree, the proceeding could not be held as a remote proceeding.
- A district court, statutory county court, statutory probate court, or county court could not conduct a jury trial as a remote proceeding unless each party to the proceeding agreed to conduct the proceeding as a remote proceeding.
- For a jury trial to be conducted as a remote proceeding in a justice or municipal court, the court would have been required to consider on the record any motion or objection related to proceeding with the trial not later than the seventh day before the trial date, except that if the motion or objection was made later than the seventh day before the trial date, the court would have to consider the motion or objection on the record as soon as practicable.
- A court that conducted a jury trial as a remote proceeding would be required to ensure all prospective jurors had access to the technology necessary to participate in the remote proceeding.
- A court that conducted a remote proceeding at a location other than the location the court regularly conducts proceedings would have been required to provide to the public reasonable notice of the location of the remote proceeding and an opportunity to observe the remote proceeding.
- OCA would have been required to provide guidance and assistance to the extent possible to a court conducting a remote proceeding.
- For purposes of any law requiring notice or citation of the time and place for a proceeding, notice of the remote means by which the proceeding would be conducted and the method for accessing the proceeding through that remote means would constitute notice of the place for the proceeding.

[**Note:** There are also two pending omnibus court bills–HB 3774 (filed by Rep. Jeff Leach (R – Plano)) and SB 1530 (filed by Sen. Joan Huffman (R – Houston)). HB 3774 incorporated similar remote proceedings provisions and could eventually include other judiciary-related proposals.]

- Bill Analysis for SB 690: Senate Research Center
- Fiscal Note for SB 690: Legislative Budget Board
- Fiscal Note for HB 3611: Legislative Budget Board
- Status of SB 690: On April 22, State Affairs conducted a public hearing on SB 690: Notice. Those who are interested can watch the proceedings here. Testimony on SB 690 begins around the 44:00 mark. Several witnesses registered a position or testified in favor of, on, or against SB 690 at the hearing, but the witness list has not been posted yet. The bill was left pending.
- Status of HB 3611: On April 14, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony on HB 3611 begins around the 5:26:30 mark. Witnesses who registered a position or testified in favor of, on, or against HB 3611 are listed here: Witness List. The bill, as amended, was unanimously voted out of committee on April 28

SB 1506 – Supreme Court/CCA Rule, Practice, or Procedure[69]

- **Summary:** SB 1506, filed by Sen. Drew Springer (R – Muenster), would have amended section 22.003 of the Government Code to provide that a rule, practice, or procedure promulgated by the Supreme Court did not apply in a criminal case unless the rule, practice, or procedure had been approved by the presiding judge of the Court of Criminal Appeals.
- Status: Referred to Jurisprudence on March 24

[69] Tex. S.B. 1506, 87th Leg., R.S. (2021).

SB 1529 – Creation of the Texas Court of Appeals[70]

- **Summary:** Under the original version of SB 1529 filed by Sen. Joan Huffman (R – Houston), the bill would have created a statewide court of appeals district that would have exclusive appellate jurisdiction over "all cases or any matters arising out of or related to a civil case brought by or against the state or a state agency, board, or commission or by or against an officer of the state or a state agency, board, or commission." The court would've been composed of six elected justices and would sit in Austin, Texas.

  At the hearing on SB 1529, the committee considered a committee substitute that would have carved out cases from the court's proposed jurisdiction, such as: (1) proceedings brought under Title 5 of the Family Code; (2) a proceeding brought against an elected official of a political subdivision or the judge of a trial court arising from an act or omission made in the official's or judge's official capacity; (3) a proceeding relating to a mental health commitment or a civil asset forfeiture; (4) a juvenile case; (5) a proceeding brought under CPRC chapter 125 to enjoin a common nuisance; and (6) a quo warranto proceeding. Further, the committee substitute would have given the court exclusive jurisdiction over a proceeding in which a party filed a petition, motion, or other pleading challenging the constitutionality of a Texas statute. The committee substitute also modified the text of the original version to provide that the court would: (1) be composed of five justices; and (2) sit in the City of Austin, but could have transacted its business in any county in the state as the court determined was necessary and convenient.

  On the Senate floor, SB 1529 was further amended to clarify that the court would have been an intermediate court of appeals and that the following proceedings would have been excluded from its jurisdiction: (1) expunction orders under Chapter 55 of the Code of Criminal Procedure: (2) an order of nondisclosure of criminal history record information under Chapter 411 of the Government Code; and (3) proceedings relating to the conditions, modification, revocation, or surrendering of a bond, including a surety bond. Under another floor amendment, the justices on the court would have been paid the same annual base salary as a justice on the Texas Supreme Court (other than the chief justice) or a judge on the Texas Court of Criminal Appeals (other than the presiding judge).

- Bill Analysis: Senate Research Center
- Fiscal Note: Legislative Budget Board
- Status: On April 1, Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here: Senate Archive Video. Testimony begins around the 32:30 mark. Those who registered a position or testified in favor of, on, or against SB 1529 are listed here: Witness List. At the conclusion of the hearing, the committee voted SB 1529, as amended, out of committee by a 3-2 vote. On April 13, the full Senate first took up SB 1529. You can watch the floor debate here. The debate about SB 1529 begins around the 2:31:30 mark. On April 14, by a 18-13 vote, the Senate passed SB 1529. It was forwarded to the House and referred to State Affairs.

J. Probate Proceedings

SB 156 – Transfer of Probate Proceedings to County in Which Executor/Administrator of Estate Resides[71] ***(Companion: HB 2427)***[72]

- **Summary:** SB 156, filed by Sen. Charles Perry (R – Lubbock), would have added section 33.1011 to the Estates Code to provide that, after the issuance of letters testamentary or administration to the executor or administrator of an estate, the court, on motion of the executor or administrator, may order that the proceeding be transferred to another county in which the executor or administrator resides if no immediate family member of the decedent resides in the same county in which the decedent resided. SB 156 also defined "immediate family member" to be the parent, spouse, child, or sibling of the decedent.

  The companion bill in the House (HB 2427) was filed by Rep. Andrew Murr (R – Kerrville).

- Bill Analysis: Senate Research Center
- Status of SB 156**:** On March 8, State Affairs conducted a public hearing on SB 156: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 00:33:00 mark. Those who registered a position or testified in favor of, on, or against SB 156 are listed here: Witness List. SB 156 was voted out of

[70] Tex. S.B. 1529, 87th Leg., R.S. (2021).

[71] Tex. S.B. 156, 87th Leg., R.S. (2021).

[72] Tex. H.B. 2427, 87th Leg., R.S. (2021).

committee, without amendment, on March 15. The full Senate unanimously passed SB 156 on March 23. The bill was forwarded to the House and referred to Judiciary & Civil Jurisprudence, which conducted a public hearing on April 28: Notice. Those who are interested can watch the proceedings here: House Archive Video. Testimony about SB 156 begins around the 1:08:00 mark. Witnesses who registered a position or testified in favor of, on, or against the bill are listed here: Witness List. On May 5, Judiciary & Civil Jurisprudence unanimously voted the bill out of committee, as amended.

- Status of HB 2427**:** Referred to Judiciary & Civil Jurisprudence on March 16.

K. Qualified Immunity

HB 614 – Cause of Action for Deprivation of Certain Rights, Privileges, and Immunities under Color of Law[73]

- **Summary:** HB 614, filed by Rep. Senfronia Thompson (D – Houston), would had added Chapter 135 to the CPRC and provide for the following:
  - A person may bring an action for any appropriate relief, including legal or equitable relief, against another person, including a public entity, who, under the color of law, deprived or caused to be deprived the person bringing the action of a right, privilege, or immunity secured by the Texas Constitution.
  - A person must bring the action no later than two years after the date the cause of action accrues.
  - Statutory immunity or limitation on liability, damages, or attorney's fees does not apply to an action brought under the proposed law. Qualified immunity or a defendant's good faith but erroneous belief in the lawfulness of the defendant's conduct is not a defense to an action brought under the proposed law.
  - A court shall award reasonable attorney's fees and costs to a prevailing plaintiff. Further, if a judgment is entered in favor of a defendant, the court may award reasonable attorney's fees and costs to the defendant only for defending claims the court finds frivolous.
  - A public entity shall indemnify a public employee of the entity for liability incurred by and a judgment imposed against the employee in an action brought under the proposed law. However, a public entity is not required to indemnify a public employee of the entity if the employee was convicted of a criminal violation for the conduct that is the basis for the action brought under HB 614.

  Note: Rep. Senfronia Thompson also filed HB 88,[74] which would have created a cause of action arising out of the acts of peace officers who, under the color of law, deprived or caused a person to be deprived of a "right, privilege, or immunity secured by the Texas Constitution." Like HB 614, the proposed law expressly stated that qualified immunity or a defendant's "good faith but erroneous belief in the lawfulness of the defendant's conduct" was not a defense under the proposed law.

- Status of HB 614**:** Referred to Judiciary & Civil Jurisprudence on March 1.
- Status of HB 88: On March 25, Homeland Security & Public Safety conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here: House Archive Video. Testimony about HB 88 begins around the 01:47:20 mark. Those who registered a position or testified in favor of, on, or against HB 88 are listed here: Witness List. Handouts related to HB 88 that were provided to the committee can be reviewed here. The bill was left pending.

L. Redistricting

HB 1025 – Creation of Texas Redistricting Commission[75]

- **Summary:** HB 1025, filed by Rep. Donna Howard (D – Austin), would have created the Texas Redistricting Commission ("TRC"), which would have been responsible for adopting redistricting plans for the election of the Texas House of Representatives, the Texas Senate, and members of the United States House of Representatives elected from the state of Texas following each federal census. The TRC would have also been responsible for reapportioning judicial districts in the event the Judicial Districts Board failed to reapportion the districts on its own. The proposed constitutional amendment

[73] Tex. H.B. 614, 87th Leg., R.S. (2021).

[74] Tex. H.B. 88, 87th Leg., R.S. (2021).

[75] Tex. H.B. 1025, 87th Leg., R.S. (2021).

authorizing the creation of the TRC (HJR 59[76]) was also filed by Rep. Howard.

Note: Similar resolutions (SJR 43[77] and HJR 121[78]) have been filed by Sen. Royce West (D – Dallas) and Rep. Rafael Anchia (D – Dallas), respectively. SJR 43 was referred to the Special Committee on Redistricting on March 11.

- Fiscal Note for HB 1025: Legislative Budget Board
- Fiscal Note for HJR 59: Legislative Budget Board
- Fiscal Note for HJR 121: Legislative Budget Board
- Status of HB 1025**:** On April 20, Redistricting conducted a public hearing on HB 1025: Notice. Those who are interested can watch the proceedings here: House Archive Video. Testimony about HB 1025 begins around the 18:45 mark. Those who registered a position or testified in favor of, on, or against HB 1025 are listed here: Witness List. Handouts related to HB 1025 that were provided to the committee can be reviewed here. The bill was left pending.
- Status of HJR 59**:** On April 20, Redistricting conducted a public hearing on HJR 59: Notice. Those who are interested can watch the proceedings here: House Archive Video. Testimony about HJR 59 begins around the 05:45 mark. Those who registered a position or testified in favor of, on, or against HJR 59 are listed here: Witness List. Handouts related to HJR 59 that were provided to the committee can be reviewed here. The resolution was left pending.
- Status of HJR 121**:** On April 20, Redistricting conducted a public hearing on HJR 121: Notice. Those who are interested can watch the proceedings here: House Archive Video. Testimony about HJR 121 begins around the 39:30 mark. Those who registered a position or testified in favor of, on, or against HJR 121 are listed here: Witness List. Handouts related to HJR 121 that were provided to the committee can be reviewed here. The resolution was left pending.

M. Separation of Powers

[***Note***: Legislators filed several bills addressing executive and legislative powers following disaster or emergency declarations. The following is a representative sample of what was filed.]

SB 1025 – Authority of the Legislature, Governor, and Certain Political Subdivisions with Respect to Disasters and Emergencies[79]

- **Summary:** SB 1025, filed by Sen. Brian Birdwell (R – Granbury) and others, would have amended the Government Code to provide that only the legislature may suspend a provision of the Penal, Criminal Procedure, or Election codes during a disaster declaration. Additionally, it would have also provided that only the legislature could restrict or impair the occupancy of a business or house of worship by category or region. SB 1025 would have also restricted the governor's ability to suspend or limit the sale, use, and transportation of alcoholic beverages, firearms, explosives, and combustibles during times of disaster, but reauthorized this power exclusively for emergency situations, where such measures better correspond to situations in which citizen conduct has deteriorated to unrest, riot, or open revolt.

  SJR 45,[80] also filed by Sen. Birdwell and others, is the proposed constitutional amendment that would have authorized the changes in the law proposed by SB 1025. Under SJR 45, the Texas Constitution would have been amended to require the governor to call a special session if he or she desired to continue a declaration past thirty (30) days when any one of the following three conditions were met: (1) the declaration affected half of the state's population; (2) the declaration affected two-fifths (102 or more) of the counties; or (3) the declaration affected two-thirds of the counties in three (3) or more trauma service regions. SJR 45 would have also provided an enforcement mechanism for ensuring that the special session occurs when appropriate. As proposed, it would have granted any sitting legislator at the time of the disaster the standing to challenge the executive branch at the Texas Supreme Court (by giving the Court original jurisdiction in the case) if the governor failed to convene the legislature after a qualifying disaster or emergency declaration. Once convened, the governor would have been given the opportunity to receive advice and consent from the legislature on his current disaster waivers and actions. The legislature would have also had the authority to terminate or renew the order subject to constraints as it deemed fit. Such action could be effectuated

[76] Tex. H.J.R. 59, 87th Leg., R.S. (2021).
[77] Tex. SJ.R. 43, 87th Leg., R.S. (2021).
[78] Tex. H.J.R. 121, 87th Leg., R.S. (2021).
[79] Tex. S.B. 1025, 87th Leg., R.S. (2021).
[80] Tex. S.J.R. 45, 87th Leg., R.S. (2021).

by a concurrent resolution or another legislative enactment that is not subject to veto.

- Bill Analysis for SJR 45: Senate Research Center
- Bill Analysis for SB 1025: Senate Research Center
- Fiscal Note for SJR 45: Legislative Budget Board
- Fiscal Note for SB 1025: Legislative Budget Board
- Status of SB 1025**:** On March 31, State Affairs conducted a public hearing on SB 1025: Notice. Those who are interested can watch the proceedings here: Senate Archive Video. Testimony about SB 1025 begins around the 38:00 mark. Those who registered a position or testified in favor of, on, or against SB 1025 are listed here: Witness List. On April 6, the committee unanimously voted the bill out of committee. On April 13, by a vote of 30-1, the Senate passed SB 1025. The bill was forwarded to the House and referred to State Affairs on April 16.
- Status of SJR 45**:** On March 31, State Affairs conducted a public hearing on SJR 45: Notice. Those who are interested can watch the proceedings here: Senate Archive Video. Testimony about SJR 45 begins around the 38:00 mark. Those who registered a position or testified in favor of, on, or against SJR 45 are listed here: Witness List. On April 6, the committee unanimously voted the resolution out of committee. On April 13, by a vote of 30-1, the Senate passed SJR 45. The resolution was forwarded to the House and referred to State Affairs on April 16.

SJR 29 – Executive Power Following Disaster or Emergency Declaration[81]

- **Summary:** SJR 29, filed by Sen. Drew Springer (R – Muenster), proposed a constitutional amendment requiring the governor to call the Legislature into special session following certain disaster or emergency declarations and specifies the powers of the Legislature in those special sessions. More specifically, SJR 29 proposed an amendment that would require the governor to call a special session: (1) if a state of disaster or emergency declared by the governor continues for more than 21 days; or (2) upon receipt of a petition from any member of the Legislature requesting legislative review of a state of disaster or emergency declared by the governor if the petition is signed by at least two-thirds of the members of the house of representatives and at least two-thirds of the members of the senate.

  SJR 29's proposed constitutional amendment would have authorized a special session in which the Legislature may:

  - review an order, proclamation, or other instrument issued by the governor during the 90 days before the special session begins:
    (1) declaring a state of disaster or emergency in Texas; or
    (2) in response to a state of disaster or emergency in Texas declared by any federal, state, or local official or entity;
  - terminate or modify an order, proclamation, or other instrument described above by passage of a resolution approved by majority vote of the members present in each house of the Legislature, which is not subject to the new constitutional provision;
  - respond to the state of disaster or emergency, including by:
    (1) passing laws and resolutions the Legislature determines are related to the state of disaster or emergency; and
    (2) exercising the powers reserved to the Legislature under the Texas Constitution; and
  - consider any other subjects stated in the governor's proclamation convening the Legislature.

  The enabling legislation for SJR 29, also filed by Sen. Drew Springer (R – Muenster), was SB 422.[82] SB 422 would have amended the Government Code to create an "Emergency Powers Board" to provide oversight to state-declared disasters (including a public health disaster). The Board would have been composed of the governor, the lieutenant governor, the speaker of the House of Representatives, and the respective chairs of the Senate and House committees with primary jurisdiction over state affairs. Under SB 422, on or after the eighth day following the date the governor issued an executive order, proclamation, or regulation entered under this proposed amendment, the Board would have been authorized to set an expiration date for the order, proclamation, or

[81] Tex. S.J.R. 29, 87th Leg., R.S. (2021).

[82] Tex. S.B. 422, 87th Leg., R.S. (2021).

regulation. However, if the governor's executive order, proclamation, or regulation had an expiration date that hadn't been modified by the Board and was more than 21 days from date of the order, proclamation, or regulation, then the governor would have been required to convene the Legislature in special session to determine whether any legislation was necessary to implement, modify, or repeal the order, proclamation, or regulation.

- Status**:** SJR 29 and SB 422 were **r**eferred to State Affairs on March 9.

HJR 42 – Powers of the Governor and Legislature Regarding Emergency or Disaster Declarations[83]

- **Summary:** HJR 42, filed by Rep. Steve Toth (R – Spring), would have amended Section 28, Article I of the Texas Constitution to provide that no gubernatorial order or proclamation shall "violate or suspend constitutional rights". HJR 42 would have also amended Section 8, Article IV of the Constitution to require the governor to call a special session when the governor wanted to renew an order or proclamation declaring a state of disaster or emergency. During a specially-called session for this purpose, the Legislature would have been authorized to:

  - renew or extend the state of disaster or emergency;
  - respond to the state of disaster or emergency, including by: (a) passing laws and resolutions the Legislature determines are related to the state of disaster or emergency; and (b) exercising the powers reserved to the Legislature under the Constitution; and
  - consider any other subjects stated in the governor's proclamation convening the Legislature.

  HJR 42 would have also prohibited the governor from extending a state of disaster or emergency declaration beyond 30 days unless it was renewed or extended by the Legislature. [***Note***: Rep. Matt Krause (R – Fort Worth) filed a similar resolution (HJR 47[84]).]

- Status of HJR 42**:** Referred to State Affairs on March 1.

- Status of HJR 47**:** Referred to State Affairs on March 1.

N. Social Media

SB 12 – Complaint Procedures and Disclosure Requirements for Social Media Platforms and Censorship of User Expressions by an Interactive Computer Services[85]

- **Summary:** SB 12, filed by Sen. Bryan Hughes (R – Mineola) (but is joined by multiple senators), would have prohibited an "interactive computer service" (including social media platforms) from censoring a person, their expression or a user's ability to receive the expression of another person, based on the viewpoint of the user or another and the viewpoint represented in the user's expression or another person's expression. SB 12 defined "expression" to include any word, music, sound, still or moving image, number or other communication. However, SB 12 would not have prohibited a social media platform from censuring expressions that the "interactive computer service" could censor by federal law. It could censure content that was considered unlawful.

  SB 12 would have applied to Texas residents, those who did business in Texas, and those who received an expression in Texas. A user who successfully asserted a claim for a violation of the law adopted under SB 12 would have been entitled to recover: (1) declaratory relief, including costs and reasonable and necessary attorney's fees, and (2) injunctive relief.

  The amended version of SB 12 that was voted out of committee included, among other things, a definition of "social media platform," requirements for platforms to disclose how content is selected and managed, and complaint procedure requirements.

  On the Senate floor, SB 12 was amended by stating that the changes to the law under SB 12: (1) "may not be construed to prohibit or restrict an interactive computer service from authorizing or facilitating a user's ability to censor specific expression at the request of that user;" and (2) would not apply to "censorship of an expression that directly incites criminal activity or consists of specific threats of violence targeted against a person or group because of their race, color, disability, religion, national origin or ancestry, age, sex, or status as a peace officer or judge."

[83] Tex. H.J.R. 42, 87th Leg., R.S. (2021).
[84] Tex. H.J.R. 47, 87th Leg., R.S. (2021).
[85] Tex. S.B. 12, 87th Leg., R.S. (2021).

[Note: Similar bills, HB 2188[86] and HB 2965,[87] have been filed by Rep. Matt Shaheen (R – Plano) and Rep. Tony Tinderholt (R – Arlington), respectively. HB 2188 and HB 2965 were referred to State Affairs on March 15 and March 18, respectively.]

- Bill Analysis: Senate Research Center
- Status**:** On March 8, State Affairs conducted a public hearing on SB 12: Notice. Those who are interested can watch the proceedings here. Testimony begins around the 03:28:00 mark. Those who registered a position or testified in favor of, on, or against SB 12 are listed here: Witness List. SB 12, as amended, was voted out of committee on March 15 by a 6-3 vote. On April 1, the full Senate passed SB 12, as amended, by an 18-13 vote. The bill was forwarded to the House and then referred to State Affairs. On May 14, by an 8-5 vote, the committee voted SB 12 out of committee without amendments.

O. Texas Citizens Participation Act

HB 4166 – Persons Considered to Exercise Certain Constitutional Rights for Purposes of a Motion to Dismiss under the TCPA[88]

- **Summary:** HB 4166, filed by Rep. Gene Wu (D – Houston), would have amended section 27.010(a) of the CPRC and added a new subsection (13) that expressly exempted "a legal action based on a common law legal malpractice claim." from the scope of the TCPA.
- [**Note**: Sen. Joan Huffman (R – Houston) filed SB 530[89], which added the following conduct to the list of actions constituting an offense of criminal harassment: "publishes on an Internet website, including a social media platform, repeated electronic communications in a manner reasonably likely to cause emotional distress, abuse, or torment to another person, unless the communications are made in connection with a matter of public concern." For purposes of the criminal harassment offense, "matter of public concern" would have the same meaning as it does under the TCPA. SB 530 was referred to Jurisprudence on March 11. On April 15, Jurisprudence conducted a public hearing on SB 530: Notice. Those who are interested can watch the proceedings here: Senate Archive Video. Testimony begins around the 30:35 mark. Witnesses who registered a position or testified in favor of, on, or against SB 530 are listed here: Witness List. At the conclusion of the hearing, the bill was unanimously voted out of committee. SB 530 was unanimously passed by the Senate on April 23. The bill was forwarded to the House, assigned to Criminal Jurisprudence, and voted out of committee, without any amendments, on May 10. By a vote of 89-51, the House passed SB 530, without any amendments, on May 12.]
- Bill Analysis: House Research Organization
- Status of HB 4166**:** On April 14, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony on HB 4166 begins around the 27:30 mark. Witnesses who registered a position or testified in favor of, on, or against HB 4166 are listed here: Witness List. The bill, as amended, was unanimously voted out of committee on April 21. On May 8, by a vote of 130-9-2, the House passed HB 4166. It was forwarded to the Senate on May 10 and referred to State Affairs.

P. Texas Sovereignty Act

HB 1215 – Texas Sovereignty Act[90] ***(Companion: HB 2930***[91]***)***

- **Summary:** HB 1215, filed by Rep. Cecil Bell (R – Magnolia), would have amended the Government Code to do the following:
  - Establish a 12-member Joint Legislative Committee in Constitutional Enforcement as a permanent joint committee of the Texas Legislature to review specified federal actions that challenge the state's sovereignty and that of the people for the purpose of determining if the federal action is unconstitutional. The bill would have authorized the committee to review any applicable federal action to determine whether the action was an unconstitutional federal action and establish the factors the committee was required to consider when reviewing a federal action. The bill would have required the committee, no later than the 180th day after the date the committee holds its first public hearing to review a specific federal action, to vote to determine whether the action was an unconstitutional federal action and authorized the committee

[86] Tex. H.B. 2188, 87th Leg., R.S. (2021).
[87] Tex. H.B. 2965, 87th Leg., R.S. (2021).
[88] Tex. H.B. 4166, 87th Leg., R.S. (2021).
[89] Act of May 16, 2021, 87th Leg., R.S., S.B. 530 (to be codified as an amendment to TEX.PENAL CODE §42.07).
[90] Tex. H.B. 1215, 87th Leg., R.S. (2021).
[91] Tex. H.B. 2930, 87th Leg., R.S. (2021).

to make such a determination by majority vote.

- Require the Speaker of the House and the Lieutenant Governor to appoint the initial committee members no later than the 30th day following the bill's effective date and would have required the Secretary of State, no later than the 30th day following the bill's effective date, to forward official copies of the bill to the President of the United States, the Speaker of the U.S. House of Representatives, the President of the U.S. Senate, and to all members of the Texas congressional delegation with the request that the bill be officially entered in the Congressional Record. The bill would have required the Speaker and the Lieutenant Governor to forward official copies of the bill to the presiding officers of the legislatures of the several states no later than the 45th day following the bill's effective date.
- Require the committee to report its determination that a federal action was an unconstitutional federal action to the Texas House of Representatives and to the Texas Senate during the current legislative session if the legislature was convened when the committee made the determination, or the next regular or special legislative session if the legislature was not convened when the committee made the determination. The bill would have required each house of the legislature to vote on whether the federal action was an unconstitutional federal action and, if a majority of the members of each house determined that the federal action was an unconstitutional federal action, would have required the determination to be sent to the Governor for approval or disapproval as provided by the Texas Constitution regarding the approval or disapproval of bills. The bill would have established that a federal action was declared by the state to be an unconstitutional federal action on the day the Governor approves the vote of the legislature making the determination or on the day the determination would become law if presented to the Governor as a bill and not objected to by the Governor. The bill would have also required the Secretary of State to forward official copies of the declaration to the President of the United States, the Speaker of the U.S. House of Representatives, the President of the U.S. Senate, and to all members of the Texas congressional delegation with the request that the declaration of unconstitutional federal action be entered in the Congressional Record.
- Establish that a federal action declared to be an unconstitutional federal action under the bill's provisions regarding such a legislative determination had no legal effect in Texas and prohibited such an action from being recognized by the state or a political subdivision of the state as having legal effect. The bill's provisions regarding the enforcement of the United States Constitution expressly did not prohibit a public officer who has taken an oath to defend the United States Constitution from interposing to stop acts of the federal government which, in the officer's best understanding and judgment, violated the United States Constitution.
- Authorize the Texas Attorney General to defend the state to prevent the implementation and enforcement of a federal action declared to be an unconstitutional federal action. The bill would have authorized the Attorney General to prosecute a person who attempted to implement or enforce a federal action declared to be an unconstitutional federal action and to appear before a grand jury in connection with such an offense.
- Amend the CPRC to establish that any court in Texas had original jurisdiction of a proceeding seeking a declaratory judgment that a federal action effective in Texas was an unconstitutional federal action. The bill would have entitled a person to declaratory relief if the court determined that a federal action was an unconstitutional federal action and would prohibit the court, in determining whether to grant declaratory relief to the person, from relying solely on the decisions of other courts interpreting the United States Constitution. The bill would have also required the court to rely on the plain meaning of the text of the United States Constitution and any applicable constitutional doctrine as understood by the framers of the Constitution.

Rep. Mike Schofield (R – Katy) filed the duplicate/companion bill: HB 2930.

[**Note:** Similar bills were filed in 2017 and 2019. In 2017, HB 2338[92] was voted out of

[92] Tex. H.B. 2338, 85th Leg., R.S. (2017).

committee, but it never reached the House floor. HB 1347[93] was filed in 2019, but died in committee.]

- Status of HB 1215**:** Referred to State Affairs on March 4.
- Status of HB 2930**:** Referred to State Affairs on March 18.

Q. Texas Tort Claims Act

HB 1089 – Liability of Governmental Units under the Texas Tort Claims Act[94]

- **Summary:** HB 1089, filed by Rep. Ron Reynolds (D – Missouri City), would have amended section 101.021 of the CPRC by adding subsection (3), which would have waived governmental immunity for "property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within the employee 's scope of employment if: (a) the employee is a county jailer, peace officer, public security officer, reserve law enforcement officer, telecommunicator, or school marshal (as those terms are defined by Section 1701.001, Occupations Code); and (b) the employee would be personally liable to the claimant according to Texas law.

  HB 1089 would have also amended section 101.023(b) of the CPRC to increase liability limits for a unit of local government (including a municipality) to money damages in a maximum amount of $250,000 for each person and $500,000.

  HB 1089 also sought to amend 101.024 to authorize an award of exemplary damages if a governmental unit was found liable for personal injury or death under proposed section 101.021(3).

- Status**:** On April 14, Judiciary & Civil Jurisprudence conducted a public hearing on the bill: Notice. Those who are interested can watch the proceedings here. Testimony on HB 1089 begins around the 3:28:40 mark. Witnesses who registered a position or testified in favor of, on, or against HB 1089 are listed here: Witness List. The bill was left pending.

IV. NOTE

As a service to interested members of the bench and bar, the author produces an e-newsletter that includes summarized information and links to relevant bills in order to keep recipients up to date on what is happening in Austin and how proposed legislation might affect the practice of civil trial and appellate lawyers and the judiciary. For those interested in receiving the e-newsletter, please contact Jerry Bullard at either of the following addresses: jdb@all-lawfirm.com or j.bullard1@verizon.net.

[93] Tex. H.B. 1347, 86th Leg., R.S. (2019).
[94] Tex. H.B. 1089, 87th Leg., R.S. (2021).