

View from the Lege: Bills Pending in the 84th Legislature

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The 2015 legislative session is well underway. As of February 13th, over 2,000 bills and resolutions had been introduced. In most sessions, between 5,000 and 6,000 bills and resolutions are typically filed. The deadline to file bills for this session is March 13th, so there are many more in the pipeline. The following is a summary of selected legislative proposals that have been filed thus far, some of which (if passed) could have a noticeable impact on the practice of civil trial and appellate law in Texas.

Note: The bills summarized herein are based on the content 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.

Attorney's Fees/Fee Agreements

[HB 230 - Recovery of Attorney's Fees in Certain Civil Cases](#)

HB 230, filed by [Rep. Jessica Farrar \(D – Houston\)](#), would amend Chapter 38.001 of the Civil Practice and Remedies Code (CPRC) to (1) add “other legal entity” to the list of those from whom attorney’s fees can be recovered; and (2) expressly provide that Chapter 38.001 does not authorize the recovery of attorney’s fees from the state, an agency or institution of the state, or a political subdivision of the state. The bill would further provide that the amendment to Chapter 38.001 would not affect any other statute that permits the recovery of attorney’s fees from the governmental entities listed in the statute.

[HB 247 - Limitations on Certain Actions Arising Out of Attorney's Fee Agreements](#)

HB 247, filed by [Rep. Richard Raymond \(D – Laredo\)](#), would place limitations on claims that could be brought under contingent fee agreements that comply with the statute (i.e., agreements that expressly state the method by which a fee is determined; that litigation and other expenses will deducted from the recovery; and whether litigation expenses and other expenses are deducted before or after the contingent fee is calculated). The limitations in HB 247 would also apply to contingency fee agreements in which an attorney represents two or more clients and enters into an aggregate settlement agreement of the clients’ claims if the agreement expressly discloses: 1) the existence and nature of all claims or pleas involved; 2) the nature and extent of the participation of each client in the settlement; and 3) the amount of remittance to each client and the method by which the remittance will be determined.

HB 247 would permit a party to bring a claim arising out of an agreement subject to the statute only on the grounds that the agreement was obtained by corruption, coercion, force, fraud, or other undue means, or that the agreement was forged as provided by the Penal Code. Further, in a claim arising out of the settlement of matters involving multiple clients that is brought on grounds other than those permitted by HB 247, the settlement will be “irrebuttably presumed” to be: 1) fully disclosed, read, understood, and voluntarily entered into by all parties to the agreement; 2) fair, accepted, reasonable, and made in the best interests of the parties by the parties or through their attorneys; and 3) final and not subject to subsequent litigation.

On the motion of a party, a court would be required to dismiss with prejudice any action involving claims arising out of an agreement that is subject to HB 247 if the action is brought on grounds other than those permitted by HB 247.

Attorney’s Oath

[SB 534 - Oath of Persons Admitted to Practice Law in Texas](#)

SB 534, filed by [Sen. Kirk Watson \(D – Austin\)](#) but joined by multiple other senators, would amend section 82.037 of the Government Code and the oath taken by all attorneys admitted to practice law in Texas so as to require to attorneys to conduct themselves “with integrity and civility in dealing and communicating with the court and all parties.”

Causes of Action

[HB 1367 - Elimination of Wrongful Life/Birth Causes of Action](#)

HB 1367, filed by [Rep. Gilbert Pena \(R – Pasadena\)](#), would amend the CPRC to expressly eliminate “wrongful life” and “wrongful birth” causes of action in Texas.

Constitutional Challenges to Texas Statutes

[SJR 8 - Constitutional Amendment Authorizing Legislature to Require a Court to Provide Notice to the Attorney General of a Constitutional Challenge to State Statutes](#)

SJR 8, filed by [Sen. Judith Zaffirini \(D – Laredo\)](#), would amend the Texas Constitution to specifically authorize the Legislature to (1) require a court to notify the attorney general of a challenge to the constitutionality of a Texas statute, and (2) prescribe a reasonable period after notice is provided during which the court may not enter a judgment holding a statute unconstitutional. SJR 8 is the legislative response to the 2013 decision by the Court of Criminal Appeals (CCA) holding that section 402.010(a)-(b) of the Government Code, which prevents a court from entering a final judgment until the AG is notified of a constitutional challenge to a statute, violated the separation-of-powers principles set forth in the Texas Constitution. As you may recall, the Legislature passed legislation in 2011 ([HB 2425](#)) amending the Government Code to require courts to notify the Attorney General (AG) when constitutional challenges to

state statutes were raised. The law was amended in 2013 to place the burden of notifying the court of the pleading that should be served on the AG on the party raising the constitutional challenge ([SB 392](#)).

Damage Awards

[HB 419 - Federal Income Tax Liability for Damages Awarded in Civil Actions](#)

HB 419, filed by [Rep. Gene Wu \(D – Houston\)](#), would amend Chapter 41 of the CPRC to require a defendant to compensate a claimant for federal income tax liability arising out of a damages award.

[HB 969 - Availability and Use of Certain Evidence in Connection with an Award of Exemplary Damages](#)

HB 969, authored by [Rep. Ken King \(R – Hemphill\)](#), would amend section 41.011 of the CPRC to eliminate “the net worth of defendant” as one of the elements considered in determining the amount of exemplary damages. Specifically, HB 969 deletes “the net worth of the defendant” from the types of evidence to be considered by the trier of fact under section 41.0011(a) and adds the following subsection (c) to that section: “Evidence of the financial condition or net worth of a party is not relevant for the purpose of supporting a claim for or the amount of exemplary damages.”

Decisions Based on Foreign Laws (Non-Family Law Proceedings)

[HB 670 - Application of Foreign Laws and Foreign Forum Selection in Texas](#)

HB 670, filed by [Rep. Dan Flynn \(R – Canton\)](#), is similar to bills filed in 2011 and 2013 that failed to pass. HB 670 would prohibit a court, arbitrator, or administrative adjudicator from basing “a ruling or decision” on “a foreign law,” or otherwise enforcing contract provisions that either require the application of a foreign law to a dispute or require parties to litigate their dispute in a forum outside of the United States if such provisions would violate a right guaranteed by the United States Constitution or the Texas Constitution.

Family Law

[HB 562 - Application of Foreign Laws and Foreign Forum Selection in Proceeding Involving Marriage, a Suit for Dissolution of a Marriage/Affecting Parent-Child Relationship](#)

HB 562, filed by [Rep. Jeff Leach \(R – Plano\)](#), would prohibit a court or arbitrator in a family law matter from making a ruling or decision based on a foreign law if the application of that law would violate a right guaranteed by the United States Constitution or the constitution or a statute of Texas. This bill is similar to HB 899, which is summarized below.

[HB 899 - Application of Foreign Laws and Foreign Forum Selection in Certain Family Law Proceedings](#)

Like HB 670, HB 899, filed by [Rep. Pat Fallon \(R – Little Elm\)](#), is similar to failed bills filed in prior session that would prohibit a court or arbitrator in suits involving the dissolution of a marriage from making a ruling or decision based on a foreign law if the application of that law would violate a right guaranteed by the United States Constitution, the Texas Constitution, or a Texas statute.

[HB 1195 - Disclosure by an Attorney Before Accepting Representation in a Marriage Dissolution Proceeding](#)

HB 1195, filed by [Rep. Dwayne Bohac \(R – Houston\)](#), would require an attorney to disclose certain information to a prospective client before agreeing to represent that client in a divorce proceeding. More specifically, HB 1195 would amend the Family Code to require: (1) the attorney to provide a prospective client with a certain disclosure form promulgated by the State Bar of Texas; and (2) the client to acknowledge in writing that the client has received and understands the disclosure. The disclosure must include information about arbitration, mediation, collaborative law, and alternatives to retaining an attorney for the dissolution of a marriage, as well as any other information that the State Bar of Texas may require. HB 1195 is essentially the same bill that Rep. Bohac filed in 2013 ([HB 3470](#)), which died in committee.

Health Care Liability

[HB 956 - Scope of a Health Care Liability Claim](#)

HB 956, authored by [Rep. Chris Turner \(D – Arlington/Grand Prairie\)](#), is similar to a bill filed by Rep. Turner that failed to pass in 2013 (i.e., [HB 2644](#)) and is intended to be the legislative response to a series of Supreme Court cases addressing the scope of “health care liability claims” under the Texas Medical Liability Act, including [Texas West Oaks Hospital, L.P. v. Williams](#). Specifically, HB 956 would amend the terms “claimant” and “health care liability claim” in Chapter 74 of the CPRC in an effort to “clarify” the meaning of those terms. Specifically, the term “claimant” would mean a “patient, including a deceased patient’s estate”, instead of “person, including a decedent’s estate.” The term “claimant” would include “both the patient and the party seeking recovery of damages” in cases in which “a party seeks recovery of damages related to injury of another person who is a patient, or other harm to the patient.” The bill would also amend the definition of “health care liability claim” to specify that such claims arise from “treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety *directly related to health care...*” [emphasis added] and that the term “does not include claims arising from an injury to or death of a person who is not a patient, including employment and premises liability claims.”

HB 1403 - Defining Health Care Liability Claim for Purposes of Certain Claims

HB 1403, filed by [Rep. Kenneth Sheets \(R – Dallas\)](#), would amend the definition of “health care liability claim” in Chapter 74 of the CPRC to not include a personal injury claim filed by against an employer by an employee not covered by worker’s compensation insurance or the employee’s surviving spouse or heir.

Judiciary/Court Administration

SB 64 - Relating to Appellate Court Procedures and Deadlines in Civil Actions

SB 64, which is also known as the “Appellate Court Accountability Act”, was filed by [Sen. Don Huffines \(R – Dallas\)](#). SB 64 would establish deadlines for the Supreme Court and intermediate courts of appeals to act on civil appeals.

Supreme Court Deadlines

SB 64 would give the Supreme Court ninety (90) days from the date of filing to deny a petition for review if the Court does not request a response and one hundred eighty (180) days if it does not request briefing. The Court would be required to grant or deny the petition no later than three hundred (300) days after the petition is filed if the Court requests briefing. If the Court determined that the issues presented in a petition were related to issues in another case for which a petition has been granted and a decision pending, it could place the petition on hold until the Court decided the prior case. At such time, the Court would be required to publish the names of the parties to the petitions and the issues the Court has determined to be related. Once a decision has been issued in the case for which a petition was placed on hold, the Court would have thirty (30) days to grant or deny the petition.

The bill would also require the Supreme Court to issue a decision for all cases in which the Court grants a petition during the “term of court” (i.e., the Court’s fiscal year) in which the petition for review was granted. If a petition is granted in June or later, the Court could carry the case into the next term under “extraordinary circumstances” but must explain the nature of the “extraordinary circumstances” in the order granting the petition. Any case carried over would have to be decided no later than December 31st of the next term.

SB 64 would also require the Court to adopt written procedures that allocate responsibilities to individual justices. The chief justice would be required to enforce the procedures and deadlines against individual justices. Such enforcement options would include prohibiting a justice from participating in future oral arguments, reassigning opinions, prohibiting a justice from participating in a new case, and referring a justice to the State Commission on Judicial Conduct.

Intermediate Appellate Court Deadlines

SB 64 would require the courts of appeals to announce whether oral argument has been granted in a civil appeal no later than sixty (60) days after the “final brief” is filed. Oral argument must be held no later than one hundred twenty (120) days after the date the final brief has been filed, and the court must issue its decision no later than ninety (90) days after oral argument (if granted) or the date the court announces that oral argument is denied.

The chief justice of each court of appeals would be required to enforce the deadlines in the same manner as the Chief Justice of the Supreme Court, as well as submit a quarterly report to the Chief Justice of the Supreme Court regarding the court’s compliance with the deadlines. If a court of appeals fails to comply, the Chief Justice may prohibit the filing of additional appeals in that court and order the transfer of appeals to other courts. If a court of appeals was prohibited from accepting new appeals, justices of that court would not be credited with state service for the time period during which the court would be prohibited from accepting appeals, and the Legislative Budget Board and Governor would be required to reduce the non-complying court’s budget and shift money to courts receiving transfers. By January 31st of each year, the Chief Justice of the Supreme Court would be required to submit a compliance report with the Governor, Lieutenant Governor, and Speaker of the House.

[SB 443 - Study and Recommendations on Consolidating the Court of Criminal Appeals and the Texas Supreme Court](#)

SB 443, filed by [Sen. Kirk Watson \(D – Austin\)](#), would require the Judicial Council to study and make recommendations as to whether the CCA and the Supreme Court should be consolidated or whether one court should be abolished and its functions and jurisdiction transferred to the other court.

[SB 455 - Creation of Special Three-Judge District Court](#)

SB 455, filed by [Sen. Brandon Creighton \(R – Conroe\)](#), would amend the Government Code to create a procedural mechanism that would allow the AG to petition the Chief Justice of the Supreme Court for the formation of a special three-judge panel to hear certain types of cases in which the State of Texas or an officer or agency of the State is a defendant. Proceedings in front of a three-judge panel would be mandatory in cases involving a claim that either (1) challenges the finances or operations of the public school system; or (2) involves the apportionment of districts for the Texas House, Texas Senate, U.S. Congress, State Board of Education, or the apportionment of state judicial districts. Three-judge panel proceedings would be discretionary in other cases in which the Attorney General certifies that the outcome of the case either (1) significantly impacts the finances of the State; (2) significantly alters the operations of important statewide policies or programs; or (3) is otherwise of exceptional statewide importance such that the case should not be decided by a single district judge. Under SB 455, the Chief Justice’s decision to either deny the AG’s petition or order that a discretionary proceeding be heard by a special three-judge district court would be considered

final and not appealable; however, appeals “from an appealable interlocutory order of final judgment” of the three-judge court would be directly to the Supreme Court.

SB 455 provides that the three-judge district court would consist of the district judge to whom the case was assigned at the time the petition to the Chief Justice was submitted, a district judge chosen by the Chief Justice who has been elected by the voters of a county other than the county in which the case was filed, and a justice of a court of appeals chosen by the Chief Justice who has been elected by the voters of a judicial district other than the district in which the case was filed or in which the district judge chosen under the section sits. The three-judge court would be required to sit in the county in which the case was filed and would be subject to the Texas Rules of Civil Procedure; provided, however, that the Supreme Court may promulgate rules for the operation of the three-judge courts.

[SB 524 - Review of State Laws Requiring an Action or Proceeding to be Brought in Travis County or a Travis County Court \(Companion: HB 1427\)](#)

SB 524, filed by [Sen. Brian Birdwell \(R – Granbury\)](#) and [Sen. Juan "Chuy" Hinojosa \(D – McAllen\)](#), would create a commission to review Texas laws to identify each statute and state agency rule that requires an action or proceeding to be brought or considered in Travis County, a Travis County district or statutory county court, or the Court of Appeals for the Third Court of Appeals District and make recommendations on whether the location of the action or proceeding in each statute or state agency rule serves a legitimate state purpose, other than the convenience of the state agency, that supersedes the interests of persons required to travel to Travis County to attend or participate in the action or proceeding or whether the identified statute or state agency rule should be revised to authorize an action or proceeding to be brought or considered in another Texas county. The companion bill, HB 1427, was filed by [Rep. Richard Raymond \(D – Laredo\)](#).

[HB 427/HJR 49 - Creation of Texas Redistricting Commission](#)

HB 427 and HJR 49, filed by [Rep. Donna Howard \(D – Austin\)](#), would create the Texas Redistricting Commission (“TRC”), which would be responsible for adopting redistricting plans for the election of the Texas House of Representatives, the Texas Senate, and the members of the United States House of Representatives elected from the state of Texas following each federal census. The TRC would also be responsible for reapportioning judicial districts in the event the Judicial Districts Board fails to reapportion judicial districts.

[HB 1122- Number of Jurors Required in Certain Civil Cases Pending in Statutory County Court](#)

HB 1122, filed by [Rep. Travis Clardy \(R – Nacogdoches\)](#), would amend the Government Code to require that civil cases pending in a statutory county court in which the amount of in controversy is \$200,000 or more be tried before a jury of twelve (12) members. The bill would also require that the drawing a jury panels, the selection of jurors, and the related practice and

procedure conform to that prescribed by law for district courts in the county where the statutory county court is located.

[HB 1416 - Judicial Requiring Recusal Based on Political Contributions](#)

HB 1416, authored by [Rep. Richard Raymond \(D – Laredo\)](#), would require justices on the Supreme Court and judges on the CCA (but apparently not intermediate appellate court justices) to “recuse himself or herself from any case in which the justice or judge has in the preceding four years accepted political contributions...in a total amount of \$2,500 or more” from “(1) a party to the case, (2) attorney of record in the case, (3) the law firm of an attorney of record in the case, (4) the managing agent of a party to the case, (5) a member of the board of directors of a party to the case, or (6) a general-purpose committee...that is established or administered by a person who is a party to the case.” Similar legislation was filed in 2009, 2011, and 2013, all of which died in committee.

[HJR 81 - Constitutional Amendment to Change the Terms of District Court Judges to Six Years](#)

HJR 81, filed by [Rep. Richard Raymond \(D – Laredo\)](#), would increase the terms of district court judges from four years to six years. A similar bill was filed in 2013, but failed to get out of committee.

[HJR 90 - Constitutional Amendment to Abolish the Court of Criminal Appeals](#)

HJR 90, also filed by [Rep. Richard Raymond \(D – Laredo\)](#), would abolish the CCA and give jurisdiction of criminal appeals to the Supreme Court. Similar legislation was filed in 2009, 2011, and 2013, all of which died in committee. Under HJR 90, death penalty cases would be appealed directly to the Supreme Court, while all other criminal cases would go through the court of appeals. In non-death penalty cases that make it to the Supreme Court, the justices would sit in panels of three. The Supreme Court would hear death penalty cases en banc.

Probate Court Proceedings

[SB 512 - Promulgation of Forms for Use in Probate Matters](#)

SB 512, filed by [Sen. Judith Zaffirini \(D – Laredo\)](#), would require the Supreme Court, as the Court considers appropriate, to promulgate forms and instructions for the use of those forms for use by individuals representing themselves in certain probate matters or making certain wills, including forms for use in: (1) a small estate affidavit proceeding under the Estates Code; (2) the probate of a will as a muniment of title under the Estates Code; and (3) the making of a will for married and unmarried individuals.

Qualifications for Public Office and Term Limits

[SJR 6 - Constitutional Amendment to Provide Qualifications for and Limit the Time that a Person May Serve in Certain Offices](#)

SJR 6, filed by [Sen. Don Huffines \(R – Dallas\)](#), proposes a constitutional amendment that would place term limits on legislators (12 years) and would limit the amount of time that a legislator could serve as Speaker of the House of Representatives or as a committee chair. SJR 6 would also impose term limits on almost the entire Texas judiciary. For example, SJR 6 would bar Supreme Court justices and CCA judges from re-election if they had previously been elected to two full terms; however, the intermediate appellate court justices would not be subject to the term limits imposed under the current version of SJR 6. SJR 6 would also apply to "every district office or office of a political subdivision of this state that is filled by popular election," which appears to include district judges, county court-at-law judges, justices of the peace and county and district attorneys. All would be ineligible for re-election if they had served eight years or more. SJR 6 would become effective in 2016.

[SJR 24 - Constitutional Amendment Limiting to Two the Number of Consecutive Terms for Which a Person may be Elected or Appointed to Hold Certain State Offices \(Companion: HJR 38\)](#)

SJR 24, filed by [Sen. Kevin Eltife \(R – Tyler\)](#), would prohibit a person who has been elected or appointed to serve two consecutive terms in an office listed in Article IV, Section 1 of the Texas Constitution (i.e., Governor, Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Commissioner of the General Land Office, and Attorney General), as well as "any other statewide elective office, other than a statewide judicial office," from serving for a third consecutive term. However, SJR would not limit a person's eligibility for election or appointment to serve nonconsecutive terms. The companion resolution, HJR 38, was filed by [Rep. Lyle Larson \(R – San Antonio\)](#).

In summary, the 84th Legislature is considering several bills that could impact the judicial branch and the practice of law as a whole. At this point, it is unclear whether the proposed bills will successfully move through the legislative process. However, even if the bills fail to pass, practitioners should be aware of the legislation and the forces at work behind them because some, if not all, of the unsuccessful measures may be addressed via interim charges (i.e., between-session studies), resurrected during the 2016 legislative session, or both.

Note: As a service to interested members of the bench and bar, during each legislative session, 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 at the Capitol 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.