

TCJL Session Report **86th Texas Legislature**

The 86th Legislative Session began with a distinctly different tone than its predecessor. The November 2018 election registered voter dissatisfaction with an aggressively partisan approach that produced an overemphasis on social issues at the expense of addressing basic functions, primarily public education. The Lieutenant Governor narrowly won re-election, and if it hadn't been for a special election in which a Republican candidate won in a historically Democratic district, he would have lost his Senate supermajority as well. In the House, 12 Democrats turned Republican seats, shrinking the GOP supermajority and diminishing the influence of the Freedom Caucus even further. This shift played out in the race to succeed former House Speaker Joe Straus, as moderate candidates came to the fore. Eventually, veteran legislator Representative Dennis Bonnen (R-Angleton), with strong backing from Republicans across the spectrum, as well as Democrats, won the gavel in a campaign that took place almost entirely behind the scenes.

Just as importantly, Governor Abbott backed the new Speaker in focusing on big issues: school finance reform, property tax limits, mental health, and rebuilding flood infrastructure in the wake of Hurricane Harvey. The Lt. Governor joined in, though his top legislative priorities continued to include hot-button base issues such as abortion restrictions, border security, voter fraud, religious freedom, and campus free speech. Still, particularly in the House, a far more bipartisan and even-tempered climate prevailed by and large for the whole session. While abortion-related and religious freedom bills roiled the waters somewhat, they did not produce the level of acrimony we have seen in the past. Moreover, the failure of a Senate initiative that Democrats believed designed to suppress minority voting got short-circuited in the House before it reached the floor. Meltdown averted.

When all was said and done, the Legislature passed a \$250 billion budget (16% higher than in 2017) with funds for teacher pay raises, mental health, buying down school property taxes, higher education, and other priorities. It also passed meaningful caps on property tax revenue increases for local governments and a school finance reform bill that reduces recapture by more than \$3 billion. Budget writers also used about \$6 billion from the Rainy Day Fund to finance Hurricane Harvey relief, a substantial contribution to the Teacher Retirement System for a so-called "13th paycheck" for retirees, and the usual Medicaid shortfall. Only one member in each chamber voted against it, whereas in the past conservatives would have raised a hue and cry about breaking into the state's piggy bank. While the big bills played out largely in personal diplomacy between the leadership and key committee chairs, a whole raft of new House chairs went about the business of churning bills out of committee. It seems that every House member (and even every Senator) got a chance to pass one or more bills of importance to him or her. With no one left out in the cold, and formerly alienated House members given important committee assignments and bills to carry, no one had much time for mischief.

With respect to civil justice issues, the 86th will go down as one of the most active and successful sessions for TCJL in many years, as you will see in the discussion below. Unquestionably, a major driver of this success was the appointment of Representative Jeff Leach (R-Plano) as the new chair of the House Judiciary & Civil Jurisprudence Committee. A construction lawyer, Chairman Leach is deeply committed to improving the civil justice system and judiciary, and his collaborative approach to processing legislation in his committee paid big dividends for all stakeholders in the process. We would like to recognize the work of all the members of JCJ, in addition to Chairman Leach: Jessica Farrar, Vice-Chair; James White; Reggie Smith; Morgan Meyer; Yvonne Davis; Julie Johnson; and Victoria Neave. While we didn't always agree with everyone on every issue, the members listened to our arguments and treated us with the utmost respect. It was a privilege to work with this group.

We are also grateful to Senator Joan Huffman, who once again piloted the Senate State Affairs Committee, and its members, who ploughed through what seemed like a thousand bills in the closing weeks of the session—including those of intense interest to TCJL: Vice Chair Bryan Hughes (who carried two of our most important priorities this session); Brian Birdwell; Brandon Creighton; Pat Fallon; Bob Hall; Eddie Lucio; Jane Nelson; and Judith Zaffirini. Again, we appreciate the professionalism and courtesy with which this committee treated us and handled its important business.

Lastly, we thank Governor Abbott, Speaker Bonnen, and Lt. Governor Patrick for always giving us a fair shake. We could not be successful without a pro-business, pro-civil justice leadership team that allows us to fully debate the issues and reach the best policy outcomes possible.

TCJL Session Report 86th Texas Legislature

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Key Legislation



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ATTORNEY DRUG ADVERTISING

SB 1189 by Senator Dawn Buckingham (R-Lakeway), Representative Gio Capriglione (R-Southlake)

Signed by the Governor 6-7-19. Effective 9-1-19.

Requires a disclaimer on any attorney drug ad warning people not to stop taking their medicine without consulting with their physician; prohibits ads from containing misleading statements (i.e., “medical alert,” “health alert,” or “public service announcement”), using governmental logos, or claiming a drug has been recalled if it has not.

OIL & GAS TITLE DISPUTES

HB 3372 by Representative Tom Craddick (R-Midland), SB 1988 by Senator Pat Fallon (R-Prosper)

Died in Calendars.

This bill addressed an industry practice known as “royalty suspense.” When an oil and gas company learns of competing claims to ownership of a royalty interest, the company will suspend payments until the title issue is resolved. This avoids (or at least mitigates) the company’s exposure to paying the royalty twice. For example, if the company believes that A owns a certain royalty interest based on title research, but B initiates a suit against A claiming that B is the legitimate owner of the interest, then B has a potential claim against the company for the money paid to A that should have been paid to B. The company can mitigate this exposure by suspending payments to A and waiting until the litigation is over to pay out the suspended funds.

The oil and gas industry has long considered that the suspense practice was protected by statute (§91.402(b), Texas Natural Resources Code) that allows for payments to be withheld without statutory interest for late payments if there is a “dispute concerning title that would affect the distribution of payments.” A recent Texas Supreme Court upset this reliance on the statute. The Court asked for “clear language from the Legislature” indicating an intent to allow oil companies to withhold royalty payments without liability for breach of contract claims in the event of a bona fide title dispute. Consequently, the Court’s decision puts the company in the position of having to pay the same royalty to both the legal owner of the interest and a party that is not entitled to the royalty in the first place. If the company doesn’t pay twice, it risks being sued for breach of contract and having to pay the other party’s attorney’s fees. Clearly, this is not the intent of §91.402(b), whose purpose is to avoid double payment of royalties.

HB 3372 would have solved the problem by amending §91.402(b), Natural Resources Code, to clarify that royalty payments may be suspended without giving rise to a claim for breach of contract in the event of a dispute concerning title which affects the distribution of payments.

IMMUNITY FROM CIVIL LIABILITY FOR CHARITABLE ORGANIZATIONS IN DISASTERS

HB 3365 by Representative Dennis Paul (R-Houston)

Signed by Governor on 6-2-19. Effective immediately.

Amends various sections of the CPRC to provide immunity from civil liability for negligence for charitable organizations and their representatives that provide assistance during a disaster.

ALI RULE OF DECISION

HB 2757 by Representative Jeff Leach (R-Plano)

Signed by the Governor 6-10-19. Effective 9-1-19.

Amends §5.001, CPRC, to specify that the American Law Institute’s Restatements of Law are not controlling in Texas.

EMINENT DOMAIN & CRITICAL INFRASTRUCTURE

Comprehensive Eminent Domain

SB 421 by Senator Lois Kolkhorst (R-Brenham), Representative Tom Craddick (R-Midland)

HB 991 by Representative DeWayne Burns (R-Cleburne)

Died in Conference Committee.

Comprehensive eminent domain legislation failed to pass this session, as in previous sessions. Despite diligent, good faith negotiations with landowners that began in January, stakeholders were unable to reach final agreement on the bill. The heart of the bill, as filed, vastly expanded the potential for costly litigation and would have led to delay of vitally needed infrastructure projects. The final House version removed some of the logistical barriers and litigation incentives while still providing information to landowners regarding the basis for initial offers, standardized easement terms, and an opportunity for landowner meetings. It also addressed landowner concerns regarding right of way agent practices and the timing of special commissioners' hearings. Unfortunately, the differences could not be overcome as Chairman Craddick and Senator Kolkhorst were unable to reach agreement in conference.

Critical Infrastructure Protection

HB 3557 by Representative Chris Paddie (R-Marshall), SB 2229 by Senator Pat Fallon (R-Prosper)

Signed by the Governor on 6-14-19. Effective 9-1-19.

Provides that a defendant who has engaged in an offense under §30.05, Penal Code, regarding causing damage to a critical infrastructure facility, is liable to the property owner for intentionally or knowingly damaging or destroying a critical infrastructure facility. Also creates an offense if a person enters or remains on or in a critical infrastructure facility with the intent to damage or destroy the facility or impair or interrupt the operation of the facility. Also imposed liability on an organization acting through an officer, director, or other person acting in a managerial capacity that knowingly compensates a person for causing damage to a critical infrastructure facility. Allows recovery of actual damages, court costs, and exemplary damages. Limits the penalty against a corporation or association for a criminal violation to \$500,000.

Appraisals, Dismissal, Fees

HB 1157 by Representative Cecil Bell (R-Magnolia)

Died in House Land & Resource Management Committee.

- Added §21.0111(a-1), Property Code, to require an entity to disclose any new, amended, or updated appraisal report obtained after making the offer and used in determining the entity's opinion of value. The disclosure must be made by the earlier of ten days after the date the entity receives the report or the third business day before the date of a special commissioner's hearing, if the report is to be used at the hearing.
- Amended §22.019, Property Code, to add Subsection (b-1) directing a court to dismiss a condemnation proceeding if the court finds that the party that filed the petition failed to comply with any provision of §§21.0111 (disclosure of appraisal), 21.0112 (landowner bill of rights), 21.0113 (bona fide offer), and 21.012 (condemnation petition). If a court dismissed under this subsection, it must grant to the landowner reasonable and necessary fees for attorneys, appraisers, and photographers and for other expenses incurred by the property owner. The bill further amended this section to apply to the dismissal of part of a condemnation proceeding on motion of the condemnor. The effect of this change was to award fees and expenses to a landowner if the condemnor moved to dismiss only part of the action.
- Amended §21.012, Property Code, to require a court to dismiss a condemnation petition unless the entity proved that the petition met the requirements of this section and that the entity had complied with the notice to the landowner requirement.
- Repealed §21.047, Property Code, which, among other things, allows the special commissioners to adjudge the costs of a condemnation against either party and directs a court to award costs to a condemnor if the special commissioners award is appealed and the court awards the same or a lesser amount to the property owner than the condemnor originally offered.

Change in Use

SB 555 by Senator Charles Schwertner (R-Georgetown), Representative Trent Ashby (R-Lufkin)

Died in House Land and Resource Management Committee.

Amended §23.46, Tax Code, to provide that land condemned for a right-of-way is not diverted to nonagricultural use if the right-of-way is less than 200 feet wide and the remainder of the parcel qualifies for agricultural use. Further provided that any additional taxes and interest imposed for a change of use is the personal obligation of the condemnor and not the property owner.

The proposed committee substitute eliminated the 200-foot corridor and provides that a portion of a parcel is not diverted to nonagricultural use because the portion is subject to a right-of-way that was taken by condemnation if the remainder of the parcel, evaluated as a single and contiguous parcel, qualified for agricultural use.

Actual Progress

HB 1253 by Representative Ben Leman (R-Iola), Senator Charles Schwertner (R-Georgetown)

Died in House Land and Resource Management Committee.

Amended §21.101, Property Code, to change the definition of “actual progress” by requiring three of the specified actions rather than two and by eliminating two actions from the list: the acquisition of a tract or parcel adjacent to the property for the same public use project for which the owner’s land was acquired from the list of actions and the adoption by a governing body of a development plan that indicates the entity will not complete more than one action before the 10th anniversary of the acquisition of the owner’s property. The bill also carved out navigation districts and port authorities, which are only required to complete one action, provided that the governing body adopts a development plan indicating that it will not complete more than one action within 10 years.

The proposed substitute retained the change in the definition of “actual progress” in the original bill (two to three actions) and amended §21.101(b)(3) to include the term “easement” along with the current language referring to preparation of a plan or plat. It added language that allows an architect, engineer, or surveyor described in §21.101(b)(3), Property Code (hiring of an architect, engineer, or surveyor as evidence of actual progress), to be an employee hired by a contractor working for the entity that acquired the property for public use. It further added a specific provision for a navigation district or port authority allowing the district or authority to establish actual progress by the completion of one of the actions described by §21.101(b) and the adoption of a development plan indicating that the authority will not complete more than one action before the 10th anniversary date of the acquisition of the property.

Complaints to RRC

HB 1919 by Representative Ernest Bailes (R-Shepherd)

Died in House Land and Resource Management Committee.

Amended §402.031(b), Government Code (LOBOR/landowner bill of rights), to add a provision stating that the property owner has the right to file a written complaint against an entity exercising eminent domain authority that is regulated by the Texas Railroad Commission.

The proposed substitute retained the addition of language to the LOBOR regarding a written complaint against an entity regulated by the Railroad Commission for the entity’s alleged misconduct while exercising the right of eminent domain. The substitute added §81.0591(d), Natural Resources Code, authorizing a property owner to file such a complaint with the RRC. The substitute added §81.073, Natural Resources Code, to prohibit an entity regulated by the RRC from using a LOBOR to harass, intimidate, or mislead a property owner. Imposed a civil penalty of \$1,000 for the first violation and \$5,000 for subsequent violations, enforced by the attorney general.

Reporting Challenges to Condemnation Authority

HB 1987 by Representative Ben Leman (R-Iola)

Died in House Land and Resource Management Committee.

Amended §2206.154, Government Code (reporting requirements for entities with eminent domain authority), to require an entity to report to the comptroller any court proceeding filed to determine the validity or extent of the entity’s eminent domain authority not later than 30 days after the date the proceeding is filed and the outcome of the court’s proceeding not later than 30 days after completion of the proceeding. Directed the comptroller to include on a separately maintained list an entity whose status is under challenge.

The proposed committee substitute required an entity that claimed in a report to the comptroller that it had eminent domain authority to notify the comptroller within 30 days a finding of a state court of competent jurisdiction that the entity does not have eminent domain authority. If the entity reported a finding, the comptroller must, as soon as practicable after receiving notification, reflect the finding in the eminent domain database. The substitute retained a requirement for a separate list of entities that a court has found do not have eminent domain authority.

Notice of Hearing

HB 2831 by Representative Terry Canales (D-Edinburg)

Died on the Senate Intent Calendar.

Permitted notice of a special commissioners' hearing in an eminent domain proceeding to be served by any manner provided by the Texas Rules of Civil Procedure.

Pipeline Community Procedures

HB 3327 by Representative Erin Zwiener (D-Driftwood)

Died in House Land and Resource Management Committee.

The filed version:

- required a common carrier pipeline that intends to acquire property by eminent domain to notify the county judge of each county in which the pipeline will be located (as well as the county judge of a county whose boundaries are within five miles of the proposed route), and the board of directors of each groundwater district located in the county or in a county whose boundaries are within five miles of the route.
- required the notice to state the entity's intent to acquire property by eminent domain, specify that the public use is the construction and operation of an oil and gas pipeline, identify real property that the entity seeks to acquire and the property owners, and identify and provide contact information for all the persons to whom the notice is sent.
- prohibited the entity from contacting property owners before the 7th day after notice is sent. Permitted, not later than 60 days after the last recipient receives the notice, the county judges and affected water districts to confer and schedule a public meeting.
- required notice of the meeting not later than 30 days before the meeting.
- required a representative of the entity to attend and participate in the meeting.
- barred an entity that does not attend the public meeting from making a bona fide offer.

The proposed substitute:

- applied to a common carrier pipeline, an entity granted the rights of a common carrier pipeline under §2.105, Business Organizations Code, or a gas utility as defined by §121.001(a)(2), Utilities Code.
- retained notice to the county judge, but limited it to counties in which the pipeline will be located.
- eliminated notice to the groundwater district.
- changed the contents of the notice to require only that it include information about the authority of the county judge to call a closed meeting of the commissioners court and state the deadline for the judge to respond to the pipeline operator.
- authorized the county judge to call a closed meeting of the court to discuss with the pipeline operator the proposed route or waive the right to call the meeting.
- gave the county judge 30 days to give a written response to the operator stating whether a meeting will be held.
- required the operator to coordinate with the county judge to schedule the meeting and arrange for representatives of the operator to attend.
- required a quorum of the court to convene in open meeting to announce the closed meeting and its purpose.
- allowed county staff to attend the meeting upon request of the judge or a commissioner.
- allowed the commissioners court to invite representatives of other political subdivisions and to share information regarding the route, including plans for future public infrastructure, planned developments, site-specific public safety concerns or environmental sensitivities, specific geologic or hydrologic concerns, and county open-space plans.
- barred the court from making specific recommendations regarding the specific tracts the proposed line should or should not cross.
- required the court to keep a certified agenda or recording of the closed meeting.
- authorized the court to conduct subsequent closed meetings before the operator contacted landowners.
- prohibited an operator from contacting property owners until the date the operator received a timely written response from the county judge, the 30th day after the date of the initial closed meeting, or, if the operator did not receive a timely response from the county judge, the 35th day after the operator sent the notice of intent to the judge.

Separate Property

SB 553 by Senator Charles Schwertner (R-Georgetown), Representative Trent Ashby (R-Lufkin)

Died in House Land and Resource Management Committee.

Amended §402.031, Government Code, and §21.0114, Property Code, to require, if the initial offer includes property that the entity is not seeking to acquire by eminent domain, a separate identification of the real property that the entity did not seek to acquire by condemnation and a separate offer for that property.

Survey Access Disclosure

SB 552 by Senator Charles Schwertner (R-Georgetown), Representative Trent Ashby (R-Lufkin)

Died in House Land and Resource Management Committee.

Amended §402.031, Government Code, to require the notice to a property owner of the owner's rights concerning the examination or survey by an entity with the power of eminent domain to include a statement that: (1) the entity is responsible for damages to the property arising from the survey; (2) the property owner has the right to refuse permission to enter the property to conduct a survey; (3) the property owner has the right to negotiate terms under which the survey may be conducted; and (4) the entity has the right to sue a property owner to obtain a court order authorizing the survey if the property owner refuses. The bill also required that if the entity provides a form requesting permission to survey the property, the form must conspicuously make the same statements. Finally, the bill required the attorney general to update the landowner's bill of rights to reflect these changes and post to the website not later than January 1, 2020.

WORKERS COMP

Cancer Presumption

SB 2551 by Senator Juan Hinojosa (D-McAllen), Representative Dustin Burrows (R-Lubbock)

Signed by the Governor 6-10-19. Effective immediately.

This bill clarifies existing law to now expressly include which cancers are subject to the presumption statute for firefighters and emergency medical technicians and are therefore compensable under the Workers Compensation Act. It also provides for the waiver of sovereign immunity in workers' compensation cases when a political subdivision is assessed a penalty by the Division of Workers Compensation. Political subdivisions will now be able to prudently invest funds to cover long-term costs like death benefits and lifetime benefits. The new law will also relax the statutory requirements to give an injured worker more time to provide his medical records prior the political subdivision having to make an initial determination.

PTSD

HB 2143 by Representative John Turner (D-Grand Prairie), Senator John Whitmire (D-Houston)

Signed by the Governor 6-14-19. Effective 9-1-19.

Last session, the legislature determined that PTSD is a compensable injury/disease under workers' compensation for first responders based upon a single incident that occurred during the scope of employment. This bill expands that coverage to include an instance where multiple events resulted in the first responder suffering from PTSD.

TCPA/ANTI-SLAPP TEXAS CITIZENS PARTICIPATION ACT

HB 2730 by Representative Jeff Leach (R-Plano), SB 2162 by Senator Angela Paxton (R-McKinney)

Signed by the Governor on 6-2-19. Effective 9-1-19.

Makes a number of amendments to Chapter 27, CPRC:

- Amends the definition of "Exercise of the right of association" to mean "to join together to collectively express, promote, pursue, or defend common interests relating to a governmental proceeding or a matter of public concern."
- Amends the definition of "legal action" to include declaratory relief. Excludes from the definition of "legal action":
 - (1) a procedural action taken or motion made in an action that does not add a claim for legal, equitable, or declaratory relief;
 - (2) alternative dispute resolution proceedings; or
 - (3) post-judgment enforcement actions.
- Amends the definition of "matter of public concern" to mean "a statement or activity regarding:

- (1) a public official, public figure, or other person who has drawn substantial public attention due to the person's official acts, fame, notoriety, or celebrity;
 - (2) a matter of political, social, or other interest of the community; or
 - (3) a subject of concern to the public.
- Amends §27.003(a), CPRC, to require the action to be “based on or in response to a party’s exercise of the right to petition, right to free speech, or right of association (removes the broad “relates to” language in current law) or arises from any act of that party in furtherance of the party’s communication or conduct described by Section 27.010(b)”(new Sec. 27.010(b) provides that the TCPA specifically applies to certain media organizations).
 - Excludes from the definition of “party” a governmental entity, agency, or official or employee acting in an official capacity.
 - Amends §27.003(b) to allow the parties my mutual agreement to extend the deadlines for filing a motion.
 - Adds §27.003(c) and (d) to require the moving party to provide written notice of the date and time of the hearing not later than 21 days before the date of the hearing unless otherwise provided by agreement of parties or order of the court. The non-moving party must file the response no later than 7 days before the hearing unless otherwise agreed or ordered.
 - Amends §27.005(a) to require the court to rule no later than 30 days after the hearing concludes.
 - Amends §27.005(b) to require the court to dismiss if the moving party demonstrates that the legal action meets the requirements for dismissal (deletes preponderance of evidence standard).
 - Amends §27.005(d) to require the court to dismiss if the moving party establishes an affirmative defense or other grounds on which the moving party is entitled to judgment as a matter of law (deletes “establishes by a preponderance of evidence each essential element of a valid defense to the movant’s claim.”)
 - Amends §27.006(a) to allow the court to consider evidence that a court could consider under Rule 166a, TCRP.
 - Amends §27.007(a) to provide that if the court awards sanctions (deletes at the request of the party), the court must issue findings.
 - Adds §27.0075 to specify that neither the court’s ruling on a motion to dismiss nor the fact that it made a ruling is admissible at any later stage of the litigation. Provides that the court’s ruling on a motion to dismiss in no way affects a burden or degree of proof in the action.
 - Amends §27.009 to make an award of sanctions permissive rather than mandatory. Limits recovery to reasonable attorney’s fees and court costs (current statute also allows other expenses). Also adds a new provision that if the court dismisses a compulsory counterclaim, it may only award attorney’s fees on a finding the counterclaim was frivolous or solely intended for delay.
 - Amends §27.010, CPRC, to add several exemptions to the applicability of the statute:
 - (1) a legal action arising from an officer–director, employer–employee or independent contractor relationship that seeks recovery for misappropriation of trade secrets or corporate opportunities or seeks to enforce a nondisparagement agreement or covenant not to compete;
 - (2) a legal action filed under Titles 1, 2, 4, and 5, Family Code, or an application for a protective order made under Chapter 7A, Code of Criminal Procedure;
 - (3) a DTPA action other than one brought under §17.49(a), Business & Commerce Code;
 - (4) a legal action in which a moving party raises a defense based on §160.010, Occupations Code, §163.033, Health & Safety Code, or the Health Care Quality Improvement Act of 1986 (medical peer review);
 - (5) an eviction suit under Chapter 24, Property Code;
 - (6) a disciplinary act or proceeding under Chapter 81, Government Code, or the Texas Rules of Disciplinary Procedure;
 - (7) a legal action under Chapter 554, Government Code (whistleblower actions), or
 - (8) a legal action based on a common law fraud claim.
 - Adds §27.010(b) to specify that the TCPA applies to communications for the creation, dissemination, exhibition, advertisement, or other similar promotion of a dramatic, literary, musical, political, journalistic, or otherwise artistic work, including AV work, a motion picture, a television or radio program, or an article published in a newspaper,

magazine, website, or other platform. Also applies the TCPA specifically to Yelp reviews and similar reviews of consumer opinions or business ratings.

- Adds §27.010(c) to apply TCPA to a legal action against a victim or alleged victim of family violence or dating violence.

COURTS & JUDICIARY

Access to Courts

HB 3336 by Representative Jeff Leach (R-Plano), SB 2342 by Senator Brandon Creighton (R-Conroe)

Signed by the Governor 6-10-19. Effective 9-1-19.

- Raises the cap on the amount in controversy for purposes of the expedited trial rules from \$100,000 to \$250,000 for county courts at law.
- Raises the maximum jurisdictional limit for statutory county courts from \$200,000 to \$250,000.
- Requires a jury in a case pending in a statutory county court in which the matter in controversy is \$250,000 or more to be composed of 12 members, unless the parties agree to fewer.
- Standardizes statutory county court jurisdiction in a number of counties to the \$250,000 cap (Angelina, Bosque, Hood, Jim Wells, Lamar, Wise, and Taylor).
- Raises the jurisdictional limit for JP courts from \$10,000 to \$20,000.

Judicial Pay Raise

SB 387 by Senator Joan Huffman (R-Houston), HB 2384 by Representative Jeff Leach (R-Plano)

Signed by the Governor on 6-14-19. Effective 9-1-19.

Raises the minimum base salary of a district judge from \$125,000 to \$140,000. The actual salary amount will be determined by the General Appropriations Act. This has the effect of raising the base salaries of appellate judges, which are set at 110% of a district judge's salary for the courts of appeals and 120% for the Supreme Court. The committee substitute also includes raises for statutory county court judges, probate judges, family judges, prosecutors, and others. Raises the monthly amount of longevity pay from .031 to .05% multiplied by the amount of the judge or justice's current monthly state salary and becomes payable after 12 (rather than 16) years of service.

Omnibus Courts Bill

HB 2120 by Representative Jeff Leach (R-Plano), SB 891 by Senator Joan Huffman (R-Houston)

Signed by the Governor 6-10-19. Effective 9-1-19.

New Courts: Removes Brazoria County from the 23rd Judicial District and creates a new Brazoria County district court with preference for family law matters. Removes Medina County from the 38th Judicial District and creates a new district court for Medina County. Creates a number of new district courts, including courts in Travis, Guadalupe, Montgomery, Comal, Denton, Collin (two new courts, one with preference for family law and the other for civil matters). Creates county courts at law in Chambers, Comal, Ellis, Gillespie, Hidalgo (two), Rockwall, and Liberty Counties.

Magistrates: Allows magistrates to be appointed by the El Paso Council of Judges (criminal jurisdiction), Collin County Commissioners Court, and Fort Bend County Commissioners Court. Authorizes the Bell County Commissioners Court to select masters to serve the JP courts in truancy matters. Authorizes the Kerr County Commissioners Court to enable district and statutory county court judges to appoint magistrates.

Court Reporters: Requires service of notice of appeal under the TRAP to be served on each court reporter responsible for preparing the reporter's record. Provides that on the request of a court reporter who reported a deposition, a court reporting firm shall provide the reporter with a copy of the document related to the deposition, known as the further certification, that the reporter has signed or to which the reporter's signature has been applied. Creates an apprentice court reporter certification and a provision court reporter certification.

Office of Court Administration: Requires OCA to publish a list of new or amended court costs and fees every two years. Requires the OCA to develop and maintain a public website that allows a person to easily publish public information on the site. Requires the OCA to provide technical support to specialty court programs and to monitor specialty court programs for compliance with programmatic best practices. Allows a person required to publish citation or notice in a

newspaper to publish the citation or notice only on the OCA's public information website if the person files a statement of inability to pay court costs under the TRCP, the total cost of the required publication exceeds the greater of \$200 or the amount set by the Supreme Court, or the county in which the publication is required does not have a newspaper. Shifts oversight of specialty court programs from the criminal justice division of the governor's office to the OCA. Directs the OCA to provide technical assistance to specialty court programs and to monitor compliance with programmatic best practices. (HB 2955 by Price)

Notice: Requires the Supreme Court to adopt rules to provide for the substituted service of citation by an electronic communication sent to a defendant through a social media presence, if substituted service of citation is authorized under the TRCP. The Court shall adopt rules not later than December 31, 2020. Requires notice served by publication to be published on the public information website maintained by OCA as well as in a newspaper. If service is made by publication, proof of service consists of an affidavit made by the OCA that contains a copy of the published notice and states the date of publication on the OCA website.

Authorizes a district clerk to post an official and legal notice by electronic display rather than a physical document.

Visiting Judges: Changes the eligibility requirements for a retired former judge to allow a visiting judge to be appointed if the judge has not in the preceding 10 years been publicly reprimanded or censured by the State Commission on Judicial Conduct in relation to behavior on the bench or judicial duties, provided the judge served as an active judge for at least four terms in office, and has not been convicted of a felony or crime involving domestic violence or moral turpitude.

Definition of "Person" for Purposes of Criminal Prosecution

HB 2361 by Representative Joe Moody (D-El Paso), SB 1258 by Senator Dawn Buckingham (R-Lakeway)

Signed by the Governor 5-22-19. Effective 9-1-19.

Amends various sections of the Penal Code to add a limited liability company or other entity or organization governed by the Business Organizations Code to the term "person" for purposes of criminal prosecution. The current definition includes only an "individual, corporation, or association."

Judicial Conduct Commission

SB 467 by Senator Judith Zaffirini (D-Laredo)

Vetoed by the Governor.

Required the Judicial Conduct Commission to report annually the number of pending complaints pending with the commission, the number of complaints pending for more than a year without decision, the number of complaints referred to law enforcement, and the number of complaints deferred pending criminal investigation. Required the JCC to post complaints and status of complaints on its website. Required the commission to establish guidelines for the imposition of sanctions to ensure each sanction is proportional to the judicial misconduct. Required the commission to establish a schedule outlining times for commission action on complaints.

Judicial Campaign Fairness Act

HB 3233 by Representative Stephanie Klick (R-Fort Worth), Senator Pat Fallon (R-Prosper)

Signed by the Governor on 6-2-19. Effective immediately.

Repeals a number of potentially unconstitutional provisions of the Judicial Campaign Fairness Act, including: the requirement that a person intending to make certain levels direct campaign expenditures to support or oppose a judicial candidate file a written declaration of the intent to make those expenditures; the requirement that a candidate for judicial office file a written statement stating an intent to comply with the expenditure limits or to make expenditures that exceed the limits; the provisions that allows a complying candidate to lift the contribution, expenditure, and reimbursement of personal loan limits if an opposing candidate does not comply with the voluntary limits; the provision allowing a complying candidate to state voluntary compliance on political advertising; the expenditure limits; and the Judicial Campaign Fairness Fund.

Judicial Selection Study

HB 3040 by Representative Todd Hunter (D-Corpus Christi), Senator Joan Huffman (R-Houston)

Signed by the Governor 6-14-19. Effective immediately.

Establishes a select committee on judicial selection. Applies to trial and appellate courts. The committee consists of four senators appointed by the Lieutenant Governor, four house members appointed by the Speaker, four members appointed

by the Governor, and one member appointed by each of the president of the state bar, Chief Justice of the Supreme Court, and Presiding Judge of the Court of Criminal Appeals. The committee must report its recommendations by December 31, 2020.

CONSTRUCTION LAW

Duty to Defend

HB 1211 by Representative Drew Darby (R-San Angelo)

Died on Senate Intent Calendar

As occurred last session, this spring we saw a wide range of bills proposing significant changes to construction law and contracting practices. Some proposals focused on construction of public works, while others dealt with the allocation of risk in private construction projects. The primary focus of discussion this time was HB 1211 by Representative Drew Darby (R-San Angelo), which barred a property owner from contracting with a design professional (engineer or architect) for the defense of claim arising from a construction defect. The bill also contained a limitation on contracting for a specific standard of care for a design professional. Despite intensive negotiations with Representative Darby and the engineers, we were unable to reach a compromise. The bill passed the House, but failed in the Senate, partly because its Senate sponsor, Senator Kolkhorst, used the bill as a vehicle for reviving her eminent domain bill, SB 421.

Design Defects

HB 290 by Representative Jeff Leach (R-Plano)

Died in House Calendars

Legislation fundamentally changing Texas construction law with respect to contractor responsibility for design defects was introduced again this session. HB 2901 by Chairman Jeff Leach (R-Plano) provided that a contractor is not responsible for defects in, and may not warranty, the adequacy, suitability, accuracy, or sufficiency of plans, specifications, or other documents provided to the contractor by the client entity or client representative, including design professionals. The bill as filed also barred the waiver of this provision by contract. TCJL worked with Chairman Leach to amend HB 2901 to exempt property owners who own or operate critical infrastructure projects, as that term is defined in the Government Code. The amendment went on the bill before it came out of committee. The bill, however, never made it to the House floor. We expect to see it again next session. *HB 2901 died in House Calendars.*

Contract Documents

HB 2268 by Representative Senfronia Thompson (D-Houston)

Died in House Calendars

A third bill that TCJL worked extensively to amend was HB 2268 by Representative Senfronia Thompson (D-Houston). As originally filed, this bill would have rendered voidable any provisions in a construction contract that was incorporated by reference and was not provided in hard copy to a general contractor or subcontractor. This bill raised very significant concerns for industry, which routinely requires contractors to comply with myriad safety and other requirements incorporated into their contracts. Working with Representative Thompson's office, TCJL successfully amended the bill to provide that such documents could be provided electronically through a vendor portal on the owner's website. We also worked on a more general exception for critical infrastructure facilities, which frequently involve complex engineering standards incorporated by reference. HB 2268 cleared the House Business & Industry Committee but did not proceed to the House floor. *HB 2268 died in House Calendars.*

Other Construction Law

School District Construction Defects

HB 728, HB 1734 by Representative Justin Holland (R-Rockwall)

Signed by the Governor on 6-14-19. Effective 9-1-19.

Requires a school district that brings an action for damages for a construction defect to provide the Commissioner of Education with a copy of the petition, by registered or certified mail, not later than the 30th day after the action is filed, or the action will be dismissed. The dismissal extends the statute of limitations for 90 days. If the district receives state assistance for facilities, the commissioner may join the action. The district must use the proceeds of the action to repair the defect and ancillary damage to furniture or fixtures, the replacement of the damaged facility, the reimbursement of the district for repairs, or any other purpose with the approval of the commissioner. Gives the Attorney General additional

authority to enjoin a violation of this section recover the state share of any recovery, if the state has provided part of the financing for the construction of an instructional facility that is the subject of the suit. Also authorizes the Attorney General to recover a \$20,000 civil penalty.

Right to Repair - Public Projects

HB 1999 by Representative Jeff Leach (R-Plano)

Signed by the Governor on 6-14-19. Effective immediately.

Requires a governmental entity (the state and local governments), before bringing an action against a contractor or design professional for a construction defect, to provide each party with whom the entity has a contract for construction or design of an affected structure a written report by certified mail, return receipt requested, that clearly identifies the specific defect, describes the present physical condition of the affected structure, and describes any modification, maintenance, or repairs to the affected structure by the governmental entity or others since the structure was initially occupied or used. Requires the contractor to provide a copy of the report to each subcontractor whose work is subject to the claim. Allows the opportunity to inspect within 30 days and to correct within 120 days after inspection. Provides that an entity is not required to allow a party to make a correction or repair if the party cannot provide a bond, provide liability insurance or workers' compensation insurance, has previously been terminated for cause, has been convicted of a felony. Also provides that the entity is not required to allow the party to make a correction or repair if the entity has already complied with the process and the defect was either not corrected or the attempt to correct the defect or related condition resulted in a new construction defect or related condition. Tolls the limitations period for one year after the report is sent, if it occurs in the final year of the limitations period. Provides that the entity can recover the costs of the report if it prevails in the action or a correction or repair is made. Requires an insurer to treat written notice of a defect or receipt of a report to the party as filing a suit asserting a claim against the party for purposes of the relevant policy terms.

Certificates of Merit

HB 2440 by Representative Matt Krause (R-Fort Worth), SB 1928 by Senator Pat Fallon (R-Prosper)

Signed by the Governor on 6-10-19. Effective immediately.

Amends §150.002, CPRC, to require the third-party professional who gives a certificate of merit on behalf of a claimant against a licensed professional to practice in the same area as the defendant (current law merely says "knowledgeable" in the defendant's area of practice).

Design Defects - Road Projects

HB 2899 by Representative Jeff Leach (R-Plano)

Signed by the Governor on 6-2-19. Effective immediately.

Provides that a contractor operating under a contract with a governmental entity for the construction of a road, highway, bridge, tunnel, overpass, or other highway extension, is not responsible for defects or the consequences of defects in the adequacy, accuracy, sufficiency, or suitability of plans, specifications, or other design or bid documents provided to the contractor by the governmental entity or a third party under a separate contract with the governmental entity. Applies to the state and political subdivisions of the state. Also provides that a governmental entity may not require the engineering or architectural services be performed to a level of professional skill and care beyond the level that would be provided by an ordinarily prudent engineer or architect with the same professional license and under the same or similar circumstances in a contract for engineering or architectural services or that contains engineering or architectural services as a component of the contract.

Waiver of Sovereign Immunity

HB 1185 by Representative John Cyrier (R-Lockhart), SB 737 by Senator Bryan Hughes (R-Mineola)

HB 1185 died on the House Calendar. The Senate companion never received a hearing.

Amended §114.003 and §114.004, CPRC, to expand the waiver of sovereign immunity to a suit against a state agency for breach of contract by removing the limitation that the waiver only applies to a claim for break "of an express provision" of the contract. The bill also allowed recovery of increased costs directly resulting from owner-caused delays or acceleration regardless of whether the contract expressly provided for that compensation, as well as the recovery of just and equitable attorney's fees, regardless of whether the contract expressly provided recovery of attorney's fees to all parties to the contract.

Construction Defects - Statute of Repose

HB 1737 by Representative Justin Holland (R-Rockwall)

Died in House Calendars.

The committee substitute reduced the statute of repose for a claim against a contractor, registered or licensed architect, engineer, interior designer, or landscape architect from 10 to 7 years arising out of a defective or unsafe condition of real property, an improvement to real property, or equipment attached to real property.

CIVIL PROCEDURE

Expense Affidavits

HB 1693 by Representative John Smithee (R-Amarillo), SB 1465 by Senator Bryan Hughes (R-Mineola)

Signed by the Governor on 6-10-19. Effective 9-1-19.

Amends §18.001, CPRC, to:

- Modify the deadlines to give a defendant additional time to determine whether to controvert the affidavit. The deadline would run from the earlier of 120 days after the defendant files an answer or the date the offering party must designate expert witnesses under a court order; and
- Clarify that the affidavit does not support a finding of the causation element of the claimant's underlying cause of action. It also clarifies that a counter-affidavit may not be used to controvert the causation element of the claimant's underlying cause of action.
- Also provides that if services are first provided after 90 days after the defendant files its answer, the plaintiff must serve the affidavit by the date the plaintiff must designate an expert under the TRCP. The defendant may file a counter-affidavit by the later of 30 days after service of the affidavit or the date the defendant must designate an expert under the TRCP.

Court Proceedings During a Disaster

SB 40 by Senator Judith Zaffirini (D-Laredo), HB 2006 by Representative Jeff Leach (R-Plano)

Signed by the Governor 6-7-19. Effective Immediately.

Extends from 30 to 90 days the duration of an order of the Supreme Court to modify or suspend procedures for the conduct of any court proceeding affected by a disaster declared by the governor. Authorizes the presiding judge of an administrative judicial region to modify the terms and sessions of a district court or statutory county court in the district affected by a disaster, with the approval of the affected judge. Does the same for statutory probate courts (by the presiding judge of the statutory probate courts), county courts (by the presiding judge of the administrative judicial region, with the approval of the county judge), and justice courts and municipal courts (with the approval of the judge of the affected courts). Alternate locations may either be in the county or outside the county, with the approval of the presiding judge of the administrative judicial district in that county.

LLC Acknowledgment Form

HB 1159 by Representative Four Price (R-Amarillo)

Signed by Governor on 5-14-19. Effective 9-1-19.

Amends §121.006(b), CPRC, to add to the definition of "acknowledged" in an acknowledgment form a member, manager, or authorized officer acting for a limited liability company when the member, manager, or authorized officer acknowledges before the officer taking the acknowledgment that the person is acting on the LLC's behalf for the purposes and consideration expressed in the instrument.

MDL Transfer

SB 827 by Senator Joan Huffman (R-Houston), HB 2083 by Representative John Smithee (R-Amarillo)

Signed by the Governor on 6-2-19. Effective 9-1-19.

Removes from the MDL transfer process cases for Medicaid fraud under Chapter 36, Human Resources Code, and actions brought under the DTPA not covered by the laundry list in §17.46 (actions brought by consumers for specified deceptive acts and practices).

Collection of Judgment

SB 2364 by Senator Bryan Hughes (R-Mineola)

Signed by the Governor on 6-14-19. Effective 9-1-19.

Amends §31.002(a), CPRC, to include a justice court in the courts of appropriate jurisdiction required to assist a judgment creditor in collecting a judgment.

Limitation in Arbitration Proceeding

HB 1744 by Representative John Smithee (R-Amarillo)

Died on House Calendar.

Adds §171.004, CPRC, to prohibit a party from asserting a claim in an arbitration proceeding if the party could not bring suit for the claim in a court because of limitations, unless the party brought suit for the claim in a court before the expiration of the limitations period and a court ordered the parties to arbitrate the claim.

Arbitration Agreements

HB 2375 by Representative Julie Johnson (D-Carrollton)

Died in House Judiciary and Civil Jurisprudence.

Adds §171.0221, CPRC, to prohibit a court from enforcing an arbitration agreement in a dispute that had not yet arisen at the time the agreement was made if the agreement requires arbitration of an employment dispute, consumer dispute, antitrust dispute, or civil rights dispute or would have the effect of waiving the right of an employee to seek judicial enforcement of a right arising under federal or state law. Does not apply to an agreement to arbitrate between an employer and a labor union or between labor union.

Offer of Settlement

HB 2500 by Representative Julie Johnson (D-Carrollton)

Died in House Judiciary and Civil Jurisprudence.

Amended §§42.002 and 42.005, CPRC, to allow any party to an action to invoke the offer of settlement procedure. The current law only allows defendants to invoke it. Directed the Supreme Court to adopt rules implementing the change by January 1, 2020.

Disclosure of Experts

HB 2825 by Representative Charlie Geren (R-Fort Worth)

Died in House Judiciary & Civil Jurisprudence.

Added Subchapter D, Chapter 22, CPRC, to require a party to disclose to all other parties the identity of any expert witness the party may use at trial. Provided that if an expert witness is retained or specially employed for the case, or if the party has an employee who regularly gives expert testimony, the disclosure must be accompanied by a written report that: (1) contains a complete statement of all the opinions to be expressed and the basis or reasons for those opinions; (2) the facts and data relied on by the witness to form an opinion; (3) copies of any exhibits; (4) the witness's qualifications, including all publications in the preceding 10 years; (5) a list of other cases in which the witness has testified in the last four years; and (6) a statement of the compensation paid for study and testimony in the case. If the witness is not required to file a report, then the disclosure must only include the subject matter of the witness testimony and a summary of the facts and opinions to be presented. Unless otherwise stipulated by the court, the disclosure must be made no later than 90 days before trial or, for rebuttal evidence, 30 days after the date of the other party's disclosure. Bars discovery of a communication between an attorney and expert witness made in anticipation of litigation or deposition or for trial, but does not bar discovery of the compensation to be paid to the witness, or facts, data, or assumptions supplied by the attorney and that the witness relied on in forming an opinion. Bars discovery of a draft of a written report or other disclosure under this chapter.

Transfer of Venue

HB 3238 by Representative Brooks Landgraf (R-Odessa)

Died in House Judiciary & Civil Jurisprudence.

Added §15.0635, CPRC, to require the court to transfer an action to another county of proper venue if the court finds, based on the petition and affidavits of the parties: (1) the defendant was joined for the primary purpose of establishing venue in a county that would not otherwise be a county of proper venue; or (2) the facts pleaded concerning the defendant who is the connection to the county is the primary basis for establishing venue in the county are materially false. Permitted the court to consider whether the trier of fact would impose significant liability on the defendant, or the plaintiff who joined the defendant has a good faith intention to prosecute the action and seek judgment against the defendant. Made a judge's decision to transfer reversible error.

MEDICAL LIABILITY

ER Standard of Care

HB 2362 by Representative Joe Moody (D-El Paso), SB 2378 by Senator Bryan Hughes (R-Mineola)

Signed by the Governor on 6-15-19. Effective 9-1-19.

Amends §74,153, CPRC, to modify SCOTX's decision in Texas Health Presbyterian Hospital of Denton, Marc Wilson, M.D., and Alliance Ob/Gyn Specialists, PLLC v. D.A. and M.A., Individually and as Next Friends of A.A., a Minor (2018) with respect to the standard of proof for medical care provided in a hospital obstetrical unit. The agreed substitute provides that the willful and wanton standard does not apply to: (1) medical care or treatment that occurs after the patient is stabilized and is receiving medical treatment as a nonemergency patient; (2) medical care or treatment that is unrelated to a medical emergency; or (3) any physician or health care provider whose negligent act or omission proximately causes a stable patient to require emergency medical care.

Medical Liability Caps

HB 765 by Representative Gene Wu (D-Houston)

Died in House Judiciary & Civil Jurisprudence.

Amended §§74.301 and 74.302, CPRC, to index the caps on noneconomic damages and the amounts of required financial responsibility in health care liability claims.

Expert Reports

HB 3186 by Representative Matt Krause (R-Fort Worth)

Died in House Judiciary & Civil Jurisprudence.

Amended §74.351, CPRC, to require a claimant who files a supplemental or amended pleading in a health care liability claim that asserts a theory of direct liability against a defendant against whom the claimant had previously asserted a theory of vicarious liability to serve on the defendant an expert report not later than 60 days after filing the supplemental or amended pleading.

Authorization for Release of Records

SB 1565 by Senator Pat Fallon (R-Prosper), HB 3248 by Representative Reggie Smith (R-Sherman)

Signed by the Governor on 5-22-19. Effective 9-1-19.

Amends §72.054(c), CPRC, the form used to authorize the release of health care information in a health care liability claim, to change "Place of Birth" to "Date of Birth" at the top of the form.

Hospital Liens

SB 1159 by Senator Kelly Hancock (R-North Richland Hills), HB 2927 and HB 2929 by Representative Jeff Leach (R-Plano)

Signed by the Governor on 6-10-19. Effective immediately.

Adds §55.0015, Property Code, to provide that for purposes of the attachment of a hospital lien, an injured person is considered admitted to a hospital if the person is allowed access to any department of the hospital for the provision of any treatment, care, or service to the individual. Provides that a hospital lien is for the lesser of the amount of the hospital's charges during the first 100 days of the injured person's hospitalization or 50% of all amounts recovered by the injured individual through a cause of action, judgment, or settlement described by §55.003(a). A hospital lien does not cover charges for which recovery is barred under §146.003, CPRC (timely billing of third-party payors).

GUN LIABILITY

Failure to Post Inadmissible

SB 772 by Senator Bryan Hughes (R-Mineola), Representative Drew Springer (R-Muenster)

Signed by the Governor on 6-14-19. Effective 9-1-19.

Several bills were filed this session dealing with the consequences of a premises owner's decision to allow or prohibit licensed handguns on the premises. The bill that finally emerged, SB 772, provides that failure to post the statutory notice required to forbid the carrying of handguns on the premises of a business, or any other evidence of the business owner's failure to exercise the option of forbidding handguns on the premises, is not admissible as evidence in a trial on the merits in an action: (1) against the person who owns, operates, or manages the property; and (2) in which a cause

of action arises from an injury on the property. The bill further provides that such evidence does not support a cause of action against the owner, operator, or manager of the property.

COMMERCIAL LITIGATION

Covenants not to Compete

HB 1522 by Representative Chris Paddie (R-Marshall)

Died in House Energy Resources Committee.

Prohibited a downstream, midstream, or upstream oil and gas operation from requiring an independent contractor to enter into a covenant not to compete that restricts the contractor from performing work or providing a service for another entity engaged in a downstream, midstream, or upstream oil and gas operation.

Conflict of Law and Contract

HB 1957 by Representative Harold Dutton (D-Houston)

Died in House Business & Industry Committee.

Added Chapter 275, Business & Commerce Code, to provide that in a conflict between Texas law and a term or condition of a contract, Texas law controls.

Contractual Appraisal

HB 4223 by Representative Yvonne Davis (D-Dallas)

Died in House Judiciary & Civil Jurisprudence.

Amended Chapter 154, CPRC, to: (1) require a person who receives notice of a dispute that may be subject to a contractual appraisal process to determine the amount of loss covered by the contract to invoke the appraisal process before the 60th day after receipt of the notice; (2) require a party that may be liable under a contract for a loss the amount of which may be determined by a contractual appraisal process to promptly investigate and pay any obligation under the contract, regardless of the existence of the appraisal provision; (3) restrict the scope of a contractual appraisal provision to the determination of the amount of loss and not to any statutory or common law obligation to investigate and promptly pay a contractual obligation or exempt a party from prompt payment of penalties or attorney's fees recoverable ordinarily when a party fails to adequately and timely pay a covered loss.

ATTORNEY FEES

Contingency Fee Contracts by Local Governments

HB 2826 by Representative Greg Bonnen (R-Friendswood), Senator Joan Huffman (R-Houston)

Signed by Governor on 6-10-19. Effective 9-1-19.

Requires a political subdivision of the state seeking to retain a lawyer on a contingency fee basis to select a well-qualified lawyer or firm on the basis of demonstrated competence, qualifications, and experience in the requested services and attempt to negotiate a fair and reasonable price. Allows the political subdivision from requiring the lawyer or firm to indemnify, hold harmless, or defend claims or liabilities arising from the negligent acts or omissions of the attorney, firm, and its employees but not for the negligent acts and omissions of the political subdivision or its employees.

Requires the subdivision to give notice and hold a hearing prior to entering into a contract, specifically addressing the reasons for pursuing the matter that is the subject of the legal services and the desired outcome of pursuing the matter, the competence, qualifications, and experience demonstrated by the attorney or firm, the nature of any relationship between the political subdivision and the attorney or firm, the reasons the legal services cannot be performed internally or reasonably obtained by payment of hourly fees, and the reasons that entering into a contingent fee contract is in the best interest of the residents of the political subdivision. Requires the governing body to approve the contract in an open meeting called for that purpose. The political subdivision must issue a statement in writing stating its findings regarding the necessity of entering into a contingency fee contract with an outside lawyer or firm. Provides that the approved contingency fee contract is a public record. Requires the Attorney General to approve contingency fee contracts within 90 days of receiving the contract from a political subdivision. Allows the Attorney General to reject a contract if the AG finds that the matter is within the AG's jurisdiction, it is in the best interest of the state for the AG to pursue the matter, or the political subdivision did not comply with the procurement process. Allows a political subdivision to appeal the AG's decision to SOAH. Voids a contingency fee contract entered into without complying with this section.

Motion to Dismiss for Failure to State a Claim

HB 3300 by Representative Andrew Murr (R-Junction), Senator Joan Huffman (R-Houston)

Signed by Governor on 6-10-19. Effective 9-1-19.

Amends §30.021, CPRC, to allow rather than require a court to award attorney's fees to a prevailing party as a result of a motion to dismiss granted or denied under supreme court rules adopted under §22.004(g), Government Code.

OTHER SIGNIFICANT BILLS THAT DID NOT PASS

Litigation Financing Disclosure

HB 2096 by Representative Matt Krause (R-Fort Worth), SB 1567 by Senator Pat Fallon (R-Prosper)

Died in House Judiciary & Civil Jurisprudence and Senate State Affairs.

Directed the Supreme Court to adopt rules providing for mandatory disclosure of third-party litigation financing agreements to the parties in a civil action in connection with which third-party litigation financing is provided.

Mitigation of Damages

HB 3832 by Representative Reggie Smith (R-Van Alstyne), SB 1215 by Senator Charles Schwertner (R-Georgetown)

Died on Referral.

Under the paid or incurred rule, a liable defendant is only responsible in damages for medical expenses actually paid or incurred by the claimant, not the full chargemaster rate for the service. A growing practice in which plaintiffs do not file insurance claims under so-called "letters of protection" under which the plaintiff's attorney promises to pay more for medical services than the negotiated rate threatens to undermine the paid or incurred rule altogether. This bill addressed this problem by simply stating that the trier of fact may consider the claimant's omission to file an insurance claim as a failure to mitigate damages.

Uninsured Motorist

HB 1739 by Representative Charlie Geren (R-Fort Worth)

Died in the Senate.

As originally filed, HB 1739 by Representative Geren prohibited an insurer from requiring as a prerequisite to asserting a claim under underinsured or uninsured motorist coverage a judgment or other legal determination establishing the other motorist's liability or uninsured or underinsured status. The bill further specified that such a judgment or legal determination is not a prerequisite to having a claim under Chapters 541 or 542, Insurance Code. HB 1739 would have barred an insurer from requiring as a prerequisite to paying benefits under underinsured or uninsured coverage a judgment or legal determination of the other motorist's liability or the extent of the insured's damages before benefits are paid under the policy. It further required an insurer to make a good faith attempt to effectuate a fair, prompt, and equitable settlement of a claim once liability and damages become reasonably clear. Under the bill, prejudgment interest would have accrued on an uninsured or underinsured motorist claim on the earlier of the 180th day after the date the claimant notifies the insurer of the claim or the date on which suit is filed against the insurer to recover under uninsured or underinsured coverage. For purposes of the recovery of attorney's fees under §38.002, CPRC, a claim for uninsured or underinsured coverage would be presented when the insurer receives notice of the claim (defined as written notification to the insurer that reasonably informs the insurer of the facts of the claim).

After the bill cleared the House Insurance Committee, it was amended in an effort to address the concerns of the insurance industry and civil justice reform groups. As amended, the bill provided that an insured may provide notice of a claim for uninsured or underinsured coverage by giving written notification to the insurer that reasonably informs the insurer of the facts of the claim. It further specified that a judgment or legal determination of the other motorist's liability or the extent of the insured's damages is not a prerequisite to recovery in an action under §541.151, Insurance Code, for a violation of §541.060. Finally, it provided that the insured's only extra-contractual cause of action with respect to a UM or UIM claim is provided by §541.151 for damages under §541.152 for a violation of §541.060. HB 1739 passed the House in this form, but was never referred to committee in the Senate.

This high priority bill for TTLA will almost certainly make a comeback next session.

NEW CAUSES OF ACTION

Of particular importance to TCJL are bills that create new private causes of action. This session, we identified approximately 60 bills that fell into that category, a significant decrease from the 130 or so we saw two years ago. Of these bills, only 10 made their way to the Governor's desk, and all involve specific and limited circumstances.



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