THE
87TH
SESSION

OVERVIEW
By Royce Poinsett

The 2021 Texas Legislature furnished enough compelling storylines for several sessions. Among other endeavors, legislators convened warily during a pandemic, responded to a historic winter storm that overwhelmed the state’s electrical grid, and balanced a strained state budget with the help of billions of dollars in just-in-time federal relief.
A primary—and somewhat unexpected—narrative emerged: The 2021 Legislature was the most socially conservative session in a generation.

Republican legislators pursued a wide-ranging agenda that included election law reforms, permitless handgun carry measures, abortion restrictions, “critical race theory” curriculum bans, transgender youth constraints, national anthem requirements at sports events, and more.

Texas Democrats resisted but were largely overwhelmed, as socially conservative measures passed each chamber on largely party-line votes. Democrats (both in Texas and nationwide) were most affronted by the now-famous SB 7, a proposed sweeping change of Texas election laws promoted by Republicans as election integrity reform but denounced by Democrats as voter suppression. In the final days of the session, frustrated House Democrats deployed their “nuclear option” to kill that bill and several others, dramatically walking out of the chamber and breaking quorum for the first time since 2003.

The Democrats’ victory over SB 7 may be short-lived. Gov. Greg Abbott quickly called for a 30-day special session beginning July 8 to force continued work on the election law changes and a slew of other unfinished items including border security enhancements, transgender youth sports restrictions, “critical race theory” curriculum bans, bail system reforms, abortion-inducing drug limitations, and social media platform “bias prohibitions.” The governor also line item vetoed the entire 2021-2022 budget appropriation for the legislative branch to incentivize Democrats to return to (and stay in) the state capitol to restore that funding. However, Democrats promptly broke quorum yet again with a sojourn to Washington, D.C. The governor responded by calling yet another 30-day session beginning August 7 and by pleading to call additional special sessions if necessary. The Legislature is also expected to return for at least one additional special session in the fall to conduct once-a-decade legislative and congressional redistricting and to appropriate further federal relief funds. Look for coverage of these special sessions in future issues of the Texas Bar Journal.

Major Legislation of the 2021 Regular Session

Texas legislators filed more than 6,900 bills and enacted over 1,000 into law. Some of the most significant legislative action is summarized here.

State budget. Legislators initially faced a multibillion-dollar budget shortfall for the upcoming biennium inflicted by the COVID-19 recession. But that shortfall vanished thanks to the mid-session influx of over $16 billion in federal COVID-19 relief funding, a surprisingly resilient Texas economy, and rebounding oil and gas revenues. SB 1 enacts a two-year balanced state budget with $248.6 billion in overall spending, a 5% decrease from the prior biennium due to the federal largesse. Later tranches of the federal aid package remain to be appropriated in a future special session.

Electrical grid. Responding to February’s Winter Storm Uri, the Legislature enacted the largest reform of the Texas electricity system since the landmark deregulation legislation of 2005. SB 2 and SB 3 overhaul governance of the beleaguered Electric Reliability Council of Texas and require market participants to “weatherize” certain facilities to handle extreme temperatures under rules to be promulgated by the Public Utility Commission of Texas and Railroad Commission of Texas. Under another package of bills (HB 1520, HB 4492, and SB 1580) the state will securitize approximately $7 billion in private losses caused by the storm, spreading out these losses (and the resulting customer rate increases) over the next two decades.

Pandemic response. Proposals to limit the governor’s emergency powers during pandemics and other disasters had bipartisan support but fell victim to infighting between the House and Senate. Instead, the Legislature passed narrow measures banning public officials from closing places of worship (HB 1239) and gun stores (HB 1500) and requiring that patients in health care facilities be allowed visits by clergy (SB 572) and visits by friends, caregivers, and other individuals (SB 25) during future governor-declared disasters. SB 6 extends broad pandemic liability protections (both retroactive and prospective) against lawsuits arising from the current and future pandemics.

State vs. local control. SB 23 requires local governments to hold an election before reducing law enforcement budgets and HB 1900 provides that large cities that do make substantial cuts to police budgets could face financial penalties and disannexation elections. HB 1925 imposes a statewide ban on camping by homeless individuals in most public spaces.

Policing. Many bills were filed in response to the killing of George Floyd, and to the unrest that followed, but only a few passed. SB 69 bans the use of chokeholds by peace officers in most circumstances and requires officers to intervene to stop excessive force by other officers. HB 2366 raises penalties for interfering with or harming law enforcement.

Broadband access. HB 5 is bipartisan legislation that will finally establish a long-discussed state broadband plan and incentive program to help provide residential high-speed internet access to the estimated 5 million Texans who lack it.

Abortion. SB 8 is one of the most restrictive abortion laws in the country, prohibiting the procedure as early as six weeks into a pregnancy and creating a novel private cause of action allowing citizens to enforce the new law through lawsuits. The constitutionality of a similar Mississippi law will be considered by the U.S. Supreme Court this fall. HB 1280 will
completely outlaw abortions in Texas if the U.S. Supreme Court ever overturns Roe v. Wade.

**Guns.** HB 1927 allows Texans to carry holstered handguns without a permit or training (termed “constitutional carry” by supporters), following the lead of 20 other states. Existing restrictions against certain people carrying handguns, and against the carrying of handguns in certain places, will remain in place, and most private property owners will still be able to ban handguns on their property.

**School curriculum.** HB 3979 seeks to limit how public school teachers handle classroom discussions of certain concepts related to race and racism. The governor stated his desire to further “abolish critical race theory in Texas” in the July special session.

**Transgender children.** Democrats successfully fought legislation to mandate that transgender student athletes play on sports teams based on their sex at birth rather than on their gender identity. They also killed bills that would have banned gender transitioning hormone therapy, puberty suppression treatment, and surgery for children younger than 18.

**Marijuana.** HB 1535 is a modest expansion of the medical marijuana program to include research patients suffering from cancer, post-traumatic stress disorder, epilepsy, seizure disorders, multiple sclerosis, autism, and other issues. But the Legislature again declined calls to legalize (and tax) recreational marijuana.

**Gaming.** The Legislature rejected well-funded advocacy efforts to allow (and tax) casinos and sports betting in Texas.

**New Laws That Affect Everyday Life**

Readers might be pleased to know that the Legislature took action on some legislation that was less ideologically charged.

**Cheers.** HB 1024 allows restaurants to continue selling “alcohol to go” even after the current pandemic ends. HB 1518 allows Sunday sales of beer and wine from stores beginning at 10 a.m. (as opposed to noon) and allows hotels to sell alcohol to hotel guests 24/7.

**Tax-free Fido.** SB 197 creates a sales tax exemption for the adoption of pets from nonprofit animal shelters and similar organizations.

**Law students rejoice.** HB 654 significantly weakens the “rule against perpetuities” in Texas, so much so that future Texas law students might not even be forced to memorize it. The new law requires that an interest in a trust, other than a charitable trust, must vest, if at all, not later than 300 years after the effective date of a trust. This former law student can’t quite remember what the prior rule required.

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**ACCESS TO JUSTICE**

By Bruce P. Bower

Access to justice relies on funds appropriated by the Texas Legislature. The 87th Legislature convened on January 12, 2021, and held its final session on May 31, 2021. The Legislature passed the biennial state budget as SB 1. The Texas Senate voted in favor of SB 1, 31-0, on May 26. The Texas House of Representatives voted in favor of SB 1, 142-6, on May 27. The governor signed SB 1 (with an exception not germane here) on June 18. SB 1 can be viewed at https://capitol.texas.gov/BillLookup/Actions.aspx?LegSess=87&R&Bill=SB1.

For fiscal years 2022 and 2023, appropriations for basic civil legal services are part of the SB 1 appropriations for the Texas Supreme Court. In other words, it is the Texas Supreme Court which, through its legislative appropriations request, sets the amount of state funds that the Legislature is requested to appropriate for basic civil legal services. Article IV of SB 1 is the article in which appropriations to the judiciary are found.

For the biennium, which starts September 1, 2021, the Legislature appropriated $43,284,392 for FY 2022 for basic civil legal services and $33,284,392 for FY 2023 (which starts September 1, 2022). The goal that the Legislature set for this strategy—the output—is that, each year, 30 grantees will receive state funding for basic civil legal services. The Legislature stated, “It is the intent of the Legislature that appropriations made by this Act [SB 1] be utilized in the most efficient and effective manner possible to achieve the intended mission of the Supreme Court of Texas.”

The Texas Supreme Court is required to report semi-annually each year to the Legislative Budget Board and the governor “disbursements from all funding sources for Basic Civil Legal Services, the purpose for each disbursement, and compliance with grant conditions.”
The $10 million difference between the FY 2022 appropriation and the smaller FY 2023 appropriation results from that $10 million being included in FY 2022 “for basic civil legal services to victims of sexual assault that may only be used for purposes established for the Supreme Court of Texas in Government Code, §420.008.” Texas Government Code § 420.008 (c)(11) specifies this appropriation is to “[T]he supreme court, to be transferred to the Texas Access to Justice Foundation, or a similar entity, to provide victim-related legal services to sexual assault victims, including legal assistance with protective orders, relocation-related matters, victim compensation, and actions to secure privacy protections available to victims under law.”

Of the amount appropriated for basic civil legal services for FY 2022 and FY 2023, “$3,500,000 each fiscal year in General Revenue [is] for the purpose of providing basic civil legal services to veterans and their families.”

It is never known for certain at the beginning of a biennium what the receipts for basic civil legal services will be through the Chief Justice Jack Pope Act. Nor is it known what the receipts will be through settlement of opioid litigation. It is known that on September 25, 2020, Gov. Greg Abbott allocated $4.2 million of Coronavirus Aid, Relief, and Economic Security (CARES) Act funds to the Texas Supreme Court for basic civil legal services to avoid evictions. Another $167 million will be used for “targeted rental assistance.” The Texas Supreme Court had established the Texas Eviction Diversion Program through its Twenty-Seventh Emergency Order Regarding the COVID-19 State of Disaster.

Readers who are interested in the grant conditions for basic civil legal services appropriations in SB 1 can visit the website of the Texas Access to Justice Foundation at tajf.org. One can also see there the income and resource criteria that limit eligibility for basic civil legal services funded by the Texas Legislature.

The roles that the governor, the chief justice and the entire Texas Supreme Court, the lieutenant governor, the speaker of the House, and the attorney general carry out in support of basic civil legal services can be seen in the fact that state funds for basic civil legal services are appropriated to the Supreme Court in a bill the governor signed, and in the fact that receipts under the Chief Justice Jack Pope Act contribute to funding for basic civil legal services.

Notes
1. SB 1, Section 1, Item of Appropriation B.1.1. Strategy, SB 1, page IV-1.
2. SB 1, page IV-2.
3. Id.
4. Id.
5. Id.
6. Id.
9. See TJR | Eviions Diversion Program (recourts.gov).

ANIMAL LAW
By Shelby Bobosky and Eric Torberson

Despite starting the session with strict COVID-19 protocols, surviving Winter Storm Uri, and safety concerns at the Texas Capitol following rioting at the federal Capitol, the 87th Texas Legislature was a busy session for those who practice animal law.

HB 1071 was passed during the session. HB 1071 amends the Texas Government Code to allow specially trained facility dogs to escort vulnerable witnesses during court proceedings in Texas courts. These witnesses are typically victims of violence or abuse, are usually minor children, and must recount and testify on traumatic experiences crucial for the record. The specially trained dogs provide comfort and support to those witnesses.

Gov. Greg Abbott also signed into law HB 1480, which will make it a misdemeanor if a person “intentionally releases, steals, destroys, or otherwise causes the loss of an animal or crop from an animal or crop facility without the consent of the owner; damages, vandalizes, or steals any property on or from an animal or crop facility;” “breaks and enters into an animal or crop facility with the intent to destroy or alter records, data, materials, equipment, animals, or crops;” or “enters or remains on an animal or crop facility with the intent to commit” any of the above listed acts.

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HB 604, a mandatory microchip scanning law, was signed by the governor on May 26, 2021. Despite a pet owner’s investment in a microchip, an owner of a stolen or lost pet must still rely on a responsible third party to scan animals at their intake and quickly identify the animal. Unaccompanied pets in the custody of those entities must be scanned for microchips as soon as is practicable. This new law affects shelters, animal control agencies, law enforcement agencies that double as animal control, and rescue groups that care for stray and homeless pets. Based on those jurisdictions that have already implemented this policy, microchip scanning will save costs associated with shelter intake and boost reunification numbers, especially if they are able to “return in the field.” The dog or cat doesn’t even enter the shelter. HB 604 is effective September 1, 2021. There are many organizations that provide agencies with free microchip scanners via grant programs.

Another bill that passed this session is SB 197, an adoption
fee sales tax exemption. Effective October 1, 2021, this exempts nonprofit rescue groups from paying sales tax on adoption fees. This frees up funds previously paid in taxes to serve more animals and eliminates the time spent preparing tax documents. In other words, SB 197 allows nonprofit animal welfare organizations that rely on foster homes rather than facilities to be exempt from collecting sales tax to align with those nonprofits that operate a shelter facility. Whether through facilities or foster homes, the spirit of this law was to exempt rescue organizations from the sales tax, as nonprofits and rescuers are not in the business of “selling dogs.”

SB 48, an animal possession ban bill, amends current law relating to conditions of community supervision for defendants convicted of certain animal cruelty crimes. The law will give judges the discretion to prevent persons from possessing an animal if they are sentenced to community supervision for attacking an assistance animal, cruelty to non-livestock animals, dog fighting, or cockfighting. The law also permits judges to require psychological counseling as a condition of such sentences. This might prevent persons from harming more animals and could ensure they are provided treatment before violent tendencies escalate, which might cause them to injure or kill humans. It fixes the problem wherein judges who grant community supervision to persons convicted for most crimes related to animal abuse cannot prohibit an offender from possessing an animal as a condition of their release and mandatory psychological counseling could not be allowed as a term of community supervision for persons found guilty of these offenses. This is important because committing crimes against animals often serves as an indicator that a person could perpetrate acts of violence against humans in the future.

Despite the Texas Licensed Breeders Law falling under the Texas Department of Licensing & Regulation and TDLR being under Sunset review this legislative session, the Breeders Program was not a part of the Sunset bill. So, a breeder must get inspected and purchase a license if the breeder has 11 or more adult breeding female cats and/or dogs and sells, exchanges, or offers to sell or exchange at least 20 cats and/or dogs in one calendar year.

Abbott vetoed one dog bill that garnered nationwide attention. SB 474, also known as the Safe Outdoor Dogs Act, clarified requirements for the restraint of unattended dogs outdoors. The bill would have defined “adequate shelter” and removed the use of a chain as a legal restraint. The bipartisan bill, which was co-sponsored by more than 80 legislators, passed the House 83-32, the Senate 28-3, and went to the governor for signature May 29, 2021. On June 18, 2021, Abbott vetoed SB 474.

BUSINESS LAW
By Daryl B. Robertson

This article summarizes several bills passed by the Texas Legislature in its 2021 regular session that affect business law and does not purport to describe all passed bills in this area. This article contains summaries only and should not be relied on as a complete description of any bill. All bills are effective September 1, 2021, unless otherwise noted.

Initial Mailing Address in Certificate of Formation of New Filing Entity

HB 3131 amends the Texas Business Organizations Code, or TBOC, to require, effective January 1, 2022, that the certificate of formation of a new filing entity must contain an initial mailing address for the entity. This change was requested by the Texas Comptroller's office to enhance its ability to communicate with new filing entities to assure their franchise tax reporting compliance.

Virtual Currency

HB 4474 amends the Texas Business & Commerce Code, or TBCC, to add a new Chapter 12 to the Uniform Commercial Code, or UCC, provisions based on a recent working draft of UCC amendments at the national level. The new provisions establish rules for ownership, transfer, and control of virtual currency and defenses against adverse claims to the virtual currency. Definitions of “virtual currency” and “control” are added. Various amendments are made to Chapter 9 (secured transactions) of the TBCC to provide that a security interest in virtual currency can be perfected by obtaining control or by filing of a financing statement.

SB 1203 Contains Omnibus Package of TBOC Amendments

SB 1203 makes an array of amendments to the TBOC covering various topics. These amendments are summarized below.

Choice of Forum Provisions in Governing Documents. The governing documents of Texas entities may require all internal entity claims to be brought only in courts (federal and state) located in Texas, if consistent with applicable state and federal jurisdictional requirements. The phrase “internal entity claims” includes direct and derivative claims based upon, arising from, or related to the “internal affairs” of the entity, which is already defined in the TBOC to include the rights, powers, and duties of governing persons, officers, owners, and members and matters relating to the membership or ownership interests of an entity.

Registration of Foreign Entities to Transact Business in Texas.
No registration for a foreign entity to transact business in
Texas is required if the foreign entity is acting solely as a governing person of a domestic Texas entity or a foreign entity that is registered to transact business in Texas. This change is intended to cure any contrary implication created by a 1983 Texas attorney general opinion that has been referenced for many years on the website of the Texas secretary of state.

Emergency Provisions. The TBOC's emergency provisions are amended to expand the definition of “emergency” to include an epidemic, pandemic, hurricane, tornado, riot or civil disturbance, governmental emergency declaration, and other emergency situations. Provisions in governing documents of Texas entities applying only during an emergency period can be adopted to limit or prohibit various specified procedural requirements for meetings of governing persons. In addition, the governing persons can take “emergency action” during an emergency period without satisfying specified procedural requirements for meetings of governing persons. Emergency actions are protected if taken in good faith and based on a reasonable belief that they were in the entity’s best interests.

Virtual Shareholder Meetings. The requirements for meetings of shareholders held by means of remote communications are relaxed. Participating shareholders or proxyholders must have a reasonable opportunity to vote at the meeting and to read or hear the meeting proceedings substantially concurrently with these proceedings.

Reliance on Financial Information by Governing Persons of Limited Partnerships or LLCs. For a limited partnership or limited liability company, its governing persons may rely on financial statements, financial information, projections, and fair valuations in making determinations of the entity’s assets, liabilities, and solvency for purposes of authorizing distributions to its owners. A new two-year statute of limitations, similar to that applicable to corporations, is added for claims against owners of a limited partnership or LLC who receives impermissible distributions.

Management of Texas LLC. Flexibility in management of a Texas limited liability company is improved by authorizing its company agreement to control over its certificate of formation as to whether the LLC is manager-managed or member-managed. The certificate of formation must state whether the LLC initially will be member-managed or manager-managed and the names and addresses of its initial members or managers.

Future Effective Time for Actions by Written Consent. A unanimous written consent of governing persons, owners, and members or non-unanimous consent of owners and members of a Texas filing entity can expressly have a future effective time. A consent of any person can also have a future effective time. The future effective time can be determined based on the happening of an event. There is, however, a time limit of 60 days for the future effective time after the signing of the last consent. Consents may be revoked before they become effective.

Restated Certificates of Formation. For LLCs and corporations, any restated certificate of formation may omit the names and addresses of the initial directors, managers, or members, which are typically outdated. The LLC or corporation can elect, but is not obligated, to list the names and addresses of its current directors, managers, or members.

Express Negligence Doctrine. Provisions in governing documents of Texas entities relating to indemnification and exculpation for negligence are not subject to the so-called Texas “express negligence” doctrine, including specifically general partnerships and limited liability companies. These provisions do not have to be express and conspicuous.

Clarifications Relating to Terminated Entities. The effects of a court-ordered revocation of an entity’s fraudulent termination and a reinstatement of a forfeited certificate of formation of a filing entity under the Tax Code are clarified. A prior extinguishment of claims under TBOC Chapter 11 is nullified when a terminated entity is reinstated, its termination revoked, or its tax forfeiture reinstated, in each case with retroactive effective. The definition of the phrase
“existing claim” is also clarified to include claims arising during the entity’s three-year limited survival period.

Series LLC Amendments
SB 1523 amends the TBOC and the TBCC, effective June 1, 2022, to introduce the concept of “registered series” of Texas limited liability companies, while renaming the existing series concept as a “protected series.” In 2009, the TBOC was amended to authorize series of LLCs that allow the assets and liabilities of each series to be segregated. The registered series concept improves the transparency of series to third parties and their ability to obtain financing, to contract with third parties, and to open bank accounts. Third parties transacting with registered series can confirm the existence of the registered series through the public records of the Texas secretary of state and obtain certificates of existence.

A “registered series” has characteristics identical to a “protected series” except that an LLC must file a certificate of registered series with the Texas secretary of state containing specified information to form a registered series. Naming rules are included for registered series. A registered series is a “registered organization” for purposes of filing of financing statements to perfect security interests under TBCC Chapter 9. A registered series can also file an assumed name certificate with the Texas secretary of state under the TBCC. To terminate a registered series, a certificate of termination must be filed with the secretary of state. The filing of a certificate of amendment with the secretary of state is required to amend a certificate of registered series. Conversions of registered series into protected series and vice versa are authorized. Merger transactions among registered series and/or protected series of a single LLC are also authorized, including a divisive merger of a single registered series or protected series. Various other clarifying amendments were made to the existing protected series provisions in the TBOC.

Exemptions for Filing Fees and Taxes for New Veteran-Owned Businesses
SB 938 amends the TBOC and Tax Code, effective January 1, 2022, to exempt new veteran-owned businesses from filing fees imposed by the Texas secretary of state and from Texas franchise taxes. Similar provisions had expired on January 1, 2020. To qualify, each owner of the business entity has to be a verified veteran with honorable discharge. The entity’s exemption expires on the earlier of (a) five years after beginning its business or (b) when it ceases to qualify as a new veteran-owned business. The new provisions are automatically repealed as of January 1, 2026.

New Oil and Gas Lien Statute
HB 3794 adds new Chapter 67 to the Texas Property Code and establishes liens in favor of oil and gas interest owners in their produced oil and gas and the proceeds from the sale thereof, including rules for automatic perfection and priority of those liens. The provisions replace repealed Section 9.343 of the TBCC.

CIVIL LITIGATION AND APPELLATE LAW
By Jerry D. Bullard

The following briefly describes some of the bills passed by the 87th Legislature that will directly affect Texas civil trial and appellate practitioners. Unless otherwise indicated, all bills are effective September 1, 2021.

For more detailed and additional background information on the following bills, please visit Texas Legislature Online at capitol.state.tx.us.

Attorneys’ Fees
HB 1578 amends Section 38.001 of the Civil Practice & Remedies Code, or CPRC, to include any type of “organization” as defined under the Business Organizations Code as entities from whom attorneys’ fees can be recovered (the amendment excludes quasi-governmental entities, religious organizations, charitable organizations, and charitable trusts).

HB 2416 adds Section 38.0015 to the CPRC and allows a person to recover reasonable attorneys’ fees from an individual, corporation, or other entity from which Section 38.001 permits the recovery of compensatory damages in breach of construction contract cases.

Commercial Motor Vehicle Litigation
HB 19 amends the CPRC to provide new guidelines for cases arising out of commercial motor vehicle accidents, including the following:

• Bifurcated trials: Bifurcated trials are required when a claimant seeks to recover exemplary damages. Requests to bifurcate must be brought on or before the later of: (1) the 120th day after the defendant bringing the motion files its original answer; or (2) the 30th day after a claimant files a pleading adding a claim against the defendant bringing the motion. Liability for and the amount of compensatory damages will be determined in the first phase of a bifurcated trial; liability for and the amount of exemplary damages will be determined in the second phase.

• Violation of regulatory standards: A defendant’s failure to comply with a regulation or standard will be admissible into evidence in the first phase of a bifurcated trial only if: (1) the evidence tends to prove that the failure to comply was a proximate cause of the injury or death for which damages are sought; and (2) the regulation or standard specifically governs, or is an element of a duty of care applicable to, the defendant, the defendant’s employee, or the defendant’s property...
provides for the following: operate during a pandemic emergency. More specifically, SB 6 emergency; and individuals and businesses that continue to manufactured and distributed products related to a pandemic protection for health care providers; businesses that Liability Act, or TMLA, and the CPRC to provide liability SB 6, Pandemic Liability of Health Care Providers During a Pandemic effective June 14, 2021, amends the Texas Medical Liability of Health Care Providers During a Pandemic Direct actions against an employer: An employer-defendant's liability for damages caused by the ordinary negligence of a person operating the defendant's vehicle shall be based only on respondeat superior if the defendant stipulates that, at the time of the accident, the person operating the vehicle was: (1) the defendant's employee; and (2) acting within the scope of employment. If an employer-defendant so stipulates and the trial is bifurcated, a claimant may not, in the first phase of the trial, present evidence on an ordinary negligence claim against the employer-defendant that requires a finding that the employee was negligent as a prerequisite to the employer-defendant being found negligent in relation to the employee's operation of the vehicle.

Admissibility of visual depictions of all motor vehicle accidents: A court may not require expert testimony to admit evidence of a photograph or video of a vehicle or object involved in an accident. If properly authenticated under the Texas Rules of Evidence, a photograph or video of a vehicle or object involved in an accident is presumed admissible, even if it tends to support or refute an assertion regarding the severity of damages or injury to an object or person.

Pandemic Liability SB 6, effective June 14, 2021, amends the Texas Medical Liability Act, or TMLA, and the CPRC to provide liability protection for health care providers; businesses that manufactured and distributed products related to a pandemic emergency; and individuals and businesses that continue to operate during a pandemic emergency. More specifically, SB 6 provides for the following:

Liability of Health Care Providers During a Pandemic: Except in a case of reckless conduct or intentional, willful, or wanton misconduct, a health care provider is not liable for an injury or death arising from care or treatment (or a failure to provide care or treatment) relating to a pandemic disease or a disaster declaration related to a pandemic disease, if the health care provider proves by a preponderance of the evidence that: (1) a pandemic disease or a related disaster declaration was a producing cause of the care or treatment (or failure to provide care or treatment) that allegedly caused the injury or death; or (2) the individual who suffered injury or death was diagnosed or reasonably suspected to be infected with a pandemic disease at the time of the care or treatment (or failure to provide care or treatment). A health care provider who intends to raise this defense must provide facts supporting such a defense no later than the later of: (1) the 60th day after the claimant serves an expert report on the health care provider; or (2) the 120th day after the health care provider files an original answer.

Pandemic Emergency Related Products: A person who designs, manufacturers, sells, or donates a product described in SB 6, such as personal protection equipment and medications and vaccines used to treat or prevent the spread of the disease, is not liable for an injury, death, or damage caused by the product unless: (1) the person either had knowledge of a product defect when the product left the person's control, or acted with malice in designing, manufacturing, selling, or donating the product; and (2) the product presented an unreasonable risk of substantial harm.

Liability for Causing Exposure to a Pandemic Disease: A person is not liable for injury or death caused by exposure to a pandemic disease during a pandemic emergency unless: (1) said person knowingly failed to warn the individual of or remedy a condition that said person knew was likely to result in exposure, or knowingly failed to implement or comply with government-promulgated standards or guidance intended to lower the likelihood of exposure; and (2) scientific evidence shows that the failure to warn about the condition, remedy the condition, or implement or comply with government-promulgated standards or guidance caused an individual to contract the disease.

Expert Reports: Claims for exposure to a pandemic disease must be supported by an expert report. Absent written agreement otherwise, no later than the 120th day after a defendant files an answer to an exposure claim, a claimant must serve on the defendant: (1) an expert report that provides a basis for the claim that the defendant's failure to act caused an individual to contract a pandemic disease; and (2) a curriculum vitae for each expert whose opinion is included in the report. A defendant must object to the sufficiency of the report supporting such a defense no later than the later of: (1) an expert report that provides a basis for the claim that the defendant's failure to act caused an individual to contract a pandemic disease; and (2) a curriculum vitae for each expert whose opinion is included in the report.

Interlocutory Appeal. A person may appeal from an interlocutory order that overrules an objection filed to an expert report or denies all or part of the relief sought in a motion to dismiss.

Contractor Liability SB 219 amends the Business & Commerce Code to establish that, except for a “critical infrastructure facility,” a contractor
is not responsible for the consequences of defects in plans, specifications, or other design/bid documents to construct or repair an improvement to real property when provided to the contractor by a person with whom the contractor entered into the contract.

Under SB 219, a contractor must disclose, in writing, any known defect in the plans, specifications, or other design/bid documents discovered by the contractor before or during construction, as well as any other inaccuracies, inadequacies, and insufficiencies. A contractor who fails to disclose conditions may be liable for defects resulting from the failure to disclose. SB 219 prohibits these protections from being waived by contract.

**HB 2086**, effective June 16, 2021, amends CPRC § 51.014 to authorize the interlocutory appeal of an order either granting or denying a motion for summary judgment filed by a contractor in cases arising out of the conduct of a contractor who constructs or repairs a highway, road, or street for the Texas Department of Transportation if, at the time of the injury, damage, or death, the contractor was in compliance with contract documents material to the damage-causing condition or defect.

**Health Care Liability**

**SB 232** adds to the TMLA a “preliminary determination for expert report” section that permits a court to issue a preliminary determination as to whether a claim is a health care liability claim. A claimant must request such a determination no later than 30 days after a defendant’s original answer is filed. If a court determines that a claim is a health care liability claim, the claimant must serve an expert report no later than the later of: (1) 120 days after each defendant’s original answer is filed; (2) 60 days after the court issues the determination; or (3) a date agreed to in writing by the affected parties.

If a preliminary determination is not issued before the 91st day after a claimant files a motion, the court shall issue a determination that the claim is a health care liability claim. A preliminary determination is subject to interlocutory appeal by either the claimant or defendant.

**Notes**

Identity Theft Enforcement and Protection Act
Use of Personal Information Consent

An individual’s personal identifying information may not be obtained, possessed, transferred, or used without the individual’s consent—or, beginning September 1, 2021, effective consent as amended by HB 3529. Effective consent includes consent given by a person legally authorized to act on behalf of the person from whom consent is required. Consent is not effective if induced by force, threat, fraud, or coercion. Neither is consent effective if given by a person who by reason of youth, mental illness, or intellectual disability is known by the actor to be unable to make reasonable decisions.

Electronic Tracking of Mail-In Early Voting Applications and Ballots

Certain qualified voters are eligible for early voting by mail in the state of Texas. Eligibility criteria for early voting by mail include being 65 years of age or older on Election Day, certain jail confinement, disability, and absence from the county on Election Day. Effective September 1, 2021, HB 1382 requires the secretary of state to develop or otherwise provide an online tool for individuals who submit their early voting application or ballot by mail to track the location and status of their submission online. The online tool must require the individual to verify his or her identity by providing certain personal identifying information such as name, registration address, and the last four digits of their Social Security number.

Disclosure of Data Collected by Public Transportation Systems

The Texas Transportation Code protects certain personal identifying information as confidential and not subject to disclosure such as a traveler’s name, address, phone number, account number, and payment information. Effective May 28, 2021, SB 858 amended the code to include additional trip data subject to non-disclosure such as time, date, place of departure and destination, and demographics that are routinely collected at the time of ticket purchase.

The newly protected information may only be disclosed to a governmental agency or institution of higher education, as defined by Section 61.003 of the Texas Education Code, by an authority if the requestor confirms in writing that the use of the information will be strictly limited to research and statistical data not subject to publish, re-disclosure, or sale.

Bullying and Cyberbullying in Public Schools

Texas law requires schools to adopt bullying and cyberbullying policies for the protection of their students. SB 2050 amended Texas Education Code § 37.0832 to add additional policies that the board of trustees of each school district must adopt for their district. As of June 18, 2021, each school district’s board of trustees is required to adopt a policy preventing and mediating bullying incidents between students that (a) interfere with a student’s educational opportunities; or (b) substantially disrupt the orderly operation of a classroom, school, or school-sponsored/related activity. SB 2050 also added a minimum standard for the policies the school districts must adopt. The standards adopted must: include an emphasis on bullying prevention by focusing on school climate and building healthy relationships between students and staff; each district campus must establish a committee to address bullying by focusing on prevention efforts and health and wellness initiatives; students at each grade level must meet periodically for instruction on building relationships and preventing bullying or cyberbullying; the standard should emphasize increasing student reporting of bullying to the school by increasing awareness about reporting procedures and providing the ability to anonymously report; the standard must collect information annually through student surveys on bullying/cyberbullying and use the survey results to develop action plans to address student concerns regarding bullying or cyberbullying; and the districts must develop a rubric or checklist to assess an incident of bullying and determine the response to the incident.

SB 2050 also amended Texas Education Code § 48.009 to require school districts and open-enrollment charter schools to annually report via the Public Education Information Management System the number of reported incidents of bullying at each campus, and they must specify the incidents that included cyberbullying.

Coercion in Relation to the Trafficking of Persons

Effective September 1, 2021, HB 3521 amends Texas Penal Code § 20A.01 to include a definition concerning coercion in relation to the trafficking of persons that focuses on the misuse of their personal information. This amendment adds the definition of coercion as follows: destroying, concealing, confiscating, or withholding from a trafficked person (or threatening to do so) their government records or identifying information or documents; causing a trafficked person to become intoxicated without their consent to a degree that impairs the person’s ability to appraise the nature of the conduct or resist in engaging in any conduct; or withholding alcohol or a controlled substance to a degree that impairs the ability of a trafficked person with a chemical dependency to appraise the nature of the conduct or resist in engaging in any conduct.

Cybersecurity Training Compliance for Grant Eligibility

HB 1118, effective May 18, 2021, requires local governments applying for grant funds to submit a written certification of the local government’s compliance with the cybersecurity training required by Section 2054.5191. The criminal justice division determines that an awarded local government has not complied with the cybersecurity training requirement, such government shall pay back the state an amount equal to the grant award and be deemed ineligible for

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another grant until the second anniversary of the determined date of ineligibility.27

Texas Schools’ Ability to Share Information Relating to Cybersecurity Incidents

SB 1696 amends Texas Education Code § 11.175, which details the schools’ systems for reporting cyber-attacks or other cybersecurity incidents they experience. Effective September 1, 2021, SB 1696 requires a school district or open-enrollment charter school to report any cyber-attack or cybersecurity incident against the school district/open-enrollment charter school’s cyber infrastructure that constitutes a breach of system security as soon as practicable after discovery of the incident.28 The school must report this type of incident to the agency in cybersecurity matters or, if applicable, the entity that administers the system designed to coordinate the anonymous sharing of information concerning cyber-attacks or other cybersecurity incidents between participating schools and the state.29 The system established must include each report the school district reports to the agency or entity described above,30 provide for those reports to be shared between participating schools in as close to real time as possible,31 and preserve a reporting school’s anonymity by ensuring the name of the school that experienced the attack or incident is not released.32 When establishing the system to anonymously share information concerning attacks or incidents, the agency may contract with a qualified third party to administer the system.33

Notes
27. Id.
29. Tex. Educ. Code §§ 11.175(e) and (g).

CONSTRUCTION LAW
By Ben Aderholt

Design Defect Liability
The 87th Legislature shifted liability from the general contractor for design defects in plans prepared by others and limits the contractor’s responsibility to timely disclose discovered plan defects in writing, and the new protection may not be waived by contract. Furthermore, indemnification by a contractor of design professionals for liability caused by defective plans is now void.1

Since the 1907 Texas Supreme Court opinion in Lonergan v. San Antonio, a contractor bore the risk and liability of a building failure resulting from defective design. The court rejected the defense that the owner impliedly warranted the sufficiency of the plans. Several appellate courts in the face of Lonergan recognized a cause of action for contractors when the owner furnished defective plans. The new law effective September 1, 2021, may resolve this conflict among Texas courts as well as the conflict with U.S. v. Spearin, a 1918 opinion by the U.S. Supreme Court.

Attorneys’ Fees
Attorneys’ fees may be recovered after September 1, 2021, as part of compensatory damages for breach of a construction contract. This will increase the face amount of appeal bonds.
Public Works (McGregor Act)
The maximum retainage will be limited to 5% on contracts exceeding $5 million, retainage held by the government on large projects may bear interest, and retainage may be payable upon completion. New contracts must provide when the work is substantially complete. The amount of retainage withheld may not exceed amounts withheld upstream. An owner must now specify why retainage is withheld and allow the contractor time to cure.3
Procurement scoring methodologies and bid evaluations must be disclosed within 30 days after a contractor’s request. Evaluations must be made public within seven days.4 Texas Local Government Code § 302 was amended to provide that energy savings performance contracts in certain cases are prohibited for public works. School districts may adopt uniform general conditions to be drafted and reviewed by the Texas Facilities Commission.5
The 10-year statute of repose in Texas Civil Practice & Remedies Code § 16.008 was shortened to eight years for a public building owner to sue for defects, but Texas Department of Transportation, highways, and civil works are excluded.6
Texas Government Code § 2254 was amended to restrict amending contracts for attorneys’ fees.7 The Prompt Pay statute was amended to require an owner to provide detailed written notice of disputed amounts, and the withheld amount may not exceed 110% of the disputed amount.8

Lien Law (Hardeman Act)
Many revisions were made to construction law. Here are the main ones.
Texas Property Code § 53 was amended effective September 1, 2022, to eliminate the requirement for the subcontractor’s second month notice to the general contractor. Form notices are promulgated in sections 53.056 and 53.057. To avoid the Myrex case result, lien deadlines are extended to the next business day and limitations to foreclose a lien is shortened to one year from when the lien could be recorded. The requirement for notices to be sent by certified mail (one of the methods for notice currently provided) was made optional. Design services and equipment rental are now lienable. Materials are now defined as those incorporated or used, rather than consumed in the project.9

Sincere gratitude is once again extended to Ben Wescott.

Notes
6. HB 3069.
7. SB 1821.
9. HB 2237.

CRIMINAL LAW
By Allen D. Place Jr. and Shea Place

The first two months of the 87th legislative session featured mostly empty House and Senate chambers and ended with an empty House chamber on the eve of sine die. Talk of simply passing a budget and perhaps a statewide broadband access bill and then adjourning was soon forgotten, as the Legislature passed well over 100 bills affecting the Texas Penal Code and Texas Code of Criminal Procedure out of approximately 900 criminal law bills filed.

Firearm legislation attracted significant attention this year and the following are the new laws regarding firearms, including handguns.

- **HB 957** amends current law regarding firearm suppressors by removing such from the list of prohibited weapons in the Penal Code and makes a firearm suppressor that is manufactured and remains in Texas not subject to federal law or regulation.
- **HB 1069** seeks to ensure first responders employed or supervised by counties or municipalities with smaller populations are able to defend themselves. It establishes the right of certain first responders who are handgun

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Human trafficking once again took center stage, as numerous bills seeking to address this issue were signed into law.

- **HB 1407** amends Penal Code § 46.035 by stating a license holder can have a handgun visible in their vehicle, regardless of whether it is on their person, as long as the handgun is in a holster.
- **HB 1920** expands the “secured area” for airports to include airport operations in order to protect against potential insider threats.
- **HB 1927** garnered the most attention in this area by allowing unlicensed or permitless carrying of a firearm for individuals over 21 who are not otherwise prohibited in doing so. There are limited changes to the places where firearms are prohibited and retroactive expunctions of unlawfully carrying a weapon charges are allowed. The bill reduces penalties for noncompliance with trespass and creates a new offense of carrying a firearm while intoxicated. Finally, the Legislature left intact current law regarding licensing procedures for carrying a handgun, primarily for individuals traveling to other states.
- **HB 2622** seeks to be proactive in protecting Texans’ Second Amendment rights through enacting the Second Amendment Sanctuary State Act. This act prohibits the enforcement of certain federal regulations on firearms, firearm accessories, or ammunition that are not in state law.
- **HB 2675** creates an at-risk designation for a handgun license and provides for the expedited processing of an application for a license with that designation.
- **SB 20** denies a hotel the right to adopt a policy prohibiting guests from storing a handgun or ammunition in a hotel room, but hotels may adopt a policy requiring guests to conceal the weapons en route to their rooms.
- **SB 162** creates an offense if a person knowingly makes a materially false or misleading statement when providing information for the purposes of complying with the National Instant Criminal Background Check System.
- **SB 550** and **HB 2112** both address the holster issue by striking a belt or shoulder from existing law, allowing one to use any type of holster for properly carrying a gun in Texas.

In response to the federal government’s imposition of a requirement to suspend an individual’s driver’s license upon conviction of certain controlled substance violations, two bills passed:

- **SB 181** reforms mandatory 180-day license suspensions. Suspensions are reduced to a minimum of 90 days and a judge is permitted to waive suspension for defendants with misdemeanor drug convictions who do not have prior drug convictions within the past 36 months.
- **Senate Concurrent Resolution 1** voices formal objection from Texas to the federal government regarding 23 U.S.C. § 159 requiring Texas to suspend drivers’ licenses of individuals convicted of certain controlled substance violations.

Following concerns that some prosecuting attorneys do not always receive all relevant evidence pertaining to a particular case from law enforcement agencies, **SB 111** establishes certain duties for law enforcement agencies regarding the release of information subject to disclosure to the state’s attorney. It specifically requires a law enforcement agency that files a case with the attorney representing the state to submit to the prosecutor a written statement from an officer employed by the agency that attests that all exculpatory, impeaching, or mitigating evidence in possession of the investigating agency has been released to the state’s attorney at
the time the case is filed. Section (c) places a continuing duty to disclose on law enforcement.

HB 1694 establishes a limited “good Samaritan” defense in drug overdose cases. This bill provides a defense to prosecution for certain offenses involving possession of a small amount of a controlled substance or marijuana for individuals seeking assistance for a suspected overdose. This bill is narrower in focus than similar efforts in previous sessions.

Relating to the effect of a successfully completed period of deferred adjudication, HB 757 prohibits denial of professional or occupational licenses and certificates for individuals who have successfully completed deferred adjudication community supervision and who would otherwise qualify for the professional or occupational license or certificate, except in limited circumstances.

The Legislature made yet another modification to the improper relationship between educator and student statute. HB 246 broadens and clarifies the definition of sexual contact between an educator and a student.

SB 1164 amends the sexual assault statute by addressing some recent headline situations. The bill adds private coaches and tutors who use their power and influence to exploit the other person’s dependency on them to the same section of the sexual assault code that applies to clergymen, public servants, and medical professionals.

A notable change regarding community supervision and also addressing the ability to pay a community supervision fee was spelled out by HB 385. The change to the probation system in Texas strengthens judicial review, aligns conditions of community supervision with individual risk assessments, and provides guidance to judges on the ability to pay determinations so people can satisfactorily complete probation. It creates a time credit for participation in faith-based programs.

The Legislature’s answer to the homeless situation was the creation of a new offense of prohibited camping. HB 1925 creates a Class C offense if a person intentionally or knowingly camps in a public place without the consent of the legal authority that manages the public place.

Finally, for the last several sessions, differing bills regarding marijuana have been filed. 2021 was no different, as a record number of bills were filed on this topic. However, the only bill that made it to the governor’s desk was a modification of the Compassionate Use Program. HB 1535 made moderate changes to this program so eligibility is now expanded to people with cancer and post-traumatic stress disorder. Although the House version increased the scope to include chronic pain, the Senate removed this section and it did not make it into law. Finally, THC content was raised from 0.5% to 1%.

ENVIRONMENTAL AND WATER LAW
By Claudia Russell and Susan M. Maxwell

Although the 87th regular legislative session was not particularly focused on environmental law issues, various bills passed that affect aspects of environmental, water, and utility law practice. Highlights of key bills are summarized in this article. Unless noted otherwise, these bills are effective September 1, 2021.

Response to Winter Storm Uri
SB 3—While most of this bill addresses problems with the state’s electrical grid exposed by February’s freezing weather event, several provisions pertain to water utilities, including:

- As soon as it is safe and practicable, water utilities must provide service during an extended power outage following a natural disaster.
- Utilities must adopt and submit a plan to the Texas Commission on Environmental Quality, or TCEQ, showing the ability of the utility to conduct emergency operations. The new law requires TCEQ to develop a template plan for systems to use and to offer the agency’s financial, managerial, and technical staff for assistance.
- Utilities are prohibited from disconnecting customers for nonpayment and from imposing late fees during an “extreme weather emergency,” which is defined in terms of high temperatures not exceeding 28 degrees for more than 24 hours.
- Although most utilities already do, utilities are now
required to assist customers who request a payment schedule.
• Fines can be imposed for violations of utilities’ billing provisions.
• Utilities have until November 1, 2021, to submit critical infrastructure and emergency contact information to the Public Utility Commission of Texas, or PUCT; electrical providers; local offices of emergency management, and the governor’s division of emergency management. Utilities have until March 1, 2022, to submit their emergency preparedness plan to TCEQ and until July 1, 2022, to implement the plan.
• SB 3 became effective June 8, 2021.

Wholesale Water Rates

SB 997—Wholesale rate appeals are processed in bifurcated proceedings before the PUCT. First, the commission determines whether a wholesale rate is adverse to the public interest, and only if so, the second phase addresses what the proper rate should be. Currently, a party challenging rates can only appeal the PUCT’s decision after both phases are complete. In an effort to reduce litigation time, SB 997 now allows the losing party in the first phase to appeal that decision immediately before moving on to the rate-setting phase. SB 997 also promotes settlement of rate disputes by permitting parties to a dispute to amend their contract before PUCT begins rate proceedings.

Retail Water Rates

SB 387—This bill authorizes rate appeals for customers within a city’s extraterritorial jurisdiction, or ETJ, when their service is taken over by another municipal utility. Districts and water supply corporations are not affected by SB 387.

HB 3689—Because they cannot vote in city elections, Water Code Chapter 13 grants municipal utility customers outside a city’s limits the right to appeal their rates to the PUCT. This bill was filed in response to a recent appeal on the reasonableness of a city’s rates outside its limits, where the PUCT assumed jurisdiction to review not only those rates but also those charged to customers within the city limits. HB 3689 clarifies that the commission’s jurisdiction extends only to rates charged to out-of-city customers.

HB 1484—This bill addresses rates charged by a utility once it purchases or acquires another utility. HB 1484 provides that without going through a new rate proceeding at the PUCT, an acquiring utility can charge its new customers the rates in effect for its existing customers.

Certificate of Convenience and Necessity, or CCN, Issues

HB 3476—Current law provides that as a condition of giving consent when a new CCN is requested within a city’s boundaries and its ETJ, cities with a population of 500,000 or more may require that water and sewer facilities be designed and constructed in accordance with city standards. That provision is now deleted, and thus these larger cities may no longer require facilities within their ETJ to comply with the city’s standards. Instead, those facilities are subject to standards set by the TCEQ.

Direct Potable Reuse Guidance

SB 905—This bill requires the TCEQ to develop and make available to the public a regulatory guidance manual explaining its rules pertaining to direct potable water reuse, which is defined as the “introduction of treated reclaimed municipal wastewater either directly into a public water system or into a raw water supply immediately before the water enters a drinking water treatment plant.”

Produced Water

SB 601—This bill creates the Texas Produced Water Consortium, to be hosted by Texas Tech University. Its purpose is to study the economic, environmental, and public health considerations of beneficial uses of oil and gas waste and the needed technology. September 1, 2022, is the deadline by which the consortium must produce its report suggesting policy changes, a state participation pilot project for a produced water facility, and an economic model for using the produced water. The consortium must also create a fee structure for private entities to participate in investigation and research. SB 601 became effective June 18, 2021.

River Authorities

SB 600—This bill requires each river authority to provide information to TCEQ regarding the operations and maintenance of each dam under its control. Specified information is required each year and also any significant changes. With this information, TCEQ must create and maintain a website that contains information on these dams, subject to confidentiality laws.

Texas Emissions Reduction Program, or TERP

HB 4472—This bill amends various aspects of the TERP program to give TCEQ more flexibility in its administration. Notably, the scope of grants or other funding is expanded to include remittances to the state highway fund for use by the Texas Department of Transportation for congestion mitigation and air quality improvement projects in nonattainment areas and affected counties. Also, award preferences for TCEQ’s grant program for new technology implementation for facilities and stationary sources will now include projects that reduce flaring emissions and other site emissions.

Geologic Storage of Carbon Dioxide

HB 1284—Effective June 9, 2021, this bill amends current law regarding the injection and geologic storage of carbon dioxide in the state, consolidating jurisdiction over both onshore and offshore Class VI underground injection control wells solely under the Railroad Commission of Texas. This consolidated jurisdiction is designed to facilitate Texas’ seeking primacy from the U.S. Environmental Protection
Agency over the Class VI underground injection control well program. Other provisions of HB 1284 address deposit of collected fees and penalties to the anthropogenic carbon dioxide storage trust fund.

**Dry Cleaner Environmental Response Program**

**SB 872**—Effective May 15, 2021, the expiration of this TCEQ program, governed by Chapter 374 of the Health and Safety Code, is extended to September 1, 2041.

**Eminent Domain**

**SB 721**—This bill requires that an entity using its eminent domain authority disclose to the landowner, prior to the special commissioners’ hearing on the property’s value, all current and existing appraisal reports produced or acquired by the entity relating to the subject property.

**SB 726**—Current law provides that landowners whose property is taken by eminent domain may repurchase the property if the condemnor fails to show actual progress toward the public use by the 10th anniversary of the date the land was taken. SB 726 raises the standard for demonstrating actual progress by requiring condemning entities now to demonstrate that they have completed three (not just two) of the five enumerated steps toward development.

**HB 2730**—This bill makes comprehensive reforms to the eminent domain process, including requirements for an initial offer, terms of conveyance, the landowner’s bill of rights, and the appointment of special commissioners. HB 2730 also establishes education requirements for easement or right-of-way agents. HB 2730 is effective January 1, 2022.

**Groundwater**

This was the first session in recent years with no groundwater-specific bills passing the Legislature. **SB 152** was the comprehensive bill that would have provided a process to petition a groundwater conservation district, or GCD, for rulemaking and would have clarified which desired future condition, or DFC, should be included in a GCD’s management plan when a DFC is challenged. It failed to pass due to disputes relating to other provisions regarding attorneys’ fees. Other groundwater bills, including to expand considerations for GCDs’ decisions on permit applications, were also unsuccessful.

**Sunset Review**

It was somewhat quiet on the environmental front in the 87th regular session but that will most likely change in the 88th regular session. That is at least partly because most of the primary environmentally related state agencies (TCEQ, the Texas Water Development Board, PUCT, and the State Soil and Water Conservation Board) are up for review by the Texas Sunset Advisory Commission during this interim. That process of comprehensive review of agency functions and processes often serves as the catalyst for other substantive legislation addressing agency jurisdiction and programs.

**ESTATE, GUARDIANSHIP, AND TRUST LAW**

By William D. Pargaman

This article contains a summary of 2021 statutory changes affecting decedents’ estates, guardianships, trusts, powers of attorney, and other areas of interest to estate and probate practitioners. This article contains summaries only and should not be relied on as a complete list of bills affecting these areas or a full description of any bill.

**Decedents’ Estates**

The bills that passed substantively affecting decedents’ estates are relatively few. **HB 1514** tinkers with procedures for estates to follow when retrieving unclaimed property from the comptroller. Under **HB 1011**, a commissioners court in a county with a medical examiner may authorize the medical examiner to expedite the completion of a death certificate if needed for religious purposes; the remains will be interred, entombed, buried, or cremated in a foreign country; and the individual requesting the expedited process is a person authorized to receive a copy of the certificate. Finally, Property Code § 240.151(g) already bars a disclaimer by a child support obligor if the obligor has been determined to be in arrears in those obligations. **SB 286** contains a number of changes regarding the payment of children support, but one in particular requires all disclaimers to contain a sworn statement regarding whether the disclaimant is a child support obligor whose disclaimer is barred that section. A sentence was added clarifying that a failure to include the required statement would not invalidate a disclaimer if the disclaimant wasn’t a child support obligor.

**Guardianships and Persons With Disabilities**

**SB 626** contains a number of “miscellaneous” changes. Estates Code § 1021.001 defines matters related to a guardianship proceeding. Prior to its amendment, there were two different definitions depending on whether you were in a county with or without a statutory probate court. The change divides the latter category further into separate definitions for counties with or without a county court at law. County courts at law now have jurisdiction over the interpretation and administration of a trust in which a ward is a beneficiary. The pandemic introduced difficulties getting documents notarized when people were advised to stay at home. Unsworn declarations under Civil Practice and Remedies Code § 132.001 are available as substitutes in a number of cases, but some county clerks took the position that they were unavailable for the oaths of guardians since they were “oaths of office” for which unsworn declarations aren’t available. This change allows a guardian to submit an unsworn declaration under the Estates Code in lieu of an oath in order to qualify to serve. (Note that the Estates Code declaration is not the same as an unsworn declaration under Civil Practice and Remedies Code § 132.001.) The general notice to creditors may be published in a newspaper...
of general circulation in the county, rather than one printed in the county. If there is no newspaper of general circulation in the county, the notice need only be posted. (This is similar to a 2017 change relating to publication of the notice to creditors in decedents’ estates.) Procedures for the sale of property are updated to conform to 2019 changes applicable to sales in dependent administrations of decedents’ estates. Changes affecting management trusts under Estates Code Chapter 1301 included conforming the notice provisions for an application to create a management trust to the provisions applicable to the creation of a guardianship. A management trust created for a minor who is also incapacitated for some reason must terminate on the beneficiary’s death or when the beneficiary regains capacity (not when the beneficiary turns 18). Copies of the annual account must be provided to both the guardian of the estate and the guardian of the person (not either).

SB 615 is a statutory probate judges’ bill and contains a number of changes affecting several areas. Some related specifically to guardianships include requiring an attorney representing any person in a guardianship proceeding to obtain guardianship education certification, not just the applicant’s attorney and court-appointed attorneys. A guardianship application must include the applicant’s former name, if any, and the approximate value of the proposed ward’s liquid and non-liquid assets (instead of just describing the proposed ward’s “property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled.”). A court waiving a guardian’s training requirement must contain a finding in the appointment order that the waiver is in accordance with Supreme Court rules. No guardian may be excluded from attending a legal proceeding in which the ward is a party or participating as a witness. Citations in a temporary guardianship must include a statement that a person interested in the estate or welfare of a ward may file a request to be notified of filings. Temporary guardians must file a final report at the termination of the temporary guardianship. Proposed non-resident guardians must provide a fingerprint-based criminal history record, while proposed Texas resident guardians must provide a name-based criminal history record. And a court may transfer a guardianship to a foreign jurisdiction to which the ward has permanently moved on its own motion.

Selected other guardianship-related bills include HB 3394 (allowing a court to appoint an ad litem and a court investigator to investigate whether a guardian should be removed due to incapacity); HB 549 (relieving certain professionals from civil, criminal, or administrative liability for making a permitted disclosure of mental health information); HB 1156 (creating a criminal offense if a person knowingly engages in financial abuse of an elderly individual, including financial exploitation committed by a person who has a relationship of confidence or trust with the elderly individual); and HB 4477 (allowing a financial institution to place a hold on any transaction in a vulnerable adult’s account if there is reason to believe the transaction involves financial exploitation and the institution has submitted a report of the suspected exploitation to DFPS). SB 25 and its companion constitutional amendment, SJR 19, grant residents of long-term care facilities (or their guardian or other legally authorized representative) the right to designate an essential caregiver for visitation, subject to the temporary suspension of a caregiver’s designation if that caregiver violates the facility’s safety protocols.

HB 375 creates the offense of continuous sexual abuse of a disabled individual, while SB 109 makes it a criminal offense to fraudulently secure document execution if a person with fraudulent intent causes another person to execute a document affecting property, a service, or pecuniary interest without that person’s effective consent.

Trusts

HB 654, which attempts to statutorily modify our constitutional rule against perpetuities as it relates to trusts, changes the statutory perpetuities period applicable to trusts to a fixed 300-year time limit measured from the “effective date” of the trust, i.e., the date the trust becomes irrevocable. It applies to trusts with an effective date on or after September 1, 2021, and to trusts with an earlier date if the trust provides that interests vest under the statutory provision applicable to trusts on the date the interest vests (which seems a bit circular). At the last minute, an amendment was added prohibiting the settlor from “direct[ing] that a real property asset be retained or refus[ing] that a real property asset may be sold for a period longer than 100 years.” Some commentators (including this author) question whether our constitutional perpetuities period (21 years plus lives in being) can by lengthened by statute.

Jurisdiction, Venue, Court Administration, and Other Stuff

HB 1296 modifies the method of serving notice to a guardian on a court’s motion to transfer the guardianship to another county from personal service to certified mail. Furthermore, the method of notice given to a private professional guardian or a guardianship program for removal for failure to maintain required certification is clarified to be by certified mail. SB 1129 modifies rules relating to (i) transfers of guardianships, (ii) mediation of contested guardianships, and (iii) guardianship mediation training. The Office of Court Administration is directed to establish a guardianship mediation course with at least 24 hours of training (if the Legislature appropriates money for that purpose). HB 1297 requires a party (rather than the court) to provide service on an institution of higher education or charitable organization that is a necessary party in a will contest or construction suit. HB 79 expands the use of associate judges to hear guardianship and protective services proceedings in courts other than just statutory probate courts.

The author would like to acknowledge the contributions of Lauren Davis Hunt and Craig Hopper, legislative co-chairs in 2021, and of Meredith McIver, his co-author of the full 2021 Estate & Trust Legislative Update.
Despite the unpredictability of the session, several bills passed that affected the Texas Family Code. What follows are highlights from this legislative session that directly affect Texas family lawyers. It is not an exhaustive list or discussion. For a thorough and complete analysis, the TexasBarCLE Family Law 2021 legislative update is highly recommended. A legislative update also was presented at the 2021 Advanced Family Law CLE.

**HB 3774** requires the date of marriage to be included in all final decrees of divorce. This amendment was important for the purposes of retirement, specifically Social Security. Divorced spouses will often retain a copy of their final decree of divorce, but rarely will they retain copy of their marriage license. Proof of the length of the marriage is required to apply for Social Security retirement benefits. Now the marriage date will be included in an official court document. The bill is effective September 1, 2021.

**HB 867 and HB 851**—These two bills combined made several changes to the spousal maintenance statutes in Chapter 8 of the Texas Family Code. Prior to this session, spousal maintenance could only be modified down. Now, in a situation where spousal maintenance has been previously modified down, it may be modified back up. However, the modification may not be increased to an amount or duration that would exceed the original maintenance order. This amendment is appropriate in situations where the spousal maintenance obligation was modified down due to a decrease in income, usually due to a loss of a job, and that income is somehow restored or even increased during the time period when the obligation would still be payable.

The changes enacted by these bills also allow the court that rendered the support order to maintain jurisdiction to enforce the order, including by means of a qualified domestic relations order. The court’s power to enforce spousal maintenance via a qualified domestic relations order includes temporary orders for spousal maintenance. This procedure was not prohibited prior to HB 867, but now there is no question that it is specifically and statutorily permitted. Furthermore, if a party objects or appeals a court order under this chapter, the court may enter temporary restraining orders that protect the pension/retirement account in question until a final order is issued. The court also retains jurisdiction for the purpose of amending the qualified domestic relations order previously entered.

Chapter 8 is additionally amended so that if a petition to modify spousal maintenance is filed based on a material and substantial change as to any other matter. Last, HB 867 amends the chapter to clarify that a court may use a writ of withholding or a qualified domestic relations order to enforce spousal maintenance. The court may order attorneys’ fees in a suit/motion filed to enforce the provisions enacted herein.

*Note:* The portions of HB 867 related to child support enforcement also amend Texas Family Code Chapter 157 in relation to the use of qualified domestic relations orders.

The changes to the modification portions only apply to a motion to modify filed on or after September 1, 2021. The changes to the enforcement portions apply to any order subject to enforcement regardless of when the order was entered.

**HB 868** amended Texas Family Code § 105.002(c) relating to jury trials. It was enacted due to confusion among the trial courts as to whether the jury could decide a geographic restriction when a sole managing conservator was appointed. The previously worded statute discussed only geographic restrictions in relation to joint managing conservators. The statute left the courts and practitioners either assuming the wording also applied to a sole managing conservator, or a very narrow reading that if a sole managing conservator was appointed, the court would decide on the geographic restriction. This bill clears up that confusion. A jury may decide the issue of geographic restriction regardless of whether the parties are appointed joint managing conservators or one party is appointed a sole managing conservator. This change will apply only to those lawsuits filed on or after September 1, 2021.

**SB 904** requires attorneys ad litem to receive trauma informed care education in order to be appointed or maintained on a court’s list of qualified appointees.

**SB 1936** clarifies the standard possession order by expressly stating that the alternative ending time for Monday student holidays and teacher in-service days is 8 a.m. on the following Tuesday and that if a conservator lives less than 50 miles from the other conservator, then the court shall also award that conservator the alternative beginning and ending times to the standard possession order. This award does not apply if the possessory conservator declines one or more of the alternative times or possession is limited by the court because of the best interest of the child. This change applies to pending suits as well as those filed on or after September 1, 2021.

**SB 904** requires attorneys ad litem to receive trauma informed care education in order to be appointed or maintained on a court’s list of qualified appointees. The training must be completed by September 1, 2022.
HB 3009 requires child custody evaluators to be able to communicate with a parent in their primary language or have someone who can assist the parent in their primary language. This requirement applies to child custody evaluations conducted on or after September 1, 2021.

SB 286 requires that if an obligee is required to pay spousal maintenance and child support, then the court shall order both to be paid through the state disbursement unit. This bill further establishes child support guidelines for low-income obligors whose monthly net resources are $1,000 or less. The court shall presumptively apply different guidelines to obligor’s who qualify as low-income. These changes apply to maintenance orders or suits filed on or after September 1, 2021.

SB 1458 calls for the creation and mandatory use of standardized forms for applications of protective orders and ex parte temporary protective orders. The Office of Court Administration is responsible for promulgating the forms. SB 1458 was vetoed on June 18, 2021.

HB 2926 added subchapter D to chapter 161 of the Texas Family Code, which is titled Reinstatement of Parental Rights After Involuntary Termination. This is a new and significant procedure that allows certain persons, including the Department of Family and Protective Services and a previously terminated parent, to move for reinstatement of parental rights. The new statutes set out the basic requirements for filing such a motion and details for the new hearing procedures. The bill is effective September 1, 2021.

HB 1012 amends Texas Property Code § 24A.002. Family lawyers are not typically interested in Property Code changes. However, there were procedures in the property code that allowed for “persons” to enter a “former residence” to obtain “personal belongings.” This procedure may be initiated in a court other than a family trial court. To prevent this statute from being abused by family court litigants, it was amended so that an applicant is required to notify the court if they are a party to a pending suit under Title I of the Texas Family Code. This amendment only applies to those applications filed on or after September 1, 2021.

HB 1372 allows the court to order a third-party phone carrier to transfer a phone number to the named petitioner in a protective order under Chapter 85 of the Texas Family Code. While the bill prevents the phone company from charging a “transferring fee,” it does not set limitations on other “customary” administrative fees. These are court orders specifically related to Chapter 85 of the Texas Family Code (protective orders), and at first blush appear to be helpful in protecting spouses and their dependents from abusive family members. It may be a useful tool, so long as the phone company does not make it cost prohibitive. This is an amendment in the Texas Business and Commerce Code, Chapter 608, and applies to petitions filed on or after September 1, 2021.

INSURANCE LAW

By W. Ryan Brannan

Affordability and accessibility continue to be central motifs for insurance-related legislation at the Texas Legislature. This session, significant pieces of legislation were also passed involving modernization and price transparency, particularly as they relate to pharmaceutical costs. Given the number of insurance bills that passed this session, the article below is to be viewed as a summary of the more significant legislation. All bills are effective September 1, 2021, unless otherwise indicated.

Transparency and Affordability

In the 2019 session, legislators passed HB 2536, requiring drug manufacturers to report wholesale acquisition costs and significant price increases and to provide justification for those increases on the Texas Health and Human Services Commission, or HHSC, website. This session, HB 1033 expanded on price transparency measures by requiring manufacturers to disclose research and development costs annually, limiting the scope of the word “drug” to “pharmaceutical drug,” and allowing the Texas Department of State Health Services to administer a fee for implementation and fines for failures to disclose price increases.

HB 1763 curtails the ability of pharmacy benefit managers, or PBMs, to assess retroactive fees and payment reductions. The bill prohibits these actions by PBMs, with few exceptions, unless those fees or reductions are made as a result of an audit outcome or the pharmacy agrees. This legislation follows the U.S. Supreme Court decision in Rutledge v. Pharmaceutical Care Management Association, holding that an Arkansas PBM reform law is not preempted by the Employment Retirement Income Security Act of 1974.
HB 1919 seeks to prevent pharmacies’ concern of PBMs referring patients to their own specialty pharmacies by protecting the right of pharmacy patients to use their pharmacy of choice.

HB 2090 codifies the federal price transparency rules for health plans into Texas statute. It also requires insurers and third-party administrators to disclose information related to health care costs at the request of the enrollee.

HB 18 requires HHSC to develop a prescription drug savings program that partners with a PBM to offer prescription drugs at a discounted rate to uninsured individuals.

HB 1935 gives pharmacists the authority to dispense a 30-day emergency supply of insulin and insulin-related equipment and supplies if specific criteria are met. Previously, they could only fill a three-day emergency refill. SB 827 caps the out-of-pocket costs in a health plan’s cost-sharing requirements for insulin at $25 for a 30-day supply.

SB 1296 gives the Texas Department of Insurance, or TDI, commissioner authority to review and disapprove rates of health benefit plans and to draft rules on a process for doing so. It also includes rules establishing geographic rating areas. This role was ceded to the federal government in 2013 as a result of the Affordable Care Act, or ACA. Now that the feds have ended reimbursements, having TDI review rates ensures Texans are getting allowed subsidies and that rates remain affordable.

Transparency and Modernization

The changing landscape of how we do business due to COVID-19 affected all lines of insurance, creating a push for more electronic means of health care delivery as well as flexibility in how insurers do business.

Effective June 15, 2021, HB 4 made permanent most of the Medicaid/Children’s Health Insurance Program waivers put in place as part of the state’s COVID-19 response while still upholding the standard of care. It also addressed gaps related to the use of technology in delivering services and information to clients identified by stakeholders during the COVID-19 pandemic. Dentists also are included in telehealth expansion as a result of HB 2056.

SB 2124 seeks to give employers the authority to “opt in” all employees to electronic delivery by default, while providing employees the ability to “opt out” of this paperless option should they so choose.

SB 1367 exempts a list of insurance products for large commercial risks and 17 specialty commercial insurance lines—from rate filing and review requirements—consistent with the existing exemption from form filing requirements for those same risks. A TDI recommendation, these changes will help employers gain specialty products in an evolving market.

SB 918 provides flexibility for when meetings can be held, allowing smaller insurance companies to operate with smaller boards and eliminating unnecessary regulations on boards, similar to other companies governed by the Texas Business Organizations Code.

Health Insurance Substitutes

In attempts to address accessibility to health products, several bills were offered this session allowing for certain insurers to offer products outside of the requirements of traditional health plans. Opponents argued these products are not pervasive coverage and could hinder the market. Time will tell as two of these bills passed. HB 3924 allows the Texas Farm Bureau to offer health products to its members. The bill exempts these plans from the definition of insurance.

HB 3752 allows Texas Mutual Insurance Company, or TMIC, to offer health products to its members, individuals, and employers with fewer than 250 employees, beginning September 1, 2023. By September 1, 2022, TMIC must submit a report to the Legislature on the feasibility in the market for this new product, taking into account a laundry list of requirements, including preexisting conditions.

Health Mandates and Rising Costs

HB 317 prohibits insurers from discriminating against living organ donors by denying coverage, increasing premiums, or taking other adverse actions against them. HB 428 expands the mandate for ovarian cancer testing and screening by including any test or screening approved by the U.S. Food and Drug Administration for the detection of ovarian cancer during annual well woman examinations.

SB 1065 requires that a health benefit plan that covers a screening mammogram must provide coverage that is no less favorable for diagnostic imaging. SB 1028 lowers the mandate for colorectal cancer detection from age 50 to age 45 and requires a colonoscopy if the screening comes back with positive cancer indicators.

SB 2016—effective immediately with the governor’s signature on June 16, 2021—exempts health plans from compliance with any state-mandated benefits determined to exceed the federally mandated essential health benefits and for which the state must defray the cost.

Additional Health Insurance Related Bills of Significance

As a result of concerns raised by health providers, HB 3459 requires physicians involved in utilization review to be in the same field as those they are reviewing. It also exempts certain physicians and providers from preauthorization requirements if they had at least 90% of their preauthorization requests approved by the insurer in the preceding calendar year.

Effective June 7, 2021, SB 874 allows for TDI to access federal funds for high-risk individuals should funds become available during the interim. Texas dissolved its high-risk pool after the ACA was passed because insurers could no longer prohibit offering coverage to individuals with serious and/or preexisting health conditions.

HB 2595, the result of recommendations from the Mental Health Condition and Substance Use Disorder Parity Workgroup created by legislation last session, creates a parity complaint portal, provides training related to parity, creates
educational materials to raise public awareness, and designates October as Mental Health Condition and Substance Use Disorder Parity Awareness Month.

Motor Vehicle Coverage

HB 19 gives commercial vehicles added tort protections. Specifically, HB 19 requires evidence directly relevant to causation and injuries arising from a commercial vehicle accident to be presented to jurors without prejudice. HB 19 also sets forth specific procedures by which the facts of a case are presented by both the plaintiff and defendant to determine negligence of a defendant and compensation.

SB 1602 requires nonrenewal of private passenger automobile policies if an insured fails to cooperate in the investigation, settlement, or defense of a claim, or if an insurer is unable to contact the insured after making reasonable efforts.

SB 965, in order to add a consumer safeguard against potential excessive or discriminatory rates, repeals the exemption for low market share auto insurers and subjects otherwise exempt residential property insurers to rate filing and approval if they increase their rates above 8% on average for three consecutive years.

Windstorm Insurance

SB 1448 requires the Texas Windstorm Insurance Association Board of Directors to have a super-majority vote to increase rates on its policyholders, going from a 5-4 vote to requiring a 6-3 vote. SB 1448 also extends interim committee studies passed in the previous legislative session that studies the funding structure of TWIA and looks at combining TWIA and the Texas Fair Access to Insurance Requirements Plan.

HB 769 prevents TWIA from using the same vendor that does its hurricane modeling to determine how much reinsurance to purchase to also be the vendor that sells TWIA its reinsurance. HB 769 prevents the TWIA Board of Directors from voting on a rate increase if there has been a coastal board member vacancy that has been unfilled for 60 days.

Additional Property and Casualty

Bills of Significance

SB 1809 allows the TDI commissioner to issue an emergency cease and desist order if TDI finds that someone is unlawfully selling insurance in Texas.

HB 3769 clarifies which non-workers’ compensation policies that provide coverage to employees must disclose that a policy is not a workers’ compensation policy. HB 3769 does not create any changes to occupational injury benefit plan law and regulation.

Effective June 16, 2021, SB 713 updates the Texas Sunset Commission agency review calendar. SB 713 postponed the Sunset review of all insurance-related agencies from the current interim to after the 2023 session. These agencies include the TDI, the Division of Workers’ Compensation, the Office of Public Insurance Counsel, and the Office of Injured Employee Counsel.

LEGISLATIVE AND CAMPAIGN LAW

By Ross Peavey

During the 87th session, the Texas Legislature filed and passed a multitude of new regulations on legislative and campaign law. This session saw updates to the law regarding operation of legislative institutions and government agencies, public integrity, state appropriations and procurement, campaign finance, and election administration. Each chamber of the Texas Legislature adopted rules to limit the spread of COVID-19 while they were in Austin for their deliberations. These new rules affected legislators, lobbyists, and those who visited the state capitol from around the world. Additionally, the 87th session saw an uptick in elections bills when compared with prior sessions. A survey of some significant changes in Texas legislative and campaign law in 2021 include the following legislation. All bills are effective September 1, 2021, unless otherwise indicated.

HB 3920
- Requires new certification for disabled voters to vote by mail.
- Expressly limits pregnant and expectant mothers’ qualification to vote by mail to those “expecting to give birth within three weeks before or after election day.”
- Under the new law, a voter’s lack of transportation, a voter’s sickness that does not prevent the voter from appearing without assistance or injuring themselves, or a voter’s requirement to be at a place of employment, may not be used to request mail-in ballots.

HB 2283
- Prohibits elections officials and commissioner’s courts from accepting donations of $1,000 or more to perform any function of administering elections.
- The secretary of state may make an exception with unanimous consent of the governor, the lieutenant governor, and the speaker of the House with written consent from the relevant political subdivision.

HB 1382
- Requires the secretary of state to provide an online tool to each early voting clerk that enables a voter who applies for a ballot by mail to track the location and status of the person’s application and ballot on the Texas secretary of state and county websites.

SB 1113
- Authorizes the secretary of state to deny public federal funds from voter registrars who failed to timely perform a duty requiring the approval, change, or cancellation of a voter’s registration.

SB 1387
- Provides that for a voting system or voting system equipment to be approved for use in Texas elections, the
system in which the equipment was designed to be used must be manufactured, stored, and sold in the United States and sold by a company whose headquarters and parent company’s headquarters are in the United States. SB 1387 became effective June 16, 2021.

SB 282
• Forbids the Legislature from appropriating money, and state agencies from using appropriated money, to settle sexual harassment claims made against a person who is an elected member of state government, is appointed by the governor to serve in public office within state government, or serves as staff for an elected or appointed person.
• Similarly prohibits political subdivisions, including open-enrollment charter schools, from using public money to settle sexual harassment claims made against an elected or appointed member of the governing body of the political subdivision or an officer or employee of the political subdivision.

Taxes/Budget
SB 1 is the state budget bill, which includes funding for the Railroad Commission of Texas, or RRC, and the Texas Commission on Environmental Quality, or TCEQ.

RRC (in millions):
- 2020-2021: $281.9
- 2022-2023: $247.8

TCEQ (in millions):
- 2020-2021: $770.7
- 2022-2023: $640.7

Industrial Project Property Tax Discounts
HB 4242, relating to the extension of the expiration of certain parts of the Texas Economic Development Act, did not pass. HB 4242 would have extended Chapter 313 of the Texas Tax Code to attract major investment by offering limited property tax discounts.

Eminent Domain
Eminent Domain Reform
HB 2730, relating to the acquisition of real property by an entity with eminent domain authority and the regulation of easement or right-of-way agents, is the result of a three-session effort to draft a balanced eminent domain bill. In part, it:

• Amends Section 402.031, Texas Government Code, to add to the Landowners’ Bill of Rights, or LOBOR: (i) notice to landowners of the right to file a complaint about a right of way agent; and (ii) an addendum of required terms for an easement under Texas Property Code § 21.0114(c), and terms the landowner can negotiate. The attorney general will conduct a biennial review of the LOBOR with public input;

• Amends Chapter 1101, Texas Occupations Code, to add continuing education requirements for registered right-of-way agents and prohibit an agent from receiving financial incentive to make an inadequate compensation offer;

• Amends Section 21.0113, Texas Property Code, as to the initial offer letter requirements to the landowner;

• Adds Section 21.0114, Texas Property Code, to set required easement terms for certain pipeline and electric transmission entities;

• Creates Section 21.0114 to permit the parties to: (i) agree to different terms than those in the condemnation petition once the owner has been provided with a conveyance that contains certain easement terms; and (ii) negotiate subsequent changes and revisions to the terms; and

• Amends Section 21.014, Texas Property Code, regarding appointment of special commissioners, alternates, and related issues. HB 2730 is effective January 1, 2022.

OIL AND GAS LAW
By Cory Pomeroy and Tom Zabel

The oil and gas industry’s priority legislation in the session included eminent domain reform, royalty suspense during ownership disputes, creation of the storage vessels safety program, updates to offset well statutes on state land, primacy of Class VI injection wells, and reestablishment of the TexNet Technical Advisory Committee. Below is a snapshot of significant legislation impacting the industry and summaries of some key bills. All bills are effective September 1, 2021, unless otherwise indicated.
SB 900 creates a new safety program at TCEQ to establish the Performance Standards for Safety at Storage Vessels Program.

Disclosure of Appraisals
   SB 721, relating to the disclosure of appraisal reports in connection with the use of eminent domain authority, provides that the condemning entity shall disclose to the landowner all appraisal reports the entity produced or acquired relating to the property and used in the opinion of value, if an appraisal report is to be used at the hearing.

Environment
   Storage Vessel Safety
   SB 900, relating to the safety of storage vessels, creates a new safety program at TCEQ to establish the Performance Standards for Safety at Storage Vessels Program.

Utilities
   Regulation Based on Energy Source
   HB 17, relating to a restriction on the regulation of utility services and infrastructure based on the energy source to be used or delivered, prohibits cities and other governmental entities from banning natural gas infrastructure. HB 17 became effective May 18, 2021.

Ban on Natural Gas Restrictions
   HB 1501, relating to certain regulations adopted by a governmental entity restricting the use of a natural gas or propane appliance or other system or component, did not pass. HB 1501 would have prohibited a governmental entity from adopting or enforcing a rule, charter provision, order, or regulation that directly or indirectly restricts or prohibits the use of natural gas or propane, or imposed an additional charge or pricing difference on a development or building permit if natural gas or propane is used.

Water
   Produced Water Consortium
   SB 601, relating to the creation and activities of the Texas Produced Water Consortium, creates the Texas Produced Water Consortium to study the economics and technology related to, and the environmental and public health considerations for, beneficial uses of produced water. The consortium is to be housed at Texas Tech University and is required to seek input from an agency advisory council, a stakeholder advisory council, and a technical and economic steering committee. SB 601 became effective June 18, 2021.

Recycled Waste
   HB 3516, relating to the regulation of the recycling of fluid oil and gas waste, requires that the RRC promulgate rules to establish standards for issuance of permits for commercial recycling and to encourage fluid oil and gas waste recycling.

Exploration and Production
   TexNet Seismic Monitoring
   HB 632, relating to the establishment of an advisory committee for the TexNet seismic monitoring program, recreates in statute the TexNet Technical Advisory Committee, within the University of Texas Bureau of Economic Geology, to advise the TexNet Seismic Monitoring Program in its collection of seismic activity information. The committee is composed of nine members, appointed by the governor, and includes an RRC representative and at least three oil and gas industry representatives.

Carbon Capture, Utilization, and Storage
   HB 1284, relating to the regulation of the injection and geologic storage of carbon dioxide in this state, moves the regulatory authority from TCEQ to the RRC for adopting standards for location, construction, maintenance, monitoring, and operation of a carbon dioxide injection and repository and for ensuring compliance with U.S. Environmental Protection Agency requirements. HB 1284 became effective June 9, 2021.

Offset Wells on GLO Lands
   SB 1258, relating to the duty of a lessee or other agent in control of certain state land to drill an offset well, pay compensatory royalty, or otherwise protect the land from drainage of oil or gas by a horizontal drainhole well located on certain land, changes the statutory 1,000-foot offset well and gas well requirement that exists in the two statutes applicable to state lands managed by the Texas General Land Office: public lands owned by Texas and Relinquishment Act Lands but does not apply to university lands. The statutes eliminate offset well requirements if the adjacent well has been drilled in an unconventional field and is no closer than the greater of 330 feet or the applicable distance in spacing rules. The bill leaves in place the offset well...
requirement for conventional oil and gas development.

_Suspending Lease Payments_

SB 1259 relates to causes of action for withholding payments of the proceeds from the sale of oil and gas production. Section 91.402(b), Texas Natural Resources Code, allows for payments on proceeds from the sale of oil or gas production to be withheld, without interest, if there is a dispute concerning title. In 2018, the Texas Supreme Court held in _ConocoPhillips v. Koopman_ that, despite this provision, an oil and gas payee was subject to claims for breach of contract and other common law causes of action for suspending royalty payments because of ownership claims. SB 1259 amends Section 91.402 to add Subsection (b-1), which bars common law causes of action for breach of contract against a payor who withholds payments due to a title dispute unless the contract that requires payment specifies otherwise. This bill applies to actions filed on or after May 24, 2021, the effective date of the bill.

_Abandoned Wells_

HB 3973, relating to a study on abandoned oil and gas wells in this state and the use of the oil and gas regulation and cleanup fund, creates a joint interim committee to study abandoned oil and gas wells and the use of the ORGC and cleanup fund. The committee will look at costs associated with plugging abandoned wells, current bonding requirements, and identify solutions to reduce the need for general revenue and conduct a review of the oil and gas regulation and cleanup fund. A report is due to the Legislature by December 1, 2022.

_Winter Storm Uri_

_Emergency Preparation and Outage Prevention_

SB 3, relating to preparing for, preventing, and responding to weather emergencies and power outages; increasing the amount of administrative and civil penalties, is the omnibus electricity bill that enacted several changes to electricity law following Winter Storm Uri. They include alert systems; winter preparation education; weatherization for natural gas infrastructure and generators; changes to critical load designation for industrial customers; changes to load-shedding procedures; electricity mapping; weather reports from the Public Utility Commission of Texas, or PUCT, and RRC; water infrastructure weatherization; and the formation of the Texas Energy Disaster Reliability Council. SB 3 became effective June 8, 2021.

_Critical Gas Entities and Facilities_

HB 3648, relating to the provision of natural gas and electric services in this state, requires the PUCT to work with the RRC to adopt rules that would designate certain gas entities and facilities as critical to receive electricity during an energy emergency. HB 3648 became effective June 18, 2021.

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**PUBLIC UTILITY LAW**

By Dane McKaughan

In February, Texas experienced the worst winter storm in living memory. Winter Storm Uri plunged temperatures across the state to the teens for almost five days and blanketed the state in ice and snow. The governor declared a state of emergency in all 254 counties. More than 200 Texans died.

Exacerbating the impact of the winter storm, operations of the wholesale electricity and gas markets in the Electric Reliability Council of Texas, or ERCOT, failed, causing blackouts for almost five days and creating huge financial impacts for stakeholders in these markets. Because the storm and the extended outage occurred during the 2021 legislative session, the Legislature addressed in real time the root causes contributing to the outage and the financial burdens Winter Storm Uri left behind.

Before describing these bills, it is worthwhile to discuss the problems these bills are designed to address. One omnibus bill, SB 3, addresses the root causes leading to the failure of the ERCOT market. Two other bills, HB 4492 and SB 1580, address the financial impact caused by that failure on market participants.

Numerous bills were filed in the Legislature attempting to identify and address the causes of the market failure. After taking testimony from market stakeholders and individuals impacted by the storm, three general categories encompass the causes identified by the Legislature.

First, it was just too cold for too long. Neither the electricity generation sector nor the natural gas production and transportation sectors were designed to operate in the sustained cold and icy conditions presented by Uri. And while legislative and regulatory efforts to incentivize weatherizing critical facilities had occurred following the last significant winter storm in 2011, Uri was colder and lasted longer. Furthermore, prior efforts relied on voluntary action taken by industry, resulting in infrastructure that was not equipped to handle this storm.

Second, there were communication breakdowns across the relevant sectors of the energy industry. ERCOT gave conflicting market signals to participants. Additionally, in an effort to divert resources to human needs customers, electric generators curtailed natural gas production while the natural gas pipelines curtailed electric generation. Because these two segments of the industry are regulated by different agencies, the curtailment priorities were not aligned. And there was no single agency dedicated to accumulating emergency information related to the winter storm on a real-time basis that could speak with a single voice.

Third, there was not sufficient “dispatchable” generation available, meaning generation sources where the turbine can be turned off and on rather than relying on external environmental factors. In ERCOT, natural gas provides a little more than half of all electricity generation, while wind provides about a quarter, with solar, coal, and nuclear rounding out the remainder. The cold affected all types of generation technology, reducing supply as demand for power reached all-time highs for the winter months. This revealed a need to have more dispatchable generation to both increase supply and to insulate that supply...
from external environmental factors. Until there is adequate storage capability for renewable sources, ERCOT needs to be able to control the generation of electricity by having sufficient dispatchable resources. But because Texas is an energy only market, the construction of new dispatchable generation is left to the market to decide, and the market obtains a premium during times of scarcity, creating a disincentive to invest.

**SB 3**

SB 3 attempted to accumulate all of the lessons learned through all of the committee hearings on all of the bills filed to address the causes of the ERCOT failure. While the details of SB 3 exceed the scope of this article, in light of the causes identified above, SB 3 addresses the first two but delegates to the Public Utility Commission of Texas, or PUCT, to resolve the thorny issue of creating new gas-fired generation in an “energy only” market.

Specifically, SB 3 creates the Texas Energy Reliability Council, or TERC, to “ensure that the energy and electric industries…meet high priority human needs and address critical infrastructure concerns” and “enhance coordination and communication in the energy and electric industries in this state.” In practice and in consultation with the PUCT and Railroad Commission of Texas, or RRC, the TERC will identify critical natural gas infrastructure necessary for the generation of electricity. These critical supply chain entities will be required to “weatherize” their facilities as directed by rule. Importantly, the TERC has enforcement authority such that if it identifies failures to comply with weatherization requirements, it can refer the matter to the Office of the Texas Attorney General to file suit and recover a fine up to $1 million for each occurrence. Similarly, any entity that produces or sells wholesale electricity or transmits electricity must weatherize its facilities as required by rule and is subject to administrative penalties for failure to comply.

Additionally, SB 3 directs the Texas Division of Emergency Management to work with the Texas Department of Transportation and other agencies to implement an alert system when it looks like the power supply may not be sufficient to meet demand and creates the Texas Electricity Supply Chain Security and Mapping Committee to annually map the electricity supply chain and establish priorities for involuntary load shedding that harmonizes the current systems at various agencies.

With respect to the need for more dispatchable generation, SB 3 does not itself require the construction of new gas-fired generation. Instead, the bill directs the PUCT to establish requirements to meet the reliability needs of the ERCOT region and to, at least annually, determine the quantity and characteristics of reliability or ancillary services necessary to meet extreme heat and extreme cold weather conditions. Exactly how the PUCT should go about this SB 3 does not say. SB 3 became effective June 8, 2021.

**HB 4492 and SB 1580**

The failure of the ERCOT market during Winter Storm Uri caused huge financial consequences. In a normal wholesale market in February, the expected price for a megawatt hour, or MWh, of electricity would be about $20. But during the winter storm, because of the scarcity of electricity coupled with the huge demand, the wholesale price of electricity skyrocketed to reach the legal cap, which was $9,000 per MWh, and stayed there for several days. So everyone—including municipal utilities, cooperative utilities, and retail electric providers, or REPs—that was not locked into a contract rate had to pay about 450 times as much for electricity than the previous February. And because almost half of natural gas production was lost at times due to the storm, in addition to the high demand for natural gas generation plus the increased demand for home gas appliances during the winter storm, the wholesale market for natural gas skyrocketed as well. The typical cost of gas in February would be $3 per Metric Million British Thermal Unit, or MMBtu, so a price of $1,000 MMBtu during the winter storm was an increase of more than 300%. Of course, there were winners and losers on both sides of these transactions, but because of the outsized impact of the losses for public utilities and REPs in the ERCOT market, the Legislature sought to create legislative mechanisms to mitigate the impact of these losses and prop up the market.

SB 1580, effective June 18, 2021, specifically addresses the financial impact on cooperative utilities. By way of example, Brazos Electric Power Cooperative serves about 1.5 million customers and owes about $1.9 billion to ERCOT for electricity it took off the grid without paying. SB 1580 enables co-ops that suffered extraordinary costs due to the winter storm to securitize that amount and requires repayment of amounts owed to ERCOT as part of ongoing participation in the market.

HB 4492, effective June 16, 2021, establishes a process for two types of securitization that include elements of the market other than cooperatives. The first bucket is funded by a loan from the Texas Comptroller up to $800 million from the economic stabilization fund, with loans to be repaid at an interest rate based on ERCOT’s credit rating, plus 2.5%. This $800 million component is designed to address the approximately $3 billion in short pays owed by ERCOT because it has not been paid amounts owed by market participants.

The second component, referred to as the “uplift balance” in HB 4492, securitizes as much as $2.1 billion to address reliability deployment price adder charges and ancillary services costs in excess of the PUCT’s system-wide offer cap during the winter storm. These exceptionally high costs strained the financial health of numerous load-serving entities throughout ERCOT. The proceeds of the securitization would be delivered to retailers who participate in the securitization. Notably, retail providers, including cooperatives and municipally owned utilities, have the option not to participate in this component of HB 4492 and to avoid the related repayment obligations.

As noted above, there is still work to do to protect against a similar collapse of the ERCOT market, and ERCOT has already issued at least one plea to conserve electricity usage in what will be a long, hot summer. In addition to the ongoing rulemakings at the PUCT and the RCC, these issues may be revisited by the Legislature during either the fall special session or in Interim Committee meetings before the 2023 regular session.
REAL ESTATE LAW
By Richard L. Spencer and Richard A. Crow

This article contains a summary of bills enacted this session relating to real estate law and should not be relied on as a complete list of bills affecting these areas or a full description of any bill.

SB 219 adds Sections 59.001-59.052 to the Texas Business and Commerce Code regarding civil liability for the consequences of defects in the plans, specifications, or related documents for the construction or repair of an improvement to real property or of a road or highway. SB 219 provides that contractors are not liable for design defects in (and may not warranty the accuracy or suitability of) plans, specifications, or other design documents provided to the contractor by a person other than the contractor’s agents. SB 219 applies to the construction of improvements to real property, including additions to improvements and repair, alteration, or remodeling of improvements (exempts contracts for construction or repair of “critical infrastructure” facilities, certain design-build contracts, and certain engineering, procurement, and construction contracts). The statute imposes an affirmative duty for contractors to disclose, in writing, any defect, inaccuracy, or insufficiency a contractor discovers (or reasonably should have discovered) during construction. The statute imposes the same standard of care on design services found in Section 130.0021 of the Texas Civil Practice and Remedies Code and amends that section to provide that any attempt to contractually establish a different standard of care is void. SB 219 applies to contracts entered on or after September 1, 2021.

HB 390 adds Business and Commerce Code §§ 114.0001-114.0104. Effective January 1, 2022, hotels (and other commercial lodging establishments with more than 10 rooms) must put all employees through an approved training program designed to identify and prevent human trafficking and post pre-approved signs regarding human trafficking. HB 390 authorizes civil penalties for non-compliance.

HB 3415 amends Texas Local Government Code § 191.010 effective September 1, 2021, so that county clerks in a county with a population of 800,000 or more may require “a person presenting a document in person for filing in the real property records” to present photo identification.

HB 1475 amends Local Government Code § 211.009 allowing municipal board of adjustment zoning variances based on unnecessary hardship. Zoning boards of adjustment, in variance cases, can now consider “as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship,” whether: (1) “financial cost of compliance” would be greater than 50% of the structure’s tax-roll value; (2) compliance would cause a loss of at least 25% of the lot area “on which development may physically occur;” (3) compliance would result in non-compliance with a “municipal ordinance, building code, or other requirement;” (4) compliance would result in “unreasonable encroachment on an adjacent property or easement;” or (5) the municipality considers the structure “nonconforming.” (Texas courts held financial cost, alone, insufficient to establish the “hardship” for issuance of a variance.) HB 1475 is effective September 1, 2021.

SB 30 adds Texas Property Code § 5.0261, effective September 1, 2021, allowing removal of certain discriminatory provisions from a recorded conveyance instrument. An owner of property subject to an instrument containing a discriminatory provision (as defined under Section 5.026(a)) may request removal of the provision by filing a motion verified by affidavit. A court may rule on the motion “solely on a review of the conveyance instrument, without hearing any testimonial evidence.” If the court does not rule by the 15th day after the motion is filed, it is deemed granted. The court must enter a finding of fact and conclusion of law, and that finding must be transferred to the county clerk and recorded. A county clerk cannot charge a fee for recording the finding.

SB 885 adds Property Code § 13.006 and amends Civil Practice and Remedies Code § 16.025(b) concerning quitclaim deeds. Beginning September 1, 2021, SB 885 protects a lender’s or buyer’s ability to be a good faith purchaser for value and to be shielded by Property Code § 13.001 by establishing that a quitclaim deed recorded more than four years prior does not affect a buyer’s or creditor’s “good faith” or constitute notice of an unrecorded deed or lien.

HB 900 adds Property Code § 24.0061(i) relating to the liability of a landlord for damages resulting from the execution of a writ of possession. HB 900 protects a landlord from liability to the tenant resulting from an officer’s (sheriff or constable pursuant to Property Code § 24.0054(a-1)) execution of a writ of possession pursuant following an eviction suit filed on or after September 1, 2021.

HB 2237 amends Insurance Code § 3503.051(3) and Property Code Chapter 53, and various sections, relating to mechanic’s, contractor’s, or materialman’s liens. HB 2237, effective January 1, 2022, clarifies various provisions pertaining to mechanic’s liens by replacing text with defined terms. HB 2237 adds real property and clarifies that the definition of “residence” includes multi-unit condominium projects. HB 2237 changes method of notices required by Chapter 53 and revises the deadlines for filing a lien affidavit and retainage, dependent on whether the party filing is an original contractor or a subcontractor and on whether the project is residential or commercial. HB 2237 requires subcontractors to give a funds trapping notice (with form) one month prior to the applicable deadline. Creates a similar notice for a claim of unpaid retainage. Shortens the limitations to bring suit to foreclose a lien to one year from the last day a claimant may file a lien affidavit, unless the claimant enters a written agreement to extend the limitations period and the agreement is filed (in which case the limitations period may be up to two years).

SB 1783 adds Property Code § 92.111 and codifies the practice of accepting small monthly “deposit waiver fees” instead of large down payments at move-in. Starting September 1, 2021, this bill
allows a residential landlord to give a prospective tenant the option to pay a fee in lieu of a security deposit and creates restrictions and notice requirements for a landlord that chooses this option, such as:

a. The landlord cannot use the choice to pay such a fee in lieu of a deposit as a criterion for lease application approval.
b. The tenant has the option to terminate the fee agreement and pay a security deposit instead.
c. Notice to the tenant and the fee agreement must both be in writing.
d. This is a recurring fee of equal amount, payable when rent is due.

SB 1783 also:

(a) delineates specific language in the fee agreement;
(b) caps the fee at the reasonable cost of insurance for tenant damages and charges;
(c) sets up restrictions and notice requirements for an insurance claim for unpaid rent or damages; and
(d) provides that fees collected under this section are still security deposits for purposes of Chapter 92 of the Property Code unless the parties enter into an agreement providing otherwise (which agreement must comply with this section) and the fees are used to purchase insurance coverage for damages and unpaid rent arising from the tenant’s default.

SB 1588, effective September 1, 2021, amends various sections of and adds sections to Property Code §§ 202, 207, and 209 to, among other things, address fees, notices, and disclosures of a property owners’ association, or POA. SB 1588 limits the cost for delivering a resale certificate and the cost of an update, requires a POA to deliver subdivision information to an owner or their agent within five business days after a second request is made, and allows for increased recovery of actual damages for a POA’s failure. SB 1588 requires a POA to make current dedicatory instruments available on its website and requires that an association’s certificate of management include any amendments to the declaration, contact information for the person managing the association, and the website with its dedicatory instruments. SB 1588 requires a POA to electronically file any certificate or amended certificate with the Texas Real Estate Commission, or TREC, within seven days and requires that TREC establish a system for electronic filing of management certificates no later than December 1, 2021. Any denial of the construction of improvements by a POA’s architectural review authority must be in writing and may be appealed to the POA’s board with a hearing relating to the denial. At least 144 hours’ notice must be given to the members before a regular POA board meeting and 72 hours’ notice prior to a special board meeting. A POA must give written notice to an owner before reporting any delinquency to a credit reporting service. An owner’s cure period for a delinquency is extended to 45 days before any collection action. A POA may not report delinquencies that are the subject of a pending dispute. Advance disclosures to owners prior to a hearing by a POA are required, and a member of the POA must present the case against the owner. SB 1588 clarifies that an association is not prohibited from adopting or enforcing provisions restricting occupancy or leasing.

TEXAS JUDICIARY
By David Slayton and Megan LaVoie

In February 2021, as socially distanced budget hearings for the 87th Legislature were unfolding at the Texas Capitol, the Texas judiciary was simultaneously celebrating an unprecedented milestone—one million court hearings held online via Zoom during the first 11 months of the COVID-19 pandemic. Zoom hearings for court proceedings continued throughout the spring and summer and also became a mainstay in legislative hearings with many judges, court staff, and attorneys testifying remotely before legislative committees. Testifying virtually was a new process for the 87th Legislature. The use of Zoom was authorized by the Texas House of Representatives for certain legislative hearings to mitigate the risk of contracting COVID-19.1 The Senate allowed remote testimony in the Special Committee on Redistricting only.

SB 690 and HB 3611—two bills filed to expand the use of remote court proceedings outside of a pandemic or disaster—didn’t pass, but many other bills made it across the legislative finish line and to the governor’s desk. The following is a brief overview of some of the new laws passed by the 87th Legislature that will directly impact the judiciary and attorneys who practice in Texas courts. All bills are effective September 1, 2021, unless otherwise indicated.

Judiciary Budget

The Legislature appropriated more than $796 million to fund the Judicial Branch for the 2022-2023 biennium.2 The funding supports the Texas Supreme Court, Court of Criminal Appeals, appellate courts and judicial branch agencies, boards, and commissions. The appropriations in SB 1 include more than $94 million over the biennium for indigent defense funding and $76 million for basic civil legal services.

New Courts

The 87th Legislature created 10 new district courts, one new statutory probate court, and six statutory county courts at law with various creation dates.3

New district courts: 478th Judicial District in Bell County, 482nd Judicial District in Harris County, 485th Judicial District in Tarrant County, 480th Judicial District in Williamson County, 481st Judicial District in Denton County, 483rd Judicial District in Hays County, 484th Judicial District in Cameron County, 474th Judicial District in McMullen County, 475th Judicial District in Smith County, and the 476th Judicial District in Hidalgo County.

New statutory county courts at law: Kendall County Court at Law, County Court at Law No. 3 of McLennan County, County Court at Law No. 6 of Montgomery County, County Court at Law No. 2 of San Patricio County, County Criminal Court No. 6 of Tarrant County, and County Court at Law No. 5 of Williamson County.

New statutory probate court: Statutory Probate Court No. 2 of Denton County.

HB 79 Guardianship Courts

HB 79 establishes a framework to allow associate judges to hear guardianship cases, similar to the way child protection courts work
across the state. The bill outlines associate judge appointment procedures, powers, qualifications, and compensation, as well as host county designation and responsibilities of the regional presiding judges in implementing the process. The bill also requires the Office of Court Administration to assist in the supervision, training, and evaluation of the associate judges.

HB 1071 Therapy Dogs in Court
HB 1071 allows for a qualified facility dog or qualified therapy dog to accompany a witness testifying in court. The bill defines what constitutes a facility or therapy dog and permits courts to impose restrictions on their presence in court.

HB 1256 Specialty Court Funding
Funding for specialty courts like drug and DWI courts across the state has historically been limited. HB 1256 aims to develop a new funding source by requiring that 1% of the mixed beverage gross receipts and sales taxes received by the state (estimated to be around $10 million per year) be credited to GR Specialty Court Account 5184. Funds generated in this account may only be used by the criminal justice division within the governor’s office for distribution to specialty court programs that apply for the funding.

HB 2950 MDL Court Modifications
HB 2950 makes changes to the makeup of a multidistrict litigation panel. It provides that the judicial panel on MDL consists of five members designated by the Texas Supreme Court. The bill requires that panel members be active, former, or retired court of appeals justices or active administrative judges. HB 2950 became effective June 16, 2021.

HB 3774 Judicial Omnibus Bill
It’s been the tradition for the chairs of the House and Senate committees with jurisdiction over the judiciary to sponsor a judicial omnibus bill every legislative session with new courts, jurisdiction changes, and modifications to judicial operations. HB 3774 was the 87th Legislature’s judicial omnibus bill and it includes the following provisions: establishes a dual status case transfer structure for juvenile and family courts; requires the Office of Court Administration to adopt rules related to the transfer of documents and cases between courts; allows applicants for writs of habeas corpus the option of using secure electronic mail to serve a copy of the application on the state’s attorney; revises statutes governing the Forensic Science Commission; expands the entities where jurors may donate their daily reimbursement and removes caps on meal reimbursement given to jurors; provides a statutory framework for regional specialty court programs, and expands the protective order registry maintained by the Office of Court Administration.

HB 4293 Court Reminder Program
It’s common practice to receive text notifications reminding you of an upcoming appointment or package delivery, but what about an upcoming court date? HB 4293 requires the Office of Court Administration to develop and make available to each county a court reminder program that would send a text message to notify criminal defendants of scheduled court appearances. Similar programs across the country have reported great success in reducing failure to appear rates.4

SB 41 Civil Court Costs Restructuring
Following the restructuring of criminal court costs during the 86th legislative session, the 87th Legislature focused on modernizing civil court fees. SB 41 consolidates civil filing fees into one state consolidated civil filing fee and one local consolidated civil filing fee. Additionally, the bill repeals various outdated court fees and costs. The bill’s framework was recommended by the Texas Judicial Council to remedy potential constitutional issues and make it easier for clerks to administer filing fees. Beginning January 1, 2022, civil filing fees across the state and in most case types will be the same. Filing fees for civil cases in all district courts, statutory county courts, and constitutional county courts will be $350 for the filing of new cases and $80 on the filing of other actions, such as an appeal counterclaim, cross-action, intervention, contempt action, interpleader, motion for new trial, or third-party action. Those amounts will be $360 and $120 for probate, guardianship, and mental health cases filed in all courts. Justice court filing fees will be $54 for all civil filings.

SB 907 Remote Marriage Licenses
SB 907 requires the Texas Judicial Council to promulgate rules, in consultation with the Department of State Health Services, to develop and implement a voluntary certification process where a county clerk may be certified to issue a marriage license to applicants through remote technology. The bill requires procedures to authenticate each applicant’s age and identity to prevent fraud.

SJR 47 Judicial Selection Constitutional Amendment
The proposed constitutional amendment would amend Article V of the Texas Constitution to change the eligibility requirements to serve as a judge.

The amendment would require at the time of election or appointment that a justice on the Supreme Court, Court of Criminal Appeals, or court of appeals be a resident of Texas, licensed to practice law in the state, and have been a practicing lawyer in Texas or a combination of practicing lawyer in the state or judge of a state court or county court for at least 10 years. The amendment would require at the time of election or appointment that a district judge be a resident of the state and a practicing lawyer or combination of practicing lawyer and judge of a court in the state for eight years.

The amendment would prohibit a judge or justice from running for election or being eligible for appointment if their license to practice law was revoked, suspended, or subject to probation.

If passed by voters during the November 2, 2021, election, the amendment is effective January 1, 2022, and would apply to judges and justices elected or appointed after January 1, 2025.

Notes
3. HB 3774.
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