TEXAS CIVIL JUSTICE LEAGUE JOURNAL | No Regulation by Litigation

TEXAS CIVIL JUSTICE LEAGUE JOURNAL

Spring 2024

Texas Supreme Court
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Nathan Hecht

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Super Staffer Awards
Session Summary
Amicus Report

Spring 2024

JOIN THE LEAGUE

Established in 1986, the Texas Civil Justice League:

- is a non-partisan, member driven, statewide business coalition committed to a fair and equitable business climate.
- cost-effectively extends corporate legal department benefits by monitoring court rulings and legislation, alerting members to challenges that threaten the state's judicial system.
- is the only statewide legal reform coalition governed by a board of directors composed of business and statewide association leaders.
- is the state's oldest and most effective legal reform organization. Business leaders and former legislators founded the Texas Civil Justice League to enact recommendations issued by the 1987 House/Senate Joint Committee on Liability Insurance and Tort Law Procedure.
- works closely with business and professional associations to achieve mutual public policy objectives.
- actively seeks and incorporates members' input into legislative proposals.
- takes fiscal responsibility seriously, leveraging membership dues into meaningful, long-term civil justice reform.
- is a national leader in the lawsuit reform movement and has assisted in the organization of similar state groups in many other states.
- is a charter member of the American Tort Reform Association and collaborates with other national groups including the U.S. Chamber of Commerce's Institute for Legal Reform.

For membership, please contact the Texas Civil Justice League by calling 512-320-0474 or by emailing info@tcjl.com

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Chairman's Corner

by Hector Rivero

The regular session of the 88th Legislature was a challenging one for the business community. More than ever before, the united efforts of industry and general business associations proved vital to advance some business-friendly policies, most notably a new economic incentive. And thanks to TCJL and Citizens for Judicial Excellence in Texas, the Legislature passed the most substantial improvements to judicial education and training, including the ability to discipline judges who do not comply with education requirements, in the history of the state. The bill earned the support of the entire trial bar, the judiciary, and the business community, showing once more that TCJL's philosophy of bringing everyone to the table to work out a solution that everyone can live with still works. We should keep this in mind for the future, as legislative politics becomes even more fractured. We applaud the legislative leadership, the members, and the governor's office for pulling together to get these deals done.

A similar, if not greater effort, was necessary to mitigate or defeat policies adverse to business. Most of these ideas involved the use of the courts or the attorney general's enforcement powers to target industry sectors, particular types of businesses, and multi-state and multi-national corporations. As we began seeing several sessions ago, the top legislative priorities have generally shifted away from business issues to social concerns that appeal to party primary voters. But in addressing those social concerns, the policy almost invariably involves the state in the operations of private businesses, their relations with their employees, and their ability to access the market economy. Government intrusion into private business and market practices is a growing challenge that is likely to become more daunting in the foreseeable future.

Fortunately for the business community, as the challenges have evolved, so has the work of the Texas Civil Justice League. We have come a long way from the tort reform years of the late 1980s, mid-1990s, and early 2000s. In fact, much of TCJL's work over the last decade or so has been defending tort reform in the Legislature and Texas courts. This goes for workers' compensation reform as well, which few legislators remember and some want to dismantle. TCJL has become a focus for these efforts, both through its enhanced research capacity and its immensely successful amicus program.

As you recall, in 2021 TCJL spearheaded a pair of very significant projects: pandemic liability protections and eminent domain reform. These achievements illustrate the evolution of TCJL's legislative involvement, which has become increasingly focused on helping resolve major policy issues and assisting the general business community in fighting off proposals imposing new exposure to civil and criminal liability.

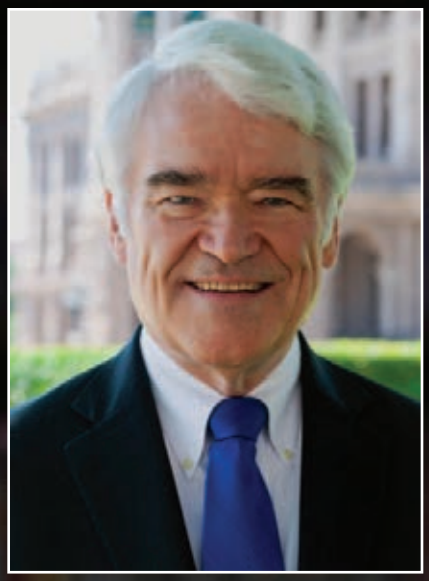
But it was TCJL's research and analysis of complex issues such as ERISA pre-emption, federal and state constitutional doctrines, construction legislation, and the liability impact of dozens of bills that illustrate the real value of TCJL's involvement in the legislative process. Retail lobbying can get us over the line, but we can't even get close to the line without the policy analysis and support we get from TCJL.

As TCJL Chair, I am proud to work with our dedicated staff—Carol Sims, George Christian, Lisa Kaufman, and Chantal Romo—to keep our members informed of what they need to know, provide them with the resources necessary to achieve their policy goals, and represent them when Texas courts require a business perspective when considering a difficult legal issue. I am also proud of how active and responsive TCJL members continue to be when we ask for support and assistance. You are generous with your time and your wisdom, and we both deeply appreciate and sorely need it.

One more note. There is no longer an "interim" between legislative sessions. As we always feared, Texas legislative campaigns have become nationalized and continuous. Legislation that dies in one session is resurrected in the next. Legislation enacted in a session often has unintended consequences that have to be addressed in the next session. It is imperative that we maintain our support of TCJL every year, without regard to whether it's a "session" year. Things have gotten too serious not to.

It is my honor to serve as your Chair. Thank you for your continued support of TCJL's work. I look forward to continuing to work with you well into the future.

Hector Rivero
President & CEO
Texas Chemistry Council



A Tribute to Chief Justice Nathan L. Hecht

To say that Texans have been enormously fortunate in the integrity, scholarship, and probity of the Texas Supreme Court is something of an understatement, for in our view we cannot give too much credit to the Court for establishing the highest standards of judicial excellence in the nation. In an era in which even our courts are not immune from the corrosive effects of partisan politics, the Texas Supreme Court has remained above the fray and dedicated solely to the rule of law, as I hope our wide-ranging discussion of the Court's opinions amply demonstrates.

We attribute the revival of the Court from the disrepute of the "Justice for Sale" days in the 1980s to two signal events: the appointment of Tom Phillips as Chief Justice in 1987 and the election of Nathan Hecht, at that time a Dallas Court of Appeals justice and former Dallas district judge, to the Court in 1988. In that election, Chief Justice Hecht overcame a primary challenge and went on to defeat the incumbent Justice William Kilgarlin, who was deeply implicated in the scandal exposed by 60 Minutes. Almost overnight the Court's reputation was transformed, and subsequent elections in the next few years produced a group of jurists that restored the rule of law. The Court has not looked back since.

Any institution takes its cue from its leader. The Court has had three chief justices since 1987, Tom Phillips, Wallace Jefferson, and Nathan Hecht, and while each one of them brought a different leadership style to the Court, they all inculcated the same high standards for the impartial and independent administration of justice. As Chief Justice Hecht nears the end of his historic tenure as an elected judge and justice, we would like to offer our perspective on what had made him the longest-serving and arguably the greatest jurist in Texas history.

TCJL's association with Chief Justice Hecht commenced in 1987, a year after the creation of the League. We strongly supported his candidacy for the Court and pulled together a united effort of Texas business, trade, and professional associations to launch a massive slate card campaign across the state. It's hard to imagine now, but in 1988 Texas was still predominantly Democratic at all levels. In the same election in which Chief Justice Hecht ascended to the Court, voters also elected Democratic Justices Jack Hightower and Justice Lloyd Doggett, followed by Justice Bob Gammage in 1990, Justice Rose Spector in 1992, and Justice Raul Gonzalez in 1994 (all with the support of TCJL, by the way). It really wasn't until the 1998 general election that the GOP dominance that we see today took hold. In short, electing the best and most qualified candidates to the Court required a hard fight every time. There were no gimmes.

What we could not have expected, nor dreamt of, was that Nathan Hecht would become the longest-serving appellate justice and Supreme Court justice who has ever served. He has dedicated his career to the judiciary, to improving access to legal services, to modernizing the Texas Rules of Civil Procedure, to ensuring that the Court cleared its docket every term and did not leave litigants wondering when their case would be decided, to making the civil jury system more efficient and less costly, and to other countless efforts to strengthen the third branch of government. In so doing, he has created a national and international model for the way a state supreme court should operate. Somehow he also found time to serve in the U.S. Naval Reserve as a JAG officer, as President of the National Conference of Chief Justices, and as a member of the prestigious American Law Institute.

In addition to all that, Chief Justice Hecht has been a tireless advocate for the judiciary. He has actively worked with the Legislature to improve judicial pay and judicial retirement. He has advocated increased funding for legal aid and found the money to do it. He is as highly respected by the Legislature as he is by his judicial colleagues—no mean feat. He led the Texas judiciary through the crisis of the COVID pandemic with astute judgment, compassion, and far-sighted renovations designed to keep the wheels of justice turning during a worldwide lockdown. No challenge is too great, and nothing ruffles his feathers. He is the same kind and generous person all the time. What you see is what you get with Chief Justice Hecht, and what you get is the best judge we ever had and one of the nicest, most knowledgeable, and most interesting human beings you will ever meet.

There is much more we could say about Chief Justice Hecht but let this suffice: we will never see his like again. Simply the financial pressure on our appellate judiciary, who commonly put lucrative private careers on hold to serve, probably assures that very few will commit virtually their entire professional life to public service. Not only that, but the grinding necessity of running statewide political campaigns is not getting any better and, as the electorate evolves, may get a lot worse. The great judges want to judge; they don't want to dial for dollars and have to buy a position on somebody's slate of partisan candidates. We are beyond fortunate that Chief Justice Hecht has been willing to fight through all that and make the enormous financial sacrifice for all of us. Frankly, we'd like to see him serve forever.

TCJL Honors Chief Justice Hecht, Representative Leach, and Key Legislative "Super Staffers" at Annual Meeting

TCJL held its 37th Annual Meeting on Thursday, November 9, 2023 in Austin at the Headliners Club.

In addition to delivering the keynote address at lunch, Chief Justice Nathan Hecht received the George E. Christian Award for Lifetime Achievement, honoring his immense contributions to the Texas judiciary in his 35 years of service on the Texas Supreme Court. TCJL has given this award only once before: to former Senator and Texas Tech University System Chancellor Robert Duncan. We were honored to hear Chief Justice Hecht's reflections on his lifelong devotion to the administration of the justice and the challenges facing the judiciary now and in the future.

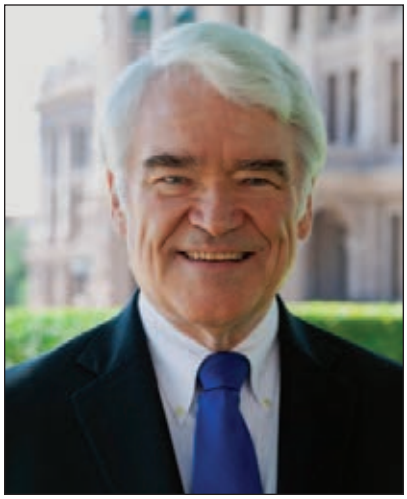
TCJL recently created an award honoring the late Rob Looney, a stalwart supporter of TCJL and its mission who served many years as our chairman. We were pleased to announce the inaugural presentation of this award to Representative Jeff Leach, who for the past three legislative sessions has chaired the House Judiciary & Civil Jurisprudence Committee. Chairman Leach has carried several pieces of landmark legislation during his tenure, including reforms to the Texas Citizens Participation Act, the Pandemic Liability Protection Act, trucking litigation reform, and, most recently, judicial transparency and education legislation. Chairman Leach has dedicated his legislative career thus far to strengthening the Texas judiciary and the civil justice system, and we are proud to recognize him for his outstanding leadership.

Also, for the first time, TCJL awarded Legislative Super Staffer Awards to three longtime Capitol staffers without whose expertise, wisdom, and counsel we could not have achieved so many important successes. The awards went to Drew Tedford, former Legislative Director for Senator Bryan Hughes and Committee Director for the Senate Committee on State Affairs; Andrea Stingley, a 25-year Capitol veteran who currently serves as Chief of Staff for Rep. John Smithee and former policy director for both the House Insurance and Judiciary & Civil Jurisprudence Committees; and Lauren Young, who has served on Chairman Leach's staff since 2014 and as his chief of staff since 2016. Each of these professionals is not only dedicated to their respective bosses, but to upholding the highest standards of integrity and devotion to the legislative process.

George E. Christian Lifetime Achievement Award

The Honorable Nathan Hecht

Chief Justice, Supreme Court of Texas



Nathan L. Hecht is the 27th Chief Justice of the Supreme Court of Texas. He has been elected to the Court seven times, first in 1988 as a Justice, and in 2014 and 2020 as Chief Justice. He is the longest-serving Member of the Court in Texas history and the longest-tenured Texas judge in active service. Throughout his service on the Court, he has overseen revisions to the rules of administration, practice, and procedure in Texas courts, and was appointed by the Chief Justice of the United States to the federal Advisory Committee on Civil Rules. He is also active in the Court's efforts to assure that Texans living below the poverty level, as well as others with limited means, have access to basic civil legal services.

Chief Justice Hecht was appointed to the district court in 1981 and was elected to the court of appeals in 1986. Before taking the bench, he was a partner in the Locke firm in Dallas. He holds a B.A. degree with honors in philosophy from Yale University, and a J.D. degree cum laude from the SMU School of Law, where he was a Hatton W. Sumners Scholar. He clerked for Judge Roger Robb on the U.S. Court of Appeals for the District of Columbia Circuit and was a Lieutenant in the U.S. Navy Reserve Judge Advocate General Corps. He is a Past President of the national Conference of Chief Justices, a Member of the American Academy of Arts and Sciences, a Life Member of the American Law Institute and a member of Council, and a member of the Texas Philosophical Society. He won re-election in November 2020 to a term that ends December 31, 2026.

2023 Rob Looney Award

The Honorable Jeff Leach

Chairman, House Judiciary & Civil Jurisprudence Committee

State Representative Jeff Leach proudly serves the citizens of House District 67 in the heart of Collin County. Now serving in his sixth term, Representative Leach has consistently proven himself to be a committed conservative and effective leader in the Texas Capitol and has worked tirelessly to ensure that Texas remains strong for future generations. Representative Leach was appointed by Speaker Dade Phelan to serve a third term as Chairman of the House Committee on Judiciary & Civil Jurisprudence. As Chairman of the House's major legislative committee with oversight of the Texas justice system, Representative Leach worked to improve our state's judiciary and advance sound reforms to civil practice and procedure. Specifically, he successfully authored legislation giving Texas judges a much-needed pay raise without raising legislator pensions, bolstered our state's judiciary with the creation of 17 new courts across the state – including two in Collin County – and implemented various reforms to improve access to courts, higher pay for jurors and consolidated court fees to promote fairness and transparency. Born and raised in Plano, Representative Leach graduated from Plano Senior High before attending Baylor University. Jeff specializes in complex commercial and civil litigation, construction law and real estate. Jeff and his wife Becky, a speaker, writer and artist, are the proud parents of Brady, Charlotte and Landry.

TCJL Super Staffer Award

Lauren Young

Chief of Staff, Chairman Jeff Leach

Lauren was born and raised in the small town of Quitaque in the Texas Panhandle, where she graduated from Valley High School before attending Baylor University. At Baylor, Lauren double majored in business administration and political science. A lover of history and government from a young age and encouraged by a beloved teacher, Lauren decided to get involved herself. She has been in and around Texas politics since 2013, when she was a Bob Bullock Scholar in the office of State Senator Kel Seliger. She has also spent time in Washington, D.C. in the offices of former Congressman Mac Thornberry and Senator Ted Cruz. Lauren has been in the office of State Representative Jeff Leach since 2014 and has served as his chief of staff since 2016. She has worked tirelessly to assist Rep. Leach in achieving his legislative goals, assuring the smooth operation of the committee he chairs, Judiciary & Civil Jurisprudence, and serving the constituents of House District 67.

TCJL Super Staffer Award

Drew Tedford

Committee Director, Senate State Affairs

Drew grew up in East Texas before attending Rice University from 2003-2007 and graduating magna cum laude from the University of Houston Law Center in 2010. After becoming licensed to practice law, he returned to Tyler and earned trial experience serving as an Assistant District Attorney. He entered the legislative field in 2012 when he accepted as position as Legislative Counsel for the Texas Legislative Council. There he drafted legislation in Utilities, Gaming, Property Law, and other subjects until 2017, when he began working as Legislative Director for Senator Bryan Hughes. He now serves as Committee Director for the Senate Committee on State Affairs. Drew enjoys sampling hobbies with his wife and kids and visiting as many State and National Parks as possible.

TCJL Super Staffer Award

Andrea Stingley

Chief of Staff, Representative John Smithee

Andrea Stingley began her career in and around the Texas Legislature in 1997. In addition to her current role as Chief of Staff for Rep. John Smithee, Andrea has also served as Chief of Staff for Rep. Robby Cook, Rep. Tony Goolsby, and Rep. Brian McCall as well as committee clerk and policy director for both the House Insurance Committee and the House Judiciary & Civil Jurisprudence Committee. Andrea gained valuable lobbying experience as a government relations liaison for the State Bar of Texas and as a lobbyist with Blackridge. A proud Amarillo native and graduate of Texas A&M University, Andrea resides in Austin with her husband Ed Serna and their dog Adley.

TCJL 2023 Annual Meeting

Chief Justice Hecht, Hon. Harriet O'Neill, Hon. Dale Wainwright, Shannon Ratliff

Judge Scott Field

Chief Justice Hecht and Hector Rivero

Lisa Kaufman, Ashley McConkey

Jennifer Woodard, Bill Oswald, Hector Rivero

Hon. Tom Phillips, Chief Justice Hecht

Hon. Bill Messer and Rep. Jeff Leach

Hon. Dale Wainwright and Hector Rivero

Rep. Jeff Leach, Jennifer Woodard, Lauren Young

Sen. Bryan Hughes, Drew Tedford, Bill Oswald

Rep. John Smithee, Andrea Stingley, Bill Oswald

November 9, 2023 • Headliners Club • Austin

Chief Justice Hecht and George Christian

Thure Cannon, Pasha Moore, Justice Kevin Jewell

Vincent DiCosimo and Sen. Bryan Hughes

Hector Rivero and Rep. Jeff Leach

Maurice Rigsby, Sandy Hoy, George Christian, Chris Newton, Jay Old

Preserving and Enhancing the Texas Miracle:

Texas Civil Justice League Statement of Conservative Business Principles

The Texas Civil Justice League (TCJL) was established in 1986 to work on a bipartisan basis with the state leadership and members of the Legislature on policies that strengthen the business climate and make Texas the best place in the nation to work and live. TCJL has always believed that far more unites us than divides us and that our national and state founding principles can and should direct legislative policy decisions. In the last 35 years, the Legislature has made a series of decisions that have borne fruit in the form of sustained economic growth and opportunity for all Texans. This success has rightly been called the "Texas Miracle."

Over the past two decades, Texas has led the nation in business development and job growth by creating an environment that attracts new businesses to Texas and encourages existing businesses to expand. This was not an accident, but the result of positive, common-sense conservative policy principles: freedom of contract, relatively moderate taxes, a reasonable regulatory climate, and a fair and predictable civil justice system.

While the Texas economy remains strong, there are signs of slippage, as CNBC's ranking of the best states for business, in which Texas fell to fifth, indicates. Much is beyond our immediate control: international crises, worldwide economic headwinds, extreme weather events, pandemic diseases, and widespread social disorder in many parts of the world. But how Texas responds to these challenges is within our control. And with challenges come opportunities.

We can all agree that preserving and enhancing the conditions that produced the Texas Miracle should be a top priority in 2023 and, for that matter, in any legislative session. TCJL believes that the best way to accomplish that goal is to adhere closely to the basic principles that have served Texas so well since 1986. In the first instance, these principles are found in the seminal documents upon which our republican form of government is based and include:

- supportive branches of government, as enshrined in the federal and Texas constitutions;
- a federalist system of government that divides powers between the national government and the several states;
- limited constitutional government in which the powers of government are exercised with restraint and in a non-discriminatory fashion;
- the rule of law, which holds all individuals, entities, and institutions equally accountable regardless of power or status;
- freedom of contract between private parties, which permits individuals and businesses to conduct their affairs as they see fit, not as the government dictates;
- freedom of movement of both persons and property, which is fundamental to both personal happiness and economic prosperity;
- respect for the autonomy of free individuals to determine their own futures without fear or intimidation; and
- the promotion of an enlightened and peaceful civil society through universal education and equal opportunity.

There is nothing controversial about any of these concepts, but TCJL believes that we should never take them for granted and that they should explicitly inform all legislative policy decisions. Though reasonable minds may differ about whether a specific policy proposal fulfills or contradicts one or more of the items on this list, simply having that debate in the open and with the full participation of all stakeholders strengthens the democratic process and legitimizes the Legislature's ultimate decisions. Policies cannot withstand the test of time if they are based on a significant lack of consensus and broad public acceptance. What makes the Texas Miracle so enduring is that the Legislature's decisions have in great part withstood that test.

TCJL and its members desire nothing more than to sustain and build on the strong foundation the Legislature has laid. The past few election cycles and recent redistricting have combined to produce substantial turnover in the membership of the Legislature. The members in office today, therefore, have inherited a dynamic, robust, and diversified economy that did not exist when TCJL was formed in the mid-1980s. At that time, Texas had the reputation, not as a beacon state for business, but as "the courtroom for the world" where businesses and health care providers simply could not insure their litigation risks. This is why the Legislature's first steps in restoring Texas' preeminence as a destination for business involved overhauling the tort liability and workers' compensation systems. Until Texas had established a fair, stable, and predictable liability environment, no Texas Miracle was even possible.

Building on the Texas Miracle thus requires maintaining and strengthening the liability environment. In order to do that, TCJL engages with the Legislature on dozens of bills every session. We support and advocate for bills that further the goal and oppose bills that we believe undermine it. But before we take a position on particular legislation, we vet it carefully and thought-

fully to ensure that our support or opposition is founded on a clear and specific basis, not because "we just don't like it." We thought it might be useful to articulate the steps in our analysis so that, in the event we engage on a bill, policymakers will have a better understanding of our rationale and can take our views into consideration during their deliberations. It is in that spirit that we offer the following standards of review.

Does the proposal violate the Texas or U.S. Constitution?

The first consideration for any legislation is whether it comports with the federal and Texas constitutions. No one can be absolutely certain of the answer until a court of competent jurisdiction tells us, but it is possible to identify proposals that push up against constitutional boundaries. In this initial step in our analysis, we look closely at the proposal's potential implications for constitutional protections, specifically those for procedural and substantive due process, the federal and Texas bill of rights, the separation of powers, and the commerce clause.

In this regard, we are particularly concerned about proposals that restrict or obstruct the free movement of people, goods, and services across state and national borders. More generally, we ask whether the proposal is consistent with federalism, which for us means comity with other states (for example, does the bill try to regulate conduct in other states? Does it seek to retaliate against another state?) and adherence to both the supremacy clause and the independence of the courts to decide the constitutionality of executive and legislative actions. Simply put, bills that raise significant constitutional concerns, especially those that impose or expand the liability of businesses, do not promote a fair, stable, and predictable business climate.

Does the proposal confer standing on an uninjured party?

This step is a corollary to a constitutional review. Both the United States Supreme Court and Texas Supreme Court have repeatedly held that a plaintiff in a lawsuit must have "constitutional standing" to bring the action. ["Texas has adopted the constitutional standing test employed by the federal courts." Tex. Bd. Of Chiropractic Examiners v. Tex. Med. Ass'n, 616 S.W.3d 558,567 (Tex. 2018)]. The constitutional minimum standing threshold requires a plaintiff to demonstrate an injury that a court is competent to redress. This threshold is mandated both by separation of powers, which denies courts the power to issue advisory opinions on abstract questions, and the Open Courts provision, which grants access to the courts only to a person "for an injury done him." According to the Court, the "minimum constitutional elements for standing under Texas and Federal law are (1) an injury in fact, (2) the injury is fairly traceable to the defendant's conduct, and (3) the injury will be redressed by the requested relief." Heckman v. Williamson Cty., 369 S.W.3d 137, 150 (Tex. 2012). The courts have further stated that standing requires a showing of specific injury, not generalized harm to the public.

For example, bills that purport to authorize any private individual to enforce a public policy decision by bringing a lawsuit against another individual or entity to recover statutory damages, in our view, fails both a constitutional review (as violating due process protections) and the constitutional standing test. Bills of this type expose businesses and health care providers to the threat (and reality) of serial litigation in every county in the state to redress a generalized harm to the public. They can also seek to enforce a state policy for activities that occur in other jurisdictions, which is inconsistent with principles of federalism and comity. Finally, they involve the courts in social regulation by litigation, which we believe violates separation of powers.

Does the proposal create a new cause of action?

TCJL generally opposes bills that create new ways to sue. It is also common for these proposals incentivize new litigation by either mandating or permitting the recovery of attorney's fees. In many cases adequate remedies already exist to redress the alleged harm through the administrative process, common law causes of action, or other enforcement mechanisms. While there may be compelling reasons that might warrant a path to the courthouse, in the vast majority of cases new causes of action simply encourage more litigation, higher litigation costs, and additional liability risks for Texas businesses. Put another way, each new type of lawsuit necessarily creates a cottage industry around a revenue source that did not previously exist.

Unfortunately, every dollar spent on litigation is one less dollar for capital investment and job creation. And in most instances, these additional litigation costs flow downhill to taxpayers and consumers in the form of higher taxes, higher costs of goods and services, and less competition in the marketplace. The Legislature did not trigger off the Texas Miracle by creating new causes of action, but by restoring fairness, stability, and predictability to the ones we already had.

Does the proposal undo prior reforms?

Many of the liability system reforms that contributed to the Texas Miracle occurred in decades past. With the passage of

time and the virtually complete turnover in the Legislature since then, the compelling policy reasons supporting those reforms have faded from collective memory. Consequently, we are beginning to see an increasing number of proposals that either contradict or reverse prior reforms. This trend is especially evident in proposals to weaken the 1989 workers' compensation reforms, which we would argue is the single most important reform that enabled Texas' economic takeoff, or the 2003 health care liability reforms. We also see it, as we discussed above, in the proliferation of bills expanding existing or imposing new liability on businesses and health care providers. While these proposals may or may not explicitly undo a prior reform, to the extent that they open up new litigation avenues and forms of damages or, as in the workers' compensation arena, create privileged classes of claimants, they undermine the very principles upon which those reforms were originally based: establishing a fair, stable, and predictable liability system that preserves access to the courts for those with legitimate injuries while guarding against excessive litigation costs and soaring damage awards.

Does the proposal impose new civil or criminal liability on businesses?

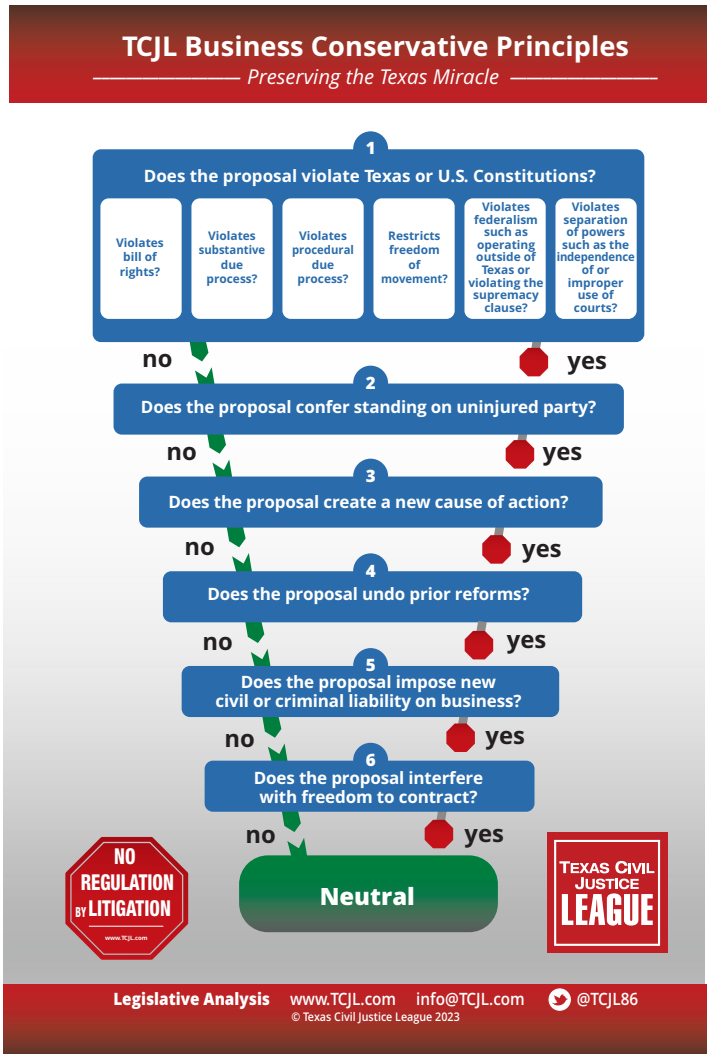
We pose this question when analyzing proposals that expand civil enforcement authority, impose new or expanded administrative or civil penalties, or single out businesses or certain business activities by subjecting them to civil and criminal penalties. Certainly, there may be circumstances under which such punitive treatment is warranted and necessary to protect the health and safety of the public, and our analysis will account for those. But if a proposal targets a specific type of business or occupation for punitive or disparate treatment based on something unrelated (or only tangentially related) to commonly recognized industry or professional standards, we consider such treatment as a government intrusion into the rights of businesses and individuals to manage their affairs as they see fit. Again, the Texas Miracle occurred because government got out of business's way and encouraged innovation, entrepreneurship, and freedom to grow. Legislation that "goes after" or seeks to make an example of certain businesses or professionals who are otherwise operating within their applicable legal and regulatory parameters does just the opposite.

Does the proposal interfere with freedom of contract?

Texas law has always affirmed the crucial importance of allowing private persons to contract freely with one another for their common benefit. Only in very limited circumstances have the courts or the Legislature seen fit to interfere with this freedom (for example, contractual indemnity). This freedom likewise extends to the relationship between private employers and their employees, as Texas is both an at-will employment state and a right-to-work state. We take pride in this and businesses flock to Texas because of it. Consequently, bills that insert the state or local governments between private parties, mandate or prohibit specific contract provisions, or tell private businesses how to run their affairs, govern their organizations, or invest their capital must have a compelling justification for doing so and be narrowly tailored so as not to discourage people from doing business in Texas.

We hope that this overview of our process is helpful and constructive. Not everybody is going to agree on everything, but that does not mean that we do not all share the same objective: to take the Texas Miracle to even greater heights of success.

We have devised a graphic "funnel" representing our decision tree.



TCJL Priority Bills Passed in the 88th Session

TCJL proposed four pieces of legislation this session, and all were signed by the Governor.

- HB 2384 relating to judicial education and transparency. This was a joint effort with Citizens for Judicial Excellence in Texas (CJET) and others.
- SB 1603 relating to permissive appeals.
- HB 3058 relating to pregnancy complications liability.
- HB 4381 relating to supersedeas appeals.

Judicial Training and Education Legislation (HB 2384) Delivers Rare Win-Win-Win for Litigants, Practitioners, and the Judiciary

HB 2384 by Leach

Signed by the Governor, effective 9/1/23.

As we reported last fall, one aspect of the larger debate over the manner in which Texas selects its judiciary has attracted a higher degree of consensus than the process of selection itself: judicial qualifications. All parties to the debate agree that it is a good thing to have well-qualified candidates for judicial offices from the trial courts on up. In 2021 the Texas Legislature adopted and the voters approved a constitutional amendment raising the practice requirements for appellate and district court judges. But beyond that, Texas law, unlike 40 other states, does not *require* that new judges receive training regarding the administration of justice in the courtroom or discharging the responsibilities of the office. That is, until now.

HB 2384, which the Governor signed into law on June 12, will go a long way toward prioritizing the education and training that newly elected or appointed judges with little or no appreciable prior experience must obtain when they arrive for work on the first day. The near unanimous passage of the bill in the Legislature acknowledges the question that we have been asking for years: is it good for the system—and by the "system" we mean the prompt, efficient, and scrupulously impartial administration of justice to the parties in any type of case—to hand over matters with enormous consequences to the people involved to somebody just because he or she has completed a minimum number of years of practice? Put another way, would you like your case to be a new and inexperienced judge's *first* case? Wouldn't you want a judge with at least some prior exposure to the relevant subject matter or, at the very least, the rules of procedure and evidence? Are there ways to ramp up the training of new judges to make that transition both shorter in time and less problematic for parties with the "first" cases?

That is precisely what HB 2384 aims to do. While not a perfect solution by any means (we think thorough vetting of judicial candidates by lawyers and judges with extensive trial or appellate experience would be the best approach), we think that much will be achieved by requiring new judges to meet heightened education and training requirements for the judicial office to which they have been elected. The bill does not go as far as to require the candidates to meet these higher standards as a prerequisite to standing for the office in the first instance (that might narrow the pool of judicial candidates too much). Instead, HB 2384 ensures that newly minted judges will complete a rigorous program to bring him or her up to speed within a year of taking the bench—or face suspension by the Judicial Conduct Commission if they don't.

We realize, of course, that current rules of the Texas Court of Criminal Appeals direct first-year judges to complete 30 hours of instruction and 16 additional hours in the second and third years of their terms. (To provide some perspective, licensed attorneys in Texas are required to complete 15 hours in continuing legal education each year.) These requirements can be met by taking courses, whether in person or remotely, sponsored by organizations specified by Rule 2 of the Rules of Judicial Education. Such organizations include the Judicial Section of the State Bar of Texas, Texas Center for the Judiciary, Texas Association of Counties, National Judicial College in Reno, Nevada (that one sounds fun), and several other national and state-based organizations. It is interesting to note that Rule 3 requires new justices of the peace to complete an *80-hour* course of instruction from the Texas Justice Court Training Center, 40 hours of which must be live training, within the first year in office, and 20 hours of continuing education each year thereafter. Of course, justices of the peace do not have to be lawyers (a vestige of the days when the population was widely scattered and there weren't many lawyers around), so one can understand the disparity (though the required number of hours is arbitrary). In either case, however, it seems to us that these minimum requirements are woefully inadequate in a general one-size-fits-all sense.

That's why HB 2384, in addition to mandating training and

penalizing judges for not completing it, directs the Texas Board of Legal Specialization to develop a board certification in judicial administration for attorneys *and* sitting judges. This program would set standards comparable to existing board certification programs. To give you some perspective on what these programs look like, to become board certified in civil trial law, a lawyer must:

- practice law fulltime for at least five years as an active member of the State Bar of Texas;
- have at least three years of civil trial law experience with a yearly minimum of 30% substantial involvement in civil trial law matters;
- try at least 15 civil trials that meet certain substantive requirements;
- have qualified vetted references from lawyers and judges in the area;
- complete 60 hours of board-approved continuing legal education in civil trial law;
- meet all board standards for attorney certification; and
- pass a comprehensive six-hour examination in civil trial law.

Compare that to the judge school that is currently required, and you can see how dramatic the difference really is. As the example above demonstrates, lawyers who undertake board certification must have three things: significant relevant practice experience, a good reputation in the legal community, and a lot of additional education. If a lawyer can run that gauntlet, it's a pretty good bet that that lawyer will be more well-prepared to take the bench (though we fully understand the practice requirements will have to be different where sitting judges are concerned). To incentivize lawyers who want to be judges and sitting judges to become board-certified, moreover, HB 2384 establishes the basis for future appropriations for judicial salary supplements, not only for those who get the board certification in judicial administration, but other board certifications in relevant specialties as well. The hope is that HB 2384 will establish a culture of excellence in which *all* sitting judges and justices, at some point or another, will become board certified in *something* relevant to their responsibilities to the judicial system.

Policymakers have time and time again shied away from making any major changes in the judicial selection process that would depart from the partisan election of judges. But that doesn't mean that the candidates who win those elections (or who are appointed to fill vacancies) should not be the very best and most qualified lawyers available for the job. HB 2384 places no limitations on who can *run* for judicial office (beyond the constitutional minimum practice and residency requirements), but it would raise the bar for those who get elected. In our view, no one should be happier to see such a program than judges themselves. Board certification is widely accepted as the gold standard in education and training for lawyers. It will quickly become the same for judges.

Permissive Appeals

SB 1603 by Hughes/ HB 1561 by Smithee

Signed by the Governor, effective 9/1/23.

Rep. John Smithee

In June 2022, a divided Texas Supreme Court ruled that §51.014(f), CPRC, gives a court of appeals unfettered discretion to deny a permissive interlocutory appeal, as long as the court minimally complies with TRAP 47.1, which requires the court to give basic reasons for its decisions. §51.014(f) provides that a court of appeals *may accept* an interlocutory appeal permitted by a trial court from an otherwise nonappealable order if two requirements are satisfied: (1) the order involves a controlling question of law as to which there is a substantial ground for difference of opinion; and (2) an immediate appeal may materially advance the ultimate termination of the litigation. §51.014(d), CPRC.

The underlying case, *Industrial Specialists, LLC v. Blanchard Refining Company LLC and Marathon Petroleum Company LP* (No. 20-0174), arose from a fire at Blanchard's Texas City refinery that injured several employees of Industrial Specialists, an independent contractor, and one employee of another contractor. The employees sued Blanchard and each of its other contractors, save Industrial. Blanchard demanded a defense and indemnity from Industrial under a contractual indemnification provision that required Industrial to defend and indemnify Blanchard except for Blanchard's own negligence. Industrial refused. Blanchard and other contractors eventually settled the employees' claims for $104 million, of which Blanchard paid $86 million. Blanchard then sued Industrial to enforce the indemnity agreement. Both parties moved for summary judgment, which the trial court denied. Industrial filed an unopposed motion to pursue a permissive interlocutory appeal under §51.014(d), which the trial court granted on the basis that the interpretation of the indemnification provision involved a controlling question of law and that the appeal would materially advance the termination of the litigation. The First Court of Appeals [Houston] denied the appeal, stating only that it determined that the statutory requirements were not satisfied. Both Industrial and Blanchard sought review, arguing that the court of appeals abused its discretion when it denied the appeal.

In an opinion by Justice Boyd, joined by Justices Devine and Huddle, the Court held that §51.014(f) does not limit the discretion of the court of appeals to deny a permissive interlocutory

appeal. The statute "addresses whether discretion exists at all; it does not impose principles to guide the exercise of that discretion when it does exist." Moreover, the statute does not require the court of appeals to "consider the appealing party's explanation," nor to accept an appeal even if the trial court and parties all want one. All the court must do, as prescribed by TRAP 47.1, is state its reason for rejecting the appeal, which the court of appeals did when it concluded that the statutory requirements were not met. Like petitions for review, which SCOTX has absolute discretion to hear or not hear, permissive interlocutory appeals may or may not be heard at the discretion of the court of appeals, just as federal circuit courts have under 28 U.S.C. § 1292(b).

Although SCOTX urged courts of appeals to accept more permissive appeals in order to further the legislature's policy of resolving disputes as efficiently as possible [*Sabre Travel Int'l, Ltd. v. Deutsche Lufthansa AG*, 567 S.W.3d 725(2019)), it does not have authority under the statute to mandate them to do so. The legislature could change the statute to require more, but until it does, the Court should not intervene "by judicial fiat." Justice Blacklock, joined by Justice Bland, concurred on the basis that "may" means "may" and *Sabre Travel* resolved the issue. Unless the legislature amends the statute, courts of appeals can freely choose not to hear permissive appeals. Indeed, as Justice Blacklock argues, a permissive appeal is not really an "appeal" until the court of appeals agrees to hear it. For him, the court of appeals does not even have to give a reason under TRAP 47.1. "If that is a bad rule," Justice Blacklock concludes, the Legislature should amend the statute, or this Court should amend the appellate rules within the confines of the statute."

Justice Busby, joined by Chief Justice Hecht and Justice Young, delivered a long dissent taking sharp issue with the plurality and concurring opinions. Not only was the court of appeals' refusal to hear the appeal "objectively wrong" and therefore an abuse of discretion, the court's failure to adequately explain its decision violated TRAP 47.1. At the very least, Justice Busby opined, the court of appeals should have had "the courtesy" to explain to the parties why it did not think the statutory requirements (controlling question of law, advancement of termination of the litigation), as Rule 47.1 requires in the interest of fairness and transparency. Summary denials frustrate the purpose of the statute and appear arbitrary and unreasonable, especially when the trial court has complied with the law and the parties concur. Nothing in §51.014(f)'s use of the term "may" indicates that the legislature intended the court of appeals to have absolute discretion. Instead, the term implies that the court shall apply appropriate "guiding principles" and explain its decision. An abuse of discretion standard is thus the appropriate standard for a determination under the statute.

TCJL supports legislation responding to the majority and concurring opinions' invitation to the Legislature to amend the statute. The proposed legislation, HB 1561 by Rep. John Smithee (R-Amarillo), would adopt the dissenting opinion's position and require courts of appeals to (1) state their reasons for denying a permissive appeal under § 51.014(f), and (2) give the Texas Supreme Court explicit authority to review the court of appeals' decision on an abuse of discretion standard.

Legislation Protecting Women with Certain Pregnancy Complications Signed Into Law

HB 3058 by Johnson, Hughes

Signed by the Governor, effective 9-1-23

Rep. Ann Johnson

Governor Abbott has signed into law a very significant piece of legislation that flew largely under the radar this session.

HB 3058 by Rep. Ann Johnson (D-Houston) and Sen. Bryan Hughes (R-Tyler) establishes an affirmative defense in an action against a physician or health care provider arising from two relatively common pregnancy complications: ectopic pregnancy and a previable premature rupture of membranes. In order to prove up the defense, a physician or provider must show they he or she exercised reasonable medical judgment in providing medical treatment for those complications. The defense likewise extends to a disciplinary action by the Texas Medical Board and criminal prosecution under Chapter 9, Penal Code (performance of an abortion). The bill also protects a pharmacist or pharmacy that receives, processes, or dispenses a prescription drug or medication ordered by a physician or provider to which the defense applies.

Given the sensitivity of the issues HB 3058 addresses, we did not think it prudent to discuss it as the bill made its way through the process. But now we can say that TCJL took responsibility for drafting the legislation and, thanks primarily to the indefatigable efforts of our fabulous General Counsel Lisa Kaufman, shepherded it through the process without raising a fuss. In fact, the filed version of the bill, in which form the bill existed all the way up to the Senate committee substitute, did not allude to pregnancy complications at all, but simply added a new section to Chapter 74, CPRC (health care liability claims), shielding a physician from liability solely for providing a medically necessary treatment or procedure to a patient with whom the physician had a physician-patient relationship and for which the patient gave informed consent.

The bill was drafted this way was to create a vehicle that could be amended later, once the necessary level of political consensus devel-

oped around the idea of doing something to ameliorate some of the unintended consequences of SB 8, the Dobbs decision, and the revival of Texas' criminal penalties for performing an abortion. The subject of introduced version of the bill thus had to be broad enough to accept the specific amendments eventually made in the Senate. Otherwise, once the bill came to back to the House with the amendments, it would have almost certainly been subject to a point of order that the Senate amendments were not germane to the original bill. This can be a very difficult needle to thread, so the bill had to be thoroughly vetted at each step of the process to ensure that we stayed within the rules.

What's even more remarkable about this story is that HB 3058 passed on local calendar in both houses. It passed the House on May 12 and the Senate on its final local calendar on May 26. The House concurred in the amendments later that day, sending the bill to the Governor's desk. It is something of a minor miracle that a bill on this topic could possibly have gotten through the process that way.

So why did it? In short, it happened because of the masterful and discreet way that the bill's House author, Rep. Johnson, and Senate sponsor, Sen. Hughes, handled things in their respective chambers. It also required not only the cooperation but the total buy-in of key legislators on both sides and, of course, the offices of the Governor, Lt. Governor, and Speaker. On the House side, HB 3058 would not have gotten anywhere close to the launch pad without the complete support of House Judiciary & Civil Jurisprudence Committee Chair Jeff Leach (R-Allen) and joint author and fellow committee member Shelby Slawson (R-Stephenville). The other House joint authors, Rep. Donna Howard (D-Austin) and Rep. Senfronia Thompson (D-Houston) assured strong bipartisan support and critical assistance on the House floor. In the Senate, Sen. Hughes, chair of Senate State Affairs likewise put together a bipartisan team that included Sen. Paul Bettencourt (R-Houston), Sen. Sarah Eckhardt (D-Austin), Sen. Juan "Chuy" Hinojosa (D-McAllen), and Sen. Lois Kolkhorst (R-Brenham). And in the final analysis, HB 3058 still would not have prevailed if Governor Abbott, Lt. Governor Patrick, and Speaker Phelan hadn't signed off.

Those are a lot of moving parts, and there are a thousand ways that the bill could have gone off the rails. Just think about how frequently that happened this session, and you'll see what we mean. We don't have enough superlatives that are adequate to express our gratitude to Rep. Johnson (with whom this effort originated), Rep. Leach, and the House joint authors and to Sen. Hughes and his co-sponsor team. We cannot also say enough good things about the staff work of Rep. Johnson's and, as always, Rep. Leach's office and, of course, to Sen. Hughes's superb team. Each participant played their part with discretion, good judgment, and, above all, the patience to wait until exactly the right time to make the next move.

We also cannot give adequate thanks to our longtime and loyal TCJL members, the Texas Medical Association and Texas Hospital Association, for quietly supporting the effort and assisting with their expertise and the experience of their members, who deal with these issues every day. The same goes for all of our members who trust us to do the right thing and who provide us with the flexibility and support necessary when dealing with such important, but extremely difficult, matters.

Regardless of where one sits on the spectrum of viewpoints on the larger issue, HB 3058 proves that people working in good faith from across the political spectrum can still come together to remedy an identified problem even if it implicates a bitterly contested and divisive public policy issue. HB 3058 not only did that, but it further created an opening to discussions about other unintended consequences that may need to be addressed in the future.

Supersedeas Bonds

HB 4381 by DeAyala

Signed by the Governor, effective 9/1/23.

Rep. Mano DeAyala

Under current law, a party seeking to appeal a judgment for money damages in a civil case must post or deposit security for payment of the judgment. In general, the amount of security (also called a "supersedeas bond") required by statute must equal the sum of the amount of compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs awarded in the judgment. § 52.006(a), Civil Practice & Remedies Code. The law further provides that the amount of security may not exceed the lesser of 50% of the party's net worth or $25 million. § 52.006(b).

While these amounts might not seem problematic for large businesses, they can pose significant concerns for smaller businesses, especially those with assets primarily, if not exclusively, in non-liquid assets, such as real estate or personal property. For these businesses, withdrawing a substantial amount of working capital from their operations could cripple their ability to sustain the business pending appeal of a judgment. And because they *must* post security in order to pursue their right to appeal, these businesses may be faced with the choice of either trying to convince a trial court and prevailing party that the amount of security should be reduced or giving up their right to appeal altogether.

NEW CAUSES OF ACTION AND PENALTIES

The 2023 session saw record numbers of new causes of action and penalties filed against business and health care providers. The sheer numbers illustrate an alarming trend in the Texas Legislature. Most sessions produce only a few dozen such filings.

- **280 total new causes of action and administrative & regulatory penalties filed.**
- **229 new causes filed against business. 14 passed, including one criminal penalty.**
- **61 new causes filed against medical providers, 2 passed.**

This proposal seeks to address this problem by allowing a judgment debtor with a net worth of less than $10 million to post alternative security. The bill provides that if the debtor can show that posting the amount of security required by existing law would require substantial liquidation of the debtor's interests in real or personal property necessary to the normal course of the debtor's business, the trial court shall allow the debtor to post alternate security sufficient to secure the judgment. The bill further provides that during an appeal, the debtor shall continue to manage, use, and receive earnings from interests in real or personal property in the normal course of business.

This proposal represents a simple, common sense approach that will preserve the ability of small businesses to appeal judgments against them while protecting the ability of judgment creditors to collect a judgment once it becomes final.

- Texas businesses need reforms to the laws on "superseding money judgments": providing security to plaintiffs (judgment creditors) so that business defendants can pursue appeals.
- Currently businesses that cannot remove $25 million from operations for years of an appeal cannot easily supersede judgments; nor can businesses that own mostly real-estate assets or other assets that cannot quickly be turned into cash.
- Plaintiffs (judgment creditors) do not benefit from putting financial strain on businesses – which only depletes potential assets for collection.

HB 4381 by DeAyala (R-Houston): Adds § 52.007, CPRC, to direct the trial court, upon a showing that posting security in the larger amount required by § 52.006 would require the judgment debtor to substantially liquidate the debtor's interests in real or personal property necessary to the normal course of the debtor's business, to allow the debtor to post alternative security. Permits the debtor, pending appeal, to continue to manage, use, and receive earnings from interests in real or personal property in the normal course of business. Provides that if an appellate court reduces the amount of the judgment that the trial court used to set security, the judgment debtor is entitled, pending appeal of the judgment to a court of last resort, to a redetermination of the amount of security. Applies to a judgment debtor with a net worth of less than $10 million.

Business Court is a Step Forward for Judicial Reform in Texas

On June 9, Governor Abbott put his signature on HB 19, the hard-fought effort to establish a Texas business court along the lines of those in dozens of other states. The effort finally succeeded after not getting to the floor of the House in three consecutive sessions. We have reported on the contents of the bill for months, but now that HB 19 has gotten over the finish line, what can we expect in terms of implementation? When will a fully operational business court be up and running?

Let's look at the details. First, the general effective date of HB 19 is September 1, 2024. "As soon as practicable" after that date, the Governor must appoint two judges in 5 of the bill's 11 business court divisions. As reported elsewhere, these divisions cover primarily the major urban and suburban regions of the state, including the Dallas area (First Division), the greater Austin metro (Third Division), San Antonio and a good bit of the coastal plain (Fourth Division), Tarrant County and environs (Eighth Division), and, of course, the Harris-Fort Bend-Brazoria County conurbation (Eleventh Division). As you recall, HB 19 was amended on the floor to postpone the creation of a business court in the other six regions until 2026, contingent upon legislative reauthorization and funding in the 2025 session. Should the legislature do that, the Governor will appoint judges for the remaining divisions by September 1, 2026, but no earlier than July 1, 2025.

The initial appointees to the business court will thus undergo Senate confirmation during the 2025 regular session. The Texas Constitution (Art. 4, § 12) provides for confirmation by a two-thirds vote of members present (21 votes if all are present). In the event of recess appointments, which will be the case with business court judges, the Governor submits the nominees to the Senate during the first ten days of the following regular session. This section does not *require* the Senate to confirm a nominee, but if the Senate does not confirm, the Governor must resubmit the recess appointee or another nominee during the first ten days of each subsequent session until confirmation occurs. However, if the Senate in regular session doesn't confirm or reject a *previously* unconfirmed recess appointee or another nominee, the appointee is deemed to be rejected at the end of the session.

Senate confirmation of appointees to the business court will be an interesting process. First, the two-thirds vote requirement means that at least two senators from the minority party have to go along with the governor's appointment to get over the hump (if all 21 are present, that is). While that means that Democratic votes will be necessary in all five of the initial divisions, they become especially important given that four of the five divisions cover urban areas represented by one or more Democratic senators (it will be the same if the shoe was on the other foot, of course). On its face, consequently, it appears that potential appointees to the business court must be acceptable to senators from both parties in order to win confirmation. That is all to the good and should produce a very strong crop of initial appointees with a maximum level of education and experience and a minimum level of partisan political activity on one side or the other.

Put another way, if appointees are controversial for any reason, they are not likely to be confirmed. The confirmation process is supposed to work on a broad consensus basis, and HB 19 sets it up that way. For most potential appointees, then, the prospect of Senate confirmation should not deter them from seeking and accepting an appointment. One thing to think about, however, is that business court judges serve two-year terms, so if they are reappointed, they must go through the confirmation process each time they are reappointed. Again, this shouldn't be a problem in most instances because subsequent confirmation will be based on the judge's record on the business court bench, not just on his or her resumé. On the other hand, it is not inconceivable that political opposition to a business court judge might arise from the judge's rulings, keeping in mind that 50% of the parties appearing in the court will lose. That is, of course, true in the elective system as well, but there is a very significant difference between getting re-elected by voters, the vast majority of whom don't know who they're voting for or against, or by a handful of senators who might be getting phone calls from unhappy and perhaps influential constituents. In any event, that's something to watch out for as we go down the road.

But assuming everything goes as planned, we should have a functioning business court up and running in some parts of the state at the earliest by the end of next year. Things will be a bit unsettled as the appointees get organized and endure the confirmation process, but we presume that once the appointees are in place, there will be an interval in which, as required by HB 19, they will: (1) appoint the necessary personnel to operate the court, including court clerks, administrative staff, and attorneys (who are employees of the Office of Court Administration, not the business court itself); and (2) adopt rules of practice and procedure. At the same time (if not sooner), HB 19 directs the Texas Supreme Court to adopt rules of civil procedure, including rules governing "the timely and efficient removal and remand of cases

to and from the business court; and (2) the assignment of cases to judges of the business court."

Since the initial courts are created as of September 1, 2024, and apply to civil actions commenced on or after that date, the apparatus for accepting filings must be in place on that date. That does not mean, of course, that the courts in each division will necessarily be quite ready to start hearing motions on that date, but it does mean that parties can start getting in line on that date. It will be interesting to see what kind of race to the courthouse occurs in the period leading up to the effective date. We have traditionally seen a spike in filings right before the effective date of other major statutory changes, so we should not expect anything different this time. But there could also be a countervailing effect in which a plaintiff wants to file a qualifying action in the business court and, depending on limitations, delays filing until September 1, 2024. In other words, the effective date of HB 19 could cut both ways.

Another issue to take note of is the very high likelihood that the constitutionality of HB 19 will be challenged. The bill gives the Texas Supreme Court exclusive and original jurisdiction over such a challenge, but even if the Court strikes down the appointment process, the court will go on with retired or former judges or justices as we do in other cases every day. Either way, Texas businesses, at least in those parts of the state where the court will operate, now have a court with a qualified judge who can hear and rule on their motions much more quickly and efficiently than is currently the case. Even those who argue in the abstract that "appointed judges" are somehow more beholden to the political process than elected judges are (we would vigorously contest that argument) have to admit that HB 19 assures a fair confirmation process that requires a significant degree of political consensus on the appointments, not just a partisan rubber stamp. That is real progress for the cause of improving the quality and stability of the judiciary in the long run.

Will there be bumps along the way? Of course. But if it works, as we think it will, HB 19 will go a long way toward establishing the legitimacy of judicial appointment as an alternative to the current system. As proponents of judicial selection reform for nearly 40 years, TCJL has always maintained that the voters get the final say on changing the system. If the political parties are so certain that voters don't want to "give up their right to elect judges," then they shouldn't worry about giving the voters the opportunity to express themselves to that effect. What's encouraging is that HB 19 passed with at least some level of bipartisan support in both houses. There may have been many variables in play that allowed that to happen, but it is undeniable that 90 members of the House and 24 members of the Senate think that appointed judges are acceptable for a substantial category of high-stakes litigation. That's a victory in our book one way or the other.

2024 Election Report

Supreme Court Judges on the 2024 Ballot

The filing period for a place on the 2024 ballot ended December 11, 2023. Three members of the Texas Supreme Court are up for re-election, and all three are actively campaigning now.

Texas Supreme Court, Place 2
Justice Jimmy Blacklock* (R)
jimmyblacklock.com

Texas Supreme Court, Place 4
Justice John Devine* (R)
judgejohndevine.com

Texas Supreme Court, Place 6
Justice Jane Bland* (R)
justicejanebland.com

For an ongoing list of appellate judge races, please see our voter education site TexasJudges.org. New judicial candidates are added as information becomes available.

Texas Appellate Seats on the 2024 Ballot

Texasjudges.org

Supreme Court, Place 2	DaSean Jones (D) v Randy Sarosdy (D) v Jimmy Blacklock* (R)
Supreme Court, Place 4:	Christine Weems (D) v John Devine* (R) v Brian Walker (R)
Supreme Court, Place 6:	Bonnie Lee Goldstein (D)) v Joe Pool (D) v Jane Bland* (R)
Court of Criminal Appeals, Presiding Judge:	Holly Taylor (D) v Sharon Keller* (R) v David Schenck (R)
Court of Criminal Appeals, Place 7:	Nancy Mulder (D) v Barbara Hervey* (R) v Gina Parker (R)
Court of Criminal Appeals, Place 8:	Chika Anyiam (D)) v Michelle Slaughter* (R) v Lee Finley (R)
1st Court of Appeals, Place 2:	Gordon Goodman* (D) v Brendetta Scott (D) v Jennifer Caughey (R)
1st Court of Appeals, Place 6:	Sarah Beth Landau* (D) v Andrew Johnson (R)
1st Court of Appeals, Place 7:	Julie Countiss* (D) v Clint Morgan (R)
1st Court of Appeals, Place 8:	Richard Hightower* (D) v Ysidra "Sissy" Kyles (D) v Kristin Guiney (R)
1st Court of Appeals, Place 9:	Peter Kelly* (D) v Amber Boyd-Cora (D) v Susanna Dokupil (R)
2nd Court of Appeals, Chief Justice:	Bonnie Sudderth* (R)
2nd Court of Appeals, Place 4:	Wade Birdwell* (R)
2nd Court of Appeals, Place 5:	Dabney Bassel* (R)
2nd Court of Appeals, Place 6:	Mike Wallach* (R)
3rd Court of Appeals, Place 2:	Edward Smith* (D) v Maggie Ellis (D) v Melissa Lorber (D) v John Messinger (R)
3rd Court of Appeals, Place 3:	Chari Kelly* (D)
3rd Court of Appeals, Place 5:	Thomas Baker* (D)) v Karin Crump (D)
3rd Court of Appeals, Place 6:	Gisela Triana* (D)

2024 Election Report

4th Court of Appeals, Place 2:	Beth Watkins* **(D)** v Velia J. Meza **(D)**
4th Court of Appeals, Place 3:	Cynthia Marie Chapa **(D)** v Todd McCray **(R)** v Michael Ritter **(R)** OPEN
4th Court of Appeals, Place 4:	Luz Elena Chapa* **(D)** v Lori Massey Brissette **(R)**
4th Court of Appeals, Place 5:	Liza A. Rodriguez* **(D)** v Adrian Spears **(R)**
4th Court of Appeals, Place 7:	Lori Valenzuela* **(R)**
5th Court of Appeals, Chief Justice:	Dennise Garcia **(D)** v Staci Williams **(D)** v Justin Jay "JJ" Koch (R) OPEN
5th Court of Appeals, Place 2:	Robbie Partida-Kipness* **(D)** v Jessica Lewis **(R)**
5th Court of Appeals, Place 5:	Erin Nowell* **(D)** v Cynthia Barbare (R)
5th Court of Appeals, Place 9:	Tina Clinton **(D)** v Theresa Bui Creevy v Matthew Kolodoski **(R)** OPEN
5th Court of Appeals, Place 10:	Amanda Reichek* **(D)** v Earl Jackson **(R)**
5th Court of Appeals, Place 11:	Cory Carlyle* **(D)** v Kim Cooks **(D)** v Gino Rossini **(R)**
5th Court of Appeals, Place 12:	Ken Molberg* **(D)** v Mike Lee **(R)**
5th Court of Appeals, Place 13:	Tonya Parker **(D)** v Emily Miskel* **(R)**
6th Court of Appeals, Place 2:	Jeff Rambin* **(R)**
7th Court of Appeals, Place 2:	Judy Parker* **(R)**
7th Court of Appeals, Place 3:	Alex Yarbrough* **(R)**
8th Court of Appeals, Chief Justice (Unexpired Term):	Maria Salas Mendoza **(D)**
8th Court of Appeals, Place 2:	Lisa Soto* **(D)**
8th Court of Appeals, Place 3:	Gina Palafox* **(D)**
9th Court of Appeals, Place 3:	Leanne Johnson* **(R)**
9th Court of Appeals, Place 4:	Kent Chambers **(R)** v Kenna Seiler **(R)** OPEN
10th Court of Appeals, Chief Justice:	Matt Johnson **(R)** OPEN
11th Court of Appeals, Chief Justice:	John Bailey* **(R)**
12th Court of Appeals, Place 3:	Greg Neeley* **(R)**
13th Court of Appeals, Chief Justice:	Gina Benavides v Jaime Tijerina **(R)** OPEN
13th Court of Appeals, Place 2:	Nora Longoria* **(D)** v Jenny Cron **(R)**
13th Court of Appeals, Place 4:	Joe Martinez **(D)** v Ysmael Fonseca **(R)** OPEN
13th Court of Appeals, Place 5:	Regi Compian Richardson* **(D)** v Jon West **(R)**
14th Court of Appeals, Place 3:	Jerry Zimmerer* **(D)** v Chuck Silverman **(D)** v Velda Renita Faulkner **(D)** v Mark Ritchie **(D)** v Chad Bridges **(R)**
14th Court of Appeals, Place 4:	Charles Spain* **(D)** v Derek Obialo **(D)** v Steve Rogers **(R)** v Tonya McLaughlin **(R)**
14th Court of Appeals, Place 5:	Frances Bourliot* **(D)** v Maritza Michele Antu **(R)**
14th Court of Appeals, Place 6:	Meagan Hassan* **(D)** v Sara Padua Cordua **(D)** v Katy Boatman **(R)**
14th Court of Appeals, Place 8:	Margaret "Meg" Poissant* **(D)** v Brad Hart **(R)**

2024 Election Report

Texas Legislative Seats on the 2024 Ballot

SD 6	Carol Alvarado* (D)	Martha Fierro (R)
SD 7	Nasir Malik (D) Michelle Gwin (D)	Paul Bettencourt* (R)
SD 8	Rachel Mello (D)	Angela Paxton* (R)
SD 10	Andy Morris (D)	Phil King* (R)
SD 12	Stephanie Draper (D)	Tan Parker* (R)
SD 14	Sarah Eckhardt* (D)	
SD 15 OPEN	Molly Cook (D) Karthik Soora (D) Jarvis Johnson (D) Todd Litton (D) Michelle Anderson Bonton (D) Alberto "Beto" Cardenas Jr (D)	Joseph Trahan (R)
SD 16	Nathan Johnson* (D) Victoria Neave-Criado (D)	
SD 17	Kathy Cheng (D)	Joan Huffman* (R)
SD 20	Juan "Chuy" Hinojosa* (D)	
SD 23	Royce West* (D)	
SD 25	Merrie Fox (D)	Donna Campbell* (R)
SD 27	Morgan LaMantia* (D)	Adam Hinojosa (R)
SD 29	Cesar Blanco* (D)	
SD 30 OPEN	Matthew McGhee (D) Michael Braxton (D) Dale Frey (D)	Carrie De Moor (R) Brent Hagenbuch (R) Cody Clark (R) Jace Yarbrough (R)

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HD 1		Gary VanDeaver* (R) Dale Huls (R) Chris Spencer (R)
HD 2	Kristen Washington (D)	Jill Dutton (R) Brent Money (R)
HD 3		Cecil Bell, Jr.* (R)
HD 4	Alex Bar-Sela (D)	Keith Bell* (R) Joshua Feuerstein (R)
HD 5		Cole Hefner* (R) Dewey Collier (R) Jeff Fletcher (R)
HD 6 OPEN	Cody Grace (D)	Daniel Alders (R)
HD 7	Marlena Cooper (D)	Jay Dean* (R) Bonnie Walters (R) Joe McDaniel (R)
HD 8	Carolyn Salter (D)	Cody Harris* (R) Jaye Curtis (R)
HD 9		Trent Ashby* (R) Paulette Carson (R)
HD 10		Brian Harrison* (R)
HD 11		Travis Clardy* (R) Joanne Shofner (R)
HD 12 OPEN	Dee Howard Mullins (D)	Trey Wharton (R) John Harvey Slocum (R) Ben Bius (R)
HD 13	Albert Hunter (D)	Angelia Orr* (R)
HD 14 OPEN	Fred Medina (D)	Paul Dyson (R) Rick Davis (R)
HD 15		Steve Toth* (R) Skeeter Hubert (R)
HD 16	Mike Midler (D)	Will Metcalf* (R)
HD 17	Desiree Venable (D)	Stan Gerdes* (R) Tom Glass (R)
HD 18		Ernest Bailes* (R) Janis Holt (R) Stephen Missick (R)
HD 19	Dwain Handley (D) Zach Vance (D)	Ellen Troxclair* (R) Kyle Biedermann (R) Manny Campos (R)
HD 20	Stephen Wyman (D)	Terry Wilson* (R) Elva Janine Chapa (R)
HD 21		Dade Phelan* (R) David Covey (R Alicia Davis (R)
HD 22	Christian Manuel* (D) Luther Wayne Martin III (D) Jamie Price Jr. (D)	
HD 23	Dev Merugumala (D)	Teresa Leo-Wilson* (R)

2024 Election Report

HD 24		Greg Bonnen* (R) Larissa Ramirez (R)
HD 25	Jai Daggett (D)	Cody Vasut* (R)
HD 26	Daniel Lee (D)	Jacey Jetton* (R) Matthew Morgan (R) Jessica Huang (R)
HD 27	Ron Reynolds* (D) Rodrigo Carreon (D)	Ibifrisolam Max-Alalibo (R)
HD 28	Marty Rocha (D) Nelvin Adriatico (D)	Gary Gates* (R) Dan Mathews (R)
HD 29 OPEN	Adrienne Bell (D)	Edgar Pacheco (R) Alex Kamkar (R) Jeff Barry (R)
HD 30 OPEN	Stephanie Bassham (D)	Jeff Bauknight (R) AJ Louderback (R) Vanessa Hicks-Callaway (R) Bret Baldwin (R)
HD 31		Ryan Guillen* (R)
HD 32	Cathy McAuliffe (D)	Todd Hunter* (R)
HD 33		Justin Holland* (R) Dennis London (R) Katrina Pierson (R)
HD 34 OPEN	Solomon P. Ortiz Jr. (D) Roland Barrera (D)	Denise Villalobos (R)
HD 35	Oscar Longoria* (D)	
HD 36	Sergio Munoz* (D)	
HD 37	Alex Dominguez (D) Jonathan Gracia (D) Ruben Cortez Jr. (D) Carol Lynn Sanchez (D)	Janie Lopez* (R)
HD 38	Erin Gamez* (D)	
HD 39	Mando Martinez* (D)	Robert Cantu (R) Jimmie Garcia (R)
HD 40	Terry Canales* (D)	
HD 41	Bobby Guerra* (D)	John "Doc" Robert Guerra (R)
HD 42	Richard Raymond* (D)	
HD 43	Mariana Casarez (D)	JM Lozano* (R)
HD 44	Eric Norman (D)	John Kuempel* (R) Gregory Switzer (R) David Freimarck (R) Alan Schoolcraft (R)
HD 45	Erin Zwiener* (D) Chevo Pastrano (D)	Tennyson Moreno (R)
HD 46	Sheryl Cole* (D)	Nikki Kosich (R)
HD 47	Vikki Goodwin* (D)	Scott Firsing (R)
HD 48	Donna Howard* (D)	
HD 49	Gina Hinojosa* (D)	
HD 50	James Talarico* (D) Nathan Boynton (D)	
HD 51	Lulu Flores* (D)	
HD 52	Angel Carroll (D) Jennie Birkholz (D)	Caroline Harris Davila* (R)
HD 53 OPEN	Joe P. Herrera (D)	Wesley Virdell (R) Hatch Smith (R)
HD 54	Dawn Richardson (D)	Brad Buckley* (R)
HD 55	Jennifer Lee (D)	Hugh D. Shine* (R) Hillary Hickland (R) Davis Ford (R) Jorge Estrada (R)
HD 56 OPEN	Erin Shank (D)	Pat Curry (R) Devvie Duke (R)
HD 57	Collin Johnson (D)	Richard Hayes* (R)
HD 58		DeWayne Burns* (R) Helen Kerwin (R) Lyndon Laird (R)
HD 59	Hannah Bohm (D)	Shelby Slawson* (R)
HD 60		Glenn Rogers* (R) Mike Olcott (R)
HD 61	Tony Adams (D)	Frederick Frazier* (R) Chuck Branch (R) Keresa Richardson (R)
HD 62	Tiffany Drake (D)	Reggie Smith* (R) Shelley Luther (R)
HD 63	Michelle Beckley (D) Denise Wooten (D)	Ben Bumgarner* (R) Vincent Gallo (R) Carlos Andino Jr. (R)

2024 Election Report

HD 64	Angela Brewer (D)	Lynn Stucky* (R) Andy Hopper (R) Elaine Hays (R)
HD 65	Detrick Deburr (D)	Kronda Thimesch* (R) Mitch Little (R)
HD 66	David Carstens (D)	Matt Shaheen* (R) Wayne Richard (R)
HD 67	Jefferson Nunn (D) Makala Washington (D)	Jeff Leach* (R) Daren Meis (R)
HD 68	Stacey Swann (D)	David L. Spiller* (R) Kerri Kingsbery (R)
HD 69	Walter Coppage (D)	James Frank* (R)
HD 70	Mihaela Plesa* (D)	Joe Collins (R) Steve Kinard (R)
HD 71	Linda Goolsbee (D)	Stan Lambert* (R) Liz Case (R)
HD 72		Drew Darby* (R) Stormy Bradley (R)
HD 73	Sally Duval (D)	Carrie Isaac* (R)
HD 74	Eddie Morales Jr.* (D)	Robert Garza (R) John McLeon (R)
HD 75	Mary Gonzalez* (D)	
HD 76	Suleman Lalani* (D) Vanesia Johnson (D)	Lea Simmons (R) Summara Kanwal (R) Dayo David (R)
HD 77 OPEN	Vince Perez (D) Alexsandra Annello (D) Norma Chavez (D) Homer Reza (D)	
HD 78	Joe Moody* (D)	
HD 79	Claudia Ordaz Perez* (D)	
HD 80 OPEN	Cecilia Castellano (D) Rosie Cuellar (D) Carlos Lopez (D) Teresa Hernandez (D) Graciela Villarreal (D)	Don McLaughlin (R) Clint Powell (R) JR Ramirez (R)
HD 81		Brooks Landgraf* (R)
HD 82	Steven Schafersman (D)	Tom Craddick* (R)
HD 83		Dustin Burrows* (R) Wade Cowan (R)
HD 84	Noah Lopez (D)	Carl Tepper* (R)
HD 85		Stan Kitzman* (R) Timothy Greeson (R)
HD 86		John Smithee* (R) Jamie Haynes (R)
HD 87 OPEN	Timothy Gassaway (D)	Jesse Quackenbush (R) Cindi Bulla (R) Caroline Fairly (R) Richard Beyea (R)
HD 88		Ken King* (R) Karen Post (R)
HD 89	Darrel Evans (D)	Candy Noble* (R) Abraham George (R)
HD 90	Ramon Romero* (D)	
HD 91		Stephanie Klick* (R) David Lowe (R) Teresa Ramirez (R)
HD 92	Salman Bhojani* (D)	
HD 93	Perla Bojorquez (D)	Nate Schatzline* (R)
HD 94	Denise Wilkerson (D)	Tony Tinderholt* (R)
HD 95	Nicole Collier* (D)	
HD 96	Ebony Turner (D)	David Cook* (R)
HD 97 OPEN	Diane Symons (D) Carlos Walker (D) William Thorburn (D)	John McQueeney (R) Leslie Robnett (R) Cheryl Bean (R)
HD 98	Scott Bryan White (D)	Giovanni Capriglione* (R) Brad Schofield (R)
HD 99	Mimi Coffey (D)	Charlie Geren* (R) Jack Reynolds (R)
HD 100	Venton Jones* (D) Barbara Caraway (D) Justice McFarlane (D) Sandra Crenshaw (D)	
HD 101	Chris Turner* (D)	Clint Burgess (R)
HD 102	Ana-Maria Ramos* (D)	
HD 103	Rafael Anchia* (D)	

2024 Election Report

HD 104	Jessica Gonzalez* (D)	
HD 105	Terry Meza* (D)	Rose Cannaday (R)
HD 106	Hava Johnston (D)	Jared Patterson* (R)
HD 107 OPEN	Linda Garcia (D)	
HD 108	Yasmin Simon (D) Elizabeth Ginsberg (D)	Morgan Meyer* (R) Barry Wernick (R)
HD 109 OPEN	Aicha Davis (D) Victoria Walton (D)	
HD 110	Toni Rose* (D)	
HD 111	Yvonne Davis* (D)	
HD 112	Averie Bishop (D)	Angie Chen Button* (R) Chad Carnahan (R)
HD 113	Rhetta Andrews Bowers* (D)	Stephen Stanley (R)
HD 114	John Bryant* (D)	Aimee Ramsey (R)
HD 115 OPEN	Cassandra Hernandez (D) Scarlett Cornwallis (D) Kate Rumsey (D)	John Jun (R)
HD 116	Trey Martinez Fischer* (D)	Darryl Crain (R)
HD 117	Philip Cortez* (D)	Ben Mostyn (R)
HD 118	Carlos Quezada (D) Kristian Carranza (D)	John Lujan* (R)
HD 119	Liz Campos* (D) Charles Fuentes (D)	Brandon Grable (R) Dan Sawatzki (R)
HD 120	Barbara Gervin-Hawkins* (D)	
HD 121	Shekhar Sinha (D) Laurel Jordan Swift (D)	Steve Allison* (R) Marc LaHood (R) Michael Champion (R)
HD 122	Kevin Geary (D)	Mark Dorazio* (R)
HD 123	Diego Bernal* (D)	
HD 124	Josey Garcia* (D)	Sylvia Soto (R)
HD 125	Ray Lopez* (D) Eric Michael Garza (D)	
HD 126		Sam Harless*(R)
HD 127	John Lehr (D)	Charles Cunningham* (R)
HD 128	Chuck Crews (D)	Briscoe Cain* (R) Bianca Gracia (R)
HD 129	Doug Peterson (D)	Dennis Paul* (R)
HD 130	Henry Arturo (D) Brett Robinson (D)	Tom Oliverson*(R)
HD 131	Alma A. Allen* (D) Erik Wilson (D) James Guillory (D)	
HD 132	Chase West (D)	Mike Schofield* (R)
HD 133		Mano DeAyala* (R) John Perez (R)
HD 134	Ann Johnson* (D)	Audrey Douglas (R)
HD 135	Jon E. Rosenthal* (D)	
HD 136	John H. Bucy III* (D)	Amin Salahuddin (R)
HD 137	Gene Wu* (D)	
HD 138	Stephanie Morales (D)	Lacey M. Hull* (R) Jared Woodfill (R)
HD 139 OPEN	Rosalind Caesar (D) Jerry Ford (D) Charlene Johnson (D) Angie Thibodeaux (D) Mo Jenkins (D)	
HD 140	Armando Walle* (D)	
HD 141	Senfronia Thompson* (D)	
HD 142	Harold Dutton* (D) Danny Norris (D) Joyce Marie Chatman (D)	
HD 143	Ana Hernandez* (D)	
HD 144	Mary Ann Perez* (D)	
HD 145	Christina Morales* (D)	
HD 146	Shawn Thierry* (D) Lauren Simmons (D) Ashton Woods (D)	Lance York (R)
HD 147	Jolanda Jones* (D)	Claudio Gutierrez (R)
HD 148	Penny Morales Shaw* (D)	Kay Smith (R)
HD 149	Hubert Vo* (D) Dave Romero (D)	Lily Truong (R)
HD 150	Marisela "MJ" Jiminez (D)	Valoree Swanson* (R)

TCJL Bill Tracker:
Civil Justice-Related Bills that Failed in 2023

As you know, the 88TH Regular Session was one for the record books in terms of the number of new causes of action, enforcement actions with penalties and attorney's fees, and regulatory bills chock full of vague standards and, in a few cases, dubious constitutionality. Fortunately, most of these bills did not survive the process (though a lot of them got perilously close). Unfortunately, some of the good legislation, such as public nuisance reform, didn't make it either. In any event, here is a list of what we consider the most significant proposals that fell short of the finish line. (*Note: This is not a complete list of bills TCJL worked on this session. A supplemental list will soon follow.*)

Tort Liability

HB 1372 by Cody Harris (R-Palestine): Adds Chapter 100C, CPRC, to limit the cause of action for public nuisance. Excludes the following claims, actions, or conditions from giving rise to a public nuisance cause of action: (1) an action or condition authorized, approved, or mandated by a court order; (2) an action or condition authorized, approved, or mandated by a statute, ordinance, regulation, permit, order, rule, or other measure issued, adopted, promulgated, or approved by the federal government, a federal agency, a state, a state agency, or a political subdivision; (3) a claim based on the manufacturing, distribution, selling, labeling, or marketing of a product, regardless of whether the product is defective. Bars the aggregation of private nuisance claims to produce a violation of established public rights. Provides that this chapter controls a conflict with the common law. *Died in House Calendars 4/14/23*

HB 2955 by Bumgarner (R-Flower Mound)/HB 2117 by Oliverson (R-Cypress)/SB 1971 by Bettencourt (R-Houston): Adds Chapter 108A. CPRC, to create a cause of action against a judge or magistrate for damages arising from an offense committed while the perpetrator was released on personal bond if the offense for which the person was released on bond is an offense involving violence and the judge or magistrate released the defendant in violation of Art. 17.03(b-2), Code of Criminal Procedure. Caps the amount of damages at $10 million and does not permit the judge or magistrate to assert judicial or other immunity. *HB 2117 vote failed in House Judiciary & Civil Jurisprudence 5/3/23 | HB 2955 and SB 1971 never received a hearing*

HB 3030 by Johnson (D-Farmers Branch): Makes an employer liable in a civil action for personal injury, death, or any other damages caused by an employee whose job duties require or may require entering into a person's residence if the employer failed to verify the employee's employment history before hiring and the damages occurred in connection with the employee entering the residence of a person in the course of employment. *Never received a hearing*

HB 3357 by Schatzline (R-Fort Worth): Adds Chapter 98C, CPRC, to impose civil liability against a defendant who engages in obscenity or knowingly or intentionally benefits from obscenity. Applies to information content providers and shareholders and members of business entities. Limits defenses. Authorizes recovery of actual damages, including mental anguish, costs, and attorney's fees. Authorizes recovery of punitive damages. Imposes joint and several liability. *Died on House General State Calendar on 5/11/23.*

HB 3533 by Leach (R-Allen): Amends § 16.0046, CPRC, to eliminate the limitations period for suits for personal injury arising from certain offenses against a child. *Never received a hearing*

HB 3545 by Moody (D-El Paso)/SB 964 by Johnson (D-Dallas): Adds Subchapter C, Chapter 128, CPRC, to provide that a person does not have a cause of action against a federal firearms licensee operating lawfully in Texas for any act or omission arising from a firearm hold agreement that results in personal injury or death, including the return of a firearm to the owner by the licensee at the termination of the agreement. Provides that immunity does not apply to unlawful conduct or gross negligence of the licensee. *Passed House on 5/9 125-15-2 | Died in Senate State Affairs*

HB 3570 by Schatzline (R-Fort Worth)/HB 3585 by Leo-Wilson (R-Galveston): Creates a cause of action against a commercial entity that knowingly or intentionally publishes or distributes material on an Internet website, including a social media platform, more than one-third of which is sexual material harmful to minors, and that fails to verify that the user is 18 or older for damages to a parent or guardian of the minor, including court costs and attorney's fees. Creates a cause of action against a commercial entity for knowingly retaining identifying information of an individual after access has been granted. Establishes

verification methods required of commercial entities or third party that performs verification for the entity. *HB 3570 died on House General State Calendar 5/11 | HB 3585 never received a hearing*

HB 3756 by Flores (D-Austin)/SB 2421 by Zaffirini (D-Laredo): Amends Chapter 92A, CPRC, to apply the same liability standard for removal of a domestic animal from a locked motor vehicle as currently applies to the removal of a vulnerable individual. *HB 3756 passed House on 4/27/23 91-57-1, died in Senate State Affairs | SB 2421 never received a hearing*

HB 4239 by Vasut (R-Angleton)/SB 2121 by Creighton (R-Conroe): Provides that a property owner is not liable for personal injury or death of a contractor, subcontractor, or employee of a contractor or subcontractor arising from work on an insurance restoration project if the contractor or subcontractor does not maintain workers' compensation insurance coverage. Defines "insurance restoration project" as repair of a home, business, or other structure following a fire, natural disaster, water damage, or mold damage for which the work is or will be compensated by insurance. *HB 4239 died in House Judiciary and Civil Jurisprudence | SB 2121 never received a hearing*

HB 4915 by Martinez Fischer (D-San Antonio): Amends § 17.46(b), Business & Commerce Code, to add to the list of DTPA violations "advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges other than taxes." *Never received a hearing*

HJR 166 by Thompson (R-Pearland): Amends § 26, Art. XVI, Texas Constitution to extend the right of recovery of exemplary damages for homicide to the deceased person's estate. *Passed House 128-1-2 on 5/3/23, died in Senate State Affairs*

SB 1034 by Middleton (R-Galveston): Adds Chapter 100C, CPRC, to limit the cause of action for public nuisance. Excludes the following claims, actions, or conditions from giving rise to a public nuisance cause of action: (1) an action or condition authorized, approved, or mandated by a court order; (2) an action or condition authorized, approved, or mandated by a statute, ordinance, regulation, permit, order, rule, or other measure issued, adopted, promulgated, or approved by the federal government, a federal agency, a state, a state agency, or a political subdivision; (3) a claim based on the manufacturing, distribution, selling, labeling, or marketing of a product, regardless of whether the product is defective. Bars the aggregation of private nuisance claims to produce a violation of established public rights. *Died in Senate State Affairs.*

Medical Liability

HB 536 by Wu (D-Houston): Amends § 74.301, CPRC, to index the $250,000 cap on noneconomic damages in health care liability cases by the CPI from September 1, 2003 to the time when damages are awarded in a judgment or settlement. Indexes both liability limits and financial responsibility amounts. *Died in House Judiciary and Civil Jurisprudence*

HB 888 by Slawson (R-Stephenville): Adds § 74.252, CPRC, to extend the statute of limitations for a claim by a minor based on the administration of a puberty suppressing drug or cross-sex hormone to or the performance of surgery or another medical procedure on the minor for the purpose of gender transitioning or gender reassignment. Provides that such that a claim must be brought by the minor's 25TH birthday, rather than the 14TH birthday for all other health care liability claims. *Died on House General State Calendar 5/11/23*

HB 1100 by Julie Johnson (D-Dallas)/SB 611 by Johnson (D-Dallas): Requires a senior living facility to conduct criminal background checks on employees and to require contractors to conduct background checks on their employees who will have access to the facility. Requires the facility to report all criminal activity to law enforcement. Prohibits the facility from preventing or inhibiting a resident from communicating with law enforcement, family member, social worker, or other interested person regarding the safety or security of the facility. Prohibits the facility from preventing a law enforcement officer from entering a common area of the facility to conduct a voluntary interview with a resident as part of an investigation of criminal activity at the facility. Prohibits a lease, rental, or purchase agreement with a resident from waiving liability, requiring arbitration, or controlling the content or execution of the resident's advance directive or testamentary documents. Imposes civil liability for damages to a resident for violations or failure to implement a safety policy or procedure and exempts actions from Chapter 74, CPRC. *HB 1100 passed House 99-43 on 5/4/23, died in Senate Health and Human Services | SB 611 never received a hearing*

HB 3063 by Moody (D-El Paso): Amends § 74.051(c), CPRC, to provide that notice of a health care liability claim tolls the statute of limitations [n]otwithstanding the inadequacy of a medical authorization provided under Section 74.052..." *Withdrawn from hearing schedule 4/12, not heard in House Judiciary and Civil Jurisprudence*

Civil Justice-Related Bills that Failed in 2023

Commercial Litigation/Oil and Gas

HB 5214 by Spiller (R-Jacksboro): Authorizes the attorney general to bring a civil action against a person on behalf of an individual or entity for injury to that individual or entity's business or property caused, directly or indirectly, by the person's violation of § 15.05 (Texas Free Enterprise and Antitrust Act). Authorizes recovery of actual damages, interest, costs, attorney's fees, expert witness fees. Authorizes treble damages and attorney's fees for willful or flagrant conduct. Passed House 143-1 on 5/3, Passed Senate 29-2 on 5/16, *House did not move to concur or appoint conference committee 5/18*

Employment Law

HB 81 by Harrison (R-Midlothian)/SB 177 by Middleton (R-Galveston): Prohibits a person from compelling or coercing an individual lawfully residing in the state into obtaining a COVID-19 vaccination contrary to the individual's vaccination preference. Requires a health care provider to obtain an informed consent for a COVID vaccine. Prohibits a person from taking an adverse action based on the person's refusal to obtain a COVID vaccine. Authorizes the attorney general to obtain injunctive relief against a person to prevent a violation of this act. Imposes civil liability against a health care provider of $5,000 and allows recovery of all costs and reasonable attorney's fees. *HB 81 died in House Calendars | SB 177 passed Senate 20-11 on 4/18, died on House General State Calendar 5/23/23*

HB 1999 by Johnson (D-Farmers Branch)/SB 1041 by Hughes (R-Tyler): Adds § 21.2545, Labor Code, to authorize a person to bring a civil suit for damages arising from an unlawful employment practice based on sexual harassment, regardless of whether the person has filed a complaint or has received a right to sue letter. Establishes a two-year statute of limitations. Makes the action subject to the § 41.008, CPRC, limits on punitive damages, not the statutory limits in § 21.2585, Labor Code. *Neither bill received a hearing*

HB 2115 by Flores (D-Austin): Amends § 21.2585, Labor Code, which limits recovery of compensatory and punitive damages against an employer in an unlawful intentional employment practices case, to exclude from the limitation an action for sexual harassment, unlawful employment practice based on sex, and retaliation in connection with an unlawful practice based on sex. Applies § 41.008, CPRC, cap on punitive damages to such actions. *Never received a hearing*

HB 4309 by Neave Criado (D-Dallas): Adds § 25.002, Labor Code, to render void and unenforceable any provision of a nondisclosure or confidentiality agreement that prohibits or limits an employee from notifying law enforcement or a regulatory agency of sexual assault or sexual harassment committed by an employee of the employer or at the employee's place of employment, or that prohibits an employee from disclosing to any person facts surrounding the assault or harassment. *Passed House 111-34 on 5/5/23, died in Senate Natural Resources 5/10/23*

Product Liability

HB 1936 by Lozano (R-Kingsville)/SB 417 by Paxton (R-McKinney): Adds Chapter 121, Business & Commerce Code, to impose civil liability on the manufacturer of an electronic device (smartphone or tablet) that is activated in this state, does not automatically enable a filter to prevent a minor from accessing sexually explicit material, and a minor user accesses such information. Requires the filter to "reasonably prevent a user of the electronic device from circumventing, modifying, removing, or uninstalling the filter without entering a password or access code. Creates a defense if the manufacturer makes a "good faith effort" to manufacture the device that automatically enables the filter. Authorizes the attorney general to collect a $30,000 per violation civil penalty. Authorizes a parent or guardian to bring an action against a manufacturer for $10,000 in damages, costs, and attorney's fees. *HB 1936 never received a hearing | SB 417 passed Senate 29-2, died in House Youth Health & Safety, Select*

Construction Law

HB 1963 by Leach (R-Plano): Amends § 162.001, Property Code, to provide that funds reserved by the owner during the progress of work for purposes of a mechanic's lien are trust funds. Amends § 162.003(a), Property Code, to provide that an artisan, laborer, mechanic, contractor, subcontractor, or materialman is a beneficiary of trust funds reserved under the mechanic's lien retainage requirement (§ 53.101, Property Code). Amends § 162.034, Property Code, to require a court to award costs and attorney's fees to a beneficiary who prevails in an action for misapplication of trust funds. *Died in House Calendars 5/9/23*

HB 2310 by Canales (D-Edinburg): Adds Chapter 28, CPRC, to govern commercial construction defect litigation. Requires a claimant asserting a defect to describe as to each defendant the specific defect giving rise to the claim, state the factual basis for the claim, and be verified by a person with knowledge of the facts stated in the petition. Allows a defendant to move to dismiss for failure to comply with the pleading requirement, subject to repleading to correct deficiencies. Requires a hearing on the motion to dismiss within 30 days of service of the motion, unless extended for good cause or by consent. Provides that failure to file a compliant pleading does not toll limitations. Allows a defendant

to move to dismiss based on a standard that no reasonable jury could find that the defendant's services, labor, or materials caused or created the defect. Authorizes a court to award costs and attorney's fees to a party that prevails in a motion to dismiss. *Died in House Calendars 5/5/23*

HB 2657 by Leach (R-Plano): Amends § 272.001, Business & Commerce Code, to make a construction contract between an original contractor and owner voidable if the owner does not, on written request, provide a copy of any incorporated document on or before the 10TH day before the date the contract is executed. Allows the owner to redact information in the document that is not incorporated into the contract. Imposes the same requirement on a contract between a subcontractor and an original contractor and on a contract between subcontractors. Provides that a contract provision is voidable only to the extent of its applicability to the incorporated document. Allows a party to provide the incorporated documents by a link to the document on an Internet website or file hosting service that may be accessed by the other party free of charge. Prohibits waiver of these requirements. *Died in House Calendars 5/9/23*

Procedure/Discovery/Privileges

HB 556 by Vasut (R-Angleton): Directs the supreme court to adopt rules allowing for documents containing alleged trade secrets to be filed under seal. Requires the rules to require the document to be filed with an affidavit describing the document and the basis for claiming trade secret privilege. Makes the affidavit open to public inspection. Requires the rules to provide for the unsealing of the documents on a motion by any person on a showing of a specific, serious, and substantial interest that clearly outweighs a presumption in favor of preserving the secrecy of trade secrets or a determination by the court that the document does not contain a trade secret. Requires adoption of the rule by January 1, 2024. *Never received a hearing*

HB 955 by Dutton (D-Houston): Amends § 18.001, CPRC, to exempt a medical bill or other itemized statement of a medical or health care service charging $50,000 or less, an expense affidavit is not required to support a finding of fact that the amount charged was reasonable and necessary. *Died in House Judiciary and Civil Jurisprudence 4/5/23*

HB 3200 by Leach (R-Allen): Entitles a judgment creditor to a hearing on the creditor's motion for the court's assistance in collecting a final money judgment that remains unsatisfied in justice court for longer than six months. Authorizes the court to appoint a receiver unless the judgment debtor appears and contests the appointment. Authorizes the court to issue an order that requires the turnover of all nonexempt property (except for paychecks or sales proceeds of exempt property) without requiring the creditor to prove the existence of specific property owned by the judgment debtor. *Failed to receive affirmative vote in House Judiciary and Civil Jurisprudence 5/3/23*

HB 3393 by Johnson (D-Farmers Branch): Adds Chapter 150D, CPRC, to authorize a person having legal custody of a minor to enter into a settlement agreement with a person against whom the minor has a claim if a guardian or guardian ad litem has not been appointed for the minor, the total amount of the settlement is $25,000 or less, the person entering into the settlement agreement on behalf of the minor completes an affidavit or verified statement that the person has made reasonable inquiry and that the minor will be fairly compensated by the settlement or there is no practical way to obtain additional amounts from the other party. Requires money to be paid in the settlement to be deposited in the court registry. Provides that if the money to be paid is by payment of a premium to purchase an annuity, the payment must be made by direct payment to the provider of the annuity. Requires that money in the registry can only be paid out pursuant to court order, when the minor reaches 18, or upon the minor's death. Provides that a person acting in good faith on behalf of a minor or the other settling party is not liable to the minor for money paid in settlement or for any other claim. *Never received a hearing*

HB 5299 by Vasut (R-Angleton): Amends § 134A.006, CPRC, to require a party to file any document that the party knows contains another party's or person's trade secrets to file the document under seal. Requires a party seeking to seal a document containing the party's trade secrets must file a motion and affidavit with the trial court and the supreme court, serve a copy of the motion, affidavit, and document to be sealed on all parties, and deliver a copy of the document to be sealed to the trial court in a sealed envelope. Imposes the same requirements for a document the party knows contains another person's trade secrets. Requires the party or third person who contends a document contains its trade secrets to file, within 14 days of receiving notice, an affidavit describing the information and setting forth the factual basis for contending that it constitutes a trade secret. Allows any person to intervene as a matter of right at any time before or after judgment in a case to seal or unseal court records. Authorizes any person to move to unseal any document filed in accordance with this section. Pre-empts rules adopted by the supreme court on this subject. *Never received a hearing*

SB 896 by Hughes (R-Tyler)/HB 2781 by Leach (R-Plano):

Amends § 51.014, CPRC, to provide that the denial of a motion to dismiss under the TCPA is not subject to the automatic stay if the order denying the motion states that the motion was: (1) denied as not timely filed under § 27.003(b), CPRC; (2) determined to be frivolous or solely intended to delay under § 27.009(b); or (3) denied because the action is exempt under § 27.010(a). *SB 896 passed Senate 31-0, died on House General State Calendar | HB 2781 never received a hearing*

SB 1843 by Johnson (D-Dallas): Amends § 27.009(a), CPRC, with respect to the award of costs and attorney's fees to the moving party, to change "incurred in" to "for defending against the legal action. *Never received a hearing*

Insurance

HB 150 by Julie Johnson (D-Farmers Branch)/SB 1042 by Hughes (R-Tyler): Prohibits a claimant and an insurer that writes personal or commercial automobile insurance from entering into an oral release for claims arising out of property damage or injury for which the insurer may be liable under the policy. The committee substitute provides that a written release in exchange for money or other consideration is enforceable if the contract is a separate written agreement. **HB 150 died in House Calendars 4/20/23 | SB 1042 never received a hearing**

HB 287 by Julie Johnson (D-Dallas): Requires a residential property insurer in a policy that includes replacement cost coverage to pay at least 80% of the estimated cost or repair for a valid claim. Does not require the insurer to pay more than replacement cost for personal property of like kind and quality. Passed House 97-43-2 on 5/12, not referred to committtee in the Senate

HB 1320 by Geren (R-Fort Worth): Amends Chapter 1952, Insurance Code, to: (1) for purposes of an unfair settlement practices claim (§ 541.060), allow an insurer to provide notice of a claim for uninsured or underinsured motorist coverage by providing written notice to the insurer that reasonably informs the insurer of the facts of the claim; (2) provide that a judgment or other legal determination establishing the uninsured or underinsured driver's liability or the extent of the insured's damages is not a prerequisite to recovery in a bad faith action with respect to a UM/UIM claim; and (3) provides that in a UM/UIM claim, the only extracontractual cause of action available to an insured is an action for bad faith under § 541.151 to reover damages under § 541.152. **Never received a hearing**

HB 1437 by Clardy (R-Nacogdoches)/SB 554 by Hughes (R-Tyler): Adds Subchapter I, Chapter 1952, Insurance Code, to require a personal automobile insurance policy to contain an appraisal procedure. Establishes an appraisal procedure whereby: (1) the insured or insurer may demand an appraisal up to 90 days after proof of loss, (2) each party shall appoint a competent appraiser to determine the loss, and (3) in the event of a disagreement the appraisers shall appoint an umpire (or the court if the appraisers can't agree. Provides that if the appraisal ends up $1 more than the insurer's proposed undisputed loss statement, the insurer shall refund to the insured appraisal costs. *HB 1437 passed House 116-25-3 on 5/9/23, died on Senate Intent Calendar 5/24/23 | SB 554 died in Senate Business and Commerce*

HB 1656 by Capriglione (R-Southlake): Amends § 27.02, Business & Commerce Code, to apply the prohibition on waiving, absorbing, or declining to collect a deductible in a transaction for good or service for $1,000 or more payable from the proceeds of a property insurance policy to automobile policies as well. *Died on House General State Calendar*

HB 3391 by Johnson (D-Farmers Branch): Requires an insurer, upon the request of a claimant asserting a claim that might be covered under a liability insurance policy between the insurer and policyholder, to provide specified information by sworn statement to the claimant, including the name of the insurer, the name of each insured, the coverage limits, and any policy or coverage defense the insurer reasonably believes is available to the insurer. The insurer must further provide a copy of the policy. Imposes a $500 administrative penalty for non-compliance. A claimant may also request the information from the policyholder. The insurer must provide the requested information within 30 days after receiving the request. Requires the insurer to amend the sworn statement or a policyholder to disclose a material change within two days of becoming aware of the change. *Never received a hearing*

HB 3773 by Johnson (D-Farmers Branch): Amends various sections of the Insurance Code to require an insurer to accept relevant clinical records submitted by a treating physician or provider with a claim related to the records or at any time after submission of the claim. Provides that for purposes of calculating a penalty related to a claim by a physician or provider, the contracted rate for health care services is the usual and customary rate for the service in the geographic area in which the service is provided. *Never received a hearing*

SB 474 by Springer (R-Muenster)/HB 1716 by Guillen (R-Rio Grande City): Raises the minimum auto liability coverage for damage to or destruction of property of others from $25,000 to $50,000, effective January 1, 2024. *SB 474 never received a hearing*

| *HB 1716 died in House Insurance*

SB 1083 by King (R-Weatherford)/HB 3476 by Leach (R-Allen): Amends § 1952.101, Insurance Code, to require an insurer to direct the use of original manufacturer's or distributor's parts to repair a vehicle that the insured has owned for three years or less and that was delivered new to the insured. Bars the insurer from limiting the insured in selecting an auto repair shop. Applies the same requirements to a third-party claim against an insured. Bars an insurer from requiring an auto repair shop to use a specific percentage of non-original equipment in the repair of a motor vehicle. *SB 1083 passed Senate 30-1 on 4/17, died in House Insurance | HB 3476 never received a hearing*

SB 1268 by Johnson (D-Dallas): Amends § 707.004, Insurance Code, to prohibit an insurer waiving a deductible owed by a policyholder under a property insurance policy for any reason from requiring as a condition the policyholder's use of the insurer's preferred or recommended contractor for the claim. Requires the insurer to receive reasonable proof of payment by the policyholder of any deductible applicable to the claim before paying a claim for withheld recoverable depreciation or a replacement cost holdback. *Passed Senate 25-6, died in House Insurance*

SB 2229 by Menendez (D-San Antonio): Amends § 601.072(a-1), Transportation Code, to raise the minimum limits for financial responsibility from $30,000 to $50,000 for bodily injury or death, $60,000 o $100,000 for bodily or death of two or more persons, and $25,000 to $40,000 for property damage. *Never received a hearing*

Workers' Compensation

HB 102 by S. Thompson (D-Houston)/SB 1352 by Miles (R-Houston): Amends § 408.001(b), Labor Code, to permit a decedent's estate to recovery exemplary damages based on the employer's gross negligence. *HB 102 passed House 134-0 on 5/6/23, died in Senate Business & Commerce | SB 1352 never received a hearing*

HB 3977 by Neave Criado (D-Dallas): Adds § 408.0011, Labor Code, to authorize an employee who is the victim of sexual assault to bring a cause of action against the employer if the employee's injuries arise from the employer's negligence. *Died on House General State Calendar*

HB 4556 by Lambert (R-Abilene): Amends § 401.013, Labor Code, to add to the definition of "intoxication" the state of not having the normal use of mental or physical faculties by reason of introduction into the body of an abusable volatile chemical. No longer requires that the introduction of the substance be "voluntary." Provides that an analysis of a specimen of blood, urine, or any bodily fluid collected during an autopsy that shows the presence of a substance creates a rebuttable presumption that the person was intoxicated. Provides that the presumption may only be rebutted by credible and objective evidence that the person was not intoxicated. *Never received a hearing*

Judicial Matters/Administration

HB 2865 by Raymond (D-Laredo): Amends § 74.003(b), Government Code, to reduce the service requirement for the eligibility of a judge to serve as an assigned judge to a court of appeals from 96 to 72 months. Adds a requirement that the assigned judge certify to the chief justice a willingness not to hear any matter involving a party who is a current or former client of the justice or judge for the duration of the assignment. Limits the certification of willingness not to appear as an attorney in any court to the court to which the judge is assigned. Amends § 74.055(c) to reduce the service requirement for the eligibility of a judge for listing on the list of judges qualified for assignment from 96 to 72 months and makes the same changes with respect to the judge's certifications as above. *Passed House 129-15-3 on 5/2/23, died on Senate Intent Calendar*

HB 3145 by Jetton (R-Richmond): Amends §§ 33.0212 and 33.0213, Government Code, to require Judicial Conduct Commission staff to conduct a preliminary investigation as soon as practicable after a complaint if filed and, upon completion, notify the judge of the complaint, the results of the preliminary investigation, and the staff's recommendations for action, as well as of the judge's right to attend each commission meeting at which the complaint is included in the report filed with commission members. Requires staff to file a report with the commissioners no later than 10 days before a scheduled meeting (current deadline is the 120TH day after the complaint is filed) of completed preliminary investigations and recommendations. Requires the commission to finalize the preliminary report not later than 120 days following the date of the first meeting at which a complaint is included in the report. Requires the commission, upon finalizing a report, to give written notice to the judge within 48 hours. Allows an extension of the date of finalizing a report of not more than 240 days (currently 270). *Died in House Calendars*

HB 3452 by Jetton (R-Richmond): Amends § 33.034, Government Code, to allow the Judicial Conduct Commission to appeal the decision of a court of review to the supreme court and to eliminate de novo review of a sanction issued in an informal

proceeding. Amends § 33.037, Government Code, to require the Judicial Conduct Commission upon initiating formal proceedings and appointing a special master to suspend a judge from office without pay pending final disposition unless the master recommends against suspension. Amends § 74.055(c), Government Code, to block a retired or former judge from the list of eligible visiting judges if the judge has received more than one public sanction, including a public admonition or warning, from the JCC that was determined to be warranted by a court of review. *Bill passes House and Senate, but fails in conference committee 5/28*

HB 3702 by Harrison (R-Midlothian): Adds § 5.001, CPRC, to provide that an ALI publication, including a restatement or model code, may not be considered to represent the law of Texas and may not be wholly or partly relief on by a court if the publication in its final form was published after December 31, 1999. Makes an exception for restatements of common law identical to Texas law without reference to any publication after December 31, 1999. *Never received a hearing*

SB 21 by Huffman (R-Houston): Amends §§ 33.0212 and 33.0213, Government Code, to require Judicial Conduct Commission staff to conduct a preliminary investigation as soon as practicable after a complaint if filed and, upon completion, notify the judge of the complaint, the results of the preliminary investigation, and the staff's recommendations for action, as well as of the judge's right to attend each commission meeting at which the complaint is included in the report filed with commission members. Requires staff to file a report with the commissioners no later than 10 days before a scheduled meeting (current deadline is the 120TH day after the complaint is filed) of completed preliminary investigations and recommendations. Requires the commission to finalize the preliminary report not later than 120 days following the date of the first meeting at which a complaint is included in the report. Requires the commission, upon finalizing a report, to give written notice to the judge within 48 hours. Allows an extension of the date of finalizing a report of not more than 240 days (currently 270). Amends § 33.01(b) to define as "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" to include "persistent or wilful violation of Article 17.15, Code of Criminal Procedure" (rules for setting the amount of bail). Amends § 33.037, Government Code, to require the Judicial Conduct Commission upon initiating formal proceedings and appointing a special master to suspend a judge from office without pay pending final disposition unless the master recommends against suspension. Provides that a public reprimand must include a 60-day suspension without pay. Amends § 74.055(c), Government Code, to block a retired or former judge from the list of eligible visiting judges if the judge has received more than one public sanction, including a public admonition or warning, from the JCC that was determined to be warranted by a court of review. *Passed Senate 21-10 on 4/5/23, died on House floor 5/23/23*

SJR 54/SB 930 by Middleton (R-Galveston): Prohibits a court from issuing a per curiam opinion. *SJR 54 died in the Senate | SB 930 passed Senate 25-5 on 4/13/23, died before reaching House Calendar*

SB 1092 by Parker (R-Flower Mound): Amends § 22.002, Government Code, to give the supreme court original jurisdiction to issue writs of quo warranto and mandamus to correct any error in a court of criminal appeals' decision finding a statute, rule, or procedure unconstitutional. Further provides that a decision of the court of criminal appeals finding a statute, rule, or procedure in violation of the federal constitution is not final until either the 60TH day after the decision or the denial or dismissal of a petition filed with the supreme court. *Died on Senate Intent Calendar*

SB 1196 by Hughes (R-Tyler)/SB 2392 by Creighton (R-Conroe)/HB 2930 by Spiller (R-Jacksboro): Provides that the supreme court has appellate jurisdiction to finally resolve a conflict between the supreme court and court of criminal appeals regarding the interpretation of a provision of the Texas Constitution on the submission of a writ of certiorari to the court by a party to any proceeding in any court in the state or certification of a question of law from any federal court. *HB 2930 died in House Judiciary and Civil Jurisprudence, other bills never received a hearing*

SB 1931 by Zaffirini (D-Laredo): Amends §§ 33.0212 and 33.0213, Government Code, to require Judicial Conduct Commission staff to conduct a preliminary investigation as soon as practicable after a complaint if filed and, upon completion, notify the judge of the complaint, the results of the preliminary investigation, and the staff's recommendations for action, as well as of the judge's right to attend each commission meeting at which the complaint is included in the report filed with commission members. Requires staff to file a report with the commissioners no later than 10 days before a scheduled meeting (current deadline is the 120TH day after the complaint is filed) of completed preliminary investigations and recommendations. Requires the commission to finalize the preliminary report not later than 120 days following the date of the first meeting at which a complaint is included in the report. Requires the commission, upon finalizing a report, to give written notice to the judge within 48

hours. Allows an extension of the date of finalizing a report of not more than 240 days (currently 270). *Never received a hearing*

Jury Matters

HB 128 by Bernal (D-San Antonio): Exempts classroom teachers, paraprofessionals, or librarians employed by a school district or open-enrollment charter school from jury duty. *Died in House Judiciary and Civil Jurisprudence*

HB 1332 by Herrero (D-Corpus Christi): Exempts firefighters and police officers from jury duty. Never received a hearing
HB 1698 by Jones (D-Houston): Requires, in a county with a million people or more, the county to summon jurors directly to a justice court, which shall hear excuses from jury duty and command a sheriff or constable to summon additional jurors if needed. *Never received a hearing*

HB 5110 by Bhojani (D-Euless): Adds § 61.004, Government Code, to provide that a person may not be disqualified to have serve as a juror based on the person's age, race, ethnicity, gender, sexual orientation, national origin, economic status, religious affiliation, or political belief. Died on House General State Calendar
SB 2087 by Hughes (R-Tyler): Exempts the spouse of an officer or employee of the Senate, House, or legislative agency from jury service. *Died on Senate Intent Calendar*

Attorney's Fees

HB 5253 by Johnson (D-Farmers Branch): Amends § 38.001(b), CPRC, to authorize the recovery of attorney's fees for a common law tort or cause of action created by statute for which an award of actual damages is authorized. *Never received a hearing*

Practice of Law

HB 4946 by Flores (D-Austin): Adds § 30.023, CPRC, to allow a party, after delivery of the jury lists to the court clerk and before the court impanels the jury, to request the court to dismiss the array of jurors and call a new array in the case. Requires the court to grant a motion of a complaining party for dismissal of the array of jurors if the attorney representing the opposing party exercised peremptory challenges for the purpose of excluding prospective jurors based on their actual or perceived race, ethnicity, sex, gender identity, sexual orientation, disability status, national origin, economic status, or religious affiliation, and the complaining party has offered evidence of relevant facts that tend to show that the opposing attorney exercised strikes in that manner. Provides that if the complaining party makes a prima facie case, the burden shifts to the opposing attorney to explain the challenges. Requires the court to call a new array if it finds that either party improperly exercised peremptory challenges. *Died on House General State Calendar*

Part 3 of 5

How Did TCJL's Statement of Conservative Business Principles Fare?

(More bills that failed in 2023.)

At the beginning of the 88TH Legislative Session in January, TCJL published a Statement of Conservative Business Principles, together with a graphic matrix illustrating our methodology for evaluating legislative proposals. What follows is a list of proposals for which we performed and published an analysis identifying one or more conflicts with our Statement of Principles. You will see that following each summary we have indicated the offending aspect of the proposal. This list is confined to bills that did not pass.

New Causes of Action

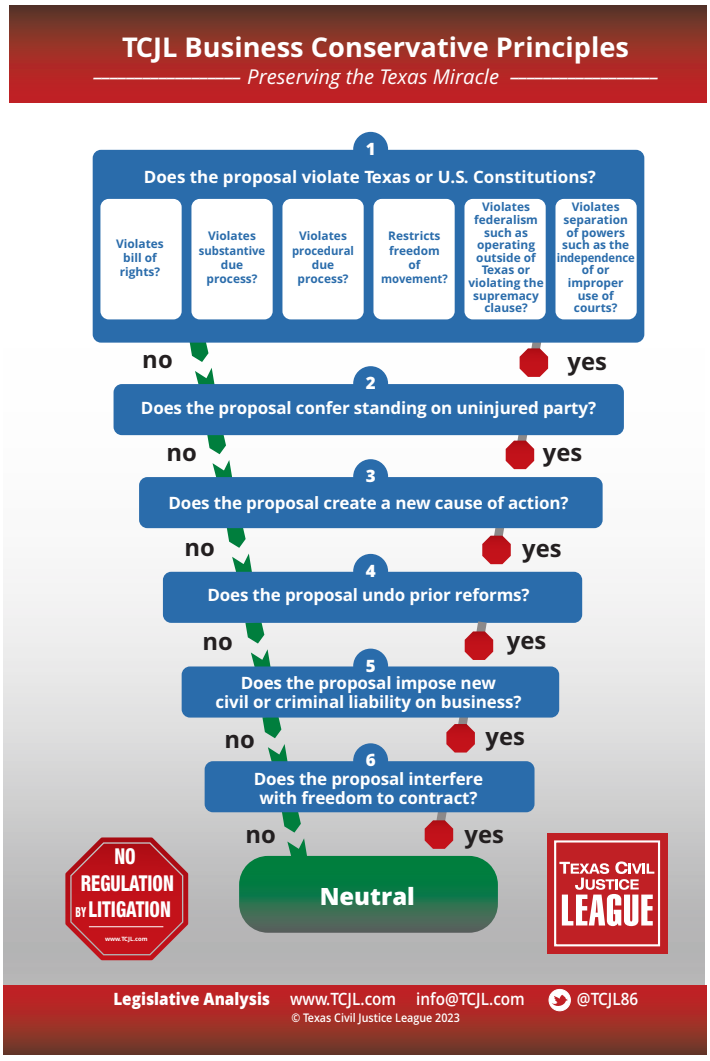
HB 319: Allows a person to decline to participate in a health care service for reasons of conscience. Exempts emergency care or, except as otherwise by Chapter 166, Health and Safety Code, life-sustaining treatment. Grants immunity from civil or criminal liability for a physician or health care provider who declines to participate in a health care service wholly or partly for reasons of conscience. Prohibits a person from taking adverse action against another person because the person declines to participate in a health care service for reasons of conscience, including licensure, certification, employment, staff appointments or privileges, and various other actions. Requires a health care facility to develop a written protocol for circumstances in which a person declines to participate in providing a health care service. Bars the protocol from requiring a health care facility, physician, or health care provider to counsel or refer a patient to another physician or facility. Establishes a complaint process at the appropriate licensing agency. Creates a private cause of action for injunctive relief, actual damages for "psychological, emotional, and physical injuries resulting from a violation of this law," court costs, and attorney's fees. *Never received a hearing.*

Creates a private cause of action for money damages, injunctive relief, court costs, and attorney's fees. Imposes new liability on physicians, hospitals, and health care providers.

HB 645: Bars a financial institution or business from using value-based criteria to discriminate against, advocate for, or give disparate treatment to a person, including the person's social media activities, membership or participation in a group or organization, political affiliation or beliefs, current or former employer, or any other social credit, environmental, social governance, or similar value-based standards. Notwithstanding the above, allows a financial institution or business to uses value-based criteria if it discloses the criteria to a potential customer. Creates a no-injury cause of action against a financial institution or business and imposes liability for injunctive relief, $100,000 in statutory damages, and costs and attorney's fees. *Never received a hearing*

Creates a no-injury cause of action for statutory penalties, injunctive relief, costs, and attorney's fees. Interferes with a private business's right to direct its own affairs.

HB 709: Prohibits a financial institution or other lender from discriminating against the customer in the price or rate for making a loan or extension of credit by basing the price or rate, wholly or partly, on a credit score, including a social credit score or an environmental, social, or governance score that is derived



from "subjective or arbitrary" standards, including the customer's social media posts, participation in the membership of an organization, political affiliation, or employer. Permits a lender to use a credit score if the lender discloses it and the customer agrees to it. Contains an exception for discontinuation or refusal of credit if it is necessary for the physical safety of employees. Imposes a civil penalty of $50,000 for the first violation and $250,000 for each subsequent violation, along with costs and attorney's fees. Enforceable by the attorney general. *Never received a hearing*
Attorney general enforcement. Imposes statutory penalties and mandatory costs and attorney's fees. Interferes with a private business's right to direct its own affairs.

HB 896 by Patterson: Adds Subchapter C-1, Chapter 120, Business and Commerce Code, to prohibit a person aged 13 to 18 from using a social media platform. Requires social media providers to verify that accounts are held by persons older than 18 and to remove an account if requested by a parent. Makes violations of the subchapter a DTPA violation and authorizes the AG consumer protection division to bring enforcement actions. *Never received a hearing*
Attorney general enforcement. Imposes statutory penalties and mandatory costs and attorney's fees.

HB 925: Creates a no-injury private cause of action in which any person may sue any other person for the manufacture, sale, transportation, distribution, importation, loan, or transfer of certain firearms and precursor parts. Applies both to direct violators and those who aid and abet a violation. Provides for equitable relief, statutory damages of $10,000 for each violation, and attorney's fees and costs. Bars the award of attorney's fees and costs to a defendant. Denies standing to a defendant from asserting the right of another to bear arms under the Second Amendment as a defense to liability. (Follows SB 8 to the letter.) *Never received a hearing*
Creates a no-injury cause of action for statutory penalties, injunctive relief, costs, and attorney's fees against a direct violator and one who aids and abets a violation. Bars certain defenses, including exercise of a constitutional right.

HB 982: Mandates a contract between a governmental entity and an entity (except a sole proprietorship) with 10 or more full-time employees with a value of $100,000 or more payable wholly or partly from public funds to require the contractor to verify in writing that it does not and will not during the term of the contract use prohibited ESG criteria to evaluate a business or investment strategy. Defines "prohibited ESG criteria" as environmental, social, and governance criteria that "furthers political policy at the expense of the Texas economy and company shareholders." *Never received a hearing*
Interferes with a business's right to conduct its own affairs. Imposes a vague and potentially unconstitutional standard of liability on a business.

HB 1936/SB 417 by Paxton: Adds Chapter 121, Business and Commerce Code, to impose civil liability on the manufacturer of an electronic device (smartphone or tablet) that is activated in this state, does not automatically enable a filter to prevent a minor from accessing sexually explicit material, and a minor user accesses such information. Requires the filter to "reasonably prevent a user of the electronic device from circumventing, modifying, removing, or uninstalling the filter without entering a password or access code. Creates a defense if the manufacturer makes a "good faith effort" to manufacture the device that automatically enables the filter. Authorizes the attorney general to collect a $30,000 per violation civil penalty. Authorizes a parent or guardian to bring an action against a manufacturer for $10,000 in damages, costs, and attorney's fees. *HB 1936 Never received a hearing | SB 417 died in House Youth Health and Safety*
Attorney general enforcement. Imposes statutory penalties. Creates a private right of action against a business for statutory damages, costs, and attorney's fees. Imposes broad, ill-defined duties on businesses.

HB 2068 by Paul (R-Houston): Mandates that a public investment fund or investment advisor for a fund to "act solely in the pecuniary interest of the system's participants and beneficiaries" (i.e., no ESG). Gives the attorney general investigatory and subpoena power. Eliminates the current law standard that requires a determination of whether the board of trustees of the fund have exercised prudence in an investment decision to be made by considering the investment of all the assets of the trust rather than the prudence of a single investment. Never received a hearing
Imposes broad and vague duties on public investment funds and investment advisors. Gives attorney general broad powers.
HB 2155: Makes a social media platform liable for actual damages and $1,000 in punitive damages to a user who receives user-generated content through a social media algorithm while the user is a minor if the operator knew or had reason to know that the user was a minor. *Never received a hearing*
Creates new cause of action against business for actual and punitive damages.

HB 2437: Adds §§ 7.0521 and 7.052, Water Code, to authorize TCEQ to increase the amount of a penalty if the alleged violator has a history or previously violations. Beginning in 2025, requires the TCEQ to index penalty amounts by the inflation rate. Authorizes TCEQ to triple the amount of a penalty if a first

responder unaffiliated with the facility is injured as a result of exposure to hazardous material while responding to an incident at the facility. *Never received a hearing*
Increases administrative penalties against businesses.

HB 2955/HB 2117/SB 1971: Adds Chapter 108A. CPRC, to create a cause of action against a judge or magistrate for damages arising from an offense committed while the perpetrator was released on personal bond if the offense for which the person was released on bond is an offense involving violence and the judge or magistrate released the defendant in violation of Art. 17.03(b-2), Code of Criminal Procedure. Caps the amount of damages at $10 million and does not permit the judge or magistrate to assert judicial or other immunity. HB 2955 and SB 1971 *Never received a hearing | HB 2117 failed to receive affirmative vote in House Judiciary and Civil Jurisprudence*
Creates a cause of action with statutory damages against judges. Interferes with the independence of the judiciary. Violates separation of powers.

HB 3030 by Johnson: Makes an employer liable in a civil action for personal injury, death, or any other damages caused by an employee whose job duties require or may require entering into a person's residence if the employer failed to verify the employee's employment history before hiring and the damages occurred in connection with the employee entering the residence of a person in the course of employment. *Never received a hearing*
Creates an expansive new cause of action against business.

HB 3036/HB 5245: Prohibits a financial institution from discriminating against lawful firearms and ammunition industry companies or businesses based solely on the company's engagement in the constitutionally protected commerce subject matter of firearm or ammunition. Authorizes the banking commissioner to enforce this provision by administrative penalties or de-charter. *Never received a hearing*
Interferes with the right of a private business to conduct its own affairs. Exposes businesses to administrative penalties and potential loss of right to do business.

HB 3164: Bars DEI at institutions of higher education. Creates a cause of action by an aggrieved student or faculty member against the institution for injunctive relief, costs, and attorney's fees. Waives sovereign immunity. *Never received a hearing*
Creates new cause of action at the expense of taxpayers and students who pay tuition.

HB 3357: Adds Chapter 98C, CPRC, to impose civil liability against a defendant who engages in obscenity or knowingly or intentionally benefits from obscenity. Applies to information content providers and shareholders and members of business entities. Limits defenses. Authorizes recovery of actual damages, including mental anguish, costs, and attorney's fees. Authorizes recovery of punitive damages. Imposes joint and several liability. *Died on General State Calendar 5/11*
Rolls back prior tort reforms. Creates a new cause of action. Makes corporate shareholders jointly and severally liable.

HB 3533: Amends § 16.0046, CPRC, to eliminate the limitations period for suits for personal injury arising from certain offenses against a child. *Never received a hearing*
Creates due process concerns by eliminating limitations.

HB 3570/HB 3585/SB 2164: Creates a cause of action against a commercial entity that knowingly or intentionally publishes or distributes material on an Internet website, including a social media platform, more than one-third of which is sexual material harmful to minors, and that fails to verify that the user is 18 or older for damages to a parent or guardian of the minor, including court costs and attorney's fees. Creates a cause of action against a commercial entity for knowingly retaining identifying information of an individual after access has been granted. Establishes verification methods required of commercial entities or third party that performs verification for the entity. *HB 3570 died on House General State Calendar 5/11 | HB 3585 and SB 2164 never received a hearing*
Creates expansive new cause of action against businesses, with costs and attorney's fees.

HB 3750 by Cain/HB 3752 /SB 2510: Amends § 143A.007, CPRC, to make a social media platform liable for up to $30,000 in statutory damages in a suit by a user based on censorship. Provides that caps on punitive damages do not apply. HB 3752 postponed to after session following a point of order 5/10 | HB 3570 and SB 2510 *Never received a hearing*
Creates new cause of action against business. Rolls back prior tort reforms.

HB 4378: Adds Chapter 100B, CPRC, to create a cause of action by an individual who attends a drag performance as a minor against a person who knowingly promotes, conducts, or participates as a performer if the performance violates the prevailing standard in the adult community for content suitable for minors and he person fails to take reasonable steps to restrict access to the performance by minors. Allows recovery of actual damages for psychological, emotional, economic, and physical harm, attorney's fees and costs, and statutory damages of $5,000. Bars defending the claim on the basis that the minor's parent or

guardian accompanied the minor. *Never received a hearing*
Creates a cause of action against business for actual damages, statutory damages, costs, and attorney's fees. Limits defenses.

HB 4601: Amends § 16.0045, CPRC, to require a person to bring suit for personal injury against a non-perpetrator of a sexual offense against a child not later than 15 years after the cause of action accrues if the injury arises as a result of conduct that violates various Penal Code provisions and the person against whom the suit is filed had a safe environment program at the time the injury occurred. Requires clean and convincing evidence in an action against a non-perpetrator. *Never received a hearing*
Creates a new cause of action against businesses. Raises due process concerns by extending limitations.

HB 4786: Amends § 85.0531, Natural Resources Code, to raise the amount of the administrative penalty from $10,000 to $25,000 per day. Requires the RRC to provide an opportunity for public input on administrative penalty guidelines. Requires the guidelines to provide for different penalties for different violations based on the seriousness of the violation and any hazard to the health and safety of the public. Requires the commission to consider additional factors in assessing a penalty. Conforms other statutes to the $25,000 penalty. *Never received a hearing*
Increases administrative penalties against businesses.

HB 4876: Amends § 71.009, CPRC, to provide that when a death is caused by an unlawful abortion, the plaintiff shall be entitled to recover exemplary damages of not less than $5 million from each defendant that acted with the intent of causing or facilitating the death of an unborn child. Adds various sections of Chapter 71, CPRC, to provide that if an unlawful abortion involves the use of mifepristone and the plaintiff is unable to identity the manufacturer, liability shall be apportioned to each manufacturer's share of the market for mifepristone; limits defenses to a death claim for an unlawful abortion; establishes a 10-year limitations period for death cases for an unlawful abortion; provides that death cases for an unlawful abortion are exempt from the TCPA and Texas Tort Claims Act; bars a court from declaring this law unconstitutional; makes judges liable to a claimant for injunctive relief, compensatory damages, punitive damages of at least $100,000, and costs and reasonable attorney's fees.
Rolls back prior tort reforms. Creates new cause of action against businesses. Extends limitations. Waives sovereign immunity. Limits defenses. Violates separation of powers.

HB 5214: Authorizes the attorney general to bring a civil action against a person on behalf of an individual or entity for injury to that individual or entity's business or property caused, directly or indirectly, by the person's violation of § 15.05 (Texas Free Enterprise and Antitrust Act). Authorizes recovery of actual damages, interest, costs, attorney's fees, expert witness fees. Authorizes treble damages and attorney's fees for willful or flagrant conduct. *Never received a hearing*
Expands antitrust enforcement authority against businesses. Creates cause of action against businesses for actual damages, interest, costs, attorney's fees, expert witness fees. Authorizes treble damages.

HJR 166: Amends § 26, Art. XVI, Texas Constitution to extend the right of recovery of exemplary damages for homicide to the deceased person's estate. *Died in Senate State Affairs 5/5*
Expands a cause of action against businesses.

SB 1446: Bars investment agents for public funds from using ESG factors in investment decisions. Limits decisions to "financial factors." Bars a public entity from retaining an investment agency with a history of taking ESG factors into account. Gives the attorney general enforcement power against trustees. *Died on House General State Calendar*
Expands enforcement authority of attorney general against private citizens. Creates liability based on vague, unenforceable standards.

SB 1711: Creates a cause action by a person or student organization against an institution of higher education alleging a violation of expressive rights for injunctive relief and compensatory damages, costs, and attorney's fees. Establishes a one-year limitations period. Waives sovereign immunity. *Died in Senate Higher Education*
Creates a cause of action against a public entity at the expense of taxpayers and students who pay tuition. Mandatory damages, costs, and attorney's fees.

SB 1879/HB 5003 by Cain: Prohibits a governmental officer, including a judge, from enforcing the First Amendment establishment clause or separation of church and state doctrine against any person other than the federal government. Creates a cause of action against a governmental officer or employee for injunctive relief, costs, and attorney's fees. Makes an attorney jointly and severally liable for attorney's fees for asserting a First Amendment claim. Bars choice-of-law provisions. Makes judges liable for compensatory and punitive damages of $100,000 or more for ruling against this law. Never received a hearing
Violates separation of powers. Interferes with the independence of the courts. Creates a new cause of action against public employees at taxpayer expense. Rolls back tort reforms. Establishes statutory punitive damages.

How Did TCJL's Statement of Conservative Business Principles Fare?

PANDEMIC LIABILITY/EMERGENCY POWERS

HB 81/SB 177 by Middleton: Prohibits a person from compelling or coercing an individual lawfully residing in the state into obtaining a COVID-19 vaccination contrary to the individual's vaccination preference. Requires a health care provider to obtain an informed consent for a COVID vaccine. Prohibits a person from taking an adverse action based on the person's refusal to obtain a COVID vaccine. Provides that a health care provider who advises or recommends the administration of a COVID vaccine is not considered to have compelled or coerced into obtaining a vaccine. Exempts an employee or trainee in a health care facility from taking a required vaccine if the individual requests the exemption based on a sincerely held religious belief or recognized health condition. Authorizes the attorney general to obtain injunctive relief against a person to prevent a violation of this act. Imposes civil liability against a health care provider of $5,000 and allows recovery of all costs and reasonable attorney's fees. Allows a health care provider to assert an affirmative defense that the individual or an individual legally authorized to consent to the vaccine voluntarily provided informed consent. *SB 177 died on House General State Calendar | HB 81 cmte report sent to Calendars 4/28*
Creates new cause of action against health care providers with statutory damages, costs, and attorney's fees. Interferes with the employer-employee relationship. Expands enforcement authority of attorney general.

HB 119: Amends Chapter 418, Government Code, to confer standing on a person to challenge in court a provision of a governor's or local entity's order relating to a declared emergency, if the provision is alleged to cause injury to the person or violate the person's federal or state constitutional or statutory rights. Requires the governor or entity to show that the order mitigates the threat to public health and is the least restrictive means of mitigating the threat. Does not appear to require the person bringing the action to prove an injury or a burden. *Never received a hearing*
Confers standing to sue without proof of injury.

HB 138: Prohibits an employer from taking an adverse employment action or discriminating against an employee based on the nondisclosure by the employee of personal health information. Imposes a civil penalty of $50,000 on an employer for a violation, enforceable by the attorney general. *Never received a hearing*
Interferes with employer-employee relationship. Imposes civil penalties enforceable by the attorney general.

HB 1032: Adds Subchapter N, Insurance Code, to prohibit a group health benefit plan issuer or a life insurance company from using an individual's COVID-19 vaccination status to discriminate against the individual in providing coverage. Purports to preempt any other law. Amends Chapter 21, Labor Code, to prohibit an employer from discriminating against a person who has not received a COVID-19 vaccination. Immunizes an employer from suit arising from a failure to mandate a COVID-19 vaccine. Prohibits an elementary or secondary school or institution of higher education from discriminating against a student who has not received a COVID vaccination. Blocks HHSC from adding COVID-19 to the list of mandatory vaccinations. *Never received a hearing*
Interferes with the employer-employee relationship. Creates a new cause of action against employers.

SB 308: Prohibits a person from discriminating against or refusing to provide a public accommodation based on the person's COVID-19 vaccination history or immunity status for a communicable disease. Enforceable by the attorney general in a suit for equitable relief. Prohibits such discrimination by a long-term care facility, health care provider, health care facility. Punishes violations by defunding, disciplinary action, and administrative penalties. Prohibits a health benefit plan from discriminating against an individual based on COVID vaccination status. Prohibits a health benefit plan from using an individual's vaccination status in rating. Prohibits a health benefit plan from discriminating against a provider based on the COVID vaccination status of the provider's patients. Prohibits an employer from discriminating against an individual based on COVID vaccination status. Prohibits a licensing agency from discriminating against a licenseholder or applicant based on COVID vaccination status. Prohibits an educational institution, hospital, or health care facility from requiring as a condition of employment to be vaccinated for COVID or to participate in vaccine administration. Creates a private right of action for equitable relief, reinstatement, back pay, and interest. Prohibits TXDOT from discriminating against a driver's license applicant based on COVID vaccination status. Abolishes vaccination requirements for schools and institutions of higher education. Eliminates emergency authorization for a physician to administer a COVID vaccination. Bars disciplinary action against child care providers or foster parents for declining to immunize a child for COVID. Bars the state or a local government from requiring COVID vaccines. Bars a health care provider from disclosing a person's COVID vaccination history. *Never received a hearing*
Interferes with the employer-employee relationship. Interferes with the right of a private business to conduct its own affairs. Creates new causes of action against businesses and health care providers.

SB 1024: Bars schools and universities from requiring COVID vaccines. Requires adverse event reporting for vaccine reactions. Bars political subdivisions from requiring COVID vaccinations. Bars a

governmental entity or private entity that accepts state money from requiring facemasks. Imposes a civil penalty of $2,000 per day and waives sovereign immunity. Bars a health care facility from refusing services to an individual based on vaccination status or post-transmission recovery of a communicable disease. Bars an employer from discriminating against an employee or applicant for failure to receive a COVID vaccination. *Died in Senate State Affairs*
Creates new causes of action against governmental entities at taxpayer expense. Imposes liability on businesses and health care providers. Interferes with the employer-employee relationship.

DOBBS/SB 8/OBERGEFELL/LGBTQ

HB 787: Amends Chapters 1, 101, and 301, Tax Code, to bar a business that assists an employee to obtain an abortion, including paying all or part of the costs associated with the procedure or traveling to the location of the service, from receiving a state or local tax incentive. Defines "tax incentive" as an "abatement, credit, discount, exclusion, exemption, limitation on appraised value, refund, special valuation, special accounting treatment, special appraisal method or provision, special rate, or special method of reporting authorized by state law or the state constitution." *Never received a hearing*
Interferes with the employer-employee relationship. Interferes with the right of a private business to conduct its own affairs. Imposes new civil and criminal liability on businesses.

HB 1280 by Oliverson/SB 953: Bars a taxable entity that provides health care coverage to its officers, directors, owners, partners, or employees for abortions, including travel, or sick leave for the purpose of procuring or recovering from an abortion from subtracting the cost of the health care in calculating its taxable margin. Requires the taxable entity to certify whether its health care benefits include that coverage. *Never received a hearing*
Exposes businesses to civil and criminal liability. Attempts to pierce ERISA pre-emption. Violates equal and uniform taxation. Violates the 5TH Amendment right against self-incrimination.

HB 1752: Creates a cause of action for damages, statutory punitive damages of $10 million, and costs and reasonable fees for knowingly treating or aiding or abetting the treatment of a minor for gender dysphoria or gender transitioning. Establishes a 20-year statute of limitations. Bars affirmative defenses. Eliminates jurisdictional or venue requirements. Provides that Texas law governs procedures in other states. Bars declaratory judgment actions challenging the constitutionality of the statute. Creates a cause of action against a state or local official, including a judge, who issues an order preventing or delaying a claimant from bringing a civil action under the statute. Waives governmental immunity. Provides mandatory attorney's fees. *Never received a hearing*
Rolls back prior tort reforms. Creates a private cause of action for damages, statutory punitive damages, costs, and attorney's fees. Extraterritorial application. Limits defenses. Violates separation of powers. Authorizes actions against governmental entities at taxpayer expense.

HB 2690 by Toth: Prohibits virtually all dissemination and uses of abortion-inducing drugs in Texas, no matter where they are sourced. Creates a wrongful death cause of action for any person. Creates apportioned liability among all manufacturers of abortion-inducing drugs if the claimant cannot identify which manufacturer made the drug. Applies to the use of the drug by a Texas resident even in other states or countries. Creates a no-injury cause of action for actual damages, statutory damages, costs, and attorney's fees. Creates a cause of action against web browsers that permit Texas residents to access information about abortion-inducing drugs. Imposes new duties on websites advertising abortion-inducing drugs. Penalizes persons who challenge these provisions by shifting the cost of litigation. Creates a cause of action against a judicial officer who bars enforcement of these provisions. *Never received a hearing*
Violates the right to travel. Rolls back prior tort reforms. Creates a no-injury private cause of action for damages, statutory punitive damages, costs, and attorney's fees. Extraterritorial application. Violates due process. Violates separation of powers. Authorizes actions against governmental entities at taxpayer expense.

HB 2813: Creates a cause of action or derivative action for breach of fiduciary duty against a governing person of a company doing business in Texas for facilitating travel of an employee outside of Texas to obtain an abortion. Provides that the business judgment rule is not a defense. *Never received a hearing*
Creates a private cause of action against businesses and a shareholder derivative action. Violates right to travel. Raises ERISA pre-emption concerns. Limits defenses.

HB 3502: Requires group health insurance plans that cover an enrollee's gender transition or procedure to cover all possible consequences of the treatment, any testing or screening necessary to monitor the mental and physical health of the enrollee on an annual basis, and any procedure or treatment necessary to reverse it. Requires the insurer to cover subsequent treatment even if the enrollee was not enrolled at the time of the gender transition procedure. Exempts ERISA plans. *Died on House General State Calendar*
Creates permanent, strict liability for insurers and businesses that provide health coverage for employees.

HB 4624: Prohibits a health care provider from performing or offering to perform on a minor a gender modification treatment or procedure. Provides that a minor may sue the health care provider and the minor's parent, legal guardian, or conservator who consented to the treatment. Authorizes a wrongful death action against a provider, which may be brought not later than the earlier of 30 years or the minor's 18TH birthday or 10 years after the minor's death. Authorizes recovery of economic damages and noneconomic damages for psychological and emotional anguish. Authorizes the attorney general to sue for a civil penalty for an intentional or knowingly violation. Never received a hearing
Raises due process concerns by extending limitations. Creates a private cause of action against health care providers. Imposes civil penalties on health care providers. Attorney general enforcement.

HB 4754: Prohibits a health care provider employed by a private or public entity from providing a gender transition procedure or treatment on an individual younger than 26 years of age or from referring a person for such treatment. Bars use of public money. Creates a criminal offense, a disciplinary offense, and a civil action for compensatory damages, equitable relief, attorney's fees and costs. Establishes a limitations period of 40 years. *Never received a hearing*
Imposes civil and criminal liability on health care providers. Violates due process by extending limitations.

HJR 58/HJR 85/SJR 70 by Hughes: Adds Art. I, § 36, to enshrine the liberty of a parent to direct the upbringing of the parent's child as a fundamental right, including the right to direct the care, custody, control, education, moral and religious training, and medical care of the child. Requires a compelling governmental interest and narrowly tailored remedy to interfere with the right. SJR 70 passed House, died in Senate State Affairs | HJR 58 and HJR 85 *Never received a hearing*
Creates a potentially expansive constitutional basis for litigation against governmental entities and businesses.

HJR 106: Adds § 36, Article I, Texas Constitution, to provide that a person has the right to travel in a vehicle using human decision-making, subject to laws or regulations relating to, among other things, "laws or regulations that impose or are subject to criminal penalties" and "restrictions on the use of a vehicle resulting from the commission of a criminal offense or other violation of a law or regulation." *Never received a hearing*
Violates right to travel. Creates vague standards that could be the basis for criminal and civil liability.

SB 511: Bars all economic and tax incentive programs authorized by the state from providing a grant or incentive to an entity that assists, refers, or otherwise encourages a woman to obtain an abortion. *Never received a hearing*
Interferes with the right of a private business to conduct its own affairs. Interferes with the employer-employee relationship. Raises ERISA pre-emption concerns. Violates the 5TH Amendment right against self-incrimination. Violates right to travel. Creates vague liability standards.

SB 1029: Imposes strict liability on a health plan issuer for the patient's medical, mental health, and pharmaceutical costs as a result of gender modification procedures or treatments covered by the plan for the life of the patient. Subjects health care providers to liability in malpractice simply for performing a gender modification treatment or procedure and makes the provider strictly liable for the life of the patient. Prohibits a health insurance policy from covering gender modification treatments. *Passed Senate, died in House State Affairs*
Imposes strict, permanent liability on health insurers and employers that provide employee health plans. Violates ERISA pre-emption. Creates a new cause of action against physicians and health care providers. Violates due process by eliminating limitations.

SB 1195: Gives the attorney general jurisdiction to prosecute criminal offenses under the Election Code, offenses relating to abortion, and offenses involving trafficking, bribery, and abuse of office. *Never received a hearing*
Expands the enforcement authority of the attorney general beyond its constitutional basis.

NULLIFICATION

HB 262: Prohibits a state agency or political subdivision from cooperating with a federal agency in implementing an agency rule that the attorney general finds violates the federal constitutional rights of a citizen or exceeds the power granted to the federal government by the constitution. *Never received a hearing*
Violates the Supremacy Clause. Violates separation of powers.

HB 384 by C. Bell/HB 2930/SB 313 by Hall: Establishes a committee of six House members and six senators to review federal government action to determine whether the action is unconstitutional. Requires the committee to report a determination that an action is unconstitutional to the legislature. Requires the legislature to vote on the determination and, upon approval by a majority of each house, send the determination to the governor for approval or disapproval. Provides that if the governor approves, the action is deemed unconstitutional and the secretary of state must notify Congress. Bars implementation or enforcement of an unconstitutional action. Gives the attorney general prosecution authority. Grants original

jurisdiction to any state court to determine in a declaratory judgment action whether a federal action is unconstitutional. *HB 384 and SB 313 Never received a hearing | HB 2930 left pending in House Judiciary and Civil Jurisprudence*
Violates the Supremacy Clause. Violates separation of powers. Expands enforcement authority of the attorney general beyond its constitutional basis.

HB 1023: Prohibits the U.S. Food and Drug Administration from regulating a clinical laboratory when the lab is performing a lab-developed test on a pathogen or agent that is the basis for a federal emergency declaration or to diagnose the health condition that is the basis for the emergency declaration. Defines the lab as a state agency but bars a state agency from regulating the lab if it did not possess that authority prior to the declared emergency. Does not relieve a lab of any state or federal liability. *Never received a hearing*
Violates the Supremacy Clause. Imposes civil liability against manufacturers of certain products.

SB 242: Bars a state agency or political subdivision from cooperating with a federal government agency to implement an agency rule that the attorney general has identified as violating a citizen's federal constitutional rights. *Died on Senate Intent Calendar*
Violates the Supremacy Clause. Violates separation of powers. Expands the authority of the attorney general beyond its constitutional basis.

SB 307: Prohibits the state or a local government from enforcing or providing assistance to a federal official or agency with respect to enforcing federal law responding to a federally declared public health emergency and imposing a prohibition, restriction, or other regulation that does not exist under Texas law. Cuts state money to a political subdivision that enforces a federal law. Provides a complaint procedure and enforcement by the attorney general with cost and attorney's fee recovery. *Never received a hearing*
Violates the Supremacy Clause. Expands enforcement authority of the attorney general. Imposes a significant liability risk on Texas employers and health care providers.

STATE PRE-EMPTION/LOCAL GOVT CONTROL

SB 149: Bars a city from regulating commercial activity. Does not apply to a uniquely local concern, local land use, protection of citizens' physical safety, regulation explicitly authorized by statute, or a measure that requires nondiscrimination in the provision of employment or service to any person on the basis of any state or federally protected class. *Died in Senate Business and Commerce*
Creates the basis for significant litigation against cities at taxpayer expense.

TORT LIABILITY/HEALTH CARE LIABILITY

HB 536: Amends § 74.301, CPRC, to index the $250,000 cap on noneconomic damages in health care liability cases by the CPI from September 1, 2003 to the time when damages are awarded in a judgment or settlement. Indexes both liability limits and financial responsibility amounts. *Never received a hearing*
Rolls back prior tort reforms.

HB 888: Adds § 74.252, CPRC, to extend the statute of limitations for a claim by a minor based on the administration of a puberty suppressing drug or cross-sex hormone to or the performance of surgery or another medical procedure on the minor for the purpose of gender transitioning or gender reassignment. Provides that such that a claim must be brought by the minor's 25TH birthday, rather than the 14TH birthday for all other health care liability claims. *Died on House General State Calendar*
Violates due process by extending limitations. Rolls back prior medical liability reforms.

HB 3063: Amends § 74.051(c), CPRC, to provide that notice of a health care liability claim tolls the statute of limitations [n]otwithstanding the inadequacy of a medical authorization provided under Section 74.052 . . ." *Withdrawn from hearing schedule*
Weakens prior medical liability reforms.

HB 3151: Imposes a civil penalty of $50,000 against a health care provider who denies or refuses to provide a treatment, procedure, or service based on the person's vaccination status. *Never received a hearing*
Imposes new liability for civil penalties against health care providers.

SB 297 by Hall: Requires hospitals to adopt and enforce a "patient's bill of rights" with enumerated responsibilities and duties. Authorizes HHSC to assess an administrative penalty of $1,000 for each violation and allows the attorney general to sue to collect the penalty. Establishes multiple bases for civil liability against hospitals and associated health care providers. *Never received a hearing*
Imposes new administrative penalties on hospitals. Attorney general enforcement. Creates potential for significant new litigation against hospitals and health care providers.

SB 298 by Hall: Creates a private right of action against a health care provider for failing to obtain an informed consent before immunizing a child. Allows recovery of attorney's fees, court costs, investigation costs, witness fees, and deposition expenses. Provides that the cap on punitive damages does not apply to the action. *Left pending in committee*
Creates private cause of action against health care providers. Lifts cap on punitive damages, thus rolling back prior tort reforms.

How Did TCJL's Statement of Conservative Business Principles Fare?

SB 299: Requires a hospital to allow a physician who is not a member of the hospital's medical staff to provide care or treatment to a patient at the hospital at the patient's request. Provides that a hospital is not liable for damages resulting from treatment provided by a non-staff physician. Does not provide immunity for other hospital providers acting under the direction of a non-staff physician. *Left pending in committee*
Creates the basis for significant litigation against hospitals and health care providers. Undermines a hospital's ability to manage liability by properly credentialing medical staff.

SB 301: Prohibits a health care licensing agency from taking adverse action against a health care provider or pharmacist that prescribes, dispenses, administers, or otherwise provides ivermectin or hydroxychloroquine to a patient. Prohibits a pharmacist from contacting a provider to dispute the efficacy of those drugs. Provides immunity to providers for negligence. *Passed Senate, Never received a hearing in House*
Interferes with the practices of medicine and pharmacy.

SB 302 by Hall: Creates a private cause of action by an employee or the employee's legal representative against an employer for damages arising from adverse health events resulting from the employer's vaccine requirement for employees. Allows recovery of attorney's fees and costs. Provides that the exclusive remedy of workers' compensation does not apply to the action. *Never received a hearing*
Creates a cause of action against an employer with attorney's fees and costs. Abrogates the exclusive remedy of workers' compensation.

SB 304: Prohibits a person from discriminating against or refusing to provide a public accommodation based on the person's vaccination history or immunity status for a communicable disease. Enforceable by the attorney general in a suit for equitable relief. Prohibits such discrimination by a long-term care facility, health care provider, health care facility. Punishes violations by defunding, disciplinary action, and administrative penalties. Prohibits a health benefit plan from discriminating against an individual based on vaccination status. Prohibits a health benefit plan from using an individual's vaccination status in rating. Prohibits a health benefit plan from discriminating against a provider based on the vaccination status of the provider's patients. Prohibits an employer from discriminating against an individual based on vaccination status. Prohibits a licensing agency from discriminating against a licenseholder or applicant based on vaccination status. Prohibits an educational institution, hospital, or health care facility from requiring as a condition of employment to be vaccinated or to participate in vaccine administration. Creates a private right of action for equitable relief, reinstatement, back pay, and interest. Prohibits TXDOT from discriminating against a driver's license applicant based on vaccination status. Abolishes vaccination requirements for schools and institutions of higher education. Eliminates emergency authorization for a physician to administer a vaccination. Bars disciplinary action against child care providers or foster parents for declining to immunize a child. Bars the state or a local government from requiring vaccines. Bars a health care provider from disclosing a person's vaccination history. Abolishes all child vaccine requirements. *Never received a hearing*
Creates multiple causes of action against health care providers, health benefit plans, employers, and governmental entities. Expands attorney general enforcement authority. Interferes with the employer–employee relationship. Interferes with the right of a private business to conduct its own affairs.

SB 305: Imposing new reporting requirements on a person who administers a vaccine. Subjects a person who violates the reporting requirements to disciplinary action by the appropriate licensing agency. Creates a no-injury cause of action for injunctive relief with recovery of attorney's fees and costs. Requires a school, institution of higher education, child care facility, state public health official, medical service, long-term care provider, and employer to accept a health exemption from a vaccine requirement without question. Provides for disciplinary action against a license holder and a no-injury cause of action for injunctive relief with recovery of attorney's fees and costs. *Never received a hearing*
Creates new administrative penalties against licensed health care providers. Creates a no–injury cause of action with attorney's fees and costs.

SB 666: Amends Chapter 154, Occupations Code, to limit the persons who may file a complaint with the Texas Medical Board regarding a license holder to the license holder's patient or a person directly involved in the care of the license holder's patient. Establishes requirements for the form of complaint. Requires the board to complete its investigation of a complaint within 180 days. Bars the board from investigating a complaint that is more than 3 years old and complaints involving care provided to a person 17 years of age or younger unless the complaint is filed on or before the person's 20TH birthday. Requires review of a complaint against a physician to be conducted by a licensed physician engaged in the active practice of medicine. Requires at least 6 of 8 members of a panel of reviewing physicians to find that the physician's conduct falls below the acceptable level of care in order for the board to discipline the physician. *Passed Senate, never received a hearing in House*
Rolls back prior medical liability reforms.

SB 1198: Adds § 74.252, CPRC, to allow a claimant to bring a health care liability claim not later than the claimant's 20TH birthday if the basis for the claim is malpractice in the provision of a puberty suppression drug or cross-sex procedure on the minor for purposes of gender transitioning or gender reassignment. *Never received a hearing*
Violates due process by extending limitations. Rolls back prior medical liability reforms.

EMPLOYMENT LAW

HB 404: Requires private employers to provide paid leave annually. Requires employers with 75 or fewer employees to provide paid leave after the second anniversary date of the date the employer hires its first employee. Provides that paid leave accrues at one hour for each 30 hours worked up to a maximum of 40 hours per calendar year. Entitles an employee to carry over 40 hours of unused leave to the next year, unless the employer pays the employee for the unused leave or offers the full amount of leave expected to accrue in the following year. Requires an employee to work at least 18 hours a week to use paid leave. Prohibits an employer from taking an adverse employment action against an employee who requests or uses paid leave or who files a complaint with the TEC. Imposes an administrative penalty of $500 for a violation involving retaliation against an employee, $100 for other violations. Imposes liability on an employer of employee who prevails in a civil action for lost wages, salary, benefits, or other compensation, as well as equitable relief, including reinstatement or promotion. Allows the court to award reasonable attorney's fees, expert witness fees, and other costs to the employee. *Never received a hearing*
Violates ERISA pre-emption. Imposes new administrative penalties against employers. Creates new cause of action with attorney's fees and costs against employers.

HB 893: Establishes a mandatory paid sick leave program for all employers. Imposes administrative and civil penalties on employers for violations. Creates a cause of action for violations. Allows an aggrieved employee to recover actual damages and authorizes a court to award attorney's fees, expert witness fees, and other costs. *Never received a hearing*
Violates ERISA pre-emption. Creates a private cause of action with attorney's fees and costs.

CONSTRUCTION LAW/FREEDOM OF CONTRACT

HB 1963: Amends § 162.001, Property Code, to provide that funds reserved by the owner during the progress of work for purposes of a mechanic's lien are trust funds. Amends § 162.003(a), Property Code, to provide that an artisan, laborer, mechanic, contractor, subcontractor, or materialman is a beneficiary of trust funds reserved under the mechanic's lien retainage requirement (§ 53.101, Property Code). Amends § 162.034, Property Code, to require a court to award costs and attorney's fees to a beneficiary who prevails in an action for misapplication of trust funds. *Committee report sent to House Calendars*
Creates a new cause of action with costs and attorney's fees against owners of real property.

HB 2657: Amends § 272.001, Business and Commerce Code, to make a construction contract between an original contractor and owner voidable if the owner does not, on written request, provide a copy of any incorporated document on or before the 10TH day before the date the contract is executed. Allows the owner to redact information in the document that is not incorporated into the contract. Imposes the same requirement on a contract between a subcontractor and an original contractor and on a contract between subcontractors. Provides that a contract provision is voidable only to the extent of its applicability to the incorporated document. Allows a party to provide the incorporated documents by a link to the document on an Internet website or file hosting service that may be accessed by the other party free of charge. Prohibits waiver of these requirements. *Committee report sent to House Calendars*
Creates significant burdens on the freedom to contract. Increases the potential for litigation against property owners and general contractors.

HB 2928: Amends § 272.001, Business and Commerce Code, to make a provision in a construction contract voidable if the provision allows a party to the contract to withhold payment owed under one contract to satisfy a claim or damages alleged under another contract. Amends § 28.003, Property Code (good faith disputes under prompt payment of contractors and subcontractors statute), to provide that a good faith dispute does not include a dispute relating to a contract, work order, contractual arrangement, or any other agreement between the parties that is not related to the contract for construction under which payment is requested or required. Amends § 162.031, Property Code (construction payments as trust funds), to provide that a trustee who retains or otherwise diverts trust funds due to a dispute, including an alleged default, arising under a construction contract other than the contract in connection with which the trust funds were received by or placed under the control or direction of the trustee has misapplied the trust funds. Allows a court to award costs and attorney's fees in an action brought under Chapter 162 for misapplication of trust funds. *Died on House General State Calendar*
Expands an existing cause of action against property owners and general contractors.

HB 3399: Bars governmental contracts with companies that engage in economic boycotts fossil fuel, mining, and agriculture operations or does business with a company that engages in any or DEI related activities. Requires the company to certify as such. *Never received a hearing*
Interferes with the right of a private business to conduct its own affairs. Interferes with freedom of contract.

HB 3661: Requires a financial institution to provide nonconfidential information to the commissioner regarding its policies for the use of scores. Requires the comptroller to publish the information. *Never received a hearing*
Interferes with the right of a private business to conduct its own affairs.

HB 4794: Adds § 21.5525, Business Organizations Code, to shift the burden of proof in a shareholder derivative action alleging an act or omission relating to the improper consideration of ESG factors to the corporation to prove the act or omission was in the best interest of the corporation. *Never received a hearing*
Encourages litigation against corporate businesses based on vague, undefined standards of liability. Endangers due process by shifting the burden of proof.

HB 4802: Adds § 21.401, Business & Commerce Code, to make it a breach of fiduciary duty for the director of an entity to "prioritize[] another consideration over the maximization of the value of the corporation's shares" in discharging the director's duties. *Never received a hearing*
Creates a new cause of action against directors of business entities based on vague, undefined standards of liability.

SB 1621/HB 3846: Prohibits a state agency from awarding a contract for goods or services to a contractor or subcontractor unless they register with and participate in the E-verify program. Requires all employers to register with and participate in the E-verify program as a condition of a license, certificate, registration, permit, or other authorization that is required for a person to practice or engage in a particular business, occupation, or profession. Requires political subdivisions to participate in E-verify and terminate employees who don't comply. *SB 1621 died on Senate Intent Calendar | HB 3846 Never received a hearing*
Imposes potentially costly and burdensome liability on businesses. Implicates substantive due process by threatening a licensed professional's or business's authorization to do business in the state.

SB 1683: Adds § 341.401(b), Finance Code, to bar an authorized lender or other person from denying credit to an organization using an ESG score, DEI standards, or entities associated with a legal industry, such as agriculture, fossil fuels, firearms, or free-speech media platforms, or a religious institution. *Never received a hearing*
Interferes with the right of a private business to conduct its own affairs. Creates the potential for liability based on vague, undefined standards.

PROCEDURE/DISCOVERY/PRIVILEGES

HB 955: Amends § 18.001, CPRC, to exempt a medical bill or other itemized statement of a medical or health care service charging $50,000 or less, an expense affidavit is not required to support a finding of fact that the amount charged was reasonable and necessary. *Left pending in House Judiciary and Civil Jurisprudence*
Rolls back prior tort reforms.

INSURANCE

HB 1320: Amends Chapter 1952, Insurance Code, to: (1) for purposes of an unfair settlement practices claim (§ 541.060), allow an insurer to provide notice of a claim for uninsured or underinsured motorist coverage by providing written notice to the insurer that reasonably informs the insurer of the facts of the claim; (2) provide that a judgment or other legal determination establishing the uninsured or underinsured driver's liability or the extent of the insured's damages is not a prerequisite to recovery in a bad faith action with respect to a UM/UIM claim; and (3) provides that in a UM/UIM claim, the only extracontractual cause of action available to an insured is an action for bad faith under § 541.151 to recover damages under § 541.152. *Never received a hearing*
Expands liability for automobile insurers by overturning Texas Supreme Court precedent.

HB 2021/SB 1137: Requires a pharmacy benefit manager that administers a self-funded employer sponsored benefit plan (ERISA plan) to submit to state regulation under Chapter 1369, Insurance Code. *HB 2021 Left pending in House Insurance | SB 1137 left pending in Senate Health and Human Services*
Violates ERISA pre-emption.

HB 5048/SB 2149: Adds § 541.054(b), Insurance Code, to make it an unfair method of competition or deceptive act or practice in the business of insurance to commit an act of boycott, coercion, or intimidation against a person who engages in businesses relating to fossil fuel energy, timber, mining, agriculture, arms and ammunition, or a business that does meet ESG criteria. *Never received a hearing*
Creates a private cause of action against insurers based on vague, undefined standards.

How Did TCJL's Statement of Conservative Business Principles Fare?

WORKER'S COMPENSATION

HB 102/SB 1352: Amends § 408.001(b), Labor Code, to permit a decedent's estate to recovery exemplary damages based on the employer's gross negligence. *HB 102 passed House, never received a hearing in Senate | SB 1352 Never received a hearing*
Expands liability of workers' compensation insurers and employers.

HB 790 by Patterson (R-Frisco): Amends § 408.0041, Labor Code, to require the first request of the carrier, injured employee, or DWC for an examination by a designated doctor to include a request to the designated doctor to provide an opinion of the extent of the compensable injury. Amends § 409.021, Labor Code, to require the carrier contesting a claim to notify the injured employee and DWC of the specific reasons for the contest, including any disputes in the cause of the injury, the extent of the injury, or the treatment. Amends § 409.021, Labor Code, to provide that the carrier waives its right to contest or deny the extent of the specific injury claimed by the injured worker or reasonably reflected in a review of the worker's medical records if it does not comply with the 15-day written notice of injury requirement (applies only to first responders and custodial officers under § 607.051, Government Code). Amends § 409.021, Labor Code, to provide that the carrier waives its right to contest or deny the extent of the specific injury claimed by the injured worker or reasonably reflected in a review of the worker's medical records if it does not contest or deny the extent of a compensable injury in writing by the 60TH day after which the carrier had notice of the claimed injury (applies to all injured workers). Adds § 417.005, Labor Code, to make the carrier liable for the injured worker's reasonable and necessary medical expenses if the carrier denies a claim that is later found to be compensable in an administrative hearing. Amends § 410.156, Labor Code, to allow a party or witness to appear at an administrative hearing remotely if good cause exists and to allow an attorney who represents a party in a contested case hearing to appear remotely (no good cause requirement). *Passed House, never received hearing in Senate*
Rolls back prior workers' compensation reforms. Reintroduces attorney involvement at the early stages of the process. Allows remote proceedings without the consent of the parties.

HB 3977: Adds § 408.0011, Labor Code, to authorize an employee who is the victim of sexual assault to bring a cause of action against the employer if the employee's injuries arise from the employer's negligence. Died on House General State *Calendar*
Creates an exception to the exclusive remedy of workers' compensation.

EMINENT DOMAIN

HB 2318: Amends § 21.02(a), Property Code, to block a condemnor from taking possession of the property for 180 days from the date of the special commissioners' award, unless the parties agree otherwise. Permits a city, irrigation district, water improvement district, or water power control district to take immediate possession if it pays or deposits the amount of the award. Never *received a hearing*
Undermines agreed eminent domain reforms enacted during the 2021 session.

HB 2906: Amends § 21.047, Property Code, to require the condemnor to pay expenses and fees (in addition to costs) incurred by the property owner if either the commissioners or a court award more than the condemnor offered. Makes the same change with regard to failure of the condemnor to make a bona fide offer. *Never received a hearing*
Undermines agreed eminent domain reforms enacted during the 2021 session.

HB 3601/SB 2311: Amends § 21.0113(b), Property Code, to change the bona fide offer requirements to specify that the final offer must be made on or after the 30TH day after the initial offer is the offer is equal to or higher than the initial offer, or the 60TH day if the final offer is lower than the initial offer. *Never received a hearing*
Undermines agreed eminent domain reforms enacted during the 2021 session.

SB 201 by Eckhardt: Amends § 21.041, Property Code, to require special commissioners to admit evidence of the market value of the property's highest and best use without consideration of the property's conservation easement status. Provides that if the entire tract or parcel that is subject to a conservation easement is condemned, the damage to the property is the market value of the property's highest and best use without consideration of the easement. Provides that if part of a tract subject to a conservation easement is condemned, the commissioners shall determine damage by estimating the extent of the injury and benefit to the owner based on the property's highest and best use without the easement status and including the effect of the taking on the owner's remaining property, based on the remainder's highest and best use without consideration of the easement. *Never received a hearing*
Undermines agreed eminent domain reforms enacted during the 2021 session.

SB 1512: Amends §21.0111(a), Property Code, to make the entity liable for the property owner's attorney's fees if the entity fails to disclose all appraisal reports produced or acquired by the entity relating specifically to the owner's property in the 10 years preceding the date of the offer. *Passed Senate, never received hearing in House*
Undermines agreed eminent domain reforms enacted during the 2021 session.

SB 1513: Amends § 402.031(c), Government Code, to add to the LOBR: the condemning entity's responsibility for any damages arising from the survey, the property owner's option to refusing permission for the entity to enter the property for the survey, the property owner's right to negotiate the terms of the entry, and the entity's right to sue for a court order authorizing the entry. Further requires the entity (other than TXDOT) that makes an initial offer that includes real property that the entity does not seek to acquire by condemnation to separately identify such property in the initial offer and make a separate offer for such property. Adds § 21.01101, Property Code, to require a survey permission form to state that the owner has a right to refuse, that the entity has a right to sue for entry, that the owner has a right to negotiate terms of entry, and that the entity has a responsibility for damages. Amends § 21.0112(a), Property Code, to require provision of the LOBR at the time the entity makes the initial offer. Adds § 21.0115, Property Code, to require the entity (other than TXDOT) that makes an initial offer that includes real property that the entity does not seek to acquire by condemnation to separately identify such property in the initial offer and make a separate offer for such property. *Passed Senate, never received hearing in House*
Undermines agreed eminent domain reforms enacted during the 2021 session.

CIVIL RIGHTS

HB 1006: Prohibits an institution of higher education from funding or promoting diversity, equity, and inclusion. Authorizes an action for injunctive relief plus attorney's fees and costs. *Never received a hearing*
Creates a new cause of action against institutions of higher education at the expense of taxpayers and students who pay tuition.

HB 1046: Prohibits an institution of higher education from requiring an employee or student "to identify a commitment to or make a statement of personal belief supporting any specific partisan, political, or ideological set of beliefs," including diversity, equity, and inclusion. Likely creates an implied cause of action. *Never received a hearing*
Creates a new cause of action against institutions of higher education at the expense of taxpayers and students who pay tuition.

JUDICIAL MATTERS, ADMINISTRATION

HB 2139: Amends the Code Construction Act (Chapter 311, Government Code) to require courts, when interpreting a statute, to enforce the text as written and in accordance with the meaning that the words of the statute would have to an ordinary speaker of the English language (i.e., prohibits so-called "intentionalism"). Provides that severability applies down to the word level in a statute (i.e., every word, phrase, clause, or sentence is severable from every other one). Attempts to limit judicial interpretations of the constitutionality of the statute to the parties in the specific case. Amends Chapter 312, Government Code (construction of statutes), to make the same changes and to bar courts from referring to legislative intent. *Postponed to 2025 after second reading*
Violates separation of powers.

ADMINISTRATIVE PROCEDURES

HB 1947: Requires a judge or administrative law judge to interpret a statute, rule, or other guidance issued by a state agency de novo, without deference to an agency's interpretation of the provision. Requires a judge or ALJ to resolve the question of an ambiguous provision of state law in favor of limiting state agency authority. *Died on House General State Calendar*
Violates separation of powers.

SB 1432/HB 2778: Makes numerous changes to the State Office of Administrative Hearings. Authorizes the chief administrative law judge to appoint one or more deputy chief administrative law judges. Directs SOAH to use the technology standards of DIR and the judicial committee on information technology. Authorizes an ALJ assigned to preside over a contested case or ADR proceeding to order the use of videoconferencing technology to conduct proceedings. Authorizes SOAH to deliver a decision or order using an electronic filing system. *SB 1432 Never received a hearing | HB 2778 committee reporting sent to House Calendars*
Allows remote proceedings, including contested case hearings, without the consent of the parties.

Part 4 of 5

Eminent Domain Update

88th Texas Legislature

The Coalition for Critical Infrastructure worked for three sessions to pass meaningful eminent domain reform. In the 87th Legislative session (2021), we were finally able to do so under the leadership of then-Chairman Joe Deshotel, Representative DeWayne Burns and Senator Lois Kolkhorst. Almost all the stakeholders on both sides of the issue agreed to a legislative moratorium after six years of negotiation.

This session (2023), we are pleased to report that while several bills affecting eminent domain were filed – 10 in the House and 5 in the Senate – none of them made it to the Governor's desk. A complete list is below.

Two bills, however, did pass the Senate. Below is CCI's opposition letter which was delivered to the Senate. The bills were referred to House Land and Resource Management, now chaired by Representative DeWayne Burns. True to his word, Chairman Burns allowed the bills to die without a hearing.

Infrastructure Fuels the Texas Economy

COALITION FOR CRITICAL INFRASTRUCTURE

April 3, 2023

To: Chairman and Members
Senate State Affairs Committee

From: Coalition for Critical Infrastructure

Subject: Opposition to SB 1512 and SB 1513

On behalf of the Coalition for Critical Infrastructure (CCI), we ask that you oppose SB 1512 and SB 1513, both relating to aspects of the eminent domain process.

Respectfully, we collectively worked for **six years** with all the stakeholder groups to address landowner complaints with the eminent domain process. Although we were not able to reach consensus on every issue, we were able to make meaningful changes last session resulting in the passage of HB 2730 by Representatives Deshotel and Burns in the House and Senator Kolkhorst in the Senate.

With the passage of HB 2730, most of the stakeholders agreed to allow the new provisions to be implemented and would refrain from further changes in the near term. These bills simply retread language where we could not reach consensus. We ask that you give deference to the six years of work, allow the changes made in HB 2730 to be fully realized, and oppose SB 1512 and SB 1513.

TXOGA · Texas Pipeline Association · TEXAS · AECT · TML TEXAS · REGIONAL WATER · PPRA · TEXAS CIVIL JUSTICE LEAGUE

Eminent Domain Bills – 88th Legislative Session

HB 376 by Rogers (R-Graford): Amends § 402.031, Government Code, to require the landowner bill of rights to notify the property owner of the owner's right to submit to the appraisal district a report of decreased value for the owner's remaining property after the taking. Must include the comptroller's decrease of value form.

HB 695 by Rogers (R-Graford): Bars a governmental or private entity from taking private property through the use of eminent domain for development of a wind project.

HB 2284 by King (R-Canadian): Amends § 21.101(a), Property Code, to permit a person to redeem real property taken by eminent domain if the use of the property is changed from the public use for which it was acquired to any other use during the life time of: (1) the person from whom the property was acquired; or (2) a person who is related within three generations by blood, marriage, or adoption to the person from whom the property was acquired. Makes conforming changes in §§ 21.102, 21.1021(a), and 21.103(a), Property Code.

HB 2318 by Zwiener (D-Driftwood): Amends § 21.02(a), Property Code, to block a condemnor from taking possession of the property for 180 days from the date of the special commissioners' award, unless the parties agree otherwise. Permits a city, irrigation district, water improvement district, or water power control district to take immediate possession if it pays or deposits the amount of the award.

HB 2628 by Moody (D-El Paso): Amends § 21.103, Property Code, to require an entity to offer previously condemned property for repurchase at the amount the entity was ordered to pay the owner in the final judgment in the condemnation proceeding through which the entity acquired the property, less any amounts paid by the entity to the property owner as costs of fees, damages to the property resulting from the entity's temporary possession, or any amount associated with a change in value of the owner's remaining property, the market value of groundwater rights, any amount paid to the property owner to avoid litigation, or any amount otherwise paid to the property owner for a purpose other than to compensate the owner for the value of the property condemned.

HB 2906 by Hayes (R-Denton): Amends § 21.047, Property Code, to require the condemnor to pay expenses and fees (in addition to costs) incurred by the property owner if either the commissioners or a court award more than the condemnor offered. Makes the same change with regard to failure of the condemnor to make a bona fide offer.

HB 3601 by Lozano (R-Kingsville)/SB 2311 by Hinojosa (D-McAllen): Amends § 21.0113(b), Property Code, to change the bona fide offer requirements to specify that the final offer must be made on or after the 30TH day after the initial offer is the offer is equal to or higher than the initial offer, or the 60TH day if the final offer is lower than the initial offer.

HB 3669 by Rogers (R-Graford): Waives governmental for conservation and reclamation districts that exercise the power of eminent domain to acquire real property outside the district.

HB 4760 by Jones (D-Houston): Amends § 21.0113, Property Code (bona fide offer), to require the offer to include a replacement value appraisal and an appraisal of expected moving expenses. Gives a property owner who enters into a voluntary agreement with the state a right of first refusal on partial acquisitions or on any offers for private ownership of the property from the state.

HJR 26 by Schofield (R-Katy): Amends Art. III, § 52j, Texas Constitution, to require an entity, including a private entity, with eminent domain authority to offer to sell property acquired by eminent domain to the owner or owner's heirs, successors, or assigns, for the price the entity paid at the time the property was acquired by eminent domain.

HJR 81 by Schofield (R-Katy): Amends Art. I, § 17(b), Texas Constitution, to exclude from the definition of "public use" the taking of property by a public entity for transfer to a private entity for any purpose.

SB 201 by Eckhardt (D-Austin): Amends § 21.041, Property Code, to require special commissioners to admit evidence of the market value of the property's highest and best use without consideration of the property's conservation easement status. Provides that if the entire tract or parcel that is subject to a conservation easement is condemned, the damage to the property is the market value of the property's highest and best use without consideration of the easement. Provides that if part of a tract subject to a conservation easement is condemned, the commissioners shall determine damage by estimating the extent of the injury and benefit to the owner based on the property's highest and best use without the easement status and including the effect of the taking on the owner's remaining property, based on the remainder's highest and best use without consideration of the easement.

SB 1441 by Springer (R-Muenster)/HB 3470 by Spiller (R-Jacksboro): Authorizes the attorney general to initiate an eminent domain proceeding to acquire real property owned by an alien or foreign entity relating to critical infrastructure if the attorney general has reason to believe and shows that the real property is being used in a manner that violates state or federal law or creates a risk to the state's critical infrastructure. Gives the General Land Office control and management of condemned property.

SB 1481 by Creighton (R-Conroe): Gives the Facilities Commission the power of eminent domain for purposes of acquiring real property for the construction of a border wall.

SB 1512 by Schwertner (R-Georgetown): Amends §21.0111(a), Property Code, to make the entity liable for the property owner's attorney's fees if the entity fails to disclose all appraisal reports produced or acquired by the entity relating specifically to the owner's property in the 10 years preceding the date of the offer.

SB 1513 by Schwertner (R-Georgetown): Amends § 402.031(c), Government Code, to add to the LOBR: the condemning entity's responsibility for any damages arising from the survey, the property owner's option to refusing permission for the entity to enter the property for the survey, the property owner's right to negotiate the terms of the entry, and the entity's right to sue for a court order authorizing the entry. Further requires the entity (other than TXDOT) that makes an initial offer that includes real property that the entity does not seek to acquire by condemnation to separately identify such property in the initial offer and make a separate offer for such property. Adds § 21.01101, Property Code, to require a survey permission form to state that the owner has a right to refuse, that the entity has a right to sue for entry, that the owner has a right to negotiate terms of entry, and that the entity has a responsibility for damages. Amends § 21.0112(a), Property Code, to require provision of the LOBR at the time the entity makes the initial offer. Adds § 21.0115, Property Code, to require the entity (other than TXDOT) that makes an initial offer that includes real property that the entity does not seek to acquire by condemnation to separately identify such property in the initial offer and make a separate offer for such property.

Special Session Report

Texas Legislature prohibits vaccine mandates

The third-called special session of the 88th legislature passed a bill relating to the prohibition of vaccine mandates. The bill sets an ominous precedent for the future and puts businesses and health care providers on notice that, when it comes to appeasing somebody's electoral base, the Legislature will now feel free to substitute its judgment for the people who actually run businesses and deliver health care to our citizens.

SB 7 prohibits an employer from requiring an employee, contractor, applicant for employment, or applicant for a contract position to be vaccinated against COVID-19 as a condition of employment. It further prohibits an employer from taking an "adverse action" for refusal to be vaccinated. Incredibly, this goes for all employers, including hospitals, medical practices, and other health care facilities that treat vulnerable patient populations, such as premature infants in neonatal intensive care units and immune-compromised patients in skilled nursing facilities.

The bill does purport to allow a hospital or physician to enforce a "reasonable policy" requiring the use of personal protective equipment by unvaccinated personnel, which is a little like closing the corral gate when the horses have already bolted. It will also put providers in the position of having to justify themselves—as if they should have to—in response to the inevitable complaints designed solely to harass providers with investigations.

Which brings us the question of complaints and investigations. SB 7 puts the Texas Workforce Commission in charge of the witch hunts. If somebody files a complaint against an employer, the commission "shall" investigate. If a complaint against a health care provider comes in, the commission will "consult with" the DSHS "in determining if a [PPE] policy [] was reasonable," whatever that means. If the commission wants to bring the attorney general into the matter, it may request the OAG to bring an action for injunctive relief against the employer. This part of the bill is better than the filed version, which gave the OAG authority to file suit against employers on its own motion, but it remains to be seen just how the commission will handle this discretionary authority (that is, if it is ever used).

The House committee version of SB 7 originally increased the civil penalty from between $1,000 and $10,000 per violation to a flat $10,000, but the bill was amended on the floor to set the civil penalty at $50,000 per violation. This unprecedented penalty sets a record for the highest possible penalty against a Texas business anywhere in Texas law. In mitigation, the penalty won't apply if the employer reinstates the complainant with back pay. One way or the other, the commission may recover "reasonable investigative costs," whatever those may be. There is nothing in the bill that allows an employer to recover the employer's costs if the complaint was groundless or filed for the purpose of harassment. The Senate concurred in House amendments, Governor Abbott signed SB 7 on November 10, 2023, and the bill takes effect on February 6, 2024.

This bill is terrible public policy on multiple levels, regardless of whether a single employer is ever prosecuted. There is no obvious reason, for example, why it should be limited to COVID-19 vaccinations. Indeed, anti-vax advocates want SB 7 expanded, so we'll see what happens now or in the future on that score. Worst of all, the Legislature has decided that it can impose a blanket mandate on employers without any consideration of the individual circumstances under which employers operate in the real world. In so doing, it has determined that partisan political interests outweigh everything else when it comes to how the private sector sees fit to conduct its business. Unfortunately, forcing businesses and health care providers to carry out the Legislature's wishes on any number of "social" issues on pain of losing their livelihood has become all too commonplace. It is only a matter of time before the burden becomes unsustainable. It also cuts both ways. When the political winds eventually swing around, the precedent will be there still.

The bill fails virtually every one of TCJL's conservative business principles. It creates no-injury business liability and a regulatory cause of action. It undoes a central feature of the Pandemic Liability Protection Act, which shields businesses from liability for complying with federal or other mandates. It obviously imposes new civil liability on businesses. And it grossly interferes with a business's freedom to contract with whom it pleases and on what conditions it pleases.

There's no sugar-coating it or explaining it away on the basis that COVID is "over" anyway. It doesn't matter whether it's "over." What matters is that the Legislature is putting another anti-employer law on the books.

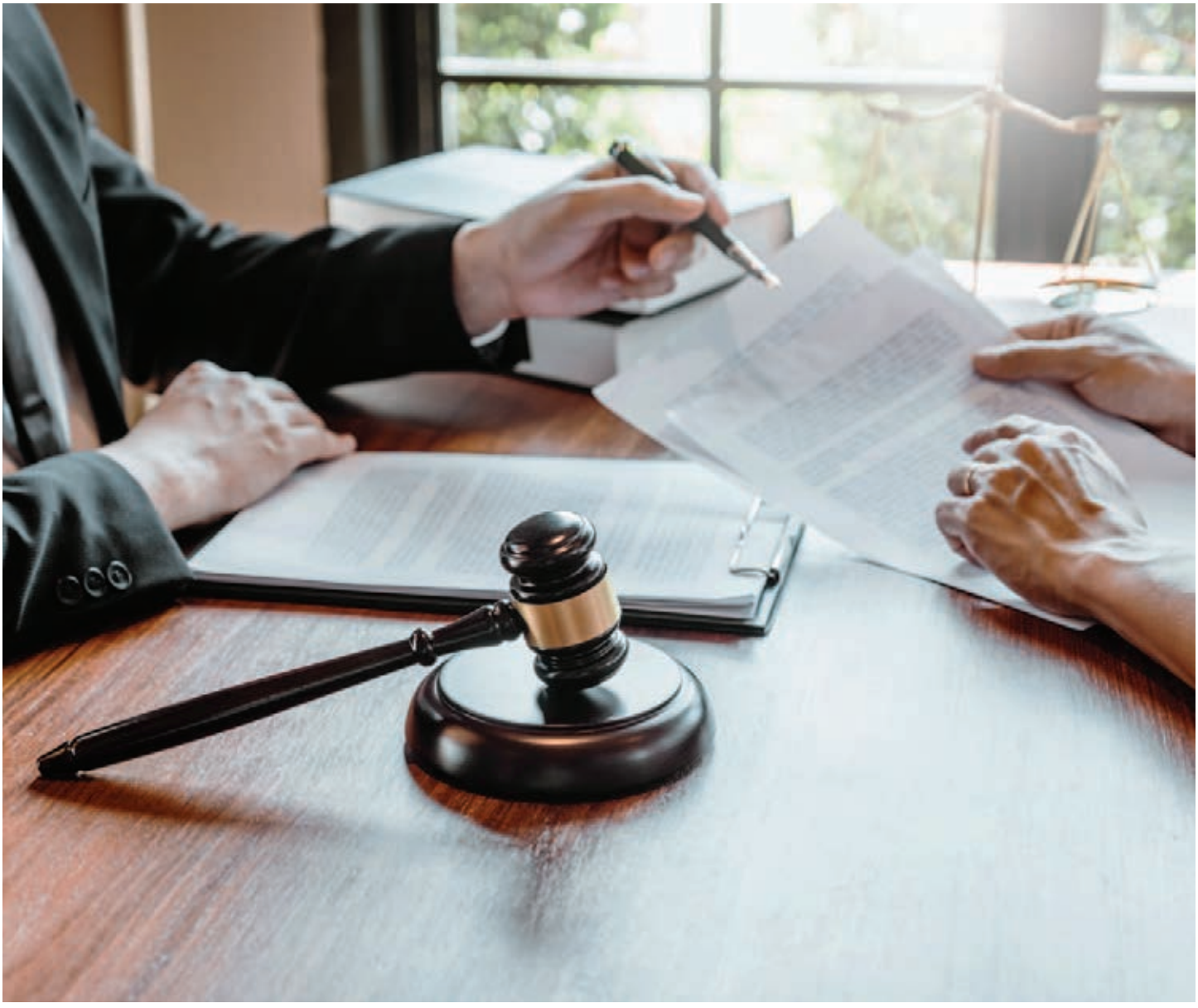
Texas has long prided itself on its business-friendly regulatory environment. SB 7 and the policy it represents takes us in the opposite direction.

TCJL Requests Rulemaking on Third Party Litigation Funding (TPLF)

In a letter to Chief Justice Hecht in late 2022, TCJL requested that rulemaking be initiated to require some form of disclosure of the existence of third-party litigation funding agreements to the court and parties under appropriate circumstances. Our letter asks the Chief Justice to refer the issue to the Supreme Court Advisory Committee for study and the promulgation of a proposed rule to the Texas Rules of Civil Procedure.

Though rulemaking through the SCAC can be a protracted process, it would put the very real and substantive ethical issues posed by TPLF before sitting judges, representatives of both sides of the trial bar, the State Bar of Texas, and in-house and external corporate counsel. If the Court refers our request, we can expect a robust and perhaps contentious debate over these issues and the extent to which TPLF agreements should be discoverable in a particular case and by whom. Our request makes no distinction between consumer and commercial litigation financing for the simple reason that the ethical considerations are the same.

As of June 30, 2023, the issue has not yet been referred to the Supreme Court Advisory Committee. A copy of the letter to the Court is available on www.tcjl.com.



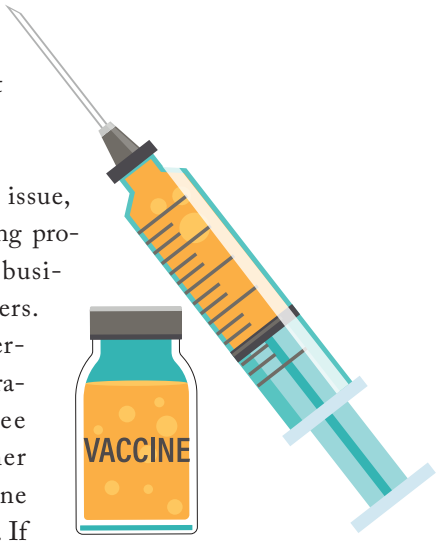
Pandemic Liability Two Years On:
What the Legislature Did and Didn't Do

TCJL's Pandemic Protection Act, enacted in 2021 during the height of the emergency, set a standard for the rest of the nation. Though we will never know how much litigation the Act prevented from happening, we do know that its passage gave businesses and health care providers the assurance that they could manage the effects of the pandemic without worrying about a rash of lawsuits.

But even before the ink of the Governor's signature on the Act was dry, the virulent political backlash against pandemic mitigation efforts had begun. In a special session immediately following the 2021 session, legislators introduced proposals to roll back the liability protections for businesses and employers that some had just voted for. TCJL and its sister organizations defeated these proposals, but only just. Almost overnight, the narrative changed from promoting the idea of staying out a private business's decisions about its operations to one of aggressive state intervention in those decisions. Fortunately, the Legislature left town before any damage could be done, and then subsequently eased off.

Despite the pandemic receding in the rearview mirror, a number of legislators, fresh off the 2022 election cycle, came to Austin in January spoiling for a fight. Much of the kerfuffle involved the extent of the Governor's emergency powers and whether the Legislature should be involved in their future exercise. The Governor even asked for legislation curbing some of those powers, and the legislators on both sides of the aisle appeared eager to oblige. Various proposals were mooted, but the idea that seemed to have the most traction involved the duration of an gubernatorial emergency declaration and requiring the Legislature to approve any further extensions. In the event, nothing of this sort got very far along in the process (there weren't even hearings on it in the House).

The reasons that these proposals failed are not hard to see. As things stand today, the Governor has the authority, should he choose to exercise it. He is politically accountable for those decisions and bears the brunt of the inevitable reaction. In Governor Abbott's case, the ease of his re-election in 2022 indicates that voters were generally unfazed by the decisions he made during the pandemic. This validation took a lot of the wind out of the sails of emergency power reform, despite the clamor in some quarters of the Legislature. Additionally, why on earth would the Legislature voluntarily undertake to share the responsibility for emergency orders that may later become politically unpopular? It's one thing to grouse and complain about what the Governor did or didn't do. It's another thing to have to own it yourself.



Regardless of the fate of that issue, however, another line of thinking produced a significant threat to businesses and health care providers. The threat involved state intervention in private business operations, the employer-employee relationship, and, among other things, the practice of medicine and the provision of health care. If you kept up with our weekly tracking list during the session, you know what these were and how we felt about them. Fortunately, what ended up getting through the process did not go this far, but, again, it was a close-run thing.

Only two bills made it to the Governor's desk: SB 29 and HB 609. SB 29 prohibits a governmental entity from adopting face-covering, vaccine, or school or business closure mandates. What's odd about this bill is its exceptions. State-supported living centers, prisons and jails, and government-owned hospitals and health care facilities are exempted from the ban on face-covering mandates. SB 29 would thus seem to validate mask mandates to mitigate the spread of infection, at least under limited circumstances. But what is the difference between a prison and school (in the sense that they pack a lot of people in a small space, that is)? How about a courtroom? A driver's license facility or tax office (which are always packed to the gills)? And, of course, any private entity that serves the public, from huge indoor sporting events, concerts, movie theaters, and private hospitals to restaurants, bars, and retail outlets?

Here's the rub. Many proponents of SB 29 wanted to see the prohibitions extended to private entities. Together with our allied organizations, we bucked against that as unwarranted government overreach into the private sector. Fortunately, and to the credit of cooler heads in the Legislature, the bill stopped

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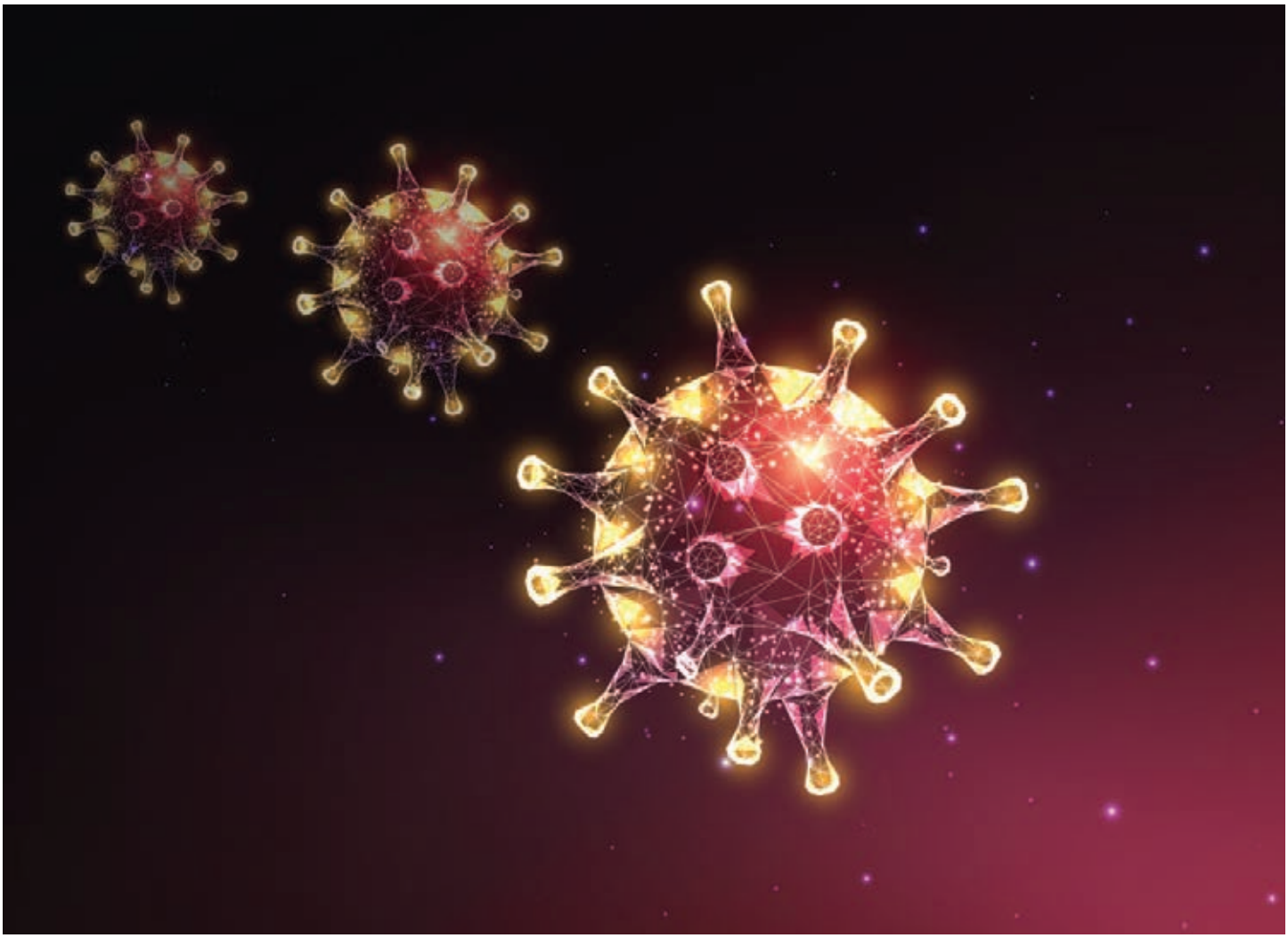


short of that. But there is really no rhyme or reason to the SB 29 policy of prohibiting certain public health measures in some contexts but not in others. Masks, vaccines, and limiting contact between people either work the same for everybody or they don't. The Pandemic Liability Protection Act recognizes this by shielding businesses and health care providers from being sued for injuries caused by a pandemic disease as long as they comply with some applicable government guidance. SB 29 appears to ensure that there won't be any such guidance from the state or local governments (though it can't control the feds) in the event of a future pandemic. That makes the enactment of the Act doubly important because it respects the judgment of businesses and health care providers about what's best for them, their employees, their customers, and their patients. If SB 29 were ever extended, as some want to do, it would negate the very basis of the Act we worked so hard to pass.

While it is true that the extension of SB 29 to private entities would not (at least we hope) abrogate the liability protections of the Act, it is equally true that it would likely put businesses and health care providers in the middle of a power struggle between the state and federal governments. SB 29 appears to acknowledge that in part, as it gives deference to rules adopted by the Centers for Medicare and Medicaid Services as to vaccines. But perhaps even worse than that, it would pre-determine a business's response to a future pandemic without regard to the exigencies of the situation. The problem with novel viruses is that they are novel. Our response evolves with our knowledge, but laws like SB 29 disregard the very real possibility that the next pandemic will be more lethal than the previous one.

Like it or not, most businesses and health care providers worry a lot more about the health and welfare of their employees,

customers, and patients than they do about political posturing, and they certainly don't want to be treated like political footballs to be kicked around because consultants and pollsters think it will play well to primary voters. Case in point: the very near success of SB 177 this session. This bill died on the last House calendar. Had it passed, it would have contradicted SB 29 and upended some of the core protections of the Pandemic Liability Act. In its final form as reported from House committee, SB 177 prohibited a person from "compel[ling] or coerc[ing] an individual lawfully residing in this state into obtaining a medical treatment involving the administration of a COVID-19 vaccine, including a COVID-19 vaccine approved or authorized by the [FDA], contrary to the individual's vaccine preference." Let's pause a moment and think about what this language means. Suppose a private employer requires employees to obtain a vaccine as a condition to performing certain functions. Presumably, such a requirement would constitute "compulsion" or "coercion." The bill further barred an employer from "tak[ing] an adverse action or impos[ing] a penalty of any kind against an individual" for refusing to get the vaccine. Under the introduced version of the bill, an aggrieved employee could have sued his employer for a minimum of $5,000 in statutory damages, court costs, litigation expenses, and attorney's fees. It also lifted the cap on punitive damages. The final version of the bill handed the attorney general enforcement authority through injunctive relief, so at least the bill was improved in that respect. But even so, by prohibiting an "adverse action," the bill arguably created an unlawful employment practice that an employee could litigate. One way or the other, SB 177 put the employer on the liability hook, thus rolling back the liability protections enacted in 2021.

But SB 177 did not stop there. It provided that if a person was "compelled" or "coerced," that deprived the person of the capacity to grant informed consent for the vaccine. So, if that same employee goes to a health care provider, signs the consent form, gets the vaccine, and later decides that doing so was "contrary to the individual's vaccine preference," not only is the employer on the hook, but so is the provider. How in the name of all that is sacred could a health care provider be expected to know that someone coming in for a vaccine was allegedly "coerced"? And in that case, SB 177 retained the private cause of action against the provider for statutory damages and all the associated costs and fees. True, the bill states further that the provider may assert an affirmative defense that the individual voluntarily gave consent, but an affirmative defense is a very different animal than immunity from liability. It doesn't stop the provider from being sued, responding to discovery, and being exposed to the unpredictable risks inherent in litigation. Moreover, nothing in SB 177 allowed a defendant who prevailed in litigation to recover the costs of defending itself against specious allegations.

The very existence of a pot of money for a claimant and the claimant's attorney, which SB 177 created, would have guaranteed the formation a litigation industry in some form or fashion. It is an unfortunate fact that, upon discovery of the potential for a cash windfall, some folks' "vaccine preference" would change down the road, especially if they were bombarded with advertising urging them to contact lawyer X if their employer or somebody else encouraged or required them to get vaccinated.

Finally, SB 177 would have allowed an employee of or other person providing or receiving training in a health care facility to claim a vaccine exemption based on a "sincerely held religious belief" or recognized medical condition. Under current law, parents may request vaccine exemptions for their minor children on religious or medical grounds, and anyone may seek a medical exemption statement from a licensed physician. SB 177 thus extended the religious belief exemption and targeted health care facilities: the very place where vaccines are probably the most important.

The upshot of all of this is that legislative attempts to subject businesses and health care providers to state control and to subject them to liability for doing their jobs is likely to continue and intensify as the culture wars rage on. Just because these and other bills didn't pass this time doesn't mean that they never will. Even worse than that, they set a terrible precedent for the future. Once it becomes acceptable for the state to intrude itself directly into private business and health care practice in one area, it becomes a whole lot easier to expand that intrusion into others. We have already seen it happen with respect to the treatment of gender dysphoria in SB 14, which, similar to SB 177, targets both employers and health care providers. And God forbid the visitation of another, more virulent pandemic in our lifetime. That's why we have to protect the protections we gained in 2021, as well as fight any effort to penalize the independent judgment of business owners and health care practitioners.

TCJL Amicus Report

1. The Ohio Casualty Insurance Company v. Patterson-UTI Energy, Inc.; Patterson-UTI Management Services, LLC; Patterson-UTI Drilling Company, LLC; and Marsh USA, Inc. (No. 23-0006)

This case arose from a personal injury action against the Patterson companies. Patterson had obtained an excess policy from Ohio Casualty that provided coverage after the primary policy and two other excess policies were exhausted. They were exhausted, and Patterson made a claim on the Ohio Casualty policy for damages awarded against them and defense expenses (over $4 million). Ohio Casualty paid the indemnity for the damages but declined to reimburse Patterson's defense expenses on the basis that its policy excluded defense costs. Patterson sued for breach of contract and bad faith under Chapter 542, Insurance Code. The trial court awarded summary judgment to Patterson. Ohio Casualty appealed.

The court of appeals affirmed, holding that the "following form" language in the excess policy controlled in the absence of "clear and unambiguous language" excluding defense costs, despite the policy's use of different terminology to describe a covered "loss." The court appealed to public policy concerns, worrying that "Ohio Casualty's argument . . . could conceivably open the door for vague language in excess policies to implicitly diverge from primary policies in "follow form" excess policies with far-reaching financial consequences for insureds." It seems equally conceivable, however, that the court's reasoning could lead to excess policies dropping "follow form" provisions altogether if those provisions can be interpreted to override other conditions of coverage in the policies.

TCJL's letter asks SCOTX to accept review and clarify two issues: (1) whether the court of appeals properly grafted the underlying policy's definition of "ultimate net loss" onto the excess policy's plain meaning use of the terms "loss" and "damages," and (2) whether the ordinary meaning of "damages" includes defense costs and attorney's fees. The latter issue transcends insurance contracts and is of general interest to the business community. We hope that SCOTX sees it that way and takes the case.

The petition for review is in the merits briefing stage.

2. American Honda Motor Co., Inc. v. Milburn (No. 21-1097)

This case arose from a collision between a Honda Odyssey, driven by an rideshare driver, and a pick-up truck. One of the passengers in the Uber was sitting in the middle seat of a fold-down third row. This particular seat design, which is common in a variety of SUVs, has a federally approved safety design which requires the lap belt to be anchored to the seat (otherwise the seat does not fold flat). The manufacturer specifically instructs and warns owners to make sure the belt is anchored before passengers sit there. The driver did not do this, and the plaintiff was injured when he ran a red light and hit the truck. At trial, the plaintiff's seatbelt expert admitted that the seatbelt in question met the standard. There was also no evidence that any other injuries involving the seatbelt had been reported and no recalls have ever been made.

The plaintiff, however, offered a second expert who opined that the federal standard was inadequate because Honda could foresee that a passenger in that seat would not know about the seatbelt design or whether it was properly anchored. She made this conclusion based on a test designed and performed by plaintiff's counsel (with no representative of the defendant present), in which several dozen people were asked to sit in that seat and fasten the seatbelt, which was unanchored. Predictably, no one knew or asked about it, but simply assumed the belt was operating properly. This is called "human factors" testing, and the "expert" admitted that it was both contrived and unscientific. Incredibly, the trial judge let the testimony in over Honda's objection. The trial judge also excluded evidence that the driver had a criminal record, assaulted a passenger, and been involved in another accident while speeding. Even more incredibly, the trial court refused to allow Honda to submit the fault of a settling party—the driver—to the jury on the basis that he was an "employee" of the rideshare company. The jury awarded the plaintiff more than $30 million.

The court of appeals affirmed. In an opinion notably bereft of legal analysis, the court found that the trial court did not abuse its discretion in admitting the plaintiff's bogus study or excluding evidence of the driver's fault. It likewise let stand the trial court's decision to keep the jury from assigning fault to the driver. I wish I could give you a reasoned justification for this holding, but alas I cannot. Honda has filed a petition for review with SCOTX challenging both the validity of the "human factors" test and the exclusion of the driver's fault. TCJL filed an amicus curiae brief in support.

Our brief argues that both the trial and appellate courts failed in their duty as gatekeepers to throw out "junk science" expert testimony. By not applying Rule 702 to the plaintiff's "human factors" expert, these courts have opened the door to whatever "study" a

plaintiff's counsel can cook up in order to rebut the presumption of nonliability, so much so that the presumption will become a dead letter. We also take the courts to task for flat out violating Chapter 33, CPRC, by blocking submission of the negligent driver's fault. In our view, this case demonstrates how a result-oriented court can use evidentiary rulings to subvert legislative policy decisions about tort law. Unfortunately, we have to ask SCOTX once more to intervene and correct an egregious abuse of discretion and erroneous appellate decision.

The Court granted the petition for review on June 2, 2023.

3. Texas Equal Access Fund v. Ashley Maxwell (No. 02-00147-CV); Sadie Weldon v. The Lilith Fund for Reproductive Equity (No. 02-22-00413-CV); Texas Right to Life v. Van Stean (No. 03-21-00650-CV)

In two cases currently pending before the Fort Worth Court of Appeals, TCJL filed amicus letters urging the Court to adjudicate the constitutional issues raised by SB 8, the legislation creating a no-injury cause of action by any person against any person for aiding or abetting an abortion. It is important to emphasize that TCJL's letters take no position whatsoever on the underlying policy issues involved in the bill but only on the constitutional standing and delegation issues decided by MDL Judge David Peeples in Texas Right to Life v. Van Stean, which is currently pending before the Austin Court of Appeals (No. 03-21-00650-CV).
The cases are before the courts of appeals in slightly different postures. In Sadie Weldon v. The Lilith Fund for Reproductive Equity (No. 02-22-00413-CV), the trial court denied Weldon's TCPA motion to dismiss. In the other case, Texas Equal Access Fund v. Ashley Maxwell (No. 02-22-00347-CV), the trial court dismissed Texas Equal's constitutional challenges. Last year TCJL filed a similar amicus letter with the Austin Court of Appeals in the Van Stean case. In view of the high stakes involved in resolving the constitutional issues—not to mention the constitutional status of several bills pending in the Legislature and in other state legislatures that follow the SB 8 model—Texas businesses deserve an answer so that they may know where they stand. Delay is doing nobody any good and serves only to destabilize the business climate.

All three cases remain pending in the Fort Worth and Austin Courts of Appeals.

4. ExxonMobil Corporation v. National Union Fire Insurance Company of Pittsburgh, PA. v. Exxon Mobil Corporation and Starr Indemnity & Liability Insurance Company (No. 21-0936)

The First Court of Appeals [Houston] handed down a decision in a coverage dispute between an additional insured and CGL carriers that flatly contravenes recent SCOTX precedent. In the related appeals National Union Fire Insurance Company of Pittsburgh, PA. v. Exxon Mobil Corporation and Starr Indemnity & Liability Insurance Company and Exxon Mobil Corporation v. Starr Indemnity & Liability Insurance Company (No. 01-19-00852-CV; Opinion issued September 21, 2021), the court of appeals reversed a summary judgment in favor of the additional insured, Exxon, for reimbursement of damages and attorney's fees under its contractor's CGL coverage. TCJL filed an amicus curiae brief in support of Exxon Mobil's petition for review to the Texas Supreme Court.

The underlying litigation commenced in 2013. Exxon contracted with Savage Refinery Services, LLC for construction services at its Baytown Refinery. As is standard practice, Exxon required Savage to carry "its normal and customary" CGL for injury, death, or property damage and to cover Exxon as an additional insured. While performing services at the plant, two Savage employees were injured by a release of hot water and steam. One of the employees filed a lawsuit against Exxon, while the other sought payment of damages outside of litigation. Exxon ultimately settled with both for about $22 million. It then sought reimbursement of the settlement amount and attorney's fees from Savage's CGL and umbrella policy carriers, AIG Europe Limited, National Union, and Starr. AIG paid its limit, but National Union and Starr denied coverage. Exxon filed breach of contract claims against both companies, as well as a declaratory judgment claim. The trial court granted summary judgment for Exxon against National Union. It also granted summary judgment for Starr against Exxon on the basis that the Starr policy covered marine risks and was not a CGL policy. Everybody appealed.

TCJL's brief in the current case recapitulates our arguments in State of Pennsylvania that the court of appeals' erroneous incorporation of a service agreement into the primary insurance policy deprives the additional insured of coverage it bargained and paid for. It also confers a windfall on the insurer, which reaped the benefit of selling the policy and then sought to avoid its indemnity obligation under the policy. We believe that SCOTX's insistence that a contract must explicitly incorporate extrinsic documents provides a bright line rule that businesses clearly understand and upon which they can confidently rely. The court of appeals' decision undermines that policy and introduces significant uncertainty into carefully negotiated agreements to allocate risk in construction contracts. We urge SCOTX to accept review and remind the court of appeals of the Court's prior opinions on the issue.

SCOTX reversed and remanded to the court of appeals on April 14, 2023. A motion for rehearing was denied.

5. Targa Channelview LLC v. Vitol Americas Corp. (No. 22-0958)

TCJL's brief supports Targa's motion for rehearing of SCOTX's denial of review. This case involves a $129 million contract dispute involving a "forward-looking" contract under which Targa agreed to construct a splitter facility for Vitol. Vitol ultimately determined that it did not want the facility, for which Targa had already spent the $129 investment, and sued for the return of the money. The court of appeals interpreted the contract in Vitol's favor and awarded the money in contract damages. SCOTX denied review.

Targa's motion for rehearing is pending.

6. In re State Farm Mutual Automobile Insurance Company and Lindsey Nicole Dessart (No. 23-0755)

In this case the trial court ordered discovery on the insured's extracontractual claims before the insurer's liability under the policy had been determined, as required by Brainard v. Trinity Universal Ins. Co., 216 S.W.3d 809 (Tex. 2006).The trial court also denied the insurer's motion to quash a deposition of a corporate representative with no specific knowledge of the case.TCJL's brief requests SCOTX to provide guidance with respect to these issues.

State Farm's petition for writ of mandamus remains pending before SCOTX.

7. Dallas County Hospital District, d/b/a Parkland Health and Hospital System v. Sheri Kowalski (Re: No. 23-0341)

This case involves the interpretation of Chapter 21, Labor Code, specifically the 2009 amendments that conformed the statute to the Americans With Disabilities Act Amendments Act of 2008. TCJL's brief supports Parkland's petition for review and argues that the court of appeals read language into the statute that goes beyond the definition of "disability" and vastly expands the scope of employer liability.

SCOTX has requested a response to Parkland's petition for review.

8. Mario Rodriguez v. Safeco Insurance Company of Indiana (No. 23-0534)

This case comes from the U.S. Court of Appeals for the Fifth Circuit on a certified question. The question is: "In an action under Chapter 542A of the Texas Prompt Payment of Claims Act, does an insurer's payment of the full appraisal award plus any possible statutory interest preclude recovery of attorney's fees?" TCJL's brief argues that the statute precludes the recovery of attorney's fees in this instance.

SCOTX heard oral arguments on October 4, 2023. A decision is pending.

9. In re Lyft, Inc. (No. 23-0739)

This case arose from a trial court order setting aside an agreed protective order and compelling disclosure of Lyft's confidential trade secrets. TCJL's brief argued that allowing trial courts to do so without a compelling justification would discourage defendants from negotiating and agreeing to such orders in the future.

SCOTX dismissed Lyft's petition for writ of mandamus on joint motion of the parties on December 8, 2023.

10. Luke Hogan, on behalf of himself and other individuals similarly situated v. Southern Methodist University, and other affiliated entities and individuals (No. 23-0565)

This case, on certified question from the U.S. Court of Appeals for the Fifth Circuit, challenges the constitutionality of SB 6, the Pandemic Liability Protection Act (2021). Plaintiffs argue that the act is unconstitutionally retroactive. TCJL's brief asserts that the act meets SCOTX's test for the constitutionality of retroactive laws as articulated in Robinson v. Crown Cork & Seal Co. (2010).

SCOTX heard oral argument on October 26, 2023. A decision is pending.

11. TotalEnergies E&P USA, Inc. v. MP Gulf of Mexico, LLC (No. 21-0028)

TCJL filed an amicus curiae brief in a case that seeks to nullify an arbitration provision in a contract between two offshore oil producers. The issue in the case is whether a contract language that incorporates by reference the rules of the American Arbitration Association (AAA), which include a specific provision delegating the threshold question of the arbitrator's jurisdiction to the arbitrator, expresses a "clear and unmistakable intent" to arbitrate the question of arbitrability. The Tyler Court of Appeals answered in the affirmative, but SCOTX granted review.

TCJL's brief in support of Respondent MP Gulf of Mexico's brief on the merits argued that a provision incorporating the AAA rules can only be read to mean all of those rules. If the parties had wanted to carve out Rule 7(a) and separately provide for its application, they could easily have done so, especially in a transaction between sophisticated parties who negotiated robustly and at

arm's length. We also expressed serious concerns about the effect of a ruling in favor of the Petitioner on contracts with similar incorporation provisions. Not only would such a ruling represent, in our words, "a breath-taking public incursion into the realm of freely-made private agreements," it would potentially negate any number of contracts that incorporate regulations or policies by reference. A few that come to mind include OSHA or other safety standards, employment regulations and policies, workers' compensation statutory and regulatory provisions, or National Highway Traffic Safety Administration rules. We simply see no compelling reason to single out a contractual arbitration clause for different treatment than any other provision that expressly incorporates extrinsic documents.

In an opinion by Justice Boyd, SCOTX affirmed the court of appeals. Noting that the Court had yet to resolve this issue, Justice Boyd conducted an exhaustive review of federal and state court authority (which anyone interested in the state of the law on delegation in an arbitration agreement should take a look at). Based on this review, he concluded that the substantial majority of jurisdictions follow the "general rule" that "an agreement to arbitrate disputes in accordance with rules providing that the arbitrator 'shall have the power' to determine 'the arbitrability of any claim' incorporates those rules into the agreement and clearly and unmistakably demonstrates the parties' intent to delegate arbitrability issues to the arbitrator."

The Court denied Total's motion for rehearing on June 9, 2023.

12. Sarah Gregory and New Prime, Inc. v. Jaswinder Chohan, Individually and as Next Friend and Natural Mother of GKD, HSD, and AD, Minors, and as Representative of the Estate of Bhupinder Singh Deol, Darshan Singh Deol, and Jagtar Kaur Deol (No. 21-0017)

Last November the Court heard oral arguments in two cases involving noneconomic damages, United Rentals N. Am., Inc. v. Evans (No. 20-0737) and Gregory v. Chohan (No. 21-0017), both of which come out of the Dallas Court of Appeals. We have previously reported in detail on these cases and the issues they involve, so we will not revisit the facts and issues here. TCJL's brief focuses on the Gregory case, in which the primary issue is the standard of review for noneconomic damages in tort cases. United Rentals raises the additional issues of, among other things, sufficiency of the evidence to support noneconomic damages and Batson challenges in jury selection.

Among other things, our brief urged the Court to address the widespread tactic of "jury anchoring." This tactic appears in many guises, but the purpose is to suggest to the jury an arbitrary algorithm or formula that would produce a substantial noneconomic damages award sufficient to "send a message" to the defendant. In Gregory, the plaintiff's counsel argued to the jury that mental anguish damages could be based on assigning a certain monetary value per mile annually driven by the defendant employer's trucks to, as we said, send the trucking company a "message." As we say in the brief, "'[S]ending a message' sounds like a phrase associated with punitive damages, not noneconomic damages." Clearly, we argue, "at least some guardrails could be placed around the permissible arguments the jury can hear without contaminating it with inflammatory suggestions with no basis on the plaintiff's actual harm."

The Court reversed the court of appeals and remanded to the trial court for a new trial on June 16, 2023.

8. Jesus Virlar, M.D. and GMG Health Systems Associates, P.A., a/k/a and d/b/a Gonzaba Medical Group v. Jo Ann Puente (No. 20-0923)

TCJL's brief concentrated on a single issue of overriding concern to the Texas business and health care community: the application of the settlement credit when the "claimant" includes both the injured party and another person seeking recovery based on the harm to the injured party (i.e., a derivative claim) (see § 33.011(1), CPRC).

SCOTX overturned the court of appeals' majority opinion in two respects: the application of the settlement credit and whether the trial court should have awarded some of the future damages in periodic payments. As to the settlement credit, the court of appeals acknowledged that under §33.012(c), CPRC, the defendants were entitled to a credit. The court likewise agreed that the definition of "claimant" in §33.011(1) includes a derivative claimant, as the plaintiff's mother and daughter were here. But rather than simply applying the plain language of the statute (as the dissenters Chief Justice Marion and Justice Alvarez would have done), the majority held that to the extent these sections reduced the plaintiff's award of economic damages (noneconomic damages are of course capped in health care liability actions), they violated the Open Courts provision of the Texas Constitution (Art. 1, §13). The majority relied heavily, indeed almost exclusively, on SCOTX's holding in Lucas v. United States, 757 S.W.2d 687 (Tex. 1988), which struck down Texas' then-statutory cap on damages in health care liability cases as violating open courts.

This decision is very significant, both for vindicating the settlement credit against an Open Courts challenge and for enforcing the crucially important Chapter 74 provision requiring at least some future damages to be paid periodically. It is worth pointing

out that for all the criticism of the Legislature's tort reform efforts over the past three decades, the statutes work the way they were intended to. And, as the Court observed, the settlement credit for which tort reform proponents advocated actually produced a more generous award in this case than the old common law would have done. Sometimes the law works better for one side, and sometimes for the other. The point is that the reforms achieve just results when considered at the systemic level, the level that determines whether Texas has a predictable and stable tort system or not. Judging by our state's record of success in attracting new business and investment and enhancing access to health care, the verdict is clear. Still, as this case demonstrates, two decades after the 2003 reforms, our courts are still adding to the jurisprudence around those reforms. As long as that's the case, our work on those reforms is never finished.

The Court denied plaintiff's motion for rehearing.

9. Hlavinka v. HSC Pipeline Partnership, LLC (No. 20-0567)

TCJL filed an amicus brief asking the Texas Supreme Court to take another look at its decision in Hlavinka v. HSC Pipeline Partnership, LLC (No. 20-0567). Although the Court reversed a Houston [1st] Court of Appeals decision holding that evidence of a common carrier pipeline's contract with an unaffiliated third-party for the transportation of the third party's product to its manufacturing facility does not as a matter of law establish public use for purposes of the pipeline's eminent domain authority, it agreed with the court of appeals that the property owner's testimony regarding valuation of the pipeline easement, which the trial court had excluded, is relevant to establishing market value. SCOTX remanded the case to the trial court for a new trial to determine the market value of the easement.

In an opinion by Justice Bland, the Court reasoned that "[S]ales of easements on this property to other pipeline companies, combined with the existence of pipelines running parallel and adjacent to HSC's pipeline, provide some evidence from which a factfinder reasonably could conclude that the Hlavinkas could have sold to another the easement that they instead were compelled to sell to HSC." Justice Bland distinguished this case from both Exxon Pipeline Co. v. Zwahr and Enbridge G&P v. Samford, in which similar landowner testimony was excluded. In Exxon, the landowner argued that the pipeline itself enhanced the value of the land, which the Court held violated the project enhancement rule. Here SCOTX ruled that Hlavinka's testimony was based on the value of the easement to HSC's competitors due to its "intrinsic qualities," i.e. suitability as a pipeline corridor. In Enbridge, there was no evidence that the landowner could have sold the easement to another pipeline company, as there was here. (Note: TCJL filed an amicus brief in the court of appeals, as did Texas Farm Bureau and other landowner groups.)

The Court denied both parties' motions for rehearing.

10. Terence J. Hlavinka, Kenneth Hlavinka, Texas Bayou Farms, LP, and Terrence Hlavinka Cattle Company v. HSC Pipeline Parntership LLP (01-19-00092-CV)

This case involved an effort to expand the Texas Supreme Court's holding in Denbury to all common carrier pipelines, not just carbon dioxide pipelines.

Our brief argued that if the Denbury holding was going to be expanded, the Texas Legislature should do it, not the courts. In similar cases, the Beaumont, Texarkana, Waco, and Eastland courts of appeals all recognized this principle and deferred to the Legislature.

SCOTX accepted review, affirmed in part and reversed in part as noted above.

11. Toyota Motor Corporation v. Reavis (No. 21-0575)

This case exemplified the deployment of reptile theory trial tactics to achieve a nuclear verdict. It arose from a 2002 accident on North Central Expressway in Dallas. While stopped in traffic, plaintiffs' Toyota Lexus was struck from behind by a Honda SUV traveling at between 45 and 48 m.p.h. The collision pushed the plaintiff's vehicle into the vehicle in front, before the Honda struck the Lexus again at a slower speed. During the chain reaction, the plaintiffs' seatbacks deformed, causing the plaintiffs to slip up and back into the back seats, a response to a rear-end collision called "ramping." The plaintiffs' heads collided with the heads of their 5 and 3-year-old children, who were secured in car seats. As a result, the children sustained severe traumatic brain injuries, though their parents suffered only minor injuries.

TCJL's brief focused on two issues: (1) the court of appeals' ruling on the specificity of evidence required to rebut the presumption of non-liability if a product complies with applicable government safety standards (§82.008, CPRC); and (2) the court of appeals' explicit approval of reptile theory trial tactics that sought to demonize a corporate defendant using highly prejudicial, inflammatory, and irrelevant evidence.

The case settled before the petition for review was granted. The Court granted the petition, vacated the judgments of the court of appeals and trial court, and dismissed the case.

12. USAA Casualty Insurance Company v. Sunny Letot, Individually and On Behalf of All Others Similarly Situated (No. 22-0238)

This case arose from a 2009 collision between Letot and USAA's insured that, according to USAA's adjuster, damaged Letot's 1983 Mercedes. USAA's adjuster determined that while the value of the vehicle was $2728, the cost of repair came to $8859. USAA declared the vehicle a "total loss" and tendered Letot checks totaling $2738.02 to Letot. Letot objected to the vehicle valuation, and her lawyer returned the checks and demanded that USAA pay $10,700 in damages. USAA declined to do so.

As its standard practice when totaling a vehicle, within 3 days of tendering payment of Letot's claim, USAA filed an owner retained report with TXDOT pursuant to 43 TAC § 217.83(c), which prescribes a procedure by which an owner of a salvage or non-repairable vehicle retains the vehicle. From what we can tell from the recital of facts in the opinion, USAA followed this procedure, declared the vehicle unsalvageable, and sent Letot a check. Since USAA did not acquire ownership or possession of the vehicle (in which case USAA would have to apply for a non-repairable or salvage vehicle title), it filed an owner retained report as required by § 217.83(c).

Our brief argues that if the problem here is the law upon which USAA's procedures are based, then the obvious remedy is to ask the Legislature to change it. This lawsuit seeks to use the leverage of class action certification to force the company to fork over a hefty sum, while leaving the company clueless about what it should have done differently to comply with the statute. In short, the court of appeals issued a results-oriented decision bereft of legal analysis or reasoning. It cannot be permitted to stand.

SCOTX granted the petition and scheduled oral argument on January 10, 2024.

13. In re Owen J. Merrell and Jeanna East (No. 22-0556)

This case arose from a personal injury lawsuit resulting from an auto accident. The trial court ordered the parties to a remote jury trial, to which both sides objected. The trial court denied their joint motion for an in-person trial. The parties sought a writ of mandamus from the Houston [1st] Court of Appeals, which denied the petition. They are now requesting mandamus relief from the SCOTX.

TCJL's brief takes the same line of argument as our legislative intervention in 2021 and more recent comments to the Supreme Court Advisory Committee (SCAC), which adopted amendments to the Texas Rules of Civil Procedure specifying that jury trials may not be held remotely without the parties' consent.

SCOTX conditionally granted a writ of mandamus.

14. In re Uber Technologies, Inc. (No. 22-0453)

TCJL filed an amicus curiae brief requesting that the Texas Supreme Court reconsider a late 1980s decision that opened the door to broad discovery sharing in Texas tort litigation. The case arose from an alleged sexual assault on a passenger in a vehicle driven by a person who had used the Uber app. Plaintiff sought discovery of all reports or complaints of sexual assault involving Uber drivers in Texas for the preceding five years. The trial court denied Uber's objection to the request and granted Plaintiff's motion to compel production. The trial court's order likewise included a provision allowing Plaintiff to share the information with attorneys with similar cases against Uber. The Houston [14th] Court of Appeals denied Uber's petition for writ of mandamus. Uber now seeks mandamus review from SCOTX.

The Court denied the petition for writ of mandamus on June 2, 2023.

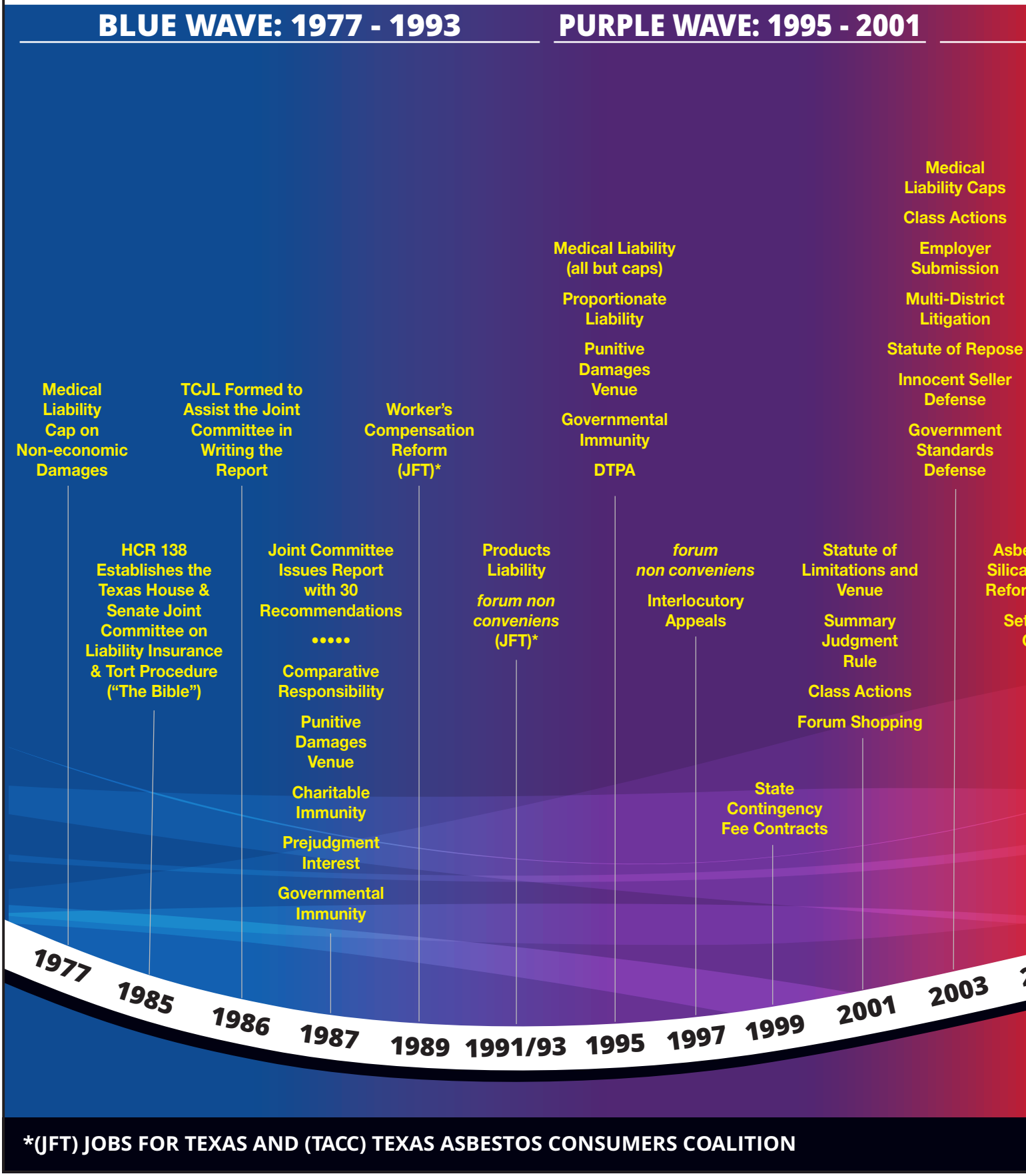
15. Texas Department of Insurance and Cassie Brown, In Her Official Capacity as Commissioner of the Texas Department of Insurance v. Stonewater Roofing, Ltd. Co. (No. 22-0427; 07-21-00016-CV)

The case arose out a suit filed by a customer against the roofing company (Stonewater) for a violation of Chapter 4102 based on certain statements on the company's website offering assistance in settling insurance claims. Stonewater responded by filing suit against TDI alleging that 4102's regulation of commercial speech was unconstitutionally vague and violated the First and Fourteenth Amendments of the U.S. Constitution seeking a declaration that 4102 is invalid on its face and as applied to the company. TDI moved to dismiss under Rule 91a on the basis that Stonewater's claim had no basis in law. The trial court granted the motion, and Stonewater appealed.

The court of appeals held that Stonewater alleged a sufficient legal claim that 4102 restricts a broad range of commercial speech and facially regulates speech based on both content (insurance claims) and speaker (roofing contractors). The State's petition for review, in our judgment, does excellent work in demolishing the roofing company's constitutional arguments and the court of appeals' construction of First Amendment jurisprudence. TCJL's brief focuses on the public policy objectives of Section 4102.

This case was argued on October 26, 2023.
A decision is pending.

The Wave: Texas Tort Ref



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