



TEXAS CIVIL
JUSTICE
LEAGUE

2025

Policy Statement

TCJL will pursue a variety of liability issues this session, on both defense and offense. Key issues currently expected include:

- ❖ Preserve the Texas workers' compensation system
- ❖ Protect ERISA pre-emption
- ❖ Safeguard prior civil justice reforms
- ❖ No new causes of action, civil, administrative, or criminal penalties, or mandatory attorney's fees
- ❖ Preserve and strengthen the independence of the judiciary
- ❖ Bring nuclear verdicts under control
- ❖ Limit the ability of governmental entities, including the state, to sue businesses under a "public nuisance" theory of liability
- ❖ Bar sovereign wealth funds and foreign governments from investing in Texas litigation (TPLF)
- ❖ Defend freedom of contract principles





2025 TCJL Policy Statement

1 Preserve the Texas workers' compensation system. In the years leading up to 1989, the Texas workers' compensation system collapsed. Costs skyrocketed, carriers stopped writing coverage, and employers found themselves unable to adequately insure their employees. A joint legislative committee found that the crisis had at least four major causes: one of the weakest benefits structure in the nation; the highest rate of attorney involvement and litigation in the nation; the predominance of lump sum settlements (with hefty attorney's fees attached) as opposed to benefits payments based on objective medical criteria; and the lack of administrative finality, since a party who didn't like the outcome of the administrative process could appeal de novo to court. In response to these findings, the 1989 Legislature enacted sweeping reforms of the system that raised workers' benefits, virtually eliminated attorney involvement in the claim process, abolished lump sum settlements, established objective medical criteria for evaluating claims, and eliminated trial de novo appeal. Further reforms in 2001 and 2005, designed to contain spiraling medical costs, further reenforced the earlier overhaul. These reforms showed immediate results. Workers' compensation insurance costs dropped dramatically. Employers could once again obtain coverage in a competitive market at much lower rates. Instead of spending money on attorney's fees, the system dedicated more to paying injured workers better benefits. Today the system is among the least expensive and most effective in the country, reversing its 1989 position.

TCJL opposes any changes to the workers' compensation system that have the effect of increasing attorney involvement and making the system more litigious, restoring lump sum settlements, weakening the objective medical criteria, or creating privileged classes of employees whose claims are treated differently than those of any other employees. The system is working precisely as the framers of the 1989 reforms intended. Any erosion of those reforms weakens the system and hurts the very employers and employees it is designed to serve.

2 Protect ERISA pre-emption. In recent sessions, legislation has been introduced that would "pierce" ERISA pre-emption by imposing Texas-specific employee benefit mandates in certain areas of health care. ERISA (the Employment Retirement Income Security Act of 1974) creates uniform standards for an employer that sponsors health and retirement benefits for its employees. The Act "pre-empts" specific state laws whose mandates interfere with either a plan's benefits or a plan's design. By allowing employers to design and provide an equal level of employee benefits in each state in which an employer has employees, ERISA encourages businesses to provide health and retirement plans (ERISA plans cover an estimated 153 million employees and their dependents nationwide) at a much lower cost than if an employer had to comply with 50 individual state mandates. In addition to benefiting Texas employers and employees, ERISA also provides important benefits to the state, most notably keeping employees on employer-sponsored health plans as opposed to shunting them to public benefit programs, such as Medicaid.

TCJL opposes legislation that would create Texas-specific health plan mandates that threaten the federal pre-emption that ERISA guarantees. By the same token, TCJL would support a legal challenge to any legislation that would have the effect of piercing ERISA pre-emption and compromising a Texas employer's ability to provide health insurance to its employees.

3 Safeguard prior civil justice reforms. The 1987, 1995, and 2003 civil justice reform legislation, along with the 1989 workers' compensation overhaul, were prime factors in igniting the Texas Miracle, making Texas the most pro-business state in the nation for capital investment and job creation, and expanding access to health care by placing common sense rules for medical malpractice lawsuits, including caps on noneconomic, "soft" damages.

TCJL opposes legislation that would weaken or reverse these reforms, including legislation that would increase the cap on noneconomic damages in health care liability cases or subject health care providers to additional liability simply for providing medical treatment that they deem necessary to treat the patient's condition and to which the patient consents.

4 No new causes of action, civil, administrative, or criminal penalties, or mandatory attorney's fees. In just the past two legislative sessions, we have seen an exponential increase in the number of bills filed that would create new ways to sue businesses and health care providers, authorize state agencies or the attorney general to pursue new civil, administrative and criminal penalties against them, or incentivizing litigation by awarding mandatory attorney's fees in certain types of cases. By expanding the liability exposure of Texas businesses and health care providers, as these proposals would do, we will effectively reverse the conservative business principles that have

made Texas one of the largest and most successful economies of the world.

TCJL opposes any legislation that creates a new cause of action, expands existing civil, administrative, or criminal penalty authority to anyone, or imposes mandatory attorney's fees in specific types of litigation. TCJL further opposes legislation that, under threat of civil or criminal liability or penalties, (1) interferes with a business's freedom to conduct lawful business activities as it sees fit or (2) substitutes the Legislature's judgment for that of a business or health care provider in how to conduct business or provide health care treatment.

5 Preserve and strengthen the independence of the judiciary. In at least the past two sessions, legislation has been introduced that threatens the independence of the judiciary. These proposals include subjecting judges to liability for doing their jobs, infringing constitutional separation of powers by purporting to require courts to hear cases involving policy issues brought by litigants with no specific and concrete injury, and even barring citizens from challenging the constitutionality of certain statutes. On the other hand, last session the Legislature enacted a bill improving judicial education and training and making a judicial candidate's background and experience more transparent to Texas voters.

TCJL supports legislation to further improve the quality of the judiciary, including a significant increase in judicial pay, additional resources to help identify and assist courts in improving judicial efficiency and performance, and an effective disciplinary process to assure that every judge is held to the highest standards of excellence.

TCJL opposes legislation that infringes separation of powers, including proposals creating no-injury causes of action (i.e., violating constitutional standing requirements), making judges personally liable for their decisions on the bench, or involving the courts in political or policy issues that should be in the Legislature's domain.

6 Bring nuclear verdicts under control. In the past several years, jury verdicts that award millions (sometimes hundreds of millions) of dollars for subjective, non-economic damages have become increasingly common, especially in commercial trucking cases. These "nuclear" verdicts, which are often based on little or no objective evidence, have significantly weakened the ability of Texas businesses to predict and insure risk, impeded the availability of liability insurance coverage (without which businesses cannot operate), and increased the cost of shipping, and hence the cost of goods, to Texas businesses and consumers.

TCJL supports legislation that provides courts with additional guidelines for juries considering non-economic damages in a case, requires objective proof of the existence and amount of such damages, directs the trial court rendering a judgment including non-economic damages to state specifically what evidence justifies the award, and require appellate courts to scrutinize awards of noneconomic damages to assure that they are proportionate to awards in similar cases.

7 Limit the ability of governmental entities, including the state, to sue businesses under a "public nuisance" theory of liability. In the past several years, governmental entities have resorted to the so-called "public nuisance" theory to sue Texas businesses for what are essentially regulatory issues. Examples include: suits against energy companies for causing climate change; claims against specific industries for alleged damage to the environment; or suits against manufacturers of legal products for alleged harm to the public by their use. This type of litigation epitomizes a "regulation by litigation" mentality that seeks to hold private businesses civilly and criminally responsible for the consequences of their perfectly legal business activities in order to achieve much broader policy goals that should be left to the Legislature.

TCJL supports legislation clarifying that governmental entities cannot use "public nuisance" lawsuits to punish individual businesses or whole business sectors for lawful activities, where an existing statutory cause of action or administrative enforcement mechanism already exists to address allegedly injurious conduct, or for manufacturing or distributing a lawful product that is not defective.

8 Bar sovereign wealth funds and foreign governments from investing in Texas litigation. The practice of "third party litigation financing" has become dominated by hedge funds, sovereign wealth funds, and foreign governments that are speculating on the outcome of litigation in Texas courts. This practice not only encourages more litigation and discourages the early settlement of disputes, but it invites foreign, non-party influence in litigation that is kept secret from the court, other parties in the lawsuit, and the public. Texans not only have the right to know when one of these entities has bought an interest in a lawsuit, they have a right to prohibit foreign ownership of litigation in our judicial system altogether.

TCJL supports legislation banning sovereign wealth funds, foreign governments, and foreign-owned hedge funds from providing third party litigation financing for cases in Texas courts.

9 Defend freedom of contract principles. The Texas Supreme Court has repeatedly held that "Texas law strongly favors parties' freedom of contract, under which parties may 'bargain for mutually agreeable terms and allocate risks as they see fit.'" *Waste Mgmt. of Tex., Inc. v. Stevenson*, 622 S.W.3d 273, 286 (Tex. 2021). TCJL strongly supports this principle and, consequently, generally opposes legislative proposals that seek to dictate the terms of contracts between private parties.

TCJL Business Conservative Principles

Preserving the Texas Miracle

