



REPORT FROM THE 80TH LEGISLATURE

by State Representative Craig Eiland (District 23), Liz Fazio, and Lynette Kilgore

The 80th Legislative Session began in January with a heated race for Speaker of the House and ended in May with an extensive debate on the power and role of the Speaker. While the controversy provided a good amount of political drama, it did not distract us from getting important work done for the citizens of Texas. By the time the session ended on May 28, the Legislature had passed 1,480 of the more than 6,190 bills filed this session. The Governor vetoed 51 of those bills that passed.

Litigation Section members should be most interested in the following bills affecting the Texas Civil Practice and Remedies Code: HB 1602 (signed), HB 3281 (vetoed), and SB 1204 (did not pass).

EFFECTIVE IMMEDIATELY: HB 1602 by Van Arsdale, et. al. concerning Section 15.018 of the Civil Practice and Remedies Code, establishes new venue rules for civil actions under the federal Jones Act, which provides a cause of action for the injury or death of maritime workers in the course of their employment. If all or a substantial part of the events or omissions giving rise to a Jones Act claim occurred in Texas or on the state’s inland waters, the suit may be brought in the county in which a substantial part of the events occurred or where the defendant’s principal Texas office is located. If a substantial part of the events or omissions occurred ashore in a Gulf Coast state other than Texas or on inland waters outside Texas, the venue may be in the county:

- where the defendant’s principal office in Texas is located, if the office is located in a coastal county;
- in the county where the plaintiff resided at the time the cause of action accrued, if the defendant does not have a principal office in a coastal county; or
- in Harris or Galveston counties, depending on the plaintiff’s residence.

All other suits brought under the Jones Act may be filed in the county where the defendant’s principal Texas office is located, where the plaintiff resided at the time the cause of action accrued, or in which a substantial part of the events or omissions giving rise to the claim occurred.

VETOED: HB 3281 by Phil King affecting Section 41.0105 of the Civil Practice and Remedies Code would have specified that the limitation on damages for recovery of medical or health care expenses paid or incurred would have applied only to health care liability claims under Chapter 74 of the CPRC. The limitation also would not have applied to future medical or health care expenses.

Although the measure passed by wide margins in both chambers - in the House by a vote of 139 to 0 and in the Senate 28 to 2 - Governor Perry chose to veto the legislation.

His veto message stated that HB 3281 would, in part, reverse the massive tort reform of 2003 and would allow a plaintiff to recover more than the amount actually paid or incurred by the individual or his insurer.

DID NOT PASS: SB 1204 by Duncan, the court reorganization bill, was originally heard in Senate committee on 3/26/2007. The bill as filed expanded Supreme Court jurisdiction, “reorganized” county courts across the state into district courts, and created a Supreme Court appointed panel to transfer complex cases to appropriate judges. The laundry list for determining a complex case included such factors as: whether the case will benefit from assignment to a judge who is knowledgeable in a specific area of law; whether there will be a large number of witnesses or a substantial amount of documentary evidence; whether there is a large amount in controversy; and whether it is likely that there will be scientific, technical, medical, or other evidence that requires specialized knowledge (*i.e.*, whether there will be an expert witness testifying). Confronted with significant opposition from judges and other lawyers’ organizations, including ABOTA, TADC, and TTLA, Senator Duncan and his office met for several weeks with interested parties to work on compromise language.

SB 1204 was significantly reworked to change the complex case provision to a “needy courts” provision that would direct resources to courts with complex cases. The bill passed the Senate and the House committee but was ultimately killed on a technical error on the House floor.

OTHER BILLS EFFECTIVE IMMEDIATELY **(Noted * If Effective 09/01/07):**

HB 823 by Ritter/Smith, Wayne/Davis, John/Callegari provides that licensed architects and engineers are not civilly liable due to a fault in the performance of services during a government-declared disaster unless the fault results from gross negligence or willful, wanton, or intentional misconduct.

HB 1183 by Otto amends Chapter 75 of the Civil Practice and Remedies Code, the recreational use statute, to add radio controlled airplanes to the list of activities for which liability

is limited under the chapter.

HB 1194 by England/Madden provides indemnification for phlebotomists performing services under contract with the Texas Department of Criminal Justice.

***HB 1268** by Van Arsdale prohibits a governmental contract from allowing a governmental entity that prevailed in a contract dispute to collect attorney's fees unless the contract provided for the award of attorney's fees to the prevailing party. A contract provision that violated this requirement would be void and unenforceable.

HB 1560 by Callegari also amends Chapter 75 of the Civil Practice and Remedies Code to add paintball activities to the list of activities for which the liability of a governmental unit is limited.

***HB 1572** by Woolley prohibits a court in a civil action from ordering discovery from a nonparty law enforcement agency of certain information, not including accident reports or other accident information, unless the movant can establish a specific need for the discovery.

***HB 2005** by Woolley clarifies that physical therapists, physical therapist assistants, occupational therapists, and occupational therapy assistants are within the definition of volunteer health care provider for the purposes of the Charitable Immunity and Liability Act.

***HB 2010** by Rose relates to declaratory relief for businesses in this state for liability for sales and use taxes of other states.

HB 2117 by Parker limits liability of a person who administers emergency care using an automated external defibrillator.

SB 502 by Averitt raises automobile liability insurance limits at 25/50/25, increasing to 30/60/25 in 2011. It received no opposition and was signed by the Governor. It is effective on April 1, 2008.

***SB 763** by Duncan relates to the affidavit required to prove expenses in a civil action; requires parties offering the affidavit to serve only the opposing party with copies of the affidavit and medical records.

***SB 791** by Williams classifies oysters as an inherently unsafe product for personal consumption because many times oysters contain *Vibrio Vulnificus* which is harmful to individuals with liver disease.

***SB 1269** by West, Royce provides explicit details relating to a constable's duties in executing a writ, and provides that damages are limited to actual damages.

SB 1288 by Van de Putte requires those lodging establishments that have already been convicted of not abating a common nuisance as defined elsewhere as prostitution or aggravated promotion of prostitution by the Penal Code, and who have been required to post a bond, to post a victim's hotline number in a certain conspicuous place in the guest rooms of the establishment.

SB 1781 by Carona reduces the time period for a technical defect to legally effect instruments conveying real property.



LITIGATION CALENDAR

by Tracy Nuckols

SEPTEMBER

The Ever-Changing Constitution and the Role of the U.S. Supreme Court

Houston Sept. 14 1:00 - 2:30 p.m.
1019 Congress Plaza, Harris County Jury Assembly Room

Confidentiality & Ethics Issues

Webcast Sept. 19 2:00 - 4:00 pm on TexasBarCLE.com
[Register for Webcast](#)

Appellate Hot Topics

Houston Sept. 20 8:00 - 9:30 a.m.
The Junior League of Houston, 1811 Briar Oaks Lane

Texas Supreme Court Update

Dallas Sept. 20 Noon - 1:00 p.m.
Dallas Bar Association Appellate Law Section
For more information, contact Teddi Rivas at (214) 220-7447.

The New Lawyer Course

Houston Sept. 20 Sheraton Brookhollow Hotel
[View Brochure](#)

Fee Disputes: Getting and Keeping Your Fees

Houston Sept. 27 8:00 - 9:30 a.m.
The Junior League of Houston, 1811 Briar Oaks Lane

Advanced In-House Counsel Course (video)

Dallas Sept. 27-28 Cityplace Conference Center
[View Brochure](#)