News from the Legislative Front (Sine Die Edition): May 27, 2019

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Dear Friends and Colleagues,

Today, the regular session of the 86th Legislature came to a close. According to the Texas Legislative Reference Library, a total of 7,324 bills were introduced during the session. Of that total, 1,429 bills were passed and sent to Governor Abbott, some of which have already been signed into law or have been vetoed. The Governor has until Sunday, June 16, 2019, to sign, veto, or allow to become law (without signature) legislation that was passed during the regular session. The next update will occur after the June 16th veto deadline has passed.

BILLS THAT PASSED

Architects and Engineers

SB 1928 – Certificate of Merit in Certain Actions Against Licensed or Registered Professionals

- **Summary:** SB 1928, as originally filed by Sen. Pat Fallon (R – Prosper), would amend section 150.001 of the Civil Practice and Remedies Code (CPRC) to substitute "claimant" for "plaintiff" and define "claimant" as "a party, including a plaintiff or third-party plaintiff, seeking recovery for damages, contribution, or indemnification." SB 1928 would also amend section 150.002 to provide that the required complaint be supported by an affidavit of a third-party licensed architect, licensed

professional engineer, registered landscape architect, or registered professional land surveyor who “practices” (as opposed to just being “knowledgeable”) in the area of practice of the defendant.

- The House amended SB 1928 to add a definition of “complaint.” Under the amendment, “complaint” would mean “any petition or other pleading which, for the first time, raises a claim against a licensed or registered professional for damages arising out of the provision of professional services by the licensed or registered professional.”
- Bill Analysis: House Research Organization
- **Effective Date:** Immediately, if signed by the Governor. Changes in the law under SB 1928 apply only to an action or arbitration proceeding commenced on or after the effective date.

Attorneys/Attorney’s Fees

SB 27 – Recovery of Damages, Attorney's Fees, and Costs Related to a Frivolous Regulatory Action

- **Summary:** SB 27, filed by Sen. Bryan Hughes (R – Mineola), would amend section 105 of the CPRC by adding a provision that limits recovery under the statute to “a total amount not to exceed $1 million for” fees, expenses, and reasonable attorney’s fees incurred in defending against the agency’s action if the court finds that the action is frivolous (excluding “unreasonable, or without foundation”) and the action is dismissed or judgment is awarded to the party.
- SB 27 would also amend Chapter 2001 of the Government Code (Administrative Procedure Act) and Chapter 105 of the CPRC by adding sections 2001.903 and 105.005 respectively, which would permit the administrative law judge or court reviewing a contested case to award a person, in addition to all other costs permitted by law, an amount not to exceed $1,000,000 for reasonable attorney’s fees and costs incurred in defending against a frivolous regulatory action during the case and judicial review of that case, if: (1) the person prevails in the case; and (2) the administrative law judge or court, as applicable, finds the that regulatory action is frivolous.
- On the Senate floor, SB 27 was amended to include factors to be considered in determining whether a claim or regulatory action was frivolous. The factors are whether: (1) the claim’s or action’s realistic chance of ultimate success is slight; (2) the claim or action has no arguable basis in law or fact; (3) it is clear that the state agency cannot prove facts in support of the claim or action; or (4) the totality of the tendered evidence fails to demonstrate any arguable basis for the claim or action. However, in committee, the House removed these factors from the bill.
- Bill Analysis for SB 27: House Research Organization
- **Effective Date:** September 1, 2019. Changes in the law under SB 27 apply only to a claim or regulatory action taken on or after the effective date.

SB 1189 - Prohibition of Deceptive Advertising of Legal Services

- **Summary:** SB 1189, as originally filed by Sen. Dawn Buckingham (R – Lakeway) respectively, would amend the State Bar Act by adding a section to address deceptive legal advertising practices.
- As originally filed, SB 1189 would prohibit advertisements for legal services that: (1) present the advertisement as a "medical alert," "health alert," "consumer alert," "public service announcement," or use a phrase similar to those; (2) display the logo of a federal or state government agency in a manner that suggests either affiliation with or sponsorship by that agency; or (3) use the term "recall" when referring to a product that has not been recalled either by a government agency or through an agreement between a manufacturer and government agency.
- SB 1189 would also require legal services advertisements to contain the following disclosures: (1) at the beginning of the advertisement, "This is a paid advertisement for legal services."; (2) the identity of the sponsor of the advertisement; and (3) either: (a) the identity of the attorney or law firm that provides legal services to clients; or (b) the manner in which a case is referred to an attorney or law firm if the sponsor of the advertisement is not legally authorized to provide legal services. Further, SB 1189 would require that legal services advertisements soliciting clients who may allege an injury from a prescription drug approved by the U.S. Food and Drug Administration

(FDA): (1) include the warning: "Do not stop taking a prescribed medication without first consulting with your physician.Discontinuing a prescribed medication without seeking your physician's advice can result in injury or death."; and; (2) disclose that the drug is approved by the FDA unless the product has been recalled or withdrawn.A legal services advertisement soliciting clients who may allege an injury from a medical device approved by the FDA must disclose that the medical device is approved by the FDA unless the product has been recalled or withdrawn.

- SB 1189 would also create the following formatting requirements for warning and disclosures: (a) any warning or disclosure statement to appear in an advertisement must be presented clearly and conspicuously; (b) written disclosures must be legible and, if televised or displayed electronically, must be displayed for sufficient time to enable the viewer to easily see and read the disclosure; and (c) verbal disclosures must be audible and intelligible.

- Under SB 1189, either the Office of the Attorney General (AG) or the prosecuting attorney in the county in which a violation occurs would be authorized to seek injunctive relief for any violation of the statute if the AG or county attorney “has reason to believe that a person is engaging in, has engaged in, or is about to engage in an act or practice” that violates the law. If a court issues a permanent injunction to restrain and prevent a violation of the law, the court may make an additional order requiring restitution to a victim for medical expenses or other expenses related to the violation.

- In addition to being subject to injunctive relief, a person who violates the law would be liable to the State of Texas for a civil penalty in an amount not to exceed $20,000 for each violation. Each advertisement that violates the law would constitute a separate violation. Only the AG or the prosecuting attorney in the county in which a violation occurs could bring suit to recover the civil penalty. The AG or prosecuting attorney could also recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses.

CSSB 1189 (Amendments to SB 1189)

- In committee, the Senate modified the original text of SB 1189 to apply only to “a television advertisement that promotes a person's provision of legal services or solicits clients to receive legal services.” As amended, SB 1189 would prohibit advertisements for legal services that: (1) present the advertisement as a "medical alert," "health alert," "consumer alert," “drug alert,” "public service announcement," or substantially similar phrase that ”suggests to a reasonable viewer the advertisement is offering professional, medical, or government agency advice about medications or medical devices rather than legal services;” (2) display the logo of a federal or state government agency in a manner that suggests to a reasonable viewer the advertisement is presented by a federal or state government agency or by an entity approved by or affiliated with a federal or state government agency; or (3) use the term "recall" when referring to a product that has not been recalled either by a government agency or through an agreement between a manufacturer and government agency.

- SB 1189, as amended, would also require legal services advertisements to contain the following disclosures, both verbally and visually: (1) at the beginning of the advertisement, "This is a paid advertisement for legal services."; (2) the identity of the sponsor of the advertisement; and (3) either: (a) the identity of the attorney or law firm primarily responsible for providing solicited legal services to a person who engages the attorney or law firm in response to the advertisement; or (b) the manner in which a responding person’s case is referred to an attorney or law firm if the sponsor of the advertisement is not legally authorized to provide legal services. Further, SB 1189 would require that legal services advertisements soliciting clients who may allege an injury from a prescription drug approved by the U.S. Food and Drug Administration (FDA) include a the following verbal and visual statement: "Do not stop taking a prescribed medication without first consulting with a physician."

- SB 1189, as amended, would also create formatting requirements for warnings and disclosures. A visual statement to appear in an advertisement must be presented clearly, conspicuously, and for a sufficient length of time for a viewer to see and read the statement. A court could not find that a visual statement in an advertisement is noncompliant with the statute if the statement is presented in the same size and style of font and for the same duration as a visual reference to the telephone number or Internet website of the entity a responding person contacts for the legal services offered or discussed in the advertisement. A verbal statement required to appear in an advertisement

must be audible, intelligible, and presented with equal prominence as the other parts of the advertisement. A court could not find that a verbal statement in an advertisement is noncompliant with the statute if the statement is made at approximately the same volume and uses approximately the same number of words per minute as the voice-over of longest duration in the advertisement.

- Under the amended version of SB 1189, a violation of the statute would be a deceptive act or practice that is actionable under chapter 17 of the Business & Commerce Code, and may be enforced by either the attorney general or a district or county attorney. SB 1189 would not create a private cause of action.
- On the House floor, SB 1189 was further amended to delete "consumer alert" from the list of prohibited terms to describe legal services ads; clarify that enforcement would be by brought by the consumer protection division of the AG's office or by a district or county attorney.The House also added the following provision: "[I]f the advertising review committee of the State Bar of Texas reviews, in accordance with the committee 's procedures, an advertisement for compliance with this subchapter before the first dissemination of the advertisement and the committee informs the sponsor of the advertisement that the advertisement is in compliance with this subchapter and the applicable advertising standards in the Texas Disciplinary Rules of Professional Conduct, the consumer protection division of the attorney general's office or a district or county attorney may not pursue an action…unless: (1) the consumer protection division or the district or county attorney demanded that the sponsor of the advertisement cease further dissemination of the advertisement; (2) the sponsor of the advertisement is given a reasonable amount of time to ensure the advertisement is withdrawn from dissemination to the public; and (3) the sponsor of the advertisement fails to ensure the advertisement is withdrawn from dissemination to the public within the time provided."
- Bill Analysis: House Research Organization
- **Effective Date:** September 1, 2019. Changes in the law under SB 1189 apply only to an advertisement that is presented on or after the effective date.

HB 3300 – Award of Costs and Attorney's Fees for Motions to Dismiss

- **Summary:** HB 3300, filed by Rep. Andrew Murr (R – Kerrville), would amend section 30.021 of the Government Code to make the award of costs and attorney's fees following the grant or denial of a motion to dismiss filed under the rules adopted by the Supreme Court pursuant to section 22.004(g) of the Government Code (i.e., TRCP 91a) discretionary instead of mandatory.
- Bill Analysis: House Research Organization
- **Effective Date:** September 1, 2019. Changes in the law under HB 3300 apply only to a civil action commenced on or after the effective date.

Damages

HB 1693 - Affidavits Concerning the Cost and Necessity of Services

- **Summary:** HB 1693, as originally filed by Rep. John Smithee (R – Amarillo), would amend several provisions in CPRC section 18.001. Specifically, the proposed revisions provide that uncontroverted affidavits stating the amount a person charged for a service was reasonable at the time and place that the service was provided and the service was necessary "is not evidence of and does not support a finding of the causation element of the cause of action that is the basis for the civil action." HB 1693 would also require that the initial affidavit be made either by the person who provided the service or the person in charge of records *for the provider.*
- HB 1693 would also require the party (or the party's attorney) offering the affidavit into evidence to serve a copy of the affidavit on all parties no later than the earlier of: (a) ninety (90) days before the date the trial commences; or (b) the date the offering party must designate expert witnesses under a scheduling order. Further, the party (or party's attorney) offering the affidavit into evidence would be required to file notice with the court no later than the latest date for serving a copy of the affidavit under section 18.001. Under HB 1693, regardless of the date the party offering the affidavit in evidence serves a copy of the affidavit, a party intending to controvert a claim reflected

by the affidavit would have to serve a copy of the counteraffidavit on each other party or the party's attorney of record by the earlier of: (a) sixty (60) days before the date the trial commences, or (b) the date the party must designate expert witnesses under a scheduling order. The party serving the controverting affidavit would also have to file a written notice with the court clerk stating that the attorney served a copy of the counteraffidavit. The counteraffidavit could not be used to controvert the causation element of the cause of action that is the basis for the civil action.

- If continuing services are provided after a relevant deadline in section 18.001, a party would be permitted to supplement the initial affidavit on or before the 30th day before trial commences. A party that served a counteraffidavit could supplement the counteraffidavit on or before the 14th day before trial commences. HB 1693 would also expressly authorize the parties to alter all deadlines under section 18.001 by agreement or with leave of court.

House Committee Amendments to HB 1693

- While in committee, the text of HB 1693 was amended to eliminate the proposed change to 18.001(c)(2), which would have required that the initial affidavit be made either by the person who provided the service or the person in charge of records for the provider. The committee amendment would further modify the deadlines to file initial affidavits and controverting affidavits. More specifically, the party offering the affidavit into evidence must serve a copy of the affidavit on all other parties no later than the earlier of: (a) ninety (90) days after the date the defendant files an answer; (b) the date the offering party must designate expert witnesses under a court order; or (c) the date the offering party must designate any expert witness as required by the Texas Rules of Civil Procedure. Further, the party (or party's attorney) offering the affidavit into evidence would be required to file notice with the court no later than the latest date for serving a copy of the affidavit under section 18.001. Under HB 1693, regardless of the date the party offering the affidavit in evidence serves a copy of the affidavit, a party intending to controvert a claim reflected by the affidavit would have to serve a copy of the counteraffidavit on each other party or the party's attorney of record by the earlier of: (a) one hundred twenty (120) after the date the defendant files its answer; (b) the date the party must designate expert witnesses under a court order; or (c) the date the party offering the counteraffidavit must designate any expert witness as required by the Texas Rules of Civil Procedure.

- If services are first provided later than ninety (90) days after the date the defendant files an answer, the party offering the affidavit in evidence (or the party's attorney) must serve a copy of the affidavit on each party by the date the offering party must designate any expert witness as required by the Texas Rules of Civil Procedure. The party offering a counteraffidavit into evidence (or the party's attorney) must serve a copy of the counteraffidavit on each other party by the later of: (a) thirty (30) days after service of the affidavit on the party offering the counteraffidavit in evidence; or (b) the date the party offering the counteraffidavit in evidence must designate any expert witness as required by the Texas Rules of Civil Procedure.

- On the floor, the House further amended HB 1693 to revise the deadlines related to serving affidavits for services provided for the first time after the defendant's answer date. Under the floor amendment, the party offering the affidavit must serve a copy of the affidavit on each party the earlier of: (a) the date the offering party must designate any expert witness under a court order; or (b) the date the offering party must designate any expert witness as required by the Texas Rules of Civil Procedure. A party filing a counteraffidavit must serve the affidavit the earlier of: (a) 120 days after the date the defendant files an original answer; (b) the date the party offering the counteraffidavit must designate expert witnesses under a court order; or (c) the date the party offering the counteraffidavit must designate any expert witness as required by the Texas Rules of Civil Procedure.

- Bill Analysis: House Research Organization

- **Effective Date:** September 1, 2019. Changes in the law under HB 1693 apply only to an action commenced on or after the effective date.

HB 2929 – Hospital Liens

- **Summary:** HB 2929, filed by Rep. Jeff Leach (R – Plano), would add section 55.0015 to the Texas Property Code and provide that, for purposes of the hospital lien statute, an injured individual would be considered admitted to a hospital if the individual is allowed access to any

department of the hospital for the provision of any treatment, care, or service.

- In committee, HB 2929 was amended to change the amount of a hospital lien on a cause of action or claim of an individual who receives hospital services for injuries caused by an accident that is attributed to another person's negligence. More specifically, a hospital lien described in section 55.002(a) of the Property Code would be "for 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; or (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)" of the Property Code.
- Bill Analysis: House Research Organization
- **Effective Date:** Immediately, if signed by the Governor. The addition of section 55.0015 is intended to clarify rather than change the existing law.

Healthcare Liability

HB 2362 – Health Care Liability Claims Involving Emergency Medical Care

- **Summary**: HB 2362, filed by Rep. Joe Moody (D – El Paso), would amend section 74.153 of the CPRC to modify the standard of proof for claims involving emergency medical care. More specifically, HB 2362 would amend section 74.153 and provide that: (1) claims involving emergency medical care in an obstetrical unit would apply only to "the initial evaluation or treatment of a patient with an obstetric emergency;" and (2) the standard of proof addressed in 74.153 would not apply to medical care of treatment that is:
  - provided when a patient arrives at a health care institution in stable condition or Is capable of receiving medical care or treatment as a nonemergency patient;
  - provided after the patient is stabilized or capable of receiving medical care or treatment as a nonemergency patient;
  - provided in an obstetrical unit if the patient arrives at a hospital for medical care or treatment for a non-obstetric emergency;
  - unrelated to the original medical emergency for which the patient initially sought medical care or treatment; or,
  - related to an emergency caused wholly or partly by a physician or health care provider who causes a stable patient to require emergency care.
- Bill Analysis: House Research Organization
- **Effective Date:** September 1, 2019. Changes in the law under HB 2362 apply only to an action commenced on or after the effective date.

Judiciary/Judicial Administration

SB 467 - State Commission on Judicial Conduct Procedures

- **Summary:** SB 467, filed by Sen. Judith Zaffirini (D – Laredo), would amend section 33.005(b) of the Government Code to require the State Commission on Judicial Conduct (SCJC) to include in its annual reports to the Legislature: (1) the number of complaints pending with the SCJC for a year or more for which the SCJC has not issued a tentative decision; and (2) the number of complaints referred to law enforcement. SB 467 would also require the SCJC to notify the person filing the complaint of "any change" in the status of the complaint. The SCJC would also be required to maintain on its website information about each written complaint filed with the SCJC and to establish guidelines for the imposition of sanctions to ensure that each sanction imposed is proportional to the judicial misconduct.
- Bill Analysis: Senate Research Center
- **Status:** Governor Abbott has vetoed SB 467. Here is the Governor's reason for vetoing the bill: Veto Statement for SB 467.

SB 891 - Operation and Administration of Certain Trial Courts

- **Summary:** SB 891, filed by Sen. Joan Huffman (R – Houston), would amend the Government Code to: (1) create new judicial district courts in Brazoria County (with preference to family law matters), Guadalupe County (with preference to civil matters), Montgomery County, Comal County, and Chambers County; (2) create new statutory county courts in Chambers County, Comal County, and Liberty County; and (3) give the county court at law in Cooke County concurrent family law jurisdiction with the district court.
- SB 891 would also amend various sections of the Business Organizations Code, the Estates Code, the Family Code, and the Government Code to authorize service of citation or notices by publication on a statewide internet website developed and maintained by the Office of Court Administration for the purpose of providing citation by publication (instead of publication in newspapers).The Supreme Court would be required to establish procedures for the submission of public information to the website.
- Further, SB 891 would amend various sections of the Family Code to clarify that certain waivers may be in the form of unsworn declarations instead of being sworn to and notarized.
- In committee, SB 891 was amended to, among other things: (1) create additional district courts in Collin County (one with preference to civil matters and one with preference to family law matters), Denton County, and Travis County (with preference to civil and family law matters); (2) modify the jurisdictions of county courts at law in Bosque County, Chambers County, Gillespie County, Hidalgo County, Potter County, and Rockwall County; (3) create new statutory county courts in Gillespie County, Hidalgo County, and Rockwall County; (4) create master and magistrate positions in certain counties (Bell and Kerr); and (5) amend various provisions of the Business & Commerce Code, CPRC, and Government Code to address matters relating to court reporters and shorthand reporting firms, such as creating additional responsibilities for the Judicial Branch Certification Commission with respect to court reporter and shorthand reporting firm certification, registration, and licensing. Many of the court reporter-related provisions are similar to those covered in HB 1619 (which are more specifically discussed in the "Court Reporters/Deposition" section below).
- In the House, Judiciary and Civil Jurisprudence amended the bill to include, among other things, additional sections related to courts sitting in Fayette, Fort Bend, and Reeves Counties and sections clarifying the employment of judges assigned to courts of other counties. Eventually, a conference committee had to resolve the differences between the House and Senate versions of SB 891. In addition to the changes discussed above, the final version of SB 891 also included amendments to Chapter 17 of the CPRC to authorize the substituted service of a defendant by way of electronic communication through social media.
- Fiscal Note: Legislative Budget Board
- Bill Analysis: House Research Organization
- **Effective Date:** September 1, 2019.

SB 2342 – Practices and Procedures in Civil Cases and Jurisdiction in Civil Courts

- **Summary:** SB 2342, as originally filed by Sen. Brandon Creighton (R - Conroe), would amend multiple sections of the Government Code and do the following:
  - Increase the maximum amount in controversy for the "expedited civil actions" provision (section 22.004(h) of the Government Code) to $250,000 [*but see the House amendment set forth below*].
  - Require the Supreme Court to select 10 counties for the establishment of pilot programs that allow trial courts in the county "to experiment with practices and procedures to enhance access by persons in this state to the civil justice system." The goal would be to use the pilot programs to identify specific practices and procedures to: (1) lower the cost of civil cases; and (2) decrease the time required to resolve civil cases. The Supreme Court would require at least one pilot program to: (1) reduce the amount of discovery allowed before trial in civil cases; and (2) restrict the number of and reasons for requests for continuances for civil cases.
  - The Supreme Court would be required to promulgate temporary rules of administration and civil procedure as necessary to implement the pilot program.

- Require the Supreme Court, in cooperation with the Office of Court Administration (OCA), to collect and maintain the information necessary to determine the success of each pilot program in enhancing access to the civil justice system. No later than December 1 of each even-numbered year, the Supreme Court would be required to submit a report describing each pilot program and detailing the program's results to the Governor, Lt. Governor, and House Speaker. The pilot program would expire on September 1, 2025.
- Increase the maximum amount-in-controversy jurisdiction to $250,000 for statutory county court exercising civil jurisdiction that is concurrent with the constitutional jurisdiction of the county court and with the district court in civil cases.
- In civil cases pending in statutory county court that involve matters of concurrent jurisdiction with district courts, and in which the matter in controversy is $250,000 or more, the jury must be composed of 12 members unless the parties agree to a jury composed of a lesser number of jurors.
- Subsequent House amendments to SB 2342 resulted in the reinstatement of the current language in section 22.004(h) in which the maximum amount in controversy for "expedited civil actions" is $100,000; but, the House also added a provision requiring the Supreme Court to adopt rules to "promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed $250,000."

- Bill Analysis: House Research Organization
- Fiscal Note: Legislative Budget Board
- **Effective Date:** September 1, 2019

HB 2384 – Judicial Compensation/Judicial Retirement

- **Summary:** As originally filed, HB 2384, filed by Rep. Jeff Leach (R – Plano), would do several things to impact judicial compensation and retirement. Some of the more notable components of the bills are as follows:
- *Base salary*: HB 2384 would maintain the current base state salary for all levels of judges (i.e., district court - $140,000; COA - $154,000; SC/CCA -$168,000) and the current county supplement scheme, but does not permit increases in the county contribution over current limits without an increase in the base salary under current law. Therefore, the maximum combined base salary of a district judge would be $158,000, a justice of the COA will be $163,000, and a SC/CCA will be $168,000.
- *Tiered pay structure*: HB 2384 would establish a new tiered pay structure based on tenure as a state court judge. The tiered structure would be as follows:
- Judges with at least 4 years of service credit in the Judicial Retirement System (JRS) would have a state salary that is 110% of the state base salary (i.e., district judges - $154,000; COA justices - $169,400; SC/CCA justices/judges - $184,800).
- Judges with at least 8 years of service credit in JRS would have a state salary that is 120% of the state base salary (i.e., district judges - $168,000; COA justices - $184,800; SC/CCA justices/judges - $210,600).
- Judges with at least 12 years of service credit in JRS would have a state salary that is 130% of the state base salary (i.e., district judges - $182,000; COA justices - $200,200; SC/CCA justices/judges - $218,400) *[see Senate amendments discussed below]*.
- *Linked salaries and retirement benefits*: Linked salaries and retirement benefits, such as constitutional county judge salary supplements, salaries and supplements for prosecutors, visiting appellate and district judges' pro rata amounts, and legislative/elected class retirement, would be maintained at the base salary.
- *Certain associate judge salaries*: HB 2384 would set the salaries for associate judges appointed under the Family Code(i.e., for Title IV-D child support and child protection courts) at at 90% of a district judge's base salary ($140,000).
- *Regional Presiding Judges*: Regional presiding judge salaries would be linked to a percentage of

a district judge's state base salary (instead of being set amounts as they are under current law). The salaries would be tiered based on the number of judges/courts in the administrative region.

- *Retirement eligibility:* Eligibility for retirement would not be affected. However, retirement benefit calculations would be based on the highest salary (12-year) paid to a judge/justice from the last court on which the retiree served.
- *Fiscal impact:* The original estimated annual cost of HB 2384 was around $30 million. The proposed budget included a rider that accounted for a judicial pay increase in the event HB 2384 passed.
- In committee, Judiciary and Civil Jurisprudence amended the bill to include, among other things, the addition of district attorneys and county court at law judges. The House passed HB 2384 without further amendment. In the Senate, State Affairs further amended the bill to, among other things, eliminate the third compensation tier (i.e., the pay increase based on at least 12 years of service). The House concurred in the Senate's amendments.
- Bill Analysis: Senate Research Center
- Fiscal Note: Legislative Budget Board
- **Effective Date:** September 1, 2019

HB 2757 – Rule of Decision in a State Court

- **Summary:** HB 2757, filed by Rep. Jeff Leach (R – Plano), would amend section 5.001 of the CPRC (entitled "Rule of Decision") and add that the "rule of decision" in Texas consists of those portions of England's common law that are not inconsistent with both the Texas and United States constitutions and "case law precedents set by a court of this state." HB 2757 would also add the following provision to section 5.001: "In any action governed by the laws of this state concerning rights and obligations under the law, the American Law Institute's Restatements of the Law are not controlling." [**Note:** In the Senate, the Committee on State Affairs eliminated the proposed changes to the "Rule of Decision" section (i.e., section 5.001).]
- Bill Analysis: Senate Research Center
- **Effective Date:** September 1, 2019

HB 3040 – Interim Study Regarding Judicial Selection

- **Summary:** HB 3040, as originally filed by Rep. Todd Hunter (R – Corpus Christi), would create a joint interim committee on judicial selection (consisting of six (6) members from both the House and Senate) to study and review the method by which statutory county court, district and appellate justices/judges are selected for office. The joint committee would be required to report its findings and recommendations to the governor, lieutenant governor, and speaker of the House by December 31, 2020.
- In committee, HB 3040 was amended to create the Texas Commission on Judicial Selection (instead of a joint interim committee composed only of members from both chambers) to study and review judicial selection methods. The committee amendment and subsequent floor amendments modified the composition of the commission, which would consist of fifteen (15) members: four (4) members appointed by the Governor; four (4) members (of which 3 must be senators) appointed by the Lt. Governor, including one senator from each party; four (4) members (of which 3 must be House members) appointed by the Speaker of the House, including one representative from each party; one (1) member appointed by the Chief Justice of the Texas Supreme Court; one (1) member appointed by the Presiding Judge of the Court of Criminal Appeals; and one (1) member appointed by the board of directors of the State Bar of Texas.
- Fiscal Note: Legislative Budget Board
- Bill Analysis: House Research Organization
- **Effective Date:** Immediately, if signed by the Governor.

HB 3233 – Amendments to the Judicial Campaign Fairness Act

- **Summary:** HB 3233, filed by Stephanie Klick (R – North Richland Hills), would amend multiple

sections of the Judicial Campaign Fairness Act (JCFA) in the Election Code. In addition to the campaign contribution limits already existing under state law, HB 3233 would do the following:

- Add the terms “law firm”, “law firm group,” and “member of a law firm” to the list of definitions in the JCFA. “Law firm” would mean “a partnership, limited liability partnership, limited liability company, or professional corporation organized for the practice of law”. “Law firm group," which would be defined as: (a) a law firm; (b) a general-purpose committee established or controlled by the law firm or a member of the law firm; (c) a member of the law firm; and (d) the spouse of a member of the law firm. A "member of a law firm" would mean: (a) a person designated "of counsel" or "of the firm"; (b) a partner or shareholder of the law firm, whether an individual or an entity; (c) an associate of the law firm; or (d) an employee of the law firm.
- Prohibit a judicial candidate or officeholder from knowingly accepting political contributions from a general-purpose committee that, in the aggregate, exceed the contribution limits prescribed by the JCFA in connection with an election in which the judicial candidate’s name appears on the ballot. The contribution limits would be: (1) $25,000 for a statewide judicial office; and (2) $5,000 for any other judicial office.
- In addition to the contribution limits described above, a judicial candidate or officeholder would be prohibited from accepting a political contribution in excess of $50 from a general-purpose committee if the contribution, when aggregated with all political contributions from all general-purpose committees in connection with an election, would exceed: (1) $300,000 for a statewide judicial office; (2) for the office of chief justice or justice, court of appeals: (a) $75,000, if the population of the judicial district is more than one million; or (b) $52,500, if the population of the judicial district is one million or less; or (3) for an office other than an office described in (1) or (2) above: (a) $52,500, if the population of the judicial district is more than one million; (b) $30,000, if the population of the judicial district is 250,000 to one million; or (c) $15,000, if the population of the judicial district is less than 250,000.
- Amend the Election Code to provide that a contribution by an individual’s spouse would not be considered to be a contribution by the individual; however, contributions by an individual’s child that is under the age of 18 would still be considered as a contribution by the individual.
- HB 3233 would also amend the JCFA by adding new section 253.1612, which provides that the Code of Judicial Conduct may not prohibit, and a judicial candidate may not be penalized for, a joint campaign activity conducted by two or more judicial candidates if the joint campaign activity clearly indicates that a judicial candidate conducting the activity does not endorse another judicial or non-judicial candidate.
- Further, HB 3233 would amend section 253.162 (i.e., “Restrictions on Reimbursement of Personal Funds and Payment on Certain Loans”) of the JCFA to state that a judicial candidate or officeholder “who accepts one or more political contributions in the form of a loan, including an extension of credit or guarantee of a loan or extension of credit, from one or more persons related to the candidate or officeholder within the second degree of affinity or consanguinity” may not repay those loans from political contributions in amounts that in the aggregate exceed the limits currently existing in the JCFA.
- HB 3233 would also amend section 253.171 (“Contribution From or Direct Campaign Expenditure by Political Party”) to provide that a political expenditure made by the principal political committee of the state executive committee or a county executive committee of a political party for a generic get-out-the-vote campaign or “to create and distribute” a written list of two or more candidates would not be considered a contribution to a judicial candidate who benefits from the get-out-the-vote campaign or is included in the written list.”
- In committee, HB 3233 was amended to revise the definition of "law firm" to include any entity organized for the practice of law. The amended bill does not include a condition on the prohibition against the Code of Judicial Conduct prohibiting, and a judicial candidate being penalized for, a joint campaign conducted by two or more judicial candidates based on whether the activity clearly indicates a judicial candidate does not endorse another judicial or non-judicial candidate.
- Bill Analysis: House Research Organization
- **Effective Date:** Immediately, if signed by the Governor.

"Revenge Porn" Law Amendments

HB 98 – Civil and Criminal Liability for Unlawful Disclosure of Intimate Visual Material

- **Summary:** HB 98, filed by Rep. Mary Gonzalez (D – San Antonio), would amend CPRC section 98B.002 and Texas Penal Code (TPC) section 21.16(b) to add intent requirements to both statutes. More specifically, in order to impose civil and criminal liability on a defendant, HB 98 would modify the intent requirements for both criminal and civil liability to be as follows: (1) the defendant discloses intimate visual material without the consent of the depicted person and "with the intent to harm that person;" and (2) the defendant, at the time of the disclosure, "know[] or has reason to believe that" the intimate visual material was obtained or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private. [**Note**: HB 98 and SB 342 are two of several bills filed in response (at least in part) to *Ex Parte: Jordan Bartlett Jones*, No. 12-17-00346-CR, 2018 WL 2228888 (Tex. App. – Tyler May 16, 2018, pet. granted), in which the Twelfth Court of Appeals held that section 21.16(b) of the Texas Penal Code was unconstitutionally overbroad.]
- Bill Analysis: House Research Organization
- **Effective Date:** September 1, 2019. Changes in the law under HB 98 apply only to a cause of action that accrues on or after the effective date (civil liability) and to offenses committee on or after the effective date (criminal liability).

Texas Citizens Participation Act

HB 2730 – Amendments to the Texas Citizens Participation Act

- **Summary:** HB 2730, as originally filed by Rep. Jeff Leach (R – Plano), would have amended various sections of Chapter 27 of the CPRC (i.e., the Texas Citizens Participation Act (TCPA)) and did the following:
  - Remove the definition of "exercise of the right of association" and replace it with the exercise of the "constitutional right to petition, speak freely, or associate freely," which would be defined as "the exercise of the right to petition, speak freely, or associate freely as those rights are provided by the constitutions of this state and the United States, as applied by the courts of this state and the United States."
  - Further define "legal action" to mean a request for "substantive relief, regardless of whether the relief is" legal or equitable, but it would not mean: (1) a discovery motion or action; (2) a motion for summary judgment; (3) a motion to dismiss under the TCPA; (4) a procedure relating to the enforcement of a final court order; or (5) a motion for sanctions or award of attorney's fees.
  - Clarify that the TCPA's purpose is to "provide a set of procedures" to encourage and safeguard constitutional rights.
  - Require that a hearing on a motion to dismiss filed under the TCPA be set no earlier than twenty-one days after service of the motion and that each party receive at least fourteen days' notice of a TCPA dismissal hearing.
  - Provide that a court may not rule on a TCPA motion to dismiss if the responding party files a nonsuit of the challenged legal action on or before the third day before the date of the hearing on the motion.
  - Provide that a court may not award any costs, fees, expenses, or sanctions for a TCPA motion to dismiss if the responding party nonsuited the challenged legal action in the time prescribed by the TCPA.
  - Provide that the TCPA does not apply to a compulsory counterclaim under the Texas Rules of Civil Procedure; a legal action filed under the Family Code or an application for a protective order made under Chapter 7A, Code of Criminal Procedure; or a legal action to enforce: (1) a non-compete agreement; (2) a nondisclosure agreement; or (3) a non-disparagement agreement.
  - Eliminate the following definitions: "communication;" "exercise of the right of free speech"; "exercise of the right to petition"; "governmental proceeding"; "matter of public concern"; "official proceeding"; and "public servant."

- In committee, the original version of HB 2730 was amended in several ways, including the following: (1) the definition of "exercise of the right of association" was modified to mean "to join together to collectively express, promote, pursue, or defend common interests relating to a governmental proceeding or a matter of public concern."; (2) post-judgment enforcement actions, alternative dispute resolution proceedings, and procedural actions taken/motions made "in an action that does not does not amend or add a claim for legal, equitable, or declaratory relief" would be excluded from the definition of "legal action"; (3) the definition of "matter of public concern" was modified to mean "a statement or activity regarding (a) public official, public figure, or other person who has drawn substantial public attention due to the person 's official acts, fame, notoriety, or celebrity; (b) a matter of political, social, or other interest to the community; or (c) a subject of concern to the public."; (4) a deadline to file a response to a motion to dismiss (not later than seven days before the date of the hearing) was added; (5) the standard of proof to prevail on a motion to dismiss was modified to require the moving party to establish "an affirmative defense or other grounds on which the moving party is entitled to judgment as a matter of law"; (6) sanctions against the non-moving party would be discretionary instead of mandatory; and (7) several additional exceptions to the TCPA were added, such as trade secret and non-compete claims, eviction suits, and attorney disciplinary proceedings.

- Bill Analysis: House Research Organization

- **Effective Date:** September 1, 2019. Changes in the law under HB 2730 apply only to an action filed on or after the effective date.

BILLS THAT FAILED

Arbitration

HB 1744 - Limitation Periods in Arbitration Proceedings

- **Summary:** HB 1744, filed by Rep. John Smithee (R – Amarillo), would amend Chapter 171 of the Civil Practice and Remedies Code (CPRC) by adding section 171.004, which would provide that "a party may not assert a claim in an arbitration proceeding if the party could not bring suit for the claim in court due to the expiration of the applicable limitations period." However, under the proposed section 171.004, the party "may assert a claim in an arbitration proceeding after expiration of the applicable limitations period if: (1) the party brought suit for the claim in court before the expiration of the applicable limitations period; and (2) a court ordered the parties to arbitrate the claim." In committee, HB 1744 was amended to, among other things, move the proposed statute from Chapter 171 to Chapter 16 of the CPRC and to provide that the parties could also agree to arbitrate after limitations has expired.

- Bill Analysis: House Research Organization

- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing on March 25th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 04:52:30 mark. Those who registered a position or testified in favor of, on, or against HB 1744 are listed here: Witness List. On April 1st, the bill (as amended) was unanimously voted out of committee.

Architects and Engineers

HB 1211 - Agreements by Architects and Engineers in Connection with Construction Contracts

- **Summary:** HB 1211, filed by Rep. Drew Darby (R – San Angelo), would amend section 130.002(b) of the CPRC to add to the existing list of void and enforceable construction-related contractual obligations any obligation placed on an architect or engineer to ***defend*** against damage claims arising from the negligence of any person other than the architect or engineer. Currently, section 130.002 states that obligations requiring an architect or engineer to "indemnify or hold harmless an owner or owner's agent or employee from liability for damage that is caused by or results from the negligence of an owner or an owner's agent or employee" are void and unenforceable. HB 1211 would also add section 130.0021 to the CPRC to state that a "contract

for engineering or architectural services must require a licensed engineer or registered architect to perform services with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license." [**Note**: Sen. Bryan Hughes (R – Mineola) filed a similar bill (SB 771) that would amend section 130.002(b) to add "defend" to the list of void and unenforceable contractual obligations. SB 771 was referred to State Affairs on March 1st, but was never scheduled for hearing.]

- In committee, HB 1211 was amended to include the following provision: "A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services related to an improvement to real property is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect must defend a party, including a third party. A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services related to an improvement to real property may provide for the reimbursement of an owner's reasonable attorney's fees in proportion to the engineer's or architect's liability."However, the prohibition above would not prevent an owner who is a party to a contract for engineering or architectural services related to an improvement to real property from contractually requiring the engineer or architect to name the owner as an additional insured under the engineer's or architect's commercial general liability insurance policy and provide any defense to the owner provided by the policy to a named insured.
- In the Senate, HB 1211 was amended to clarify that the defense and indemnity prohibition applies to "claim based wholly or partly on the negligence of, fault of, or breach of contract by a person other than the engineer or architect."The Senate amendments also addressed acquisition of real property by entities with eminent domain authority.
- Bill Analysis: House Research Organization
- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing on April 1st: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 00:45:45 mark. Witnesses who registered a position or testified in favor of, on, or against HB 1211 are listed here: Witness List. On April 3rd, the bill (as amended) was unanimously voted out of committee. The House passed HB 1211, without amendment, on April 25th. The bill was forwarded to the Senate and referred to State Affairs, which conducted a public hearing on May 16th: Notice. Those who are interested can watch the proceedings here: Senate Video Archives. Testimony begins around the 00:06:00 mark. Witnesses who registered a position or testified in favor of, on, or against HB 1211 are listed here: Witness List. On May 19th, HB 1211, as amended, was voted out of committee.

Attorneys/Attorney's Fees

HB 370 - Recovery of Attorney's Fees in Civil Cases

- **Summary:** HB 370, filed by Rep. Briscoe Cain (R – Baytown), would amend section 38.001 of the CPRC to provide that a person may recover reasonable attorney's fees "from an individual or a corporation, or other organization…". HB 370 further provides that the term "organization" has 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. [**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 and 2017 to expand the scope of the statute to include all business organizations. However, the bills failed to pass.]

- **Status:** Referred to Judiciary and Civil Jurisprudence on February 19, 2019.

HB 790 - Recovery of Attorney's Fees in Civil Cases

- **Summary:** HB 790, as originally filed by Rep. Sarah Davis (R – Houston), would amend section 38.001 of the CPRC to add "the state, an agency or institution of the state, or a political subdivision of the state" to the list of individuals or entities from whom attorney's fees can be recovered. While in committee, the text of the bill was amended to eliminate "political subdivision of the state."
- Bill Analysis: House Research Organization
- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing on HB 790 on March 18th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony on HB 790 begins around the 03:02:45 mark. Witnesses who registered a position or testified in favor of, on, or against HB 790 are listed here: Witness List. On April 1st, the bill (as amended) was unanimously voted out of committee. The House passed HB 790, without amendment, on April 25th.

HB 1359 - Attorney Access to Courthouses

- **Summary:** HB 1359, filed by Rep. Gene Wu (D – Houston), would amend the Government Code and permit Texas-licensed attorneys to enter a building that houses a justice court, municipal court, county court, county court at law, or district court without passing through security services by presenting a State Bar of Texas (SBOT) membership card instead of an identification card issued or authorized for issuance by a county or municipality. HB 1359 does not include the appellate courts.
- In committee, HB 1359 was amended so as to permit an attorney to apply for an identification card through the SBOT. The card would include the attorney's photo and could be used in any county. The SBOT would create a committee to accept applications and vet applicants, which would include a criminal background check to be repeated annually. Each applicant would pay a fee to cover the cost of issuing the cards. A part of the fee would go back to the lawyer's home county to be spent on court security.
- Bill Analysis: House Research Organization
- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing on April 8th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 00:38:30 mark. Those who registered a position or testified in favor of, on, or against HB 1359 are listed here: Witness List. The bill was unanimously voted out of committee on April 18th.

HB 2376 – Recovery of Attorney's Fees in Certain Civil Actions

- **Summary:** HB 2376, filed by Rep. Julie Johnson (D – Dallas), would repeal section 38.006 of the CPRC and remove the exemptions under Chapter 38 (attorney's fees statute) that would otherwise apply to insurance policies subject to Title 11 and Chapters 541 and 542 of the Insurance Code (i.e., the Unfair Methods of Competition and Unfair or Deceptive Acts or Practices).
- **Status:** Judiciary and Civil Jurisprudence had scheduled a public hearing on HB 2376 for March 25th at 8:00 a.m.: Notice. However, a hearing on the bill did not occur.

HB 2437 – Recovery of Attorney's Fees in Certain Civil Cases

- **Summary:** HB 2437, filed by Rep. Andrew Murr (R – Kerrville), would amend section 38.001 of the CPRC and permit the recovery of attorney's fees under section 38.001 only if the person is the prevailing party.
- Bill Analysis: House Research Organization
- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing on April 23rd: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 00:25:30 mark. Those who registered a position or testified in favor of, on, or against HB 2437 are listed here: Witness List. The bill was unanimously voted out of committee,

without amendment, on April 25th.

HB 2533 – Recovery of Attorney's Fees in Certain Civil Cases

- **Summary:** HB 2533, filed by Rep. Morgan Meyer (R – Dallas), would amend section 38.001 of the CPRC to add "an organization, as defined by Section 1.002, Business Organizations Code" to the list identifying those from whom attorney's fees can be recovered under the statute.
- **Status:** Referred to Judiciary and Civil Jurisprudence on March 11, 2019.

SB 471 - Recovery of Attorney's Fees in Certain Civil Cases

- **Summary:** SB 471, filed by Sen. Bryan Hughes (R – Mineola), would amend section 38.001 of the CPRC to remove "an individual or corporation" from the statute and replace it with "another person." The remainder of Chapter 38 would remain unchanged.
- **Status:** Referred to State Affairs on February 14, 2019.

Contracts

HB 1957 - Contract Provisions that Conflict with State Law

- **Summary:** HB 1957, filed by Rep. Harold Dutton, Jr. (D – Houston), would add Chapter 275 to the Business & Commerce Code and expressly state that, in the event of a conflict between Texas law and any term or condition in a contract, Texas law will control. HB 1957 would also provide that the resolution of any conflict between a contract term or condition and Texas law will "not be a construed to authorize the impairment of any contract in violation of the Texas Constitution or the United States Constitution."
- **Status:** Referred to Business and Industry on March 5, 2019.

Court Costs

SB 39 - Consolidation and Allocation of State Court Costs

- **Summary:** SB 39, 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.
- **Status:** Referred to State Affairs on February 1, 2019.

HB 1021 - Prohibition on the Imposition of Court Costs and Filing Fees on Certain Indigent Parties

- **Summary:** HB 1021, filed by Rep. Joe Moody (D – El Paso), would add Chapter 104 to the Government Code and require a judge or justice of a court who determines that a defendant or plaintiff (whether in a criminal or civil proceeding) is indigent to waive all court costs, including costs of conviction, and all filing fees and other fees imposed by law on the indigent defendant or plaintiff. For purposes of this statutory amendment, "indigent" would mean an individual whose household income is at or below 125% of the federal poverty guidelines as determined by the U.S. Department of Health and Human Services.
- Bill Analysis: House Research Organization
- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing on March 11th: Notice. Those who are interested can watch the proceedings here: House Broadcast Archives. Testimony on the bill begins around the 00:37:30 mark. Those who registered a position or testified in favor of, on, or against HB 1021 are listed here: Witness List. On April 1st, the bill was unanimously voted out of committee without amendment.

Court Reporters/Depositions

HB 1619 - Court Reporters and Shorthand Reporting Firms and Fees ***(Companion:*** *SB 2094****)***

Summary: HB 1619, filed by Rep. Jeff Leach (R – Plano), would amend various provisions of the Business & Commerce Code, CPRC, and Government Code to address matters relating to court reporters and shorthand reporting firms, such as creating additional responsibilities for the Judicial Branch Certification Commission (JBCC) with respect to court reporter and shorthand reporting firm certification, registration, and licensing. HB 1619 would also provide for the following:

- The transmission, preparation, completion, enforceability, and admissibility of a document that is: (a) produced by an appointed court reporter, certified court reporter, or registered shorthand reporting firm for use in the state or federal judicial system; or (b) governed by rules adopted by the Texas Supreme Court would not be subject to Chapter 322 of the Business & Commerce Code (i.e., the Uniform Electronic Transactions Act)(amends section 322.003);
- In addition to the requirements for service of notices of appeal imposed by TRAP 25.1(e), notices of appeal would have to be served on each court reporter responsible for preparing the reporter's record (amends Chapter 51 of the CPRC); and
- A court reporter or shorthand reporting firm would be subject to disciplinary action for "repeatedly committing to provide at a specific time and location court reporting services for an attorney in connection with a legal proceeding and unreasonably failing to fulfill the commitment under the terms of that commitment." (amends section 154.111 of the Government Code).
- In committee, HB 1619 was amended to eliminate any provisions requiring a court reporter or shorthand reporting firm to disclose, to each party in a proceeding, rates and charges for services provided in a legal proceeding and to itemize the rate and amount charged for each service provided on each billing statement; but, it the amended bill does includes a provision that requires a court reporting firm, on request, to provide an itemized statement of taxable costs to a court reporter who prepares a deposition transcript. The amended bill also includes a provision requiring a person who has management responsibility for a shorthand reporting firm registered in Texas to complete continuing professional education. It also requires the JBCC to establish applicable stakeholder work groups and to solicit comments in the development of certain rules
- The Senate companion (SB 2094) was filed by Sen. Bryan Hughes (R – Mineola).

- Bill Analysis for HB 1619: House Research Organization
- Fiscal Note for HB 1619: Legislative Budget Board
- **Status of HB 1619:** Judiciary and Civil Jurisprudence conducted a public hearing on HB 1021 on March 11th: Notice. Those who are interested can watch the proceedings here: House Broadcast Archives Part 1 and Part 2. Testimony on HB 1619 begins around the 1:31:25 mark in Part 1 and around the 00:00:30 mark in Part 2. Witnesses who registered a position or testified in favor of, on, or against HB 1619 are listed here: Witness List. On March 25th, the bill (as amended) was voted out of committee. The House unanimously passed HB 1619 on April 30th. It was forwarded to the Senate and referred to State Affairs.
- **Status of SB 2094:** Referred to State Affairs on March 21, 2019.

HB 2181 - Non-Stenographic Recording of Oral Depositions

- **Summary:** HB 2181, filed by Rep. Ron Reynolds (D – Missouri City), would amend Chapter 20 of the CPRC to allow parties to record oral depositions by methods other than a stenographic recording (such as video recording).
- **Status:** Referred to Judiciary and Civil Jurisprudence on March 6, 2019.

Damages

SB 1215 – Recovery of Medical or Healthcare Expenses in Civil Actions ***(Companion: HB 3832)***

- **Summary:** SB 1215, filed by Sen. Charles Schwertner (R – Georgetown), would amend section 41.0105 of the CPRC to add the following subsection (b): "The trier of fact shall consider a claimant's failure to seek reimbursement for medical or health care expenses that are obligated to be paid on the claimant's behalf a failure to mitigate the claimant's damages."

- The House companion (HB 3832) was filed by Rep. Reggie Smith (R – Van Alstyne).
- **Status of SB 1215:** Referred to State Affairs on March 7, 2019**.**
- **Status of HB 3832:** Referred to Judiciary and Civil Jurisprudence on March 19, 2019**.**

Experts

HB 2825 – Disclosures and Discovery Regarding Expert Witnesses

- **Summary:** HB 2825, filed by Rep. Charlie Geren (R – Fort Worth), would amend Chapter 22 of the CPRC to add requirements for the designation of expert witnesses and related disclosures, including the following:
  - In addition to any other disclosure required by the Texas Rules of Civil Procedure, a party shall disclose to the other parties the identity of any person the party may use to present expert testimony at trial.
  - Except as otherwise stipulated or ordered by the court, if the witness is retained or specially employed by a party to provide expert testimony in the case or is a person whose duties as the party's employee regularly involve giving expert testimony, the disclosure required by the statute must be accompanied by a written report prepared and signed by the witness. The report must include: (1) a complete statement of all opinions to be expressed by the witness and the basis and reasons for those opinions; (2) the facts or data considered by the witness in forming the opinions; (3) copies of any exhibits to be used to summarize or support the opinions; (4) the witness's qualifications, including a list of all publications authored by the witness in the preceding ten years; (5) a list of any other cases in which the witness has testified as an expert at trial or by deposition in the preceding four years; and (6) a statement of the compensation to be paid for study and testimony in the case.
  - For expert witnesses not required to provide a written report under the statute, the required disclosures must state: (1) the subject matter on which the witness is expected to present expert testimony; and (2) a summary of the facts and opinions to which the witness is expected to testify.
  - A party would be required to make disclosures at the times and in the sequence the court orders. Except as otherwise stipulated or ordered by the court, a required disclosure would have to be made: (1) no later than the 90th day before the date set for trial; or (2) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party in a report or disclosure provided under the statute, no later than the 30th day after the date the other party's disclosure is made.
  - A party would be required to supplement disclosures made by the party: (1) in a timely manner if the party learns that in some material respect the disclosure is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or (2) as ordered by the court.
  - A court in a civil action may not order discovery of communications made in anticipation of litigation or deposition or for trial between a party's attorney and a witness expected to provide expert testimony in the action, regardless of the form of the communication and regardless of whether the witness provides an expert affidavit or a written report. However, such limitations would not bar discovery to the extent a communication: (1) relates to compensation for the witness's study or testimony; (2) identifies facts or data that the party's attorney provided and that the witness considered in forming the opinions to be expressed; or (3) identifies assumptions that the party's attorney provided and that the witness relied on in forming the opinions to be expressed.
  - A court would not be permitted to order discovery of any draft of a written report or other disclosure required by the statute, regardless of the form in which the draft is recorded.
- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing on April 8th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 00:06:15 mark. Those who registered a position or testified in favor of, on, or against HB 2825 are listed here: Witness List. The bill was left pending.

Healthcare Liability

HB 765 - Liability Limits in a Health Care Liability Claim

- **Summary:** HB 765, filed by Rep. Gene Wu (D – Houston), would amend sections 74.301 and 74.302 of the CPRC so as to provide for an adjustment to the noneconomic damages caps based on the consumer price index (CPI). More specifically, the bill provides that, when there is an increase or decrease in the CPI, the liability limit prescribed by the noneconomic damage limitation sections will 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 measures 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 are awarded by final judgment or settlement.

- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing for April 15th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 01:07:00 mark. Those who registered a position or testified in favor of, on, or against HB 765 are listed here: Witness List. The bill was left pending.

HB 3186 – Service of Expert Reports in Health Care Liability Claims

- **Summary:** HB 3186, filed by Rep. Matt Krause (R – Fort Worth), would amend section 75.351 of the CPRC to add the following expert report requirements in health care liability claims in which pleadings are amended to assert direct liability against a defendant: "Not later than the 60th day after the date the claimant files an amended or supplemental pleading that asserts a theory of direct liability against a defendant against whom the claimant had previously asserted only a theory of vicarious liability, serve on that defendant or that defendant's attorney: (A) an expert report that addresses at least one theory of direct liability asserted against that defendant in the amended or supplemental pleading; and (B) a curriculum vitae of each expert listed in that expert report."

- Bill Analysis: House Research Organization

- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing for April 15th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 00:25:30 mark. Those who registered a position or testified in favor of, on, or against HB 3186 are listed here: Witness List. On April 16th, the bill was voted (by a 5-3 vote) out of committee without amendment.

Insurance

HB 649 - Disclosure by Liability Insurers and Policyholders to Third Party Claimants

- **Summary:** HB 649, filed by Rep. Matt Krause (R – Fort Worth), would amend the Insurance Code to require 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 649 would require an insurance carrier to provide the claimant with a sworn statement of an officer or claims manager of the insurer that contains the following information for each policy known by the insurer that provides or may provide relevant coverage, including excess or umbrella coverage: (a) the name of the insurer; (b) the name of each insured; (c) the limits of liability coverage; (d) any policy or coverage defense the insurer reasonably believes is available to the insurer at the time the sworn statement is made; and (e) a copy of each policy under which the insurer provides coverage. An insurer that fails to comply with the request is subject to an administrative penalty up to $500. An insured who receives such a request must: (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:** Insurance conducted a public hearing on April 2nd: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 00:50 mark.

Here is a link to the witnesses who registered a position or testified on, for, or against HB 649: Witness List. The bill was left pending.

HB 1739 - Recovery under Uninsured/Underinsured Motorist Insurance Coverage

- **Summary:** HB 1739, filed by Rep. Charlie Geren (R – Fort Worth), would amend the Insurance Code to, among other things, expressly: (1) define, to some degree, what constitutes sufficient notice under the Insurance Code for uninsured/underinsured motorists (UIM) 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 1739 would also amend the Insurance Code to address when prejudgment begins to accrue on UIM claims and when a claim for attorney's fees is considered to be "presented" for UIM claim purposes.
- Bill Analysis: House Research Organization
- **Status:** Insurance conducted a public hearing on April 2nd: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 01.49:15 mark. Here is a link to the witnesses who registered a position or testified on, for, or against HB 1739: Witness List. The bill was unanimously voted out of committee without amendment. By a vote of 105-32, the House passed HB 1739, as amended, on May 9th.

HB 2371 – Offset for Amounts Paid Under Personal Injury Protection Coverage

- **Summary:** HB 2371, filed by Rep. Julie Johnson (D – Dallas), would amend section 1952.159 of the Insurance Code (Personal Injury Protection Coverage) to provide that, with respect to a claim made by a guest or passenger against the owner or operator of the motor vehicle in which the guest or passenger was riding or against the owner's or operator's liability insurer, "[t]he owner's or operator's liability insurer is not entitled to an offset, credit, or deduction if the insurer has not paid, in relation to the accident, the full amount of the applicable liability policy limit under the owner's or operator's policy."
- **Status:** Referred to Insurance on March 6, 2019**.**

HB 2372 – Mandatory Personal Injury Protection Coverage

- **Summary:** HB 2372, filed by Rep. Julie Johnson (D – Dallas), would amend section 1952.152 of the Insurance Code and remove the option for insureds to reject the personal injury protection coverage provided under an automobile liability insurance policy.
- **Status:** Referred to Insurance on March 6, 2019**.**

HB 2373 – Required Amount of Personal Injury Protection Coverage

- **Summary:** HB 2373, filed by Rep. Julie Johnson (D – Dallas), would amend section 1952.153 of the Insurance Code and increase to $5,000 the maximum amount of personal injury protection coverage that an insurer can provide under an automobile liability insurance policy.
- **Status:** Referred to Insurance on March 6, 2019**.**

HB 2374 – Claims Settlement for Automobile Liability Insurance

- **Summary:** HB 2374, filed by Rep. Julie Johnson (D – Dallas), would add Chapter 1955 to the Insurance Code and provide that a release entered into by a claimant injured by a motorist is voidable by the claimant if: (1) the claimant entered into the release on or before the 45th day after the date the cause of action that is the basis for the released claim accrued; and (2) the claimant was not represented by an attorney at the time the claimant entered into the release.
- HB 2374 also provides that, no later than the first anniversary after the date the release was entered into, a claimant may void a release by providing written notice of the claimant's intent to void the release to each person released (releasee).Any consideration paid to the claimant by or on behalf of the releasee in exchange for a voided release would be credited against any award or

payment made in connection with a claim against the releasee arising from the cause of action that is the basis for the previously released claim.

- In committee, the voidable release of claim provision described above was removed from HB 2374.Instead, the bill includes provisions that (1) prohibit a claimant and an applicable automobile insurer or another individual or entity from entering into an oral release of claims; and (2) establish that an applicable release is not enforceable unless the contract is in writing.
- Bill Analysis: House Research Organization
- **Status:** Insurance conducted a public hearing on April 16th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 01:09:00 mark. Here is a link to the witnesses who registered a position or testified on, for, or against HB 2374: Witness List. On April 30th, the bill, as amended, was unanimously voted out of committee.

Judiciary/Judicial Administration

SB 561 - Jurisdiction/Qualifications of Judges and Justices of the Peace for Certain Courts

- **Summary:** SB 561, filed by Sen. Judith Zaffirini (D – Laredo), would amend multiple sections of the Government Code to do, among other things, the following: (1) increase the minimum amount in controversy for district courts to $10,000; (2) increase the minimum amount in controversy for county courts at law to $10,000 (though I understand that amount will likely be changed to $5,000 in order to be consistent with the Texas Judicial Council's recommendations); (3) increase the maximum amount in controversy for justice of the peace court to $20,000; and (4) increase the minimum age for county court at law and statutory probate court judges from 25 to 30 years of age.
- **Status:** Referred to State Affairs on February 21, 2019.

SJR 25 - Eligibility to Serve as a District Judge

- **Summary:** SJR 25, filed by Sen. Juan "Chuy" Hinojosa (D – McAllen), would amend the Texas Constitution and specifically provide that, in order to be eligible to serve as a district judge, a person must be licensed to practice law in Texas and, at the time of election, have been a practicing lawyer in Texas for at least ten years. The current requirement is four years. The constitutional amendment would take effect on January 1, 2020 and would apply only to a person elected on or after that date to serve as a judge. [Note: A similar bill (HJR 63) has been filed by Rep. Leo Pacheco (D – San Antonio).]
- **Status of SJR 25:** Referred to State Affairs on February 7, 2019**.**
- **Status of HJR 63:** Judiciary and Civil Jurisprudence conducted a public hearing on April 15th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 02:53:15 mark. Those who registered a position or testified in favor of, on, or against HJR 63 are listed here: Witness List. The resolution was left pending.

SJR 35 - Constitutional Amendment to Increase Time for Judges to be a Practicing Lawyer

- **Summary:** SJR 35, filed by Sen. Judith Zaffirini (D – Laredo), would amend the Texas Constitution and specifically provide that in order to be eligible to serve as a supreme court justice, court of criminal appeals judge, and court of appeals justice, a person must be licensed to practice law in Texas and, at the time of election, have been a practicing lawyer in Texas for at least twelve years. District judges would have to be a practicing lawyer for at least eight years. The constitutional amendment would take effect on January 1, 2020 and would apply only to a person elected on or after that date to serve as a judge or justice.
- **Status:** Referred to State Affairs on February 14, 2019.

SB 1069 – Additional Qualifications of Justices and Judges of Certain Courts

- **Summary:** SB 1069, filed by Sen. Kirk Watson (D – Austin), would amend section 21.0045 of the Government Code to require that, in addition to the qualifications required by Article V of the Texas Constitution or any other law, a person will not be eligible to be a candidate for or to serve as a justice of the supreme court or a court of appeals or a judge of the court of criminal appeals, a

district court, a statutory county court, or a statutory probate court unless the person has: (1) served for at least one year as a justice or judge of a court; or (2) practiced for at least one year in a court of equivalent or greater jurisdiction than the court in which the person will serve.

- **Status:** Referred to State Affairs on March 7, 2019.

SB 1979 – Annual Salary of a Statutory Probate Court Judge

- **Summary:** SB 1979, filed by Sen. Bryan Hughes (R – Mineola), would provide that a statutory probate court judge would be entitled to an annual salary, not including contributions and supplements paid by the state or county, in an amount equal to the salary to which a district judge with the same number of years of service credit in the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two is entitled.

- **Status of SB 1979:** Referred to State Affairs on March 19, 2019.

HB 1033 - Jurisdiction of County and Justice Courts in Civil Matters ***(Companion:*** SB 793**)**

- **Summary:** HB 1033, filed by Rep. Andrew Murr (R – Kerrville), would amend sections 26.042(a) and 27.031(a) of the Government Code to increase the jurisdictional limits of the justice courts to $20,000. The Senate companion (SB 793) was filed by Sen. Carol Alvarado (D – Houston). (**Note**: Rep. Murr has also filed a similar bill HB 1380 that not only addresses an increase in justice court jurisdiction, but also consolidates justice and small claim court fees).

- Bill Analysis for HB 1380: House Research Organization

- **Status of HB 1033:** Judiciary and Civil Jurisprudence had scheduled a public hearing for April 23rd: Notice. However, the bill was withdrawn before the hearing.

- **Status of HB 1380:** Judiciary and Civil Jurisprudence conducted a public hearing on April 8th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 04:26:15 mark. Those who registered a position or testified in favor of, on, or against HB 1380 are listed here: Witness List. On April 15th, the bill was voted out of committee (by a vote of 8-1) without amendment.

- **Status of SB 793:** Referred to State Affairs on March 1, 2019.

HB 1222 - Increase in Annual Salaries of the Chief Justice or Presiding Judge of an Appellate Court

- **Summary:** HB 1222, filed by Rep. John Wray (R – Waxahachie), would amend section 659.012 of the Government Code to provide that the Chief Justice of the Texas Supreme Court and the Presiding Judge of the Court of Criminal Appeals would be entitled to an annual salary that is $10,000 more than the salary provided for other justices or judges of those courts. A chief justice of a court of appeals would be entitled to an annual salary that is $5,000 more than the other justices on those courts. Under current law, chief justices and the presiding judge receive $2,500 more than the other justices and judges.

- Bill Analysis: House Research Organization

- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing on April 15th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 01:39:30 mark. Those who registered a position or testified in favor of, on, or against HB 1222 are listed here: Witness List. On May 1st, the bill was unanimously voted out of committee without amendment.

HB 1624 - Annual State Contribution to Counties for Statutory Probate Court Judge Salaries

- **Summary:** HB 1624, filed by Rep. Senfronia Thompson (D – Houston), would require the state to annually compensate each county, in an amount equal to 60% of the state salary of a district court judge in the county, for each statutory probate court judge in the county.

- Bill Analysis: House Research Organization

- **Status:** County Affairs conducted a public hearing on April 18th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the

03:25:00 mark. Those who registered a position or testified in favor of, on, or against HB 1624 are listed here: Witness List. On April 25th, the bill was unanimously voted out of committee without amendment.

HB 2854 – Judicial Deference to Interpretation of Law by a State Agency ***(Companion: SB 2371)***

- **Summary:** HB 2854, filed by Rep. Mayes Middleton (R – Galveston), would amend the Government Code and add the following provisions:
  - Section 311.0231 (Code Construction Act): "A court may not give deference to any construction of a statute by the state agency responsible for the statute's administration or implementation."
  - Section 2001.042 (Administrative Procedure Act): In a judicial proceeding, "a court may not give deference to a legal determination made by a state agency regarding the construction, validity, or applicability of a rule adopted by the state agency responsible for the rule's administration or implementation."
  - Section 2001.1721 (APA – Judicial Review of Contested Cases): A reviewing court must "decide all questions of law by trial de novo, including the interpretation of constitutional provisions, statutory provisions, or rules adopted by a state agency, without giving deference to any legal determination by a state agency."
  - The Senate companion (SB 2371) was filed by Sen. Bryan Hughes (R – Mineola).
- Bill Analysis for HB 2854: House Research Organization
- Bill Analysis for SB 2371: Senate Research Center
- **Status of HB 2854:** Judiciary and Civil Jurisprudence conducted a public hearing on April 1st: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 10:36:15 mark. Here is a link to the witnesses who registered a position or testified on, for, or against HB 2854: Witness List. On April 15th, the bill was voted out of committee (by a 5-4 vote) without amendment.
- **Status of SB 2371:** State Affairs conducted a public hearing on April 9th: Notice. Those who are interested can watch the proceedings here: Senate Video Archives. Testimony begins around the 00:07:45 mark. Here is a link to the witnesses who registered a position or testified on, for, or against SB 2371: Witness List. The bill was left pending.

HB 3061 – Interim Study Regarding Judicial Selection

- **Summary:** HB 3061, filed by Rep. Steve Allison (R – San Antonio), would create an interim commission on judicial selection (consisting of thirteen (13) members: four (4) members appointed by the Governor; three (3) members from both the House and Senate; two (2) members appointed by the Chief Justice of the Texas Supreme Court; and one (1) member appointed by the president of the State Bar of Texas) to study and review the method by which statutory county court, district and appellate justices/judges are selected for office. The interim commission would be subject to the Texas Open Meetings Act and Texas Public Information Act and would be required to report its findings and recommendations to the governor, lieutenant governor, and speaker of the House by January 11, 2021.
- Bill Analysis: House Research Organization
- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing on April 15th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 00:01:50 mark. Those who registered a position or testified in favor of, on, or against HB 3061 are listed here: Witness List. On April 18th, the bill was voted out of committee (by a 7-1 vote) without amendment.

HB 3104 – Public Access to Certain Court Proceedings

- **Summary:** HB 3104, filed by Rep. Craig Goldman (R – Fort Worth), would amend section 54.08 of the Family Code to require a juvenile justice court to permit public access to all proceedings unless the court, on the motion of any party and based on the evidence presented, determines that: (1) there exists a reasonable and substantial basis for believing that public access to the

proceeding could harm the child, endanger the child's right to a fair trial, or endanger a victim of the conduct of the child; (2) the potential for harm to the child or a victim outweighs the benefits of public access to the proceeding; and (3) the harm can be remedied only by excluding the public from the proceeding.

- HB 3104 would require that the motion filed by a party be in writing and served on all parties not later than the third day before the date the proceeding is scheduled to occur. On receipt of a motion to exclude the public from a proceeding, the court would be required to conduct an evidentiary hearing in open court on the motion to determine whether exclusion of the public from the proceeding is warranted. General considerations, including concern for rehabilitation of the child, would be insufficient to warrant exclusion of the public from a proceeding.
- Further, upon conclusion of the evidentiary hearing, the court would be required to order the proceeding to be open to the public unless the court issued written findings of fact and conclusions of law stating that the evidence of potential harm to the child or to a victim presented clearly outweighs the public interest in a proceeding that is open to the public.
- Under HB 3104, any party or member of the public would have standing to appeal an order of the court excluding the public from a proceeding, provided that the notice of appeal is filed no later than the 7th day after the date the order is entered or the date the public is excluded from a proceeding. The filing of a notice of appeal would stay further proceedings pending the disposition of the interlocutory appeal.
- The amendments proposed by HB 3104 would not apply to proceedings involving children under the age of 14.
- **Status:** Referred to Juvenile Justice and Family Issues on March 13, 2019**.**

HB 3238 – Transfer Due to Improper Joinder

- **Summary:** HB 3238, filed by Rep. Brooks Landgraf (R – Odessa), would amend Chapter 15 of the CPRC by adding a new section 15.0635, which would provide as follows:
- On a defendant's motion, filed and served concurrently with or before the filing of the defendant's answer, a court must transfer an action to another county of proper venue if the court finds, based on the petition and affidavits submitted by the parties, that: (1) a defendant was joined in the action for the primary purpose of establishing venue in a county that would not otherwise be a county of proper venue; or (2) the facts pleaded concerning a defendant whose connection to a county is the primary basis for establishing venue in the county are materially false.
- In determining whether a defendant was joined for the primary purpose of establishing venue in a particular county, a court may consider whether: (1) a trier of fact would impose significant liability on the defendant; or (2) the plaintiff that joined the defendant has a good faith intention to prosecute the action and seek judgment against the defendant.
- **Status:** Referred to Judiciary and Civil Jurisprudence on March 13, 2019**.**

HB 4149 – Creation of a Business Court and a Court of Business Appeals ***(Companion:*** *SB 2259****)***

- **Summary:** HB 4149, filed by Rep. Jeff Leach (R – Plano), would create a statewide specialized civil trial court and an appellate court to hear certain business-related litigation cases, such as actions against businesses, accusations of wrongdoing by businesses or their members, disputes between businesses, violations of the Business Organizations Code, Finance Code, and Business & Commerce Code, and business-related disputes 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 are:
  - The business court would be composed of seven (7) judges who are appointed by the governor for staggered six (6) year terms. The judges would be selected from a list of qualified candidates compiled by a bipartisan advisory council (Business Court Nominations Advisory Council) and would have to have at least 10 years of experience in complex business law;
  - The court clerk would be located in Travis County, but individual judges would be based in the

county seat of their respective counties;

- Current venue rules would apply, but cases could be heard in an agreed-upon county or where the court may decide to be more convenient or necessary;
- There would be a removal procedure for cases filed in a district court;
- The business court would be required to provide rates for fees associated with filings and actions in the business court, and such fees must be set at a sufficient amount to cover the costs of administering the business court system; and
- The Court of Business Appeals, which would handle appeals from the business trial court, would be composed of seven (7) justices who are appointed by the governor based on a list of qualified candidates compiled by the advisory council. Justices would serve six (6) year terms and would hear cases in panels of three (3) randomly-selected justices. Appeals from the Business CA would go to the Supreme Court.
- HB 4149 is substantially similar to the version of the 2015 chancery court bill (HB 1603) that was voted out of committee (but failed to pass in the House) and the 2017 chancery court bill (HB 2594) that was filed and referred to committee, but never received a hearing.
- The Senate companion (SB 2259) was filed by Sen. Bryan Hughes (R – Mineola).

- Fiscal Note for HB 4149: Legislative Budget Board
- **Status of HB 4149:** Judiciary and Civil Jurisprudence conducted a public hearing on April 8th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 00:35:45 mark. Those who registered a position or testified in favor of, on, or against HB 4149 are listed here: Witness List. The bill was left pending.
- **Status of SB 2259:** Referred to State Affairs on March 21, 2019.

HB 4207 – Jurisdiction of a Statutory County Court in Civil Cases

- **Summary:** HB 4207, filed by Rep. J.M. Lozano (R – Portland), would increase the jurisdiction of a statutory county court exercising civil jurisdiction concurrent with the district court to hear cases in which the amount in controversy does not exceed $250,000.
- **Status of HB 4207:** Referred to Judiciary and Civil Jurisprudence on March 25, 2019.

HB 4504 – Appointment/Non-Partisan Election of Certain Judicial Offices/HJR 148

- **Summary**: HB 4504/HJR 148, filed by Rep. Brooks Landgraf (R – Odessa), would change the manner in which Texas selects certain district judges and appellate court judges and justices. Some of the highlights of HB 4504/HJR 148 are as follows:
- All state appellate court judges and justices and all district judges in a judicial district: (1) that contains a county with a population that exceeds 500,000, or (2) in which the voters of the district have voted to have district judge vacancies filled by appointment would be subject to an appointment/non-partisan retention election process that is triggered by a vacancy.
- All vacancies would be filled by gubernatorial appointment and appointees would then face a non-partisan retention election during the 4th and 8th years of their 12-year terms.
- During the retention election, if a majority of the votes received are for the retention of the judge or justice, the judge or justice is entitled to continue the term. However, if a majority of the votes received are to not retain the judge or justice, the resulting vacancy is filled by gubernatorial appointment based on the recommendation of the Judicial Appointments Advisory Board.
- The Judicial Appointments Advisory Board (Board) would review the qualifications of gubernatorial nominees and advise the Senate on whether the Board believes the appointee is “unqualified,” “qualified,” or “highly qualified.”
- The Board would be composed of eleven (11) members: three (3) members appointed by the majority party of the House; two (2) members appointed by the minority party of the House; two (2) members appointed by the majority party of the Senate; two (2) members appointed by the

minority party of the Senate; one (1) member appointed by the Chief Justice of the Texas Supreme Court; and one (1) member appointed by the Presiding Judge of the Court of Criminal Appeals. Members of the Board would serve staggered six (6) year terms.

- Current judges and justices would be permitted to complete their current terms before facing a nonpartisan retention election.

- Fiscal Note for HB 4504: Legislative Budget Board

- **Status of HB 4504:** Judiciary and Civil Jurisprudence conducted a public hearing on April 15th: Notice. Those who are interested can watch the proceedings here: House Video Archives (Part I) House Video Archives (Part II). Testimony on HB 4504 begins around the 00:23:00 mark in Part I and 00:45 in Part II. Those who registered a position or testified in favor of, on, or against HB 4504 are listed here: Witness List. The bill was left pending.

- **Status of HJR 148:** Judiciary and Civil Jurisprudence conducted a public hearing on April 15th: Notice. Those who are interested can watch the proceedings here: House Video Archives (Part I) House Video Archives (Part II). Testimony on HJR 148 begins around the 00:23:00 mark in Part I and 00:45 in Part II. Those who registered a position or testified in favor of, on, or against HJR 148 are listed here: Witness List. The resolution was left pending.

Limitations

HB 1737 - Statutes of Limitation/Repose for Claims Involving Equipment/Construction on Real Property

- **Summary:** HB 1737, as originally filed by Rep. Justin Holland (R – Rockwall), would amend CPRC section 16.008 (addressing limitation periods relating to certain claims against architects, engineers, interior designers, and landscape architects) and section 16.009 (addressing limitation periods relating to certain claims against persons furnishing construction or repair of improvements to real property) to: (a) reduce the limitations period for bringing certain claims against the individuals covered by the statutes from ten (10) years to eight (8) years; and (b) add a four-year limitations period for claims arising out of latent or patent deficiencies in real property, improvements to real property, or equipment attached to real property. In committee, the four-year limitations period for claims arising out of latent or patent deficiencies was removed from the bill.

- Bill Analysis: House Research Organization

- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing on March 11th: Notice. Those who are interested can watch the proceedings here: House Broadcast Archives. Testimony on the bill begins around the 02:15:30 mark. Those who registered a position or testified in favor of, on, or against HB 1737 are listed here: Witness List. On April 15th, the bill, as amended, was voted out of committee (by a 5-4 vote).

Litigation Financing

HB 2096 – Mandatory Disclosure of Third Party Litigation Financing Agreements ***(Companion:*** *SB 1567****)***

- **Summary:** HB 2096, filed by Rep. Matt Krause (R – Fort Worth), would require the Supreme Court to adopt rules to provide for the mandatory disclosure of third-party litigation financing agreements to parties in the civil action in connection with which third-party litigation financing is provided. HB 2096 defines “third-party litigation financing” to mean “the provision of financing with repayment being conditioned on and sourced from the person's or group's proceeds from the civil action, regardless of whether the proceeds are obtained through collection of a judgment, payment of a settlement, or otherwise.“ However, the term would not include a contingent fee arrangement or an extension of credit to any attorney or law firm when the obligation of the attorney or law firm to repay the loan is required by the loan agreement and is not contingent on the outcome of a lawsuit or a portfolio of lawsuits. Under HB 2096, "financing" would mean “the provision of monetary or in-kind support to a person or group of persons who have or will file or prosecute a civil action, including a payment to an attorney who represents the person or group, a payment to a fact or expert witness, a payment of the costs of the civil action, or the provision of funds or

credit to be used in the future to support the civil action." The term would include the provision of monetary or in-kind support, regardless of whether the support is called a loan, an advance, a purchase, or another term.

- The Senate companion (SB 1567) was filed by Sen. Pat Fallon (R – Prosper).
- Bill Analysis for SB 1567: Senate Research Center
- **Status of HB 2096:** Judiciary and Civil Jurisprudence conducted a public hearing on March 25th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 05:27:55 mark. Those who registered a position or testified in favor of, on, or against HB 2096 are listed here: Witness List. The bill was left pending.
- **Status of SB 1567:** Referred to State Affairs on March 14, 2019**.**

Probate Proceedings

SB 192 - Transfer of Probate Proceedings to County Where Executor/Administrator of Estate Resides

- **Summary:** SB 192, filed by Sen. Charles Perry (R – Lubbock), would add section 33.1011 to the CPRC to provide that, after the issuance of letters testamentary/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 the 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 192 also defines "immediate family member" to be the parent, spouse, child, or sibling of the decedent.
- Bill Analysis: Senate Research Center
- **Status:** State Affairs conducted a public hearing on March 4th: Notice. For those interested in watching the proceedings, here is a link to the video stream: Senate Video Archive. Testimony begins around the 00:13:00 mark. Witnesses who registered a position or testified in favor of, on, or against SB 192 are listed here: Witness List. On March 6th, the bill was voted out of committee, without amendment. The Senate unanimously passed SB 192 on April 11th.
- SB 192 was forwarded to the House and referred to Judiciary and Civil Jurisprudence, which conducted a public hearing on April 23rd: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 00:30:45 mark. Witnesses who registered a position or testified in favor of, on, or against SB 192 are listed here: Witness List. On April 29th, SB 192 was unanimously voted out of committee without amendment.

Redistricting

*HB 312/**HJR 25 - Creation of Texas Redistricting Commission***

- **Summary:** HB 312 and HJR 25, filed by Rep. Donna Howard (D – Austin), would create the Texas Redistricting Commission ("TRC"), which would be 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 also would be responsible for reapportioning judicial districts in the event the Judicial Districts Board failed to reapportion the districts. A similar joint resolution (SJR 56) was filed in the Senate by Sen. Royce West (D – Dallas) and Sen. Nathan Johnson (D – Dallas).
- **Status of HB 312 and HJR 25:** Redistricting conducted a public hearing on April 4th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony on HB 312 and HJR 25 begins around the 00:18:00 mark. Those who registered a position or testified in favor of, on, or against HB 312 and HJR 25 are listed here: Witness List. The bill and related resolution were left pending.
- **Status of SJR 56:** Referred to State Affairs on March 14, 2019.

"Revenge Porn" Law Amendments

SB 97 - Prosecution of Criminal Offense of Unlawful Disclosure/Promotion of Intimate Visual Material

- **Summary:** SB 97, filed by Sen. José Menéndez (D – San Antonio), would amend section 21.16(b) of the Texas Penal Code ("TPC") to add language requiring a perpetrator to disclose intimate visual material "with an intent to harm that person" and that the perpetrator "knows or has reason to believe that" the visual material was obtained or created under circumstances in which the person depicted in the visual material had a reasonable expectation that the visual material would remain private.
- **Status:** Referred to Criminal Justice on February 1, 2019.

Settlement

HB 2500 – Settlement Offers in Certain Civil Actions

- **Summary:** HB 2500, filed by Rep. Julie Johnson (D – Dallas), would amend Chapter 43 (offer of settlement provisions) of the CPRC and change all references to "defendant" to "party" so as to make the offer of settlement provisions apply to all parties to civil actions.
- **Status:** Referred to Judiciary and Civil Jurisprudence on March 11, 2019.

State Sovereignty

HB 1347 - Texas Sovereignty Act

- **Summary:** HB 1347, filed by Rep. Cecil Bell (R – Magnolia), would amend the Government Code to do the following:
  - Establish a 12-member Joint Legislative Committee on 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 authorize the committee to review any applicable federal action to determine whether the action is an unconstitutional federal action and establish the factors the committee is required to consider when reviewing a federal action. The bill would require 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 is an unconstitutional federal action and authorize the committee to determine that a federal action is an unconstitutional federal action by majority vote.
  - Require the Speaker of the House of Representatives and the Lieutenant Governor to appoint the initial committee members no later than the 30th day following the bill's effective date and would require 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 require 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 is an unconstitutional federal action to the Texas House of Representatives and to the Texas Senate during the current legislative session if the legislature is convened when the committee makes the determination, or the next regular or special legislative session if the legislature is not convened when the committee makes the determination. The bill would require each house of the legislature to vote on whether the federal action is an unconstitutional federal action and, if a majority of the members of each house determine that the federal action is an unconstitutional federal action, would require 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 establish that a federal action is 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 also require 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 has no legal effect in Texas and prohibit 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 do 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, violate the United States Constitution.
- Authorize the AG to defend the state to prevent the implementation and enforcement of a federal action declared to be an unconstitutional federal action. The bill would authorize the attorney general to prosecute a person who attempts 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 has original jurisdiction of a proceeding seeking a declaratory judgment that a federal action effective in Texas is an unconstitutional federal action. The bill would entitle a person to declaratory relief if the court determines that a federal action is 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 also require 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.

[**Note:** In 2017, a similar bill (HB 2338) was voted out of committee. However, the House never voted on HB 2338.]

- **Status:** State Affairs conducted a public hearing on April 17th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony on HB 1347 begins around the 04:15:15 mark. Here is a link to the witnesses who registered a position or testified on, for, or against HB 1347: Witness List. The bill was left pending.

Texas Citizens Participation Act

HB 3547 – Amendments to the Texas Citizens Participation Act

- **Summary:** HB 3457, filed by Rep. Joe Moody (D – El Paso), would amend the TCPA and do the following:
- Modify the definition of "exercise of the right of association" to exclude "a communication that is the basis of a claim asserting a misappropriation of a trade secret or a breach of a covenant not to compete."
- Exclude governmental entities and governmental officials/employees acting in an official capacity from being able to file a motion to dismiss under the TCPA.
- Allow the parties to agree to extend the time to file a motion to dismiss.
- Require a party moving for dismissal to provide the non-moving party with written notice of the date and time of the dismissal hearing no later than fourteen days before the date of the hearing.
- Require a party responding to a motion to dismiss to file a response no later than the 7th day before the date of the hearing.
- Provide that the court must rule on the motion no later than the 30th day after the date on which the hearing on the dismissal motion concludes.
- State that the court is required to grant the dismissal motion if the moving party establishes that the "legal action fails as a matter of law (instead of by a preponderance of the evidence each

essential element of a valid defense to the non-movant's claim).

- Add "admissible evidence submitted by the parties" to the types of evidence that a court must consider in ruling on the motion to dismiss.
- State that a court's ruling on a motion to dismiss, or the fact that the court made the ruling, is not admissible in evidence at any later stage of the proceeding. Further, the court's ruling on the motion would affect a party's burden of proof.
- Provide that the trial court: (1) "shall" award to the moving party court costs and reasonable attorney's fees incurred in defending against the action (eliminating "other expenses" and "as justice and equity may require"; and (2) "may" award sanctions to the party moving for dismissal.
- Add that the TCPA does not apply to an action filed under Title 1, 2, 4, or 5, Family Code, or an application for a protective order under Chapter 7A, Code of Criminal Procedure. However, it would apply to "a legal action against a person based on the creation, dissemination, exhibition, advertisement, or other similar promotion of a dramatic, literary, musical, political, or other artistic work, including a motion picture or television program, or an article published in a newspaper or magazine of general circulation."
- **Status:** Referred to Judiciary and Civil Jurisprudence on March 18, 2019**.**

HB 4575 – Amendments to the Texas Citizens Participation Act

- **Summary:** HB 4575, filed by Rep. Dustin Burrows (R – Lubbock) would amend the TCPA and do the following:
- Modify the definition of "exercise of the right of association" to expressly provide that communications related to "public participation in governmental or official proceedings."
- Modify the definition of "legal action" to state that the term does not include alternative dispute resolution procedures (such as arbitration), a petition under TRCP 202, and a discovery request in litigation (including subpoena requests).
- Modify the definition of "matter of public concern" to expressly state that it refers to "public" issues.
- State that, once a motion to dismiss is filed, all discovery related to "the claim that is the subjection of the motion" is suspended until the court rules on the motion.
- Require a party moving for dismissal to provide the non-moving party with written notice of the date and time of the dismissal hearing no later than fourteen days before the date of the hearing.
- Require a party responding to a motion to dismiss to file a response no later than the 7th day before the date of the hearing.
- State that the court is required to grant the dismissal motion if, in addition to establishing by a preponderance of the evidence each essential element of a valid defense to the non-movant's claim, the moving party also proves that there is no material fact in dispute regarding each essential element described of the defense.
- Add "evidence obtained from discovery" to the types of evidence that a court must consider in ruling on the motion to dismiss and add that the court may hear testimony or require the parties to submit affidavits to determine any amounts awarded.
- Provide that discovery is suspended during an interlocutory appeal only for the part of the legal action that is the subject of the motion to dismiss, but it does not affect discovery related to a motion filed before a motion to dismiss is filed under the TCPA.
- Provide that, if a party intends to appeal any other procedural ruling, the appealing party must include in the appeal an appeal of the trial court's order on the motion to dismiss.
- Provide that the trial court "may" award to the moving party court costs and reasonable attorney's fees incurred in defending against the action or sanctions against the party who brought the legal action.
- Add that the TCPA does not apply to a deceptive trade practice under Chapter 17 of the Business & Commerce Code or a covenant not to compete.

- **Status:** Referred to Judiciary and Civil Jurisprudence on March 26, 2019.

SB 1981 – Amendments to the Texas Citizens Participation Act

- **Summary:** SB 1981, filed by Sen. Bryan Hughes (R – Mineola), would amend the TCPA and do the following:
  - Remove the definition of "exercise of the right of association" and replace it with the "exercise of the constitutional right to petition, speak freely, or associate freely," which would be defined as "the exercise of the right to petition, speak freely, or associate freely as those rights are provided by the constitutions of this state and the United States, as applied by the courts of this state and the United States."
  - Exclude from the definition of "legal action" a "motion made or procedural action taken during a suit that does not amend or add a claim for legal or equitable relief."
  - Provide that a party may file a motion to dismiss if the legal action is based on, relates to, or is in response to a party's "exercise of the right to petition, speak freely, or associate in a place or context that is open to the public."
  - Amend section 27.006(a) to add "admissible evidence submitted by the parties" to the types of evidence that a court must consider in ruling on the motion to dismiss.
  - Provide that a court must award court costs, reasonable attorney's fees, and other expenses "to a moving party or responding party that prevails on the matter of a motion to dismiss" under the TCPA.
  - Provide that, if the court orders dismissal of a legal action under the TCPA, the court may issue sanctions against the responding party as the court may determine to be sufficient to deter the party from bringing similar actions in the future.
  - Provide that the TCPA does not apply to a suit to dissolve a marriage; a suit affecting the parent-child relationship; an application for a protective order under the Family Code; a suit for misappropriation of trade secrets; or a suit for breach of a covenant not to compete.
  - Eliminate the following definitions: "communication;" "exercise of the right of free speech"; "exercise of the right to petition"; "governmental proceeding"; "matter of public concern"; "official proceeding"; and "public servant."
- **Status:** Referred to State Affairs on March 19, 2019.

Wrongful Birth Claims

HB 4199 – Elimination of Wrongful Birth Cause of Action

- **Summary:** HB 4199, filed by Rep. Dan Flynn (R – Canton), would amend the CPRC to expressly prohibit a cause of action and damages arising out of a claim that "but for the act or omission of another, a person would not have been permitted to have been born alive but would have been aborted." The bill also expressly provides that the law should not be construed to eliminate any duty of a physician or health care practitioner that exists under applicable law.
- Bill Analysis: House Research Organization
- **Status:** Judiciary and Civil Jurisprudence conducted a public hearing on April 8th: Notice. Those who are interested can watch the proceedings here: House Video Archives. Testimony begins around the 00:09:55 mark. Those who registered a position or testified in favor of, on, or against HB 4199 are listed here: Witness List. On April 10th, the bill was voted out of committee (5-4 vote) without amendment.

If you have any questions about these topics or any other matter that comes to mind, feel free to contact me. If I do not know the answer to your questions, I'll do my best to find someone who does.

Sincerely,

Jerry Bullard

Co-Chair, Legislative Liaison Committee
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