

LEGISLATIVE UPDATE 2023

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Pending Legislation

I. Filed Bills

On November 14, 2022, legislators began filing bills for the 2023 legislative session. By March 10, 2023, which was the last day to file bills and joint resolutions other than local bills, emergency appropriations, and emergency matters submitted by the governor, 8,153 bills and joint resolutions have been filed. This paper summarizes some of the more notable bills related to the civil justice system.

Note: The bills summarized herein are based on the content and status of each bill at the time of submission. As bills move through the legislative process, they are often revised or amended in committee or on the floor of the chamber debating the bill. For a current status of the text of each bill and additional background information about the same, please visit Texas Legislature Online at <http://www.capitol.state.tx.us> and/or subscribe to the author's e-newsletter by following the directions at the end of this article.

A. Administrative Law

[HB 1947 – De Novo Review and Interpretation of State Laws and Agency Rules by Reviewing Court Judges](#)

- **Summary:** HB 1947, filed by [Rep. Brian Harrison \(R – Midlothian\)](#), would require a judge or administrative law judge (ALJ) to interpret a statute, rule, or other guidance issued by a state agency *de novo*, without deference to an agency's interpretation of the provision. HB 1947 would also require a judge or ALJ to resolve the question of an ambiguous provision of state law in favor of limiting state agency authority.
- *Effective date:* September 1, 2023.

B. Arbitration

[HB 1255 – Limitation Periods in Arbitration Proceedings](#)

- **Summary:** HB 1255, filed by [Rep. John Smithee \(R – Amarillo\)](#), would amend Chapter 16 of the Civil Practice and Remedies Code (CPRC) by adding section 16.073, which would provide that “a party may not assert a claim in an arbitration proceeding if the party could not bring suit for the claim in court due to the expiration of the applicable limitations period.” However, under the proposed section 16.073, the party “may assert a claim in an arbitration proceeding after expiration of the applicable limitations period if: (1) the party brought suit for the claim in court before the expiration of the applicable limitations period; and (2) a court ordered the parties to arbitrate the claim.”
- *Effective date:* September 1, 2023. However, if HB 1255 is passed by a vote of two-thirds of all members elected to each chamber, the changes in the law under HB 1255 would be effective immediately.

[**Note:** In 2019, Rep. Smithee filed a similar bill ([HB 1744](#)), which was voted out of committee but died without receiving a vote on the House floor.]

C. Attorneys/Practice of Law

[SB 559 – Discrimination Against or Burdening Constitutional Rights of Law License Holder or Applicant](#) (Companion: [HB 2846](#))

- **Summary:** SB 559, filed by [Sen. Bryan Hughes \(R – Mineola\)](#), would amend the State Bar Act to prohibit rules or policies that: (1) limit an applicant's ability to obtain a license to practice law in Texas, or a bar member's ability to maintain or renew the license, based on a sincerely held religious belief; or (2) burden an applicant's or bar member's free exercise of religion, freedom of speech regarding a sincerely held religious belief; membership in any religious organization; or freedom of association. A person could seek injunctive relief for violating this prohibition. However, the prohibition would not apply to a State Bar rule or policy adopted or penalty imposed that results in a limitation or burden if the rule, policy, or penalty is: (1) essential to enforcing a compelling governmental purpose and narrowly tailored to accomplish that purpose; or (2) restricts wilful expressions of bias or prejudice in connection with an adjudicatory proceeding.
- SB 559 also provides that, in an administrative hearing or a judicial proceeding under the Texas Uniform Declaratory Judgments Act, a person may assert as a defense that a prohibited bar rule, policy, or penalty violates the State Bar Act. However, the person may not raise the violation as a defense to an allegation of sexual misconduct or the prosecution of an offense.
- *Effective date:* September 1, 2023. However, if SB 559 is passed by a vote of two-thirds of all members elected to each chamber, the changes in the law under SB 559 would be effective immediately.

[**Note:** The House companion was filed by [Rep. Briscoe Cain \(R – Deer Park\)](#). In 2021, [Sen. Charles Perry \(R – Lubbock\)](#) authored a similar bill ([SB 247](#)) that passed in the Senate, but died in the House after being voted out of committee. The House companion ([HB 3940](#)) was voted out of committee, but died without receiving a floor vote.]

[HB 1627 – Implicit Bias Training for Judges, Judicial Officers, Court Personnel, and Attorneys](#)

- **Summary:** HB 1627, filed by [Rep. Ana Hernandez \(D – Houston\)](#), would require judges, certain court personnel, and attorneys to receive training or continuing education on implicit bias regarding racial, ethnic, gender, religious, age, mental disability, and physical disability and sexual harassment issues, and on bias-reducing strategies to address the manner in which unintended biases and sexual harassment issues undermine confidence in the legal system. There would be different requirements for attorneys and the judiciary

and other court-related personnel under the proposed law. Attorneys would be required to complete one hour of continuing education for each compliance period. Those employed within the judicial branch would be required to complete two hours of training every two years.

- *Effective date:* September 1, 2023. Rules necessary to provide the training required under HB 1627 would have to be adopted by January 1, 2024.

[**Note:** In 2021, Rep. Hernandez filed a similar bill ([HB 2714](#)), but it died in committee.]

[HB 5010 – Classification of a Grievance Filed With the State Bar of Texas – \(Companion: \[SB 2462\]\(#\)\)](#)

- **Summary:** HB 5010, filed by [Rep. Mike Schofield \(R – Katy\)](#), would amend section 81.073 of the Government Code and require the chief disciplinary counsel's office to classify complaints based on whether the complaint is submitted by a person who has cognizable individual interest in or connection to the legal matter or facts alleged in the grievance. HB 5010 would also allow an attorney against whom the complaint is filed to appeal the classification of the grievance.
- *Effective date:* September 1, 2023.

[**Note:** [Sen. Bob Hall \(R – Edgewood\)](#) filed the Senate companion.]

[HB 5101 – Procedures for a Complaint Filed with the State Bar of Texas – \(Companion: \[SB 2461\]\(#\)\)](#)

- **Summary:** HB 5101, filed by [Rep. Mike Schofield \(R – Katy\)](#), would amend section 81.075 of the Government Code and authorize the Supreme Court, on its own motion or the motion of the respondent attorney, to order a stay and reconsider the finds of the chief disciplinary counsel, place the complaint on a dismissal docket, or affirm the finding of just cause. HB 5101 would also provide that (1) the filing of a motion to stay does not affect the filing deadline or other time prescribed for a trial or hearing, and (2) if the Supreme Court does not grant or deny a motion for stay on or before the 45th day of filing, the motion is considered denied.
- *Effective date:* September 1, 2023.

[**Note:** [Sen. Bob Hall \(R – Edgewood\)](#) filed the Senate companion.]

D. Attorney's Fees

[HB 5253 – Recovery of Attorney's Fees for Statutory Causes of Action and Common Law Tort Claims](#)

- **Summary:** HB 5253, filed by [Rep. Julie Johnson \(D – Farmers Branch\)](#), would amend section 38.001 of the CPRC to allow for the recovery of attorney's fees if the claim is for a common law tort or a cause of action created by statute for which an award of actual damages is authorized.

E. Attorney General

[HB 1610 – Defense of the State of Texas or a State Agency in Actions Challenging the Constitutionality of a Texas Statute](#)

- **Summary:** HB 1610, filed by [Rep. Jeff Leach \(R – Allen\)](#), would amend section 402.010 of the Government Code to provide that the attorney general may not settle or compromise any claim in an action against the state or a state agency if the settlement or compromise has the effect of holding that a state statute is unconstitutional. HB 1610 also provides that, if a state agency in the executive or legislative branch of state government is a defendant in an action in which a party to the litigation files a petition, motion, or other pleading challenging the constitutionality of a state statute and the attorney general elects not to defend the agency, the attorney general shall pay or reimburse the reasonable expenses incurred by the agency in defending the action, including court costs, investigative costs, deposition expenses, witness fees, and attorney's fees. However, this change in the law under HB 1610 would not apply to representation of the agency before the Supreme Court in violation of Section 22, Article IV, Texas Constitution.
- *Effective date:* September 1, 2023.

F. Civil Causes of Action Involving Injuries to Minors

[HB 206 – Elimination of Limitations Periods for Personal Injury Cases Arising from Certain Offenses Against a Child](#) – (*Companion:* [SB 751](#))

- **Summary:** HB 206, filed by [Rep. Ann Johnson \(D – Houston\)](#), would amend section 16.0046 of the CPRC and eliminate the limitations period (currently 30 years) for a personal injury suit arising from sexual offenses against a child.
- *Effective date:* September 1, 2023.

[**Note:** [Sen. Pete Flores \(R – Austin\)](#) filed the Senate companion (SB 751). [Rep. Jeff Leach \(R – Allen\)](#) has filed a similar, but not identical, bill ([HB 3533](#)).]

[HB 4601 – Personal Injury Suits Arising from Conduct that Violates Penal Code Provisions Concerning Sexual Offenses Against a Child](#)

- **Summary:** HB 4601, filed by [Jeff Leach \(R-Allen\)](#), would amend section 16.0045 of the CPRC to require a person to bring suit for personal injury against a non-perpetrator of a sexual offense against a child no later than 15 years after the cause of action accrues if the injury arises as a result of conduct that violates various Penal Code provisions and the person against whom the suit is filed had a safe environment program at the time the injury occurred. However, HB 4601 would not create a private cause of action against a person “concerning a safe environment program.”

Under HB 4601, the burden of proof to establish liability would be clear and convincing evidence for each element of the cause of action.

G. Construction

[HB 2022 – Residential Construction Liability](#) – (Companion: [SB 873](#))

- **Summary:** HB 2022, filed by [Rep. Jeff Leach \(R – Allen\)](#), would amend Chapter 27 of the Property Code and provide that:
 - A contractor is liable only to the extent a defective condition proximately causes actual physical damage to the residence, an actual failure or lack of capability of a building component to perform its intended function or purpose, or a verifiable danger to the safety of the occupants of the residence.
 - A contractor is not liable for damages caused by the failure of a person other than the contractor to timely notify the contractor of a construction defect.
 - A contractor is not liable for normal cracking or shrinkage cracking.
 - To maintain a breach of a warranty of habitability, a claimant must establish that a construction defect was latent on the date the residence was completed or title was conveyed to the original purchaser and the defect has rendered the residence uninhabitable for its intended use as a home.
 - A contractor must have up to three inspections during the 35-day right to cure period.
 - Recoverable damages will be limited only to economic damages as listed in the statute.
 - The court or arbitration tribunal may find that an offer of settlement by the contractor made after the applicable deadline is timely if the claimant failed to provide required written notice, failed to provide the contractor with

evidence of the defect, or amended a claim to add a new alleged defect (or under circumstances beyond the contractor's control).

- o Statute of limitations applies to an arbitration proceeding as it does to a filing in court.
- o HB 2022 also repeals § 27.004(l), § 27.0042(b), and § 27.007(c).
- *Effective date:* September 1, 2023.

[**Note:** [Sen. Phil King \(R – Weatherford\)](#) filed the Senate companion bill ([SB 873](#)).]

[HB 2024 – Statutes of Limitations and Repose for Certain Claims Arising out of Residential Construction](#) – (*Companion:* [SB 939](#))

- **Summary:** HB 2024, as originally filed by [Rep. Jeff Leach \(R – Allen\)](#), would amend section 16.008 of the CPRC and require a person to bring a claim arising out of the design, planning, or inspection or a new residence, an alteration of or repair or addition to an existing residence, or an appurtenance to a residence against a registered or licensed architect, engineer, interior designer, or landscape architect no later than 8 years after the substantial completion of the improvement or the beginning of operation of the equipment in an action arising out of a defective or unsafe condition of the real property, the improvement, or the equipment.

The version of the bill adopted by the House Judiciary & Civil Jurisprudence committee eliminated the above-described proposed amendment to CPRC section 16.008. However, the committee-approved version of HB 2024 would amend section 16.009 of the CPRC to establish a 10-year limitations period in a similar action against a person who constructs or repairs the improvement. It would also establish a 6-year limitations period if the defendant is a contractor who has provided a written warranty for the residence and provides that a written warranty must provide a minimum period of one year for workmanship and materials, two years for plumbing, electrical, and HVAC, and five years for major structural components.

- *Effective date:* September 1, 2023. However, if HB 2024 or SB 939 is passed by a vote of two-thirds of all members elected to each chamber, the changes in the law under HB 2024 or SB 939 would be effective immediately.

[**Note:** [Sen. Phil King \(R – Weatherford\)](#) filed the Senate companion bill ([SB 939](#)).]

H. Damages

[HB 955 – Relating to Affidavits Concerning Costs and Necessity of Services](#)

- **Summary:** HB 955, filed by [Rep. Harold Dutton \(D – Houston\)](#), would amend section 18.001 of the CPRC to exempt a medical bill or other itemized statement of a medical or health care service charging \$50,000 or less from the requirements of 18.001. An affidavit would not be required to support a finding of fact that the amount charged was reasonable and necessary.
- *Effective date:* September 1, 2023. The changes in the law addressed by HB 955 would apply to an action that commences on or after the effective date.

I. Education/Civil Remedy

[SB 393 – Public Schools, Grievance Process, and Civil Remedy](#)

- **Summary:** SB 393, filed by [Sen. Bob Hall \(R – Edgewood\)](#), would (among other things) create a cause of action for damages, costs, and attorney's fees by a parent against a school district if the district's grievance procedure fails to resolve an issue within thirty (30) days after the receipt of a parent's complaint.
- *Effective date:* September 1, 2023. However, if SB 393 is passed by a vote of two-thirds of all members elected to each chamber, the changes in the law under SB 393 would be effective immediately.

J. Employment

[HB 1999 – Unlawful Employment Practices Based on Sexual Harassment, Including Related Complaints and Civil Actions](#) – (*Companion: [SB 1041](#)*)

- **Summary:** HB 1999, filed by [Rep. Julie Johnson \(D – Farmers Branch\)](#), would add section 21.2545 to the Labor Code and authorize a person to bring a civil suit for damages arising from an unlawful employment practice based on sexual harassment, regardless of whether the person has filed a complaint or has received a right to sue letter. Under HB 1999, such actions would be subject to a two-year statute of limitations and make the actions subject to the punitive damages limitations in section 41.008 of the CPRC instead of the statutory limits in section 21.2585 of the Labor Code.
- *Effective date:* September 1, 2023.

[**Note:** [Sen. Bryan Hughes \(R – Mineola\)](#) filed the Senate companion bill.]

K. Healthcare Liability

[HB 536 – Liability Limits in a Health Care Liability Claim](#)

- **Summary:** HB 536, filed by [Rep. Gene Wu \(D – Houston\)](#), would amend CRPC sections 74.301 and 74.302 and provide for an adjustment to the noneconomic damages caps based on the consumer price index (CPI). More specifically, the bill provides that, when there is an increase or decrease in the CPI, the liability limit prescribed by the noneconomic damage limitation sections will be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the CPI that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone (CPI-W: Seasonally Adjusted U.S. City Average--All Items), between September 1, 2003, and the time at which damages subject to such limits are awarded by final judgment or settlement.
- *Effective date:* September 1, 2023. The changes in the law addressed in HB 536 would apply to a health care liability claim that accrues on or after the effective date.

[**Note:** Similar bills have been filed in previous sessions. For example, bills filed in 2017 ([HB 719](#)), 2019 ([HB 765](#)), and 2021 ([HB 501](#)) all died in committee.]

[HB 1791 – Qualification of Experts in Certain Healthcare Liability Claims](#) (*Companion:* [SB 2171](#))

- **Summary:** HB 1791, filed by [Rep. Yvonne Davis \(D – Dallas\)](#), would amend the CPRC to provide that, in suits involving a health care liability claim against a chiropractor, a person may qualify as an expert witness on the issue of the causal relationship between an alleged departure from accepted standards of care and the injury, harm, or damages claimed if the person is a chiropractor or physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence.
- *Effective date:* September 1, 2023

[**Note:** [Sen. Carol Alvarado \(D – Houston\)](#) filed the Senate companion bill ([SB 2171](#)). In 2021, [Sen. Bryan Hughes \(R – Mineola\)](#) filed a similar bill ([SB 1106](#)), which died in committee.]

L. Insurance

[HB 1320 – Recovery under Uninsured and Underinsured Motorist Insurance Coverage](#)

- **Summary:** HB 1320, filed by [Rep. Charlie Geren \(R – Fort Worth\)](#), would amend the Insurance Code to, among other things, expressly: (1) define, at least to some degree, what constitutes sufficient notice under the Insurance

Code for uninsured/underinsured motorists (UIM) claims; (2) state that an insurer may not require, as a prerequisite to asserting a claim under UIM coverage, a judgment or other legal determination establishing the other motorist's liability or uninsured/underinsured status; (3) state that an insurer may not require, as a prerequisite to payment of UIM benefits, a judgment or other legal determination establishing the other motorist's liability or the extent of the insured's damages before benefits are paid; and (4) require an insurer to attempt, in good faith, to effectuate a prompt, fair, and equitable settlement of a claim once liability and damages have become reasonably clear. HB 1320 would also amend the Insurance Code to address when prejudgment interest begins to accrue on UIM claims and when a claim for attorney's fees is considered to be "presented" for UIM claim purposes.

- *Effective date:* September 1, 2023. The changes in the law addressed in HB 1320 would apply to causes of action that accrue on or after the effective date, but does not affect the enforceability of any provision in an insurance policy delivered, issued for delivery, or renewed before January 1, 2024, that conflicts with the change in law made by HB 1320.

[**Note:** Rep. Geren filed similar bills in 2019 ([HB 1739](#)) and 2021 ([HB 359](#)). Both bills passed in the House, but died in the Senate.]

[HB 3391 – Disclosure of Liability Insurers and Policyholders to Third Party Claimants](#)

- **Summary:** HB 3391, filed by [Rep. Julie Johnson \(D – Farmers Branch\)](#), would amend the Insurance Code and require an insurance carrier and a policyholder to disclose to a third party claimant certain information about the insurance coverage of the party against who a claim is being made. More specifically, HB 3391 would have required an insurance carrier to provide the claimant with a sworn statement of an officer or claims manager of the insurer that contained the following information for each policy known by the insurer that provides or may provide relevant coverage, including excess or umbrella coverage: (1) the name of the insurer; (2) the name of each insured; (3) the limits of liability coverage; (4) any policy or coverage defense the insurer reasonably believes is available to the insurer at the time the sworn statement is made; and (5) a copy of each policy under which the insurer provides coverage. An insurer that failed to comply with the request would be subject to an administrative penalty up to \$500. An insured who received such a request had to: (a) disclose to the claimant the name of and type of coverage provided by each insurer that provides or may provide liability coverage for the claim; and (b) forward the claimant's request to each insurer included in the disclosure.
- *Effective date:* September 1, 2023.

[**Note:** HB 3391 is identical to bills previously filed in 2019 and 2021, but died in committee.]

M. Judiciary

[SB 372 – Creating a Criminal Offense for the Unauthorized Disclosure of Judicial Opinions](#) (*Companion: [HB 1741](#)*)

- **Summary:** SB 372, filed by [Sen. Joan Huffman \(R – Houston\)](#), would amend the Government Code to make it a Class A misdemeanor for a person, other than a justice or judge, with access to non-public judicial work product to knowingly disclose the contents of any non-public judicial work product to a person who is not a justice, judge, court staff attorney, court clerk, law clerk, employee of an agency established under Chapter 71 (Judicial Council) or 72 (Office of Court Administration) of the Government Code, or other court staff routinely involved in crafting an opinion or decision for an adjudicatory proceeding. However, it would be a defense to prosecution if the disclosure was authorized either in writing by the justice or judge for whom the work product is prepared or under Texas Supreme Court rules.

- *Effective date:* September 1, 2023.

[**Note:** [Rep. Jeff Leach \(R – Allen\)](#) filed the House companion bill ([HB 1741](#)).]

[SB 802 – Annual Base Salary of a District Judge](#) (*Similar Bill: [HB 2779](#)*)

- **Summary:** SB 802, filed by [Sen. Bryan Hughes \(R – Mineola\)](#), would increase the annual base salary of a district judge from \$140,000 to \$172,494, which would also result in annual base salary increases for all appellate court judges and justices.
- *Effective date:* September 1, 2023.

[**Note:** [Rep. Jeff Leach \(R – Allen\)](#) has filed a similar (but not identical) bill, [HB 2779](#). HB 2779 includes the same pay increase but would delink legislative retirement from a district judge's salary].

[SB 900 – Reimbursement of Certain Expenses of Appellate Court Justices and Judges](#)

- **Summary:** SB 900, filed by [Sen. Bryan Hughes \(R – Mineola\)](#), would amend the Government Code and permit an appellate justice or judge engaged in the discharge of official duties in a county other than the justice's or judge's county of residence to be reimbursed for traveling and other expenses. SB 900 would also permit appellate justices and judges to receive from the state the actual and necessary postage, telegraph, and telephone expenses incurred in the discharge of official duties.
- *Effective date:* September 1, 2023.

[SB 930 – Prohibition of Per Curiam Opinions](#) (*Joint Resolution: [SJR 54](#)*)

- **Summary:** SB 930, filed by [Sen. Mayes Middleton \(R – Galveston\)](#), would amend the Government Code to prohibit per curiam opinions on the basis that the authorship of court opinions is public information. Sen. Middleton has also filed SJR 54, which proposes a constitutional amendment that prohibits per curiam opinions.
- *Effective date:* The changes in the law under SB 930 would be effective September 1, 2023. The constitutional amendment proposed by SJR 54 would be subject to voter approval and placed on the ballot for an election to be held on November 7, 2023.

[SB 1045 – Creation of the Fifteenth Court of Appeals](#) (*Companion: [HB 3166](#); Joint Resolution: [HJR 139](#)*)

- **Summary:** SB 1045, filed by [Sen. Joan Huffman \(R – Houston\)](#), would establish the Fifteenth Court of Appeals, which would be a district composed of all counties. The court would be based in Austin and composed of a chief justice and four justices. Under SB 1045, the court would have exclusive immediate appellate jurisdiction over: (1) matters brought by or against the state or a board, commission, department or executive state agency, or by or against an officer or employee thereof arising out of the officer's or employee's official conduct; (2) matters in which a party to the proceeding challenges the constitutionality or validity of a state statute or rule and the attorney general is a party; and (3) any other matter as provided by law.

The court's jurisdiction would not include: (1) a proceeding brought under the Family Code; (2) certain proceedings under the Code of Criminal Procedure; (3) a proceeding brought against a district or county attorney with criminal jurisdiction; (4) a proceeding relating to a mental health commitment; (5) a proceeding relating to civil asset forfeiture; (6) a condemnation proceeding; (7) a proceeding brought under Chapter 125 of the CPRC to enjoin a common nuisance; (8) an expunction proceeding under Chapter 55 of the Code of Criminal Procedure; (9) a 3-judge district court proceeding under Chapter 22A of the Government Code; (10) a proceeding under Chapter 411, Subchapter E-1 of the Government Code (orders of nondisclosure of criminal history record information); (11) unfair employment practices under Chapter 21 of the Labor Code; (12) a removal action under Chapter 87 of the Local Government Code; or (13) a proceeding under Chapter 841 of the Health and Safety Code (sexually violent predators).

SB 1045 also provides that the Supreme Court may not transfer cases out of the Fifteenth Court of Appeals for docket equalization purposes or transfer cases to that court if it does not have exclusive jurisdiction.

SB 1045 further provides that the Supreme Court has original and exclusive jurisdiction to determine whether the Fifteenth Court of Appeals is constitutional.

- *Effective date:* September 1, 2023.

[**Note:** [Rep. Andrew Murr \(R – Kerrville\)](#) filed the House companion and the House Joint Resolution.]

[SB 1092 – Jurisdiction of the Texas Supreme Court and Court of Criminal Appeals](#)
(Companion: [HB 4178](#))

- **Summary:** SB 1092, filed by [Sen. Tan Parker \(R – Flower Mound\)](#), would amend the Government Code to grant the Texas Supreme Court jurisdiction to “correct any error in a Court of Criminal Appeals (CCA) decision in which the CCA finds that a statute, rule, or procedure is unconstitutional. More specifically, SB 1092 provides that, on a petition of the attorney general or a district or county attorney, the Supreme Court would have original civil jurisdiction to issue writs of quo warranto and mandamus to correct any error in the court of criminal appeals’ decision. The jurisdiction granted by SB 1092 would apply regardless of whether the CCA decision is (1) based on the state constitution, federal constitution, or both; (2) characterized as criminal or civil; or (3) characterized as final or non-final.

Under SB 1092, a decision by the CCA that a statute, rule, or procedure violates the state or federal constitution would not be final and would not be effective until the later of: (1) the 60th day after the date of the decision; or (2) the denial or dismissal of a petition filed in the Supreme Court.

- *Effective date:* September 1, 2023.

[**Note:** [Rep. Mike Schofield \(R – Katy\)](#) filed the House companion.]

[SB 1196 – Jurisdiction of the Texas Supreme Court and Court of Criminal Appeals](#)
(Companion: [HB 2930](#))

- **Summary:** SB 1196, filed by [Sen. Bryan Hughes \(R – Mineola\)](#), would amend the Code of Criminal Procedure to provide that the Texas Supreme Court has jurisdiction to resolve any conflicts between the Supreme Court and the CCA regarding the interpretation of a provision of the Texas Constitution on: (1) submission of a writ of certiorari to the Supreme Court by a party to any proceeding in any Texas court; or (2) certification of a question of law from any federal court.
- *Effective date:* September 1, 2023. However, if SB 1196 or HB 2930 are passed by a vote of two-thirds of all members elected to each chamber, the changes in the law under those bills would be effective immediately.

[**Note:** [Rep. David Spiller \(R – Jacksboro\)](#) filed the House companion.]

SB 2275 – Authority of Texas Supreme Court to Adopt Rules

- **Summary:** SB 2275, filed by [Sen. Bryan Hughes \(R – Mineola\)](#), would repeal section 22.004(c) of the Government Code, which states as follows:

“So that the supreme court has full rulemaking power in civil actions, a rule adopted by the supreme court repeals all conflicting laws and parts of laws governing practice and procedure in civil actions, but substantive law is not repealed. At the time the supreme court files a rule, the court shall file with the secretary of state a list of each article or section of general law or each part of an article or section of general law that is repealed or modified in any way. The list has the same weight and effect as a decision of the court.”

- *Effective date:* September 1, 2023

SB 2299 – Identification of Constitutional or Statutory Provisions Invalidated or Limited by a State Appellate Court

- **Summary:** SB 2299, filed by [Sen. Judith Zaffirini \(D – Laredo\)](#), would amend the Government Code to require an appellate court, including the Supreme Court and CCA, to report any decision to OCA if such a decision (1) concludes that a Texas constitutional provision or statute conflicts wholly or partly with federal law; (2) concludes that a Texas statute conflicts wholly or partly with the Texas Constitution; (3) uses the statutory construction aids identified in the Code Construction Act because a statute is either facially ambiguous, or ambiguous as applied to the facts of the case; or (4) concludes that two or more Texas statutes or two or more amendments to the same statute are irreconcilable. Such reports would have to be sent to OCA within 30 days of issuing the decision.

Also under SB 2299, no later than September 1 of each year, OCA would be required to prepare and submit to the governor, the lieutenant governor, the speaker of the House, and the Legislature an electronic report describing information received by OCA for the period beginning July 1 of the previous year and ending June 30 of the year in which the report is issued. The report must provide the following in a searchable and sortable format: (1) for each appellate court decision reported, information specifying: the caption; case number; the court that issued the decision; and the current status of the case; (2) a citation to each constitutional provision or statute impacted by the decision to which the paragraph above applies with an indication of which subdivision applies; (3) for a Texas constitutional provision or statute to which the section above applies, identification of each federal law that the appellate court determines is in conflict with the constitutional provision or statute; (4) for a statute to which the subsection above applies, identification of each provision of the Texas Constitution that the appellate court determines is in conflict with the statute; and (5) for each constitutional provision or statute listed in the report that became law during the 40-year period before the date of the report, identification of the applicable legislative session; resolution or bill number; author; and sponsor.

SB 2299 would also require OCA to publish its reports on the OCA website.

- *Effective date:* September 1, 2023.

[SJR 40 – Proposing a Constitutional Amendment to Increase the Mandatory Retirement Age for Judges and Justices](#) (*Companion:* [HJR 107](#))

- **Summary:** SJR 40, filed by [Sen. Juan "Chuy" Hinojosa \(D – McAllen\)](#), seeks to amend Art. V, § 1-a(1) of the Texas Constitution and increase the mandatory retirement age for judges from 75 to 79.

[**Note:** [Rep. Four Price \(R – Amarillo\)](#) filed the House companion resolution.]

- *Effective date:* Upon approval of the Texas voters at an election to be held on November 7, 2023.

[HB 19 – Creation of a Specialty Trial Court \(Business Trial Courts\)](#) (*Companion:* [SB 27](#))

- **Summary:** HB 19, filed by [Rep. Andrew Murr \(R – Kerrville\)](#), would create a business trial court system in Texas. More specifically, under the **original** version of the bill (the text changed in committee and on the House floor), HB 19 would do the following:
 - Establish a statewide business court with concurrent jurisdiction with a district court in: (1) a derivative action on behalf of a business organization; (2) an action arising out of or related to a “qualified transaction” in which the amount in controversy exceeds \$10 million, exclusive of attorney’s fees, costs, interest, penalties, statutory damages, or exemplary damages (“qualified transaction” means a transaction under which a party pays or receives, or is obligated to pay or entitled to receive consideration, or lends, advances, borrows, or receives, or is obligated to lend or advance, or entitled to borrow or receive money or credit); (3) an action regarding the governance or internal affairs of the organization; (4) an action in which a claim under a state or federal securities or trade regulation law is asserted against an organization, a governing or controlling person or officer of an organization, or an underwriter of securities issued by the organization or its auditor; (5) an action by an organization or an owner or member thereof if the action is brought against an owner, managerial official, or controlling person and alleges an act or omission by that person in the person’s official capacity; (6) an action alleging that an owner, managerial official, or controlling person breached a duty, including a duty of care, loyalty, or good faith; (7) an action seeking to hold an owner, member, or governing person liable for an obligation of the organization; (8) an action in which the amount in controversy exceeds \$10 million that arises against, between, or among organizations, governing authorities, governing persons, members, or owners, relating to a contract transaction for business, commercial,

investment, agricultural, or similar purposes, or involves violations of the Finance Code or Business & Commerce Code; (9) an action seeking a declaratory judgment or injunctive relief under the CPRC involving the Business Organizations Code, an organization's governing documents, or other dispute falling within the scope of the jurisdictional grant for the business court; and (10) an action arising out of the Business Organizations Code.

- o Actions **outside** of the business court's jurisdiction would be those brought by or against a governmental entity (unless the entity invokes or consents to the jurisdiction of the business court), personal injury or death claims, claims under the DTPA, the Estates Code, the Family Code, or Title 9/Property Code, unless the parties agree to submit to the jurisdiction of the business court.
- o Provide that claims within the jurisdiction of the business court may be directly filed there.
- o Establish a procedure for removing claims (or parts of claims) not within the jurisdiction of the business court to a county in which the claim could have originally been filed.
- o Provide a process for removing an action (or parts of actions) from a district or county court to the business court on motion of a party.
- o Give the proposed statewide 15th Court of Appeals exclusive jurisdiction over appeals.
- o Require a business court judge to be at least 35 years of age, a U.S. citizen, a Texas resident for two years preceding appointment, a Texas licensed attorney with at least 10 years of experience in Texas in practicing complex business litigation or business transaction law, teaching complex business litigation or business transaction law at an accredited Texas law school, or serving as a judge of a Texas civil court (or any combination of the above).
- o Provide for the gubernatorial appointment of judges.
- o Provide for two-year terms with the possibility of reappointment.
- o Provide a salary equal to the sum of a district judge's salary and the maximum amount of county contributions and supplements allowed by law to be paid to a district judge.
- o Bar a business court judge from private practice while in office.
- o Provide for the appointment of visiting judges by the chief justice of the Supreme Court.

- Provide that a party has a right to a jury trial where required by the constitution in the county in which venue is proper under CPRC, section 15.002, if the case was removed to the business court, in the county in which the case was originally filed.
- Require a jury trial in a case filed initially in business court to be held in any county of proper venue under CPRC section 15.002, as chosen by the plaintiff.
- Allow the parties to agree to hold a jury trial in another county.
- Require written opinions unless the court has a well-developed body of law on the issue, is applying its own precedent, or another opinion on the issue will not significantly contribute to the development of the law.
- Provide for the central administration of the business court in Travis County, with judges maintaining chambers in the county seat of their county of residence.
- Allow judges to hold court at any location in the state, as the court determines is necessary or convenient.
- Allow parties to appear by remote proceedings.
- Authorize the business court to set filing fees.
- *Effective date:* September 1, 2023, but the court would be created by September 1, 2024.

[Note: At the time it passed in the House, more than 77 House members have signed onto to HB 19 as [co-authors or joint authors](#). Further, HB 19 is similar (but not identical) to versions of the 2015 chancery court bill (HB 1603) that was voted out of committee (but failed to pass in the House), as well as the 2017 chancery court bill (HB 2594) and the 2019 business courts bill (HB 4149) that were filed but never voted out of committee; and the 2021 business courts bill (HB 1875) that was voted out of committee (but failed to pass in the House).]

[Note: [Sen. Bryan Hughes \(R – Mineola\)](#) filed the Senate companion.]

- On March 29, by a 5-4 vote, the House Judiciary & Civil Jurisprudence Committee voted HB 19 (as amended) out of committee. The amended version approved by the committee provides, among other things, that: (1) the amount of in controversy must exceed \$10 million (unless a claim falls within the court's defined supplemental jurisdiction); (2) the business court will be composed of geographic divisions that correspond to the state's eleven administrative judicial regions; and (3) a judge will be appointed to each business court division.

On May 2, by a vote of 90-51, the House passed HB 19 (as amended). On the floor, the House adopted amendments that, among other things, revised the jurisdictional parameters to: (1) reduce the amount in controversy for most claims from \$10 million to \$5 million; (2) add “an action arising out of the Business Organizations Code”; and (3) create another tier of claims in which the amount in controversy exceeds \$10 million if the action arises out of: (a) a “qualified transaction” (as defined in HB 19); (b) a contract or commercial transaction in which the parties to the contract or transaction agreed that the business court has jurisdiction of the action (except for actions arising out of insurance contracts); and (c) a violation of the Finance Code or Business & Commerce Code by an organization or an officer/governing person acting on behalf of an organization other than a bank, credit union, or savings and loan association. The business court would also have jurisdiction to hear actions seeking injunctive or declaratory relief under the Texas Uniform Declaratory Judgments Act provided that such disputes fall with the jurisdictional grant in HB 19. The floor amendments also carved out additional **exceptions** to the business court’s jurisdiction, such as: (1) actions to foreclose a lien on real or personal property; (2) a claim arising out of Chapter 15 (covenants not to compete) of the Business & Commerce Code; (3) a claim arising out of the Insurance Code; (4) a claim arising out of Chapter 53 (mechanic’s liens) of the Property Code; (5) a claim arising out of the production or sale of a farm product; (6) a claim related to the duties and obligations under an insurance policy; (6) a claim related to a consumer transaction, as defined in §601.001 of the Business & Commerce Code (consumer right to cancel certain transaction) to which the consumer is a party, arising out of a violation of state or federal law; (7) a healthcare liability claim; and (8) a legal malpractice claim. The floor amendments also included additional removal procedures and added four more judges to the business trial court bench, with all additional judges being added to four different court divisions.

[HB 367 – Powers and Duties of the State Commission on Judicial Conduct](#)

- **Summary:** HB 367, filed by [Rep. Jacey Jetton \(R – Sugar Land\)](#), would amend the Government Code to authorize the State Commission on Judicial Conduct (SCJC) to accept complaints, conduct investigations, and take any other action authorized by statute or the Texas Constitution, with respect to a candidate for judicial office who is subject to the Judicial Campaign Fairness Act, in the same manner SCJC is authorized to take those actions with respect to a judge.

In 2021, the 87th Legislature passed—and Texas voters subsequently approved—a constitutional amendment that provides the constitutional authority for the SCJC to enforce the Code of Judicial Conduct and administer discipline with respect to judicial candidates.

- *Effective date:* September 1, 2023.

[HB 437 – Annual Base Salaries of State Judges and Justices](#)

- **Summary:** HB 437, filed by [Rep. Mike Schofield \(R – Katy\)](#), would amend the Government Code to provide for a cost-of-living adjustment for judicial salaries

based on changes in the Consumer Price Index. HB 437 would also abolish the Judicial Compensation Commission.

Rep. Schofield also filed a similar bill ([HB 438](#)) that would accomplish the same result using a different formula.

- *Effective date:* September 1, 2023, but the changes in the law under HB 437 and HB 438 would apply starting with the state fiscal biennium beginning on September 1, 2025.

[**Note:** Rep. Schofield filed similar bills in 2021 ([HB 1876](#) and [HB 1880](#)), but they died in committee.]

[HB 525 – Delivery of Court Orders Through Electronic Filing System](#)

- **Summary:** HB 525, filed by [Rep. Cody Vasut \(R – Angleton\)](#), would amend the Government Code to require a statutory county court, district court, or appellate court to deliver, via the electronic filing system, all court orders to all parties in each case in which the use of the electronic filing system is required or authorized.
- *Effective date:* September 1, 2023.

[HB 556 – Sealing of Documents Containing Trade Secrets](#)

- **Summary:** HB 556, filed by [Rep. Cody Vasut \(R – Angleton\)](#), would amend the Government Code to require the Texas Supreme Court to adopt rules allowing for documents alleged to contain trade secrets to be filed under seal. The rules must: (1) require the document to be accompanied by an affidavit that describes the document and the basis for claiming a trade secret privilege; (2) provide that the affidavit is open to public inspection; (3) allow any person to move to unseal the document; and (4) provide for the unsealing of the document or a portion of the document only on: (a) a sufficient showing by the moving party of a specific, serious, and substantial interest that clearly outweighs a presumption in favor of preserving the secrecy of trade secrets; or (b) a determination by the court that the document or the portion of the document does not contain a trade secret.
- *Effective date:* September 1, 2023, but the Supreme Court would have until January 1, 2024 to adopt rules implementing the changes made under the Government Code.

[HB 841 – Gathering and Maintenance of Certain Judicial Statistics by the Texas Judicial Council](#)

- **Summary:** HB 841, filed by [Rep. Claudia Ordaz \(D – El Paso\)](#), would require the Texas Judicial Council to gather and maintain more detailed statistics about

case-level information related to the amount and character of the business transacted by courts.

- *Effective date:* September 1, 2023.

[**Note:** Rep. Ordaz filed a similar bill ([HB 4335](#)) in 2021. The bill was voted out of committee, but failed to reach the House floor.]

[HB 1561 – Relating to the Decision of a Court of Appeals Not to Accept Permissive Interlocutory Appeals](#) (*Companion:* [SB 1603](#))

- **Summary:** HB 1561 and SB 1603, filed by [Rep. John Smithee \(R – Amarillo\)](#) and [Sen. Bryan Hughes \(R – Mineola\)](#) respectively, would amend section 51.014 of the CPRC and require a court of appeals to specify its reasons for finding that a permissive appeal is not warranted under 51.014(d) if the court does not accept the appeal. HB 1561/SB 1603 also provides that the Supreme Court may review a decision by a court of appeals not to accept a permissive appeal under an abuse of discretion standard.

By a near-unanimous vote of 143-1, the House passed SB 1603 (as amended). The floor amendments did the following: (1) changed the Supreme Court's standard of review from an abuse of discretion to de novo, and (2) provides that the court of appeals could be directed to accept the appeal if the Supreme Court determined that the requisites for a permissive appeal have been satisfied.

- *Effective date:* September 1, 2023. The changes in law made by HB 1561/SB 1603 would apply only to an application for a permissive appeal filed on or after the effective date.

[HB 2014 – Reimbursement for Jury Service](#)

- **Summary:** HB 2014, filed by [Rep. Jeff Leach \(R – Allen\)](#), would amend section 61.001(a) of the Government Code to raise juror reimbursement from \$6 to \$20 for the first day and from \$40 to \$58 for each day thereafter.
- *Effective date:* September 1, 2023.

[HB 2139 – Construction of Code, Laws, and Statutes](#)

- **Summary:** HB 2139, filed by [Rep. Dustin Burrows \(R – Lubbock\)](#), would amend Chapter 311 of the Texas Government (Code Construction Act) and require courts, when interpreting a statute, to enforce the statutory text as written and in accordance with the meaning that the words of the statute would have to “an ordinary speaker of the English language” (i.e., prohibits “intentionalism”). HB 2139 would also provide that “severability” applies down to every word, phrase, clause, or sentence in a statute.

Further, HB 2139 attempts to limit judicial interpretations of the constitutionality of the statute to the parties in the specific case.

HB 2139 would also make the same changes to Chapter 312 of the Government Code (construction of statutes) and prohibit courts from referring to legislative intent.

- *Effective date:* September 1, 2023. However, if HB 2139 is passed by a vote of two-thirds of all members elected to each chamber, the changes in the law under HB 2139 would be effective immediately.

HB 2383 – Court Deposition and Transcription Services

- **Summary:** HB 2383, filed by [Rep. Jeff Leach \(R – Allen\)](#), would amend the Texas Government Code, to permit (1) the judges of two or more courts of record that are not located in the same judicial district to agree to jointly appoint an official court reporter to serve the courts; (2) the judges to appoint a certified shorthand reporter and permit the reporter to serve more than one court and serve remotely; (3) a deputy court reporter to serve remotely; and (4) a certified shorthand reporter to administer oaths to witnesses without being at the same location as the witnesses.

HB 2383 would also require an **uncertified** court reporter to engage in reporting to report an oral deposition only if the reporter delivers the required affidavit *before* the deposition begins (under current law, affidavit must be provided to those “present at” the deposition) and requires the reporter to file the affidavit with the court. The court reporter will be subject to civil penalty for any failure to comply.

HB 2383 also seeks to modify section 20.001 (b)-(d) of the CPRC to address those who may take depositions upon written questions of those who either reside outside the state of Texas or are members of (or civilians employed by) the armed forces.

- *Effective date:* September 1, 2023. However, the Supreme Court would be required to revise the Texas Rules of Civil Procedure, if necessary to conform to the changes in the law under HB 2383, as soon as practicable.

HB 2384 – Court Administration/Knowledge, Efficiency, Training, and Transparency Requirements for Judicial Office Holders and Candidates

- **Summary:** HB 2384, filed by [Rep. Jeff Leach \(R – Allen\)](#), would amend applicable sections of the Election Code and Government Code to do the following:
 - Require a judicial candidate’s ballot application to include the candidate’s bar number, disclose any public sanction or censure or disciplinary sanctions in Texas or another state, state for the previous five-year period

the nature of the candidate's practice, any legal specialization, the candidate's professional courtroom experience, and any final conviction for a Class A or B misdemeanor in the past 10 years. HB 2384 would further require candidates for appellate courts to describe appellate court briefs and oral arguments for the past five years.

- o Make public any sanction against a judicial candidate for making a false declaration on the ballot application.
 - o Direct the Supreme Court to adopt rules on the judicial training a judge must complete within one year of election to the bench, including a requirement that a minimum of 30 hours of instruction and that judges receive 16 hours of continuing education annually. The rules should also require the Judicial Conduct Commission to suspend a judge who does not complete the training.
 - o Provide that a judge who is noncompliant with the education requirement for more than one year engages in "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" sufficient to subject the judge to removal from office under Art. V, § 1-a, Texas Constitution.
 - o Direct the Office of Court Administration (OCA) to develop standards for identifying courts that need additional assistance to promote the efficient administration of justice.
 - o Direct OCA to include disaggregated performance measures for each appellate, district, statutory county, and county court as part of its annual performance report.
 - o Direct OCA to report the annual clearance rate for each trial court.
 - o Direct local district grievance committees to sanction attorneys that make false declarations on a ballot application.
 - o Direct the Supreme Court to adopt rules establishing a specialty certification for attorneys in judicial administration and that the Texas Board of Legal Specialization make it available to judges. Judges should also be permitted to receive additional compensation for those who hold a specialty certification in judicial administration provided that the legislature makes an appropriation for that purpose.
- *Effective date:* September 1, 2023

HB 2431 – Preparation of Appellate Records in Civil and Criminal Cases

- **Summary:** HB 2431, as originally filed by [Rep. Julie Johnson \(D – Farmers Branch\)](#), would amend the CPRC and Code of Criminal Procedure to permit appealing parties to file an appendix in lieu of a clerk's record. More specifically, under HB 2431, a party would be required to notify the court of appeals within ten (10) days of filing a notice of appeal that the party will file an appendix that replaces the clerk's record. The appealing party would then be required to file the appendix with its appellate brief. Except in an expedited proceeding or by court order, the brief and appendix would be due no later than the 30th day after the later of (1) the date notice of intent to use the appendix was provided, or (2) the date a reporter's record is filed with the court of appeals.

However, the version of the bill adopted by the House Judiciary & Civil Jurisprudence committee applied only to civil cases, so the provisions dealing with criminal proceedings no longer apply. It would also require the appealing parties to notify both the trial court and the court of appeals during the allotted time frame.

An appendix filed under HB 2431 must contain a file-stamped copy of each document required by Rule 34.5 of the Texas Rules of Appellate Procedure and any other item the party intends to reference in the party's brief. The appendix could not contain a document that has not been filed with the trial court except by agreement of the parties to the appeal.

An appendix filed according to the process under HB 2431 would become part of the appellate record. The court clerk would not prepare or file a clerk's record or assess a fee for preparing a clerk's record if a party files an appendix.

- *Effective date:* September 1, 2023.

HB 3474 – Omnibus Courts Bill (Companion: [SB 1462](#))

- **Summary:** HB 3474, filed by [Rep. Jeff Leach \(R – Allen\)](#), would do the following:
 - Entitle an appellate justice engaged in the discharge of official duties in a county other than the justice's county of residence to reimbursement of traveling and other expenses.
 - Entitle appellate justices to receive from the state the actual and necessary postage, telegraph, and telephone expenses incurred in the discharge of official duties.
 - Create new district courts in Denton, Collin (2 courts—one civil, one family law), Bastrop, Brazos, Brewster, Culberson, El Paso, Harris, Hudspeth, Jeff Davis, Kaufman, and Presidio counties.

- o Add district, criminal district, or county attorneys to the state base salary calculation for judges and justices.
- o Expand the jurisdiction of the Grayson County county court at law to include concurrent jurisdiction with the district court in family law cases.
- o Convert Montgomery County Court at Law No. 2 to a statutory probate court and give it jurisdiction over eminent domain proceedings.
- o Allow remote proceedings without the consent of the parties.
- o Create a second statutory probate court in Travis County for mental health matters.
- o Create new county courts at law in Aransas, Waller, and Wilson counties.
- o Create a second multicounty court at law for Bee, Live Oak, and McMullen counties.
- o Create criminal magistrate courts in Denton County and provides appointment parameters for courts in Bexar, Dallas, Denton, Harris, Tarrant, Travis, and other counties throughout Texas.
- o Require JPs to report annually to the Ethics Commission the total amount of fees, commissions, and payments received during the year.
- o Raise the jurisdictional limit for justice courts from \$10,000 to \$20,000.
- o Authorize the Grayson County commissioners court to allow the district and statutory county court judges to appoint part-time or full-time criminal magistrates.
- o Specify the reasons for which an administrative region presiding judge may appoint a visiting associate judge.
- o Exempt a county official or employee while transacting county business from paying fees for the issuance of transcripts if the county maintains court reporting equipment for the court.
- o Provide for the appropriate time for the State of the Judiciary Address.
- o Provide for grand juror and petit juror service qualifications, procedures, and compensation.
- o Address the appointment of official court reporters and interpreters.
- o Address deposition, transcription, and interpretation services.

- o Exempt a party from providing or paying for an interpreter unless another party contests a statement of inability to afford payment and the court orders the party to pay the costs.
- o Address the transfer of cases and proceedings in probate, guardianship, and family matters.

On May 4, the House passed HB 3474 (as amended). The floor amendments included the following provisions (among other things): (1) the creation of other district courts, county courts at law, and probate courts; (2) a process in which an appealing party can create an appendix in lieu of a clerk's record (*compare* [HB 2431](#)); and (3) would require trial and appellate courts to deliver through the electronic filing system all orders that a court enters in a case to all parties (*compare* [HB 525](#)).

- *Effective date:* September 1, 2023.

[**Note:** [Sen. Bryan Hughes \(R – Mineola\)](#) filed the Senate companion.]

[HB 3952 – Jurisdiction of Courts in Forcible Entry and Detainer and Forcible Detainer Cases](#)

- **Summary:** HB 3952, filed by [Rep. Mike Schofield \(R – Katy\)](#), would give statutory county courts concurrent jurisdiction with justice courts in forcible entry and detainer and forcible detainer suits.
- *Effective date:* September 1, 2023.

[HJR 39 – Proposing a Constitutional Amendment to Repeal the Mandatory Retirement Age for Judges and Justices](#)

- **Summary:** HJR 39, filed by [Rep. Cody Vasut \(R – Angleton\)](#), seeks to amend Art. V, § 1-a(1) of the Texas Constitution and repeal the mandatory retirement age for judges.

[**Note:** Rep. Vasut filed a similar resolution ([HJR 66](#)) in 2021. The resolution was referred to committee, but was never scheduled for hearing.]

N. Nuisance

[HB 1372 – Tort of Public Nuisance](#) (*Similar Bill:* [SB 1034](#))

- **Summary:** HB 1372, filed by [Cody Harris \(R – Palestine\)](#), and amended in committee, would add Chapter 100C to the CPRC and limit the cause of action for public nuisance. More specifically, HB 1372 would exclude the following claims, actions, or conditions from giving rise to a public nuisance cause of action: (1) an action or condition authorized, licensed, approved, or mandated

by a statute, ordinance, regulation, permit, order, rule, or other measure issued, adopted, promulgated, or approved by the federal government, a federal agency, this state or an agency, or a political subdivision of this state; (2) an action or condition that occurs or exists in a context where a statutory cause of action or administrative enforcement mechanism already exists to address conduct that is injurious to the public; or (3) a product or the manufacturing, distribution, selling, labeling, or marketing of a product, regardless of whether the product is defective.

- *Effective date:* September 1, 2023. However, if HB 1372 is passed by a vote of two-thirds of all members elected to each chamber, the changes in the law under HB 1372 would be effective immediately. The changes to the law under HB 1372 would apply only to a cause of action that accrues on or after the effective date.

[**Note:** [Sen. Mayes Middleton \(R – Galveston\)](#) has filed a similar bill ([SB 1034](#)).]

O. **Qualified Immunity**

[SB 575 – Creation of Cause of Action for Deprivation of Rights and Waiver of Immunity](#)

- **Summary:** SB 575, filed by [Sen. Roland Gutierrez \(D – San Antonio\)](#), would add Chapter 106A to the CPRC and create a cause of action by an injured person against a local government peace officer if the officer subjects or causes to be subjected, including a failure to intervene, the person to a deprivation of individual rights that create binding obligations on government actors. The peace officer would be liable to the injured party for legal or equitable relief as permitted by law.

Under SB 575, a court would be authorized to award reasonable attorney fees and costs to a prevailing plaintiff. For purposes of injunctive relief, a plaintiff would be deemed to have prevailed if the plaintiff's suit was a substantial factor or significant catalyst in obtaining the results sought by the litigation. If a judgment is entered in favor of defendant, a court would have discretion to award reasonable costs and attorney fees to the defendant for defending any claims the court finds to be frivolous.

SB 575 would require the local government employer to indemnify a peace officer for any liability incurred or any judgment or settlement entered against the peace officer; except that, if the peace officer's employer determines that the officer did not act upon a good faith and reasonable belief that the action was lawful, then the peace officer is personally liable and shall not be indemnified by the employer for five percent of the judgment or settlement or twenty-five thousand dollars, whichever is less.

An employer would not be required to indemnify the peace officer if the officer was convicted of a criminal violation. Qualified immunity would not be a defense to liability.

- *Effective date:* September 1, 2023. However, if SB 575 is passed by a vote of two-thirds of all members elected to each chamber, the changes in the law under SB 575 would be effective immediately.

P. Rideshare Liability

[HB 1745 – Civil Actions or Arbitrations Involving Transportation Network Companies](#)

- **Summary:** HB 1745, as originally filed by [Rep. Jeff Leach \(R – Allen\)](#), would add Chapter 150E to the CPRC and require a claimant bringing a personal injury action against a transportation network company (as defined in the Section 2402.001 of the Occupations Code) to file with the petition (or at the initiation of arbitration) an affidavit by claimant's counsel setting forth specifically for each theory of recovery (1) the negligence, if any, or other action, error, or omission of the company; and (2) the factual basis for each claim. HB 1745 would further require a third-party expert affidavit attesting that the damages exceed the applicable insurance coverage and require a court or arbitration tribunal to dismiss the action for failure to file the affidavits.

HB 1745 would also make an order granting or denying a motion to dismiss immediately appealable as an interlocutory appeal or grounds to file an application to a court to review the order of the arbitration tribunal.

Further, HB 1745 would prevent a transportation network company from being held vicariously liable if the company did not commit a state or federal crime and has fulfilled its obligations with respect to the company driver under Chapter 2402 of the Occupations Code.

On April 10, HB 1745 (as amended) was unanimously voted out of committee. The amendments included the removal of the affidavit-related provisions (proposed section 150E.003 and 150E.004) and the addition of a limitation of liability subsection (the new 150E.003) that deals with gross negligence claims.

- *Effective date:* September 1, 2023. The changes in the law addressed in HB 1475 would apply only to causes of action that accrues on or after the effective date.

[Note: Rep. Leach filed a similar bill ([HB 2788](#)) in 2021. The bill was voted out of committee, but did not reach the House floor.]

Q. Texas Citizens Participation Act

[SB 896 – Automatic Stay of Proceedings During Interlocutory Appeals of TCPA Motions to Dismiss](#) (Companion: [HB 2781](#))

- **Summary:** SB 896, filed by [Sen. Bryan Hughes \(R – Mineola\)](#), would amend section 51.014 of the CPRC to provide that the denial of a motion to dismiss under the TCPA is not subject to the automatic stay if the order denying the motion states that the motion was: (1) denied as not timely filed under section 27.003(b); (2) determined to be frivolous or solely intended to delay under section 27.009(b); or (3) denied because the action is exempt under section 27.010(a).
- *Effective date:* September 1, 2023. The changes in the law addressed in SB 896 would apply to causes of action filed on or after the effective date.

[**Note:** [Rep. Jeff Leach \(R – Allen\)](#) filed the House companion bill ([HB 2781](#)).]

[HB 527 – Persons Considered to Exercise Certain Constitutional Rights for Purposes of a Motion to Dismiss under the TCPA](#)

- **Summary:** HB 527, filed by [Rep. Gene Wu \(D – Houston\)](#), would amend section 27.010(a) of the CPRC and add a new subsection (13) that expressly exempts “a legal action based on a common law legal malpractice claim.” from the scope of the TCPA.
- *Effective date:* September 1, 2023. The changes in the law addressed in HB 527 would apply to an action that commences on or after the effective date.

[**Note:** Rep. Wu filed a similar bill ([HB 4166](#)) in 2021. The House unanimously passed HB 1466, but it died in the Senate.]

R. Texas Deceptive Trade Practices Act

[HB 515 – Relating to the Diagnosis, Maintenance, and Repair of Electronics-Enabled Heavy Equipment](#)

- **Summary:** HB 515, filed by [Rep. Terry Meza \(D – Irving\)](#), would add Chapter 121 to the Texas Business & Commerce Code and require an original manufacturer of electronics-enabled heavy equipment (including parts for the equipment) sold or used in Texas to make available on fair and reasonable terms to any independent repair provider or owner of such equipment: (1) documentation, replacement parts, and tools; and (2) documentation, replacement part, or tool necessary to disable and reset a lock when disabled in the course of diagnosis, maintenance, or repair of the equipment. HB 515 would also prohibit an agreement between an authorized repair provider and original equipment manufacturer that waives or otherwise limits the original manufacturer’s obligation under the Chapter 121. Further, HB 515

would make it a violation of the new Chapter 121 a deceptive trade practice under the Texas Deceptive Trade Practices Act.

- *Effective date:* September 1, 2023.

S. Texas Sovereignty Act

[HB 384 – Texas Sovereignty Act](#) (Companion: [SB 313](#))

- **Summary:** HB 384, filed by [Rep. Cecil Bell \(R – Magnolia\)](#), would amend the Government Code and do the following:
 - Establish a 12-member Joint Legislative Committee in Constitutional Enforcement as a permanent joint committee of the Texas Legislature to review specified federal actions that challenge the state's sovereignty and that of the people for the purpose of determining if the federal action is unconstitutional. The bill would authorize the committee to review any applicable federal action to determine whether the action is an unconstitutional federal action and establish the factors the committee is required to consider when reviewing a federal action. The bill would require the committee, no later than the 180th day after the date the committee holds its first public hearing to review a specific federal action, to vote to determine whether the action is an unconstitutional federal action and authorize the committee to make such a determination by majority vote.
 - Require the Speaker of the House and the Lieutenant Governor to appoint the initial committee members no later than the 30th day following the bill's effective date and would require the Secretary of State, no later than the 30th day following the bill's effective date, to forward official copies of the bill to the President of the United States, the Speaker of the U.S. House of Representatives, the President of the U.S. Senate, and to all members of the Texas congressional delegation with the request that the bill be officially entered in the Congressional Record. The bill would require the Speaker and the Lieutenant Governor to forward official copies of the bill to the presiding officers of the legislatures of the several states no later than the 45th day following the bill's effective date.
 - Require the committee to report its determination that a federal action is an unconstitutional federal action to the Texas House of Representatives and to the Texas Senate during the current legislative session if the legislature is convened when the committee makes the determination, or the next regular or special legislative session if the legislature is not convened when the committee makes the determination. The bill would require each house of the legislature to vote on whether the federal action is an unconstitutional federal action and, if a majority of the members of each house determine that the federal action is an unconstitutional federal action, would require the determination to be sent to the Governor for approval or disapproval as provided by the Texas Constitution regarding the approval or disapproval of bills. The bill would establish that a federal action is declared by the state to be an unconstitutional federal action on the day the Governor approves

the vote of the legislature making the determination or on the day the determination would become law if presented to the Governor as a bill and not objected to by the Governor. The bill would also require the Secretary of State to forward official copies of the declaration to the President of the United States, the Speaker of the U.S. House of Representatives, the President of the U.S. Senate, and to all members of the Texas congressional delegation with the request that the declaration of unconstitutional federal action be entered in the Congressional Record.

- Establish that a federal action declared to be an unconstitutional federal action under the bill's provisions regarding such a legislative determination has no legal effect in Texas and prohibit such an action from being recognized by the state or a political subdivision of the state as having legal effect. The bill's provisions regarding the enforcement of the United States Constitution expressly do not prohibit a public officer who has taken an oath to defend the United States Constitution from interposing to stop acts of the federal government which, in the officer's best understanding and judgment, violate the United States Constitution.
- Authorize the Texas Attorney General to defend the state to prevent the implementation and enforcement of a federal action declared to be an unconstitutional federal action. The bill would authorize the Attorney General to prosecute a person who attempts to implement or enforce a federal action declared to be an unconstitutional federal action and to appear before a grand jury in connection with such an offense.
- Amend the CPRC to establish that any court in Texas has original jurisdiction of a proceeding seeking a declaratory judgment that a federal action effective in Texas is an unconstitutional federal action. The bill would entitle a person to declaratory relief if the court determines that a federal action is an unconstitutional federal action and would prohibit the court, in determining whether to grant declaratory relief to the person, from relying solely on the decisions of other courts interpreting the United States Constitution. The bill would also require the court to rely on the plain meaning of the text of the United States Constitution and any applicable constitutional doctrine as understood by the framers of the Constitution.
- *Effective date:* If HB 384 passes by a vote of two-thirds of all members elected to each chamber, the changes in the law would be effective immediately. Otherwise, the changes in the law under HB 384 would become effective on September 1, 2023.

[Note: [Sen. Bob Hall \(R – Edgewood\)](#) filed the Senate companion ([SB 313](#)). Similar bills were filed in 2017, 2019, and 2021. In 2017, [HB 2338](#) was voted out of committee, but it never reached the House floor. [HB 1347](#) and [HB 1215](#) were filed in 2019 and 2021 respectively. Both died in committee.]

T. Texas Tort Claims Act

[HB 1309 – Suits Against Certain Governmental Employees](#)

- **Summary:** HB 1309, filed by [Rep. Harold Dutton \(D – Houston\)](#), would amend section 101.106 of the CPRC to allow a plaintiff to sue a governmental employee for assault, battery, false imprisonment, or any other intentional tort, including a tort involving disciplinary action by school authorities.
- *Effective date:* September 1, 2023. The changes in the law addressed in HB 1309 would apply only to causes of action that accrues on or after the effective date.

II. Summary

The 88th Legislature is considering numerous bills that could significantly impact the judicial branch, the civil justice system, and the practice of law as a whole. The Legislature's regular session convened on January 10, 2023 and ends on May 29, 2023, so it remains to be seen whether any of the pre-filed or anticipated bills will successfully move through the legislative process.

As a service to interested members of the bench and bar, the author produces an e-newsletter that includes summarized information and links to relevant bills in order to keep recipients up to date on what is happening in Austin and how proposed legislation might affect the practice of civil trial and appellate lawyers and the judiciary. For those interested in receiving the e-newsletter, please contact Jerry D. Bullard at either of the following addresses: jdb@all-lawfirm.com or j.bullard1@verizon.net.