

# Face Masks, Zoom, and Quarantines: Welcome to... The 2021 Texas Estate and Trust Legislative Update

(Including Decedents' Estates, Guardianships, Trusts,  
Powers of Attorney, and Other Related Matters)

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(See the note on page 1 about hyperlinking to the online version of this paper.)

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### Legal Experience

Bill Pargaman has been a partner in the Austin law firm of Saunders, Norval, Pargaman & Atkins since July of 2012. He has been certified as a specialist in Estate Planning and Probate Law by the Texas Board of Legal Specialization (since 1986) and has been a Fellow in the American College of Trust and Estate Counsel (since 1994). He is very active in the Real Estate, Probate and Trust Law Section of the State Bar of Texas, having served as REPTL's Chair for the 2015-2016 bar year, as chair of its Estate and Trust Legislative Affairs Committee for the 2009, 2011, and 2013 legislative sessions, and as a Council member and chair of REPTL's Trusts Committee from 2004 to 2008.

Bill's practice involves the preparation of wills, trusts and other estate planning documents, charitable planning, and estate administration and alternatives to administration. He advises clients on the organization and maintenance of business entities such as corporations, partnerships, and limited liability entities. He represents nonprofit entities with respect to issues involving charitable trusts and endowments. Additionally, he represents clients in contested litigation involving estates, trusts and beneficiaries, and tax issues.

### Education

- Doctor of Jurisprudence, *with honors*, University of Texas School of Law, 1981, Order of the Coif, Chancellors
- Bachelor of Arts, Government, *with high honors*, University of Texas at Austin, 1978, Phi Beta Kappa

### Professional Licenses

- Attorney at Law, Texas, 1981

### Court Admissions

- United States Tax Court

### Prior Experience

- Brown McCarroll, L.L.P. (now Husch Blackwell LLP), 1981 – 2012

### Speeches and Publications

Mr. Pargaman has been a speaker, author, or course director at numerous seminars, including:

- State Bar of Texas (TexasBarCLE) – Advanced Estate Planning and Probate Course, Advanced Estate Planning Strategies Course, Estate Planning and Probate Drafting Course, Advanced Guardianship Law Course, Advanced Real Estate Law Course, Advanced Real Estate Drafting Course, Advanced Tax Law Course, State Bar College Summer School, State Bar Annual Meeting, Practice Skills for New Lawyers, Essentials for the General Practitioner, Miscellaneous Webcasts, and more
- Real Estate, Probate and Trust Law Section Annual Meeting
- University of Texas Estate Planning, Guardianship, and Elder Law Conference
- South Texas College of Law Wills and Probate Institute
- Estate Planning & Community Property Law Journal Seminar
- Texas NAELA Summer Conference
- University of Houston Law Foundation General Practice Institute, and Wills and Probate Institute

## William D. Pargaman (cont.)

- Austin Bar Association Estate Planning and Probate Section Annual Probate and Estate Planning Seminar
- Austin Bar Association and Austin Young Lawyers Association Legal Malpractice Seminar
- Dallas Bar Association Probate, Trusts & Estate Section
- Houston Bar Association Probate, Trusts & Estate Section
- Tarrant County Probate Bar Association
- Hidalgo County Bar Association Estate Planning and Probate Section
- Bell County Bench Bar Conference
- Midland College/Midland Memorial Foundation Annual Estate Planning Seminar
- Austin Chapter, Texas Society of Certified Public Accountants, Annual Tax Update
- Texas Bankers Association Advanced Trust Forum
- Texas Credit Union League Compliance, Audit & Human Resources Conference
- Estate Planning Councils in Austin, Amarillo, Corpus Christi, Houston, Lubbock, San Antonio, and Tyler
- Austin Association of Life Underwriters

### Professional Memberships and Activities

- American College of Trust and Estate Counsel, Fellow
- State Bar of Texas
  - Real Estate, Probate and Trust Law Section, Member (Chair, 2015-2016)
    - Real Estate, Probate, and Trust Law Council, Member, 2004–2008
    - Estate and Trust Legislative Affairs Committee, Member, 2000–Present (Chair, 2008–2013)
    - Public Service Committee, Chair, 2013–2014
    - Trusts Committee, Member, 2000–2010 (Chair, 2004–2008)
    - Uniform Trust Code Study Project, Articles 7–9 & UPIA, Subcommittee Member, 2000–2003
  - Continuing Legal Education Committee, 2018-2021
  - Texas Board of Legal Specialization (Estate Planning and Probate Law), Examiner, 1995-1997
- Estate Planning Council of Central Texas, Member (President, 1991-1992)
- Austin Bar Association, Member
  - Estate Planning and Probate Section, Member (Chair, 1992-1993, Board Member, 1997-1999)

### Honors

- Recipient, TexasBarCLE STANDING OVATION award, 2014
- Listed in The Best Lawyers in America® (2019 Trusts & Estates “Lawyer of the Year” in Austin, TX)
- Listed in *Texas Super Lawyers* (Texas Monthly)
- Listed in The Best Lawyers in Austin (Austin Monthly)

### Community Involvement

- St. Stephen’s Episcopal School Professional Advisory Council, Past Member
- City of Austin, XERISCAPE Advisory Board, Past Member
- Volunteer Guardianship Program of Family Eldercare, Inc. of Austin, Past Member, Advisory Board

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## **Education**

- University of Houston Law Center, Houston, Texas (LL.M. in Tax, 2012)
- Samford University Cumberland School of Law, Birmingham, Alabama (J.D., 2011)
- Washington & Lee University, Lexington, Virginia (B.A. in Politics, 2008)

## **Certifications and Admissions**

- Board Certified, Estate Planning and Probate Law, Texas Board of Legal Specialization
- Admitted to Practice: State Bar of Texas; United States Tax Court

## **Professional Memberships**

- Member, The College of the State Bar of Texas
- Member, REPTL Leadership Academy Class of 2018-2019
- Member, Real Estate, Probate, and Trust Law Section of the State Bar of Texas
- Member, Tax Section of the State Bar of Texas
- Member, Estate Planning and Probate Section of the Austin Bar Association
- Member, Estate Planning Council of Central Texas

## **Publications and Presentations**

- Presenter/Co-Author, “Teaching the ABCs to Your Trustees: How to Provide Practical Instructions to New Trustees,” State Bar of Texas, Handling Your First (or Next) Trust Course (2021)
- Co-Author, “Language to Include in Your Estate Planning Documents: Suggestions from Trust and Estate Litigators,” State Bar of Texas, Estate Planning and Probate Drafting (2020)
- Co-Author, “Transfer Restrictions in Business Entities,” State Bar of Texas, Advanced Estate Planning & Probate Course (2020)
- Co-Author, “How to Request (and Get) a PLR,” *Texas Tax Lawyer*, Spring 2013, Vol. 40, No. 2



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### **AREAS OF PRACTICE**

Probate litigation, probate administration, guardianship administration, trust administration, and estate planning law.

### **EDUCATION**

Juris Doctor degree, Duke University School of Law, 1995.

Bachelor of Arts degree with high honors, Plan II program, University of Texas at Austin, 1990

### **PROFESSIONAL HISTORY**

Hopper Mikeska, PLLC, 2012-Present

Hopper & Associates, P.C., 2005 - 2012

Shareholder, Graves, Dougherty, Hearon & Moody, 1998 - 2005

Law Clerk, Honorable Guy Herman, Travis County Probate Court No. 1, 1996-1998

### **PROFESSIONAL AFFILIATIONS**

Board Certified in Estate Planning and Probate Law, Texas Board of Legal Specialization

Fellow, American College of Trusts and Estates Counsel

Member, Austin Bar Association

Member, State Bar of Texas

Member, SBOT Real Estate, Probate and Trust Law (REPTL) Section Chair-Elect/Secretary 2020-2021; Council Member 2010-2014; Chair or Co-Chair of Estate and Trust Legislative Affairs Committee 2014-Present

Member, Estate Planning Council of Central Texas; Director 2008-2014; Chair 2012-2013

Member, Austin (formerly Travis County) Bar Association Probate and Estate Planning Section; Director, 1999-2004; Chair, 2003

### **PUBLICATIONS**

O'Connor's Texas Probate Law Handbook, 2018-Present

Texas Guardianship Manual, State Bar of Texas, Manual Committee 2013-Present

O'Connor's Estates Code Plus, co-author, 2012-Present

### **RECENT PRESENTATIONS/PAPERS**

- Speaker, 2019 Trusts and Estates Legislative Update, numerous locations in 2019-2020
- Speaker, 2017 Trusts and Estates Legislative Update, numerous locations in 2017-2018
- Author/Moderator, "How 2015 [Guardianship] Changes Are Affecting Your Practice," SBOT Advanced Guardianship Course 2016, Dallas
- Panelist, "Peace Treaties: Considerations when Negotiating, Drafting & Enforcing Settlement Agreements and Releases," SBOT Estate Planning and Probate Drafting Course, Houston 2015
- Speaker, 2015 Trusts and Estates Legislative Update, numerous locations in 2015-2016
- Author/Speaker, "Extraordinary Remedies in Probate Proceedings," SBOT Probate and Estate Planning Drafting Course 2014, Dallas
- Author/Speaker, "Whack-a-Mole: Handling Problem Litigants and the Occasional Overzealous Ad Litem," SBOT Advanced Guardianship Course 2014, Dallas;
- Speaker, "Mock Guardianship Hearing—How and When to Put Your Ward on the Stand," SBOT Advanced Guardianship Course 2014, Dallas; Tarrant County Bar Association Probate Litigation Seminar 2014, Ft Worth
- Speaker, "Basic Guardianship," Docket Call in Probate Court, San Antonio, Texas 2014
- Speaker, "Ask the Experts" panel 15<sup>th</sup> Annual University of Texas Estate Planning, Guardianship and Elder Law Conference, Galveston 2013
- Author/Speaker, "Creating a Travis County Guardianship," Austin Advisors Forum, Austin 2013
- Course Director, SBOT Advanced Guardianship and Elder Law Courses, Houston, 2013
- Speaker, "Alternatives to Guardianship" and "Ask the Experts" panel 14<sup>th</sup> Annual University of Texas Estate Planning, Guardianship and Elder Law Conference, Galveston 2012

## **CRAIG HOPPER (cont.)**

- Author/Speaker, “Drafting the Estate and Trust Distribution Documents,” SBOT Advanced Drafting Course, Dallas 2011
- Speaker, “Contested Guardianships,” SBOT Advanced Guardianship Course 2011, Houston; South Texas College of Law 26<sup>th</sup> Annual Wills and Probate Institute, Houston 2011
- Author/Speaker, “The Role of the Guardian,” 13<sup>th</sup> Annual University of Texas Estate Planning, Guardianship and Elder Law Conference, Galveston 2011
- Speaker, “Call in the Sheriff: Handling Overzealous Ad Litem and Other Outlaws,” SBOT Advanced Guardianship Course 2010, Houston
- Author/Speaker, “Extraordinary Preparation for Mediation in Guardianship Disputes,” SBOT Advanced Guardianship Course 2009, Houston
- Author/Speaker, “Extraordinary Remedies in Probate Proceedings,” SBOT Advanced Estate Planning and Probate Course 2008, Dallas
- Panel Member, “Ask the Experts,” and “Former Statutory Probate Court Staff Attorneys Panel” 9<sup>th</sup> Annual Intermediate Estate Planning, Guardianship and Elder Law Conference, Galveston, Texas, August 2007
- Speaker, “Attorney Ad Litem Duties” and Panel Member, “Ask the Experts,” 8<sup>th</sup> Annual Intermediate Estate Planning, Guardianship and Elder Law Conference, Galveston, Texas, August 2006
- Speaker/Panel Member, SBOT Building Blocks of Probate and Estate Planning: Probate Administration, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013
- Author/Speaker, “Using Independent Facilitators to Resolve Probate Disputes,” Guardianship and Elder Law Conference, Galveston, Texas, August 2004



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Lauren Davis Hunt is a partner at Osborne, Helman, Knebel & Scott, L.L.P., in Austin, Texas. She practices in the area of fiduciary litigation, with a focus on trust, estate, guardianship, and partnership disputes. Lauren represents both fiduciaries and beneficiaries in her practice. In recent years, Lauren has served on the council for the Real Estate, Probate and Trust Law (“REPTL”) section of the State Bar of Texas, she served as the Chair of the Fiduciary Litigation Committee of REPTL, and is currently the Co-Chair of the Legislative Affairs Committee for REPTL. Such work involves assisting with the drafting of new legislation and helping usher through the Texas Legislature proposed changes to law impacting Trusts, Estates, Guardianships, powers of attorney, and similar areas of the law.

### **EDUCATION**

- Baylor University School of Law, Waco, TX (J.D., 2007)
- Rhodes College, Memphis, TN (B.A. in International Studies, Minor in Spanish, Phi Beta Kappa, cum laude, 2001)

### **PROFESSIONAL ACTIVITIES & HONORS**

- Co-Chair, Legislative Affairs Committee, State Bar of Texas, Real Estate, Probate & Trust Law Section, 2019-2021
- Council Member, State Bar of Texas, Real Estate Probate & Trust Law Section, 2016-2020
- Chair, Fiduciary Litigation Committee, State Bar of Texas, Real Estate Probate & Trust Law Section, 2017-2021
- Texas Rising Star, Texas Monthly Magazine and Texas Rising Star Magazine: 2016 - 2018
- Trust Code Committee, State Bar of Texas, Real Estate Probate & Trust Law Section, 2011 - 2013
- Texas Bar Foundation
- Texas Bar College

### **CLE PRESENTATIONS AND PAPERS**

- *What Every Planner Needs to Know About Fiduciary Litigation*, State Bar of Texas, Advanced Estate Planning Strategies, Panelist with W. Cameron McCulloch, Jr., Mickey R. Davis and Sarah Patel Pacheco, March 2021
- *Alternatives to Tortious Interference with Inheritance*, Estate Planning & Community Property Law Journal, Texas Tech University School of Law, Co-Author with Christopher T. Hodge and Brian Thompson, March 1, 2021
- *Legislative Update*, Elder Law Section of San Antonio Bar Association, January 2021
- *Alternatives to Tortious Interference with Inheritance*, State Bar of Texas, Advanced Estate Planning & Probate, Panelist with Christopher T. Hodge and Brian Thompson, June 2020
- *Legislative Update*, Corpus Christi Estate Planning Council, September 2019
- *Strategies for Suing and Defending Fiduciary Decision Making*, State Bar of Texas Fiduciary Litigation Course, December 2018
- *Case Development Strategies*, State Bar of Texas, 11th Annual Fiduciary Litigation Course, December 2016, Panelist with Sarah Patel Pacheco and David Berg
- *Standing and Capacity to Sue in Estate and Trust Litigation*, State Bar of Texas, Tarrant County Probate Litigation Seminar, September 2016, Author and Presenter

## LAUREN DAVIS HUNT (cont.)

- *Standing and Capacity to Sue in Estate and Trust Litigation*, State Bar of Texas, 10th Annual Fiduciary Litigation Course, December 2015, Author and Presenter
- *The Client is Incapacitated – What do you do next?*, State Bar of Texas, 38th Annual Advanced Estate Planning and Probate Course, June 2014, Author and Presenter
- *Decanting with No Sour Grapes*, State Bar of Texas, 24th Annual Estate Planning & Probate Drafting Course, October 2013, Panelist
- *Capacity, Standing and Jurisdiction*, State Bar of Texas, 37th Annual Advanced Estate Planning and Probate Course, June 2013, Author and Presenter
- *Informal Demand or Formal Discovery: The Debate on Obtaining Information from Fiduciaries Under Their Duty to Disclose*, State Bar of Texas, Fiduciary Litigation Beyond the Basics, 2011, Moderator
- *Exculpatory Clauses*, State Bar of Texas, Trial of a Fiduciary Litigation Case, December 2009, Co-Author and Co-Presenter

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<sup>1</sup> For those who care and are viewing an electronic version of this paper, the color of the horizontal lines is “**Illuminating**” (Pantone 13-0647), a Pantone 2021 “**Color of the Year.**” (Pantone’s other 2021 Color of the Year is Ultimate Gray.)

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# Face Masks, Zoom, and Quarantines: Welcome to... The 2021 Texas Estate and Trust Legislative Update

(Including Decedents' Estates, Guardianships, Trusts,  
Powers of Attorney, and Other Related Matters)

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## 1. The Preliminaries.

**1.1 Introduction and Scope.** The 87<sup>th</sup> Regular Session of the Texas Legislature spans the 140 days beginning January 12, 2021, and ending May 31, 2021. This paper presents a summary of the bills that relate to probate (*i.e.*, decedents' estates), guardianships, trusts, powers of attorney, and several other areas of interest to estate and probate practitioners. Issues of interest to elder law practitioners are touched upon, but are not a focus of this paper. (And, to be honest, sometimes I<sup>1</sup> go off on a tangent and discuss a bill of interest to me that has nothing to do with any of the areas mentioned above.)

**1.2 CMA Disclaimers.** While reading this paper, please keep in mind the following:

- We've made every reasonable attempt to provide accurate descriptions of the contents of bills, their effects, and in some cases, their background.
- Despite rumors to the contrary, I am human. And have been known to make mistakes. (I don't think such rumors have started about Meredith.)
- In addition, some of the descriptions in this paper admittedly border on editorial opinion, in which case the opinion is my/our own, and not necessarily that of REPTL, Craig Hopper, Lauren Hunt, or anyone else.
- I often work on this paper late at night, past my normal bedtime, perhaps, even, under the influence of strategic amounts of Johnnie Walker Black (donations of Red, Black, Green, Gold, Blue, Platinum, or even Swing happily accepted!). Craig Hopper has informed me that he's also happy to accept donations of Scotch. (I don't yet know Meredith's adult beverage of choice.)
- As companion bills make their way through the legislative process, we usually base descriptions on the most recently approved version in either chamber. In the case of REPTL bills, we sometimes

have access to drafts of substitutes before they are officially posted, in which case the descriptions may be based on what we think the bill will look like, rather than what the currently-online version looks like.

- As a consequence, while the descriptions contained in this paper are hopefully accurate at the time they are written, they may no longer accurately reflect the contents of a bill at a later stage in the legislative process.

Therefore, you'll find directions in Section 1.7 on page 2 for obtaining copies of the actual bills themselves so you may review and analyze them yourself before relying on any information in this paper.

**1.3 If You Want to Skip to the Good Stuff ...** If you don't want to read the rest of these preliminary matters and want to skip to the legislation itself, you'll find it beginning with **Part 6 on page 7**.

**1.4 A Note About Linking to the Electronic Version.** Feel free to link to the electronic version of this paper if you'd like. If you do, use the URL found on the cover page to link to the most recent version of the paper:

[www.snpalaw.com/resources/2021LegislativeUpdate](http://www.snpalaw.com/resources/2021LegislativeUpdate)

Once you click on that link, you'll open a PDF version of this paper. However, **don't** copy the URL that you'll find in your browser's address bar when you open the PDF! That's likely to be a 100+ character web address that will take you to that particular version of the paper only, and only so long as that version remains posted. Trust me – the link I've given you will take you to the right version each time.

And note that you can bring up my previous legislative updates going back to 2009 by substituting the appropriate odd-numbered year for "2021" in the URL.

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<sup>1</sup> In this paper, "I" refers to Bill Pargaman, the author of this legislative update since the 2009 legislative session. However, this year, Meredith McIver has provided invaluable assistance in preparing not only the initial draft of this paper

but also many revisions as the status or descriptions of bills change. Therefore, when we use "we," that refers to both of us.

**1.5 Where You'll Be Able to Find the Statutory Language After the Session's Over.** In previous legislative updates, after the session was over and we knew what had passed, I added attachments to the update that included the actual language of bills marked to show what had been added or deleted. But this was quite lengthy. It took over 100 pages in the 2017 update, more than doubling the size of the paper. So, in an effort to be green (for anyone getting a hard copy), beginning last session we changed things up. After the session, a separate supplement that contains all of that statutory language – or at least the language we deem worthy to include – may be downloaded by pointing your browser to:

[www.snplaw.com/resources/2021LegislativeSupplement](http://www.snplaw.com/resources/2021LegislativeSupplement)

Down the road, we'll update it in case the Governor vetoes any included bills, and to add session law chapter numbers to the acts.

**1.6 Acknowledgments.** A lot of the effort in every legislative session comes from the Real Estate, Probate & Trust Law Section of the State Bar of Texas ("REPTL"). REPTL, with over 9,000 members, has been active in proposing legislation in this area for more than four decades. During the year and a half preceding a session, the REPTL Council works hard to come up with a package that addresses the needs of its members and the public, and then works to get the package enacted into law. In addition to myself, others who have been deeply involved in this legislative process include:

- Craig Hopper of Austin, Co-Chair, Estate and Trust Legislative Affairs Committee; principal presenter of this paper; and Chair-Elect/Secretary of REPTL
- Lauren Hunt of Austin, Co-Chair, Estate and Trust Legislative Affairs Committee; Chair, Fiduciary Litigation Committee
- Reid Wilson, Chair of REPTL
- Eric Reis of Dallas, Immediate Past Chair of REPTL
- Greg Kimmel of Tyler, Chair, Decedents' Estates Committee
- Dyann McCully of Fort Worth, Chair, Guardianship Committee
- Gene Wolf of El Paso, Chair, Trusts Committee
- Don Totusek of Dallas, Chair, Powers of Attorney and Advance Directives (PAADs) Committee
- Clint Hackney of Austin, Lobbyist
- Barbara Klitch of Austin, who provides invaluable service tracking legislation for REPTL

REPTL is helped along the way by the State Bar, its Board of Directors, and its staff (in particular, KaLyn Laney, Assistant Deputy Director).

Other groups have an interest in legislation in this area, and REPTL tries to work with them to mutual advantage. These include the statutory probate judges (Judge Guy Herman of Austin, Presiding Statutory Probate Judge) and the Wealth Management and Trust Division of the Texas Bankers Association.

Last, but of course not least, are the legislators and their staffs. You'll note the names of our authors and sponsors<sup>2</sup> in the parenthetical following the first mention of a bill in this paper. These are the legislators who have volunteered their time and effort to help REPTL get its bills passed. Thanks go to all of these persons, their staffs, and the many others who have helped in the past and will continue to do so in the future.

Hopefully, the effort that goes into the legislative process will become apparent to the reader. In the best of circumstances, this effort results in passing good bills and blocking bad ones. But in the real world of legislating, the best of circumstances is never realized.

**1.7 Obtaining Copies of Bills.** If you want to obtain copies of any of the bills discussed here, go to [www.legis.state.tx.us](http://www.legis.state.tx.us). Near the top of the page, in the middle column, you'll see **Search Legislation**. First, select the legislative session you wish to search (for example, the 2021 regular legislative session that spans from January through May is "87(R) – 2021"). Select the Bill Number button, and then type your bill number in the box below. So, for example, if you wanted to find the House version of the 2021 Decedents' Estates bill prepared by the Real Estate, Probate, and Trust Law Section of the State Bar of Texas ("REPTL"), you'd type "HB 2182" and press Go. (It's fairly forgiving – if you type in lower case, place periods after the H and the B, or include a space before the actual number, it's still likely to find your bill.)

Then click on the Text tab. You'll see multiple versions of bills. The "engrossed" version is the one that passes the chamber where a bill originated. When an engrossed version of a bill passes the other chamber without amendments, it is returned to the originating chamber where it is "enrolled." If the other chamber does make changes, then when it is returned, the originating chamber must concur in those amendments before the bill is enrolled. Either way, it's the "enrolled" version you'd be interested in.

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<sup>2</sup> See Sec. 2.5 on page 3 if you want to learn the difference between an author and a sponsor.

## **2. The People and Organizations Most Involved in the Process.**

A number of organizations and individuals get involved in the legislative process:

**2.1 REPTL.** REPTL acts through its Council. Many volunteer Section members who are not on the Council give much of their time, energy and intellect in formulating REPTL legislation. REPTL is not allowed to sponsor legislation or oppose legislation without the approval of the Board of Directors of the State Bar. There is no provision to support legislation offered by someone other than REPTL (although the rules do allow REPTL members to act as a resource at the request of legislators), and the ability of REPTL to react during the legislative session is hampered by the necessity for Bar approval. Therefore, REPTL must receive prior permission to carry the proposals discussed in this paper that are identified as REPTL proposals. REPTL has hired Clint Hackney, who has assisted with the passage of REPTL legislation for many sessions.

**2.2 The Statutory Probate Judges.** The vast majority of probate and guardianship cases are heard by the judges of the Statutory Probate Courts (18 of them in 10 counties). Judge Guy Herman of the Probate Court No. 1 of Travis County (Austin) is the Presiding Statutory Probate Judge and has been very active in promoting legislative solutions to problems in our area for many years.

**2.3 The Bankers.** There are two groups of bankers that REPTL deals with. One is the Wealth Management and Trust Division of the Texas Bankers Association ("TBA"), which tends to represent the larger corporate fiduciaries, while the other is the Independent Bankers Association of Texas ("IBAT"), which tends to represent the smaller corporate fiduciaries, although the distinctions are by no means hard and fast.

**2.4 The Texas Legislative Council.** Among other duties, the Texas Legislative Council<sup>3</sup> provides bill drafting and research services to the Texas Legislature and legislative agencies. All proposed legislation must be reviewed (and usually revised) by Leg. Council before a Representative or Senator may introduce it. In addition, as part of its continuing statutory revision

program, Leg. Council was the primary drafter of the Texas Estates Code, a nonsubstantive revision of the Texas Probate Code.

**2.5 The Authors and Sponsors.** All legislation needs an author, the Representative or Senator who introduces the legislation. A sponsor is the person who introduces a bill from the other house in the house of which he or she is a member. Many bills have authors in both houses originally, but either the House or Senate version will eventually be voted out if it is to become law; and so, for example, the Senate author of a bill may become the sponsor of a companion House bill when it reaches the Senate. In any event, the sponsor or author controls the bill and its fate in their respective house. Without the dedication of the various authors and sponsors, legislative success in this session could not be possible. The unsung heroes are the staffs of the legislators, who make sure that the bill does not get off track.

**2.6 The Committees.** All legislation goes through a committee in each chamber. In the House, most bills in our area go through the House Committee on Judiciary and Civil Jurisprudence, or "Judiciary." In the Senate, in recent sessions, most bills in our area go through the Senate Committee on State Affairs, or "State Affairs," because in 2015, Lt. Gov. Patrick dissolved the Senate Committee on Jurisprudence, or "Jurisprudence," where most of our bills used to go. This session, the Lite Guv has resurrected Jurisprudence, so our bills are mostly split between that committee and State Affairs.

## **3. The Process.**

**3.1 The Genesis of REPTL's Legislative Package.** REPTL<sup>4</sup> begins work on its legislative package shortly after the previous legislative session ends. In August or September of odd-numbered years – just weeks after a regular legislative session ends, the chairs of each of the main REPTL legislative committees put together lists of proposals for discussion by their committees. These items are usually gathered from a variety of sources. They may be ideas that REPTL Council or committee members come up with on their own, or they may be suggestions from practitioners around the state, accountants, law professors, legislators,

clean up the Residential Construction Liability Act to eliminate references to the repealed Texas Residential Construction Act, revise Property Code rules regarding representation in justice courts to adopt the clearer Supreme Court rules on the same subject, and correct obsolete references to Vernon's Statutes found throughout the Property Code. Finally, **HB 3504** (Lambert) cleans up outdated provisions in Prop. Code Chs. 92 (Residential Tenancies) and 94 (Manufactured Home Tenancies).

<sup>3</sup> We usually refer to the Texas Legislative Council as simply "Leg. (pronounced "ledge") Council."

<sup>4</sup> Note that until recently the "RE" or real estate side of REPTL usually did not have a legislative package, but was very active in monitoring legislation filed in its areas of interest. It DOES have some clean-up bills in the 2021 session. **HB 3502** (Lambert) and **SB 1939** (Creighton) contain nonsubstantive updates relating to electronic voting by members and directors of condominium owners' associations and property owners' associations. **HB 3503** (Lambert) and **SB 1938** (Creighton)

judges – you name it. Most suggestions usually receive at least some review at the committee level. If you have ideas for the 2023 legislative package, you can contact the chairs of the main REPTL legislative committees using the contact information that can be found on the REPTL website sometime in the Fall of 2021 (when new committee chairs will be selected).

**3.2 Preliminary Approval by the REPTL Council.** The full “PTL” or probate, guardianship, and trust law side of the REPTL Council reviews each committee’s suggestions and gives preliminary approval (or rejection) to those proposals at its Fall meeting (usually in September or October) in odd-numbered years. Draft language may or may not be available for review at this stage – this step really involves a review of concepts, not language.

**3.3 Statutory Language is Drafted.** Following the Fall Council meeting, the actual drafting process usually begins by the committees. Proposals may undergo several redrafts as they are reviewed by the full Council at subsequent meetings. By the Spring meeting of the Council in even-numbered years (usually in April), language is close to being final, so that final approval by the Council at its June annual meeting held in conjunction with the State Bar’s Annual Meeting is mostly *pro forma*. Note that items may be added to or removed from the legislative package at any time during this process as issues arise.

**3.4 REPTL’s Package is Submitted to the Bar.** In order to obtain permission to support legislation, the entire REPTL package is submitted to the other substantive law sections of the State Bar for review and comment by June. This procedure is designed to assure that legislation with the State Bar’s “seal of approval” will be relatively uncontroversial and will further the State Bar’s goal of promoting the interests of justice.

**3.5 Legislative Policy Committee Review.** Following a comment period (and sometimes revisions in response to comments received), REPTL representatives appear before the State Bar’s Legislative Policy Committee in August to explain and seek approval for REPTL’s legislative package. By letter dated August 20, 2020, the Legislative Policy Subcommittee notified REPTL that it would recommend approval of all of REPTL’s proposals to the State Bar’s Board of Directors.

**3.6 State Bar Board of Directors Approval.** Assuming REPTL’s package receives preliminary approval from the State Bar’s Legislative Policy

Committee, it is submitted to the full Board of Directors of the State Bar for approval in September. At times, REPTL may not receive approval of portions of its package. In these cases, REPTL usually works to satisfy any concerns raised, and then seeks approval from the full Board of Directors through an appeal process. REPTL’s 2021 legislative package received approval from the full Board of Directors in the Fall of 2020.

**3.7 REPTL is Ready to Go.** After REPTL receives approval from the State Bar’s Board of Directors to carry its package, it then meets with appropriate Representatives and Senators to obtain sponsors, who submit the legislation to Leg. Council for review, revision, and drafting in bill form. REPTL’s legislation is usually filed (in several different bills) in the early days of the sessions that begin in January of odd-numbered years.

**3.8 During the Session.** During the legislative session, the work of REPTL and members of its various committees is not merely limited to working for passage of their respective bills. An equally important part of their roles is monitoring bills introduced by others and working with their sponsors to improve those bills, or, where appropriate, to oppose them (in their individual capacities – not on behalf of REPTL without State Bar approval).

**3.9 Where You Can Find Information About Filed Bills.** You can find information about any of the bills mentioned in this paper (whether or not they passed), including text, lists of witnesses and analyses (if available), and actions on the bill, at the Texas Legislature Online website: [www.legis.state.tx.us](http://www.legis.state.tx.us). The website allows you to perform your own searches for legislation based on your selected search criteria. You can even create a free account and save that search criteria (go to the “My TLO” tab). Additional information on following a bill using this site can be found at:

<http://www.legis.state.tx.us/resources/FollowABill.aspx>

**3.10 Where You Can Find Information About Previous Versions of Statutes.** I frequently see requests on Glenn Karisch’s [Texas Probate E-Mail List](#) for older versions of statutes, such as the intestacy laws applicable to a decedent dying many years ago. You can find old law on your own (for free) rather than asking the list, and I’ll use our intestacy statutes as an example.

- Former Texas Probate Code Sec. 38 had the rules for non-community property. If you’ve got a copy of it with the enactment information,<sup>5</sup> you’ll see that it

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<sup>5</sup> If you don’t have a copy of the Probate Code with enactment information, you can get one! Prof. Gerry Beyer’s website (<http://professorbeyer.com/>) contains a copy of the Probate

Code as it existed immediately prior to its repeal effective December 31, 2013, with post-1955 amendment information following each section. Click on Legal Updates | Texas

came from “Acts 1955, 54<sup>th</sup> Leg., p. 88, ch. 55, eff. Jan. 1, 1956.” That means it was part of the original Probate Code, and was never amended. The key information you’ll need is that it was from the **54<sup>th</sup> Legislature**, and it’s found in **chapter 55**.

- Next, go to the search page of the Legislative Reference Library:  
<http://www.lrl.state.tx.us/legis/billsearch/lrlhome.cfm>
- Since you’ve got the session and chapter number, use the option to “Search by session law chapter.” Click the down arrow and scroll down to “54<sup>th</sup> R.S. (1955).” Then type “55” as the Chapter number. Click “Search by chapter.”
- You’ll arrive at a page that has a hyperlink to chapter 55. Click on that and Voilà – you’ve got a PDF of the entire original Probate Code! Since Sec. 38 was never amended prior to its repeal on December 31, 2013 (and replacement by Estates Code Secs. 201.001 and 201.002), you’ve got the language of that section as it existed before 1993.
- Former Texas Probate Code Sec. 45 had the rules for community property. The PDF you just downloaded had the version in effect when the Probate Code went into effect in 1956. But if you’ve got the enactment information, you’ll see that it was amended by Acts 1991, 72<sup>nd</sup> Leg., ch. 895, § 4, eff. Sept. 1, 1991, and by Acts 1993, 73<sup>rd</sup> Leg., ch. 846, § 33, eff. Sept. 1, 1993.
- If you’re researching the law applicable to someone who died before September 1, 1991, look no further – the original version was still the law. But if your decedent happened to die on or after September 1, 1991, but before September 1, 1993, you need to see what the 1991 amendment did. So back to the search page mentioned above. Scroll to 72<sup>nd</sup> R.S. (1991) (you don’t want either of the “called sessions”), type in 895 for the chapter number, and click on the search button. Again, click on the hyperlink to chapter 895, and you’ll download all of that chapter. You need to scroll down to Section 4 of the act to find the 1991 amendment to Texas Probate Code Sec. 45.
- The same procedure should work for any bill or amendment.

**3.11 Summary of the Legislative Process.** Watching the process is like being on a roller coaster; one minute a bill is sailing along, and the next it is in dire trouble. And even when a bill has “died,” its substance may be resurrected in another bill. The real work is done in committees, and the same legislation must ultimately pass both houses. Thus, even if an identical bill is passed

by the Senate as a Senate bill and by the House as a House bill, it cannot be sent to the Governor until either the House has passed the Senate bill or vice-versa. At any point in the process, members can and often do put on amendments which require additional steps and additional shuttling. It is always a race against time, and it is much easier to kill legislation than to pass it. You can find an “official” description of how a bill becomes a law prepared by the Texas Legislative Council at:

<https://tlc.texas.gov/docs/legref/legislativeprocess.pdf>

**3.12 Other Legislative Information and Resources.** Leg. Council has also prepared a guide designed to help interested persons track the work of current legislatures and research the work of past legislatures. You can download a copy at:

<https://tlc.texas.gov/docs/legref/gtli.pdf>

**3.13 The Legislative Council Code Update Bill.** As statutes are moved around pursuant to the legislature’s continuing statutory revision program, Leg. Council prepares general code update bills for the purposes of (and I quote):

- (1) codifying without substantive change or providing for other appropriate disposition of various statutes that were omitted from enacted codes;
- (2) conforming codifications enacted by the 83<sup>rd</sup> Legislature to other Acts of that legislature that amended the laws codified or added new law to subject matter codified;
- (3) making necessary corrections to enacted codifications; and
- (4) renumbering or otherwise redesignating titles, chapters, and sections of codes that duplicate title, chapter, or section designations.

As an aside, if you’re interested in learning more about the creation of the Estates Code as part of this statutory revision, you can download this author’s paper, *The Story of the Estates Code*, at:

[www.snpalaw.com/resources/EstatesCodeStory](http://www.snpalaw.com/resources/EstatesCodeStory)

By the end of the 2019 session, Leg. Council had updated most, but not all, of references to old Probate Code provisions found outside of the Estates Code<sup>6</sup> (*see* **HB 4170** (Leach | Kolkhorst). While this year’s Leg. Council code update bill (**HB 3607** (Leach)) mentions the Estates Code in two of its amendments, the amendments themselves have nothing to do with the Estates Code, the Probate Code, or references to either of those codes. Given the passage of REPTL’s “substantive code update bill” in 2019 (*see below*), I

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Estates Code, and you’ll find the link to the final Probate Code at the upper left.

<sup>6</sup> Previous Leg. Council code update bills relating to the Estates Code are **S.B. 1303** (2011), **S.B. 1093** (2013), **S.B. 1296** (2015), and **SB 1488** (2017).

think it's safe to conclude that the codification project is now done, and there *probably* won't be any more mentions of the codification project in future updates.

3.14 **The REPTL Substantive Code Update Bill.** But Leg. Council still couldn't update all references to the Probate Code. Its mandate under Chapter 323, Government Code, only allows it to make **nonsubstantive** changes, and updating certain provisions in an appropriate manner could potentially result in making **substantive** changes. These provisions were identified, and in the 2019 session, we *think* that REPTL fixed the remaining references (see [HB 2780](#) (Wray | Rodríguez)).

#### 4. Key Dates.

Key dates for the enactment of bills in the 2021 legislative session include:<sup>7</sup>

- **Tuesday, November 3, 2020** – General election for federal, state, and county offices on the first Tuesday after the first Monday in November of even-numbered years. [*Election Code, Sec. 41.002, U.S. Statutes at Large, 28<sup>th</sup> Congress, 2<sup>nd</sup> Session, p. 721*]
- **Monday, November 9, 2020** – Prefiling of legislation for the 86<sup>th</sup> Legislature begins.
- **Tuesday, January 12, 2021** (1<sup>st</sup> day) – 87<sup>th</sup> Legislature convenes at noon on the second Tuesday in January of each odd-numbered year. [*Government Code, Sec. 301.001*]
- **Friday, March 12, 2021** (60<sup>th</sup> day) – Deadline for filing most bills and joint resolutions. [*House Rule 8, Sec. 8; Senate Rule 7.07(b); Senate Rule 10.01 subjects joint resolutions to the rules governing proceedings on bills*]
- **Monday, May 10, 2021** (119<sup>th</sup> day) – Last day for House committees to report House bills and joint resolutions. [*a “soft” deadline that relates to House Rule 6, Sec. 16(a), requiring 36-hour layout of daily calendars prior to consideration, and House Rule 8, Sec. 13(b), the deadline for consideration*]
- **Thursday, May 13, 2021** (122<sup>nd</sup> day) – Last day for House to consider nonlocal House bills and joint resolutions on **second** reading. [*House Rule 8, Sec. 13(b)*]
- **Friday, May 14, 2021** (123<sup>rd</sup> day) – Last day for House to consider nonlocal House bills and joint

resolutions on **third** reading. [*House Rule 8, Sec. 13(b)*]

- **Saturday, May 22, 2021** (131<sup>st</sup> day) – Last day for House committees to report Senate bills and joint resolutions. [*relates to House Rule 6, Sec. 16(a), requiring 36-hour layout of daily calendars prior to consideration, and House Rule 8, Sec. 13(c), the deadline for consideration*]
- **Tuesday, May 25, 2021** (134<sup>th</sup> day) – Last day for House to consider most Senate bills and joint resolutions on **second** reading. [*House Rule 8, Sec. 13(c)*]
- **Wednesday, May 26, 2021** (135<sup>th</sup> day) – Last day for House to consider most Senate bills or joint resolutions on **third** reading. [*House Rule 8, Sec. 13(c)*]  
Last day for Senate to consider any bills or joint resolutions on third reading. [*Senate Rule 7.25; Senate Rule 10.01 subjects joint resolutions to the rules governing proceedings on bills*]
- **Friday, May 28, 2021** (137<sup>th</sup> day) – Last day for House to consider Senate amendments. [*House Rule 8, Sec. 13(d)*]  
Last day for Senate committees to report all bills. [*relates to Senate Rule 7.24(b), but note that the 135<sup>th</sup> day (two days earlier) is the last day for third reading in the senate; practical deadline for senate committees is before the 135<sup>th</sup> day; Senate Rule 10.01 subjects joint resolutions to the rules governing proceedings on bills*]
- **Sunday, May 30, 2021** (139<sup>th</sup> day) – Last day for House to adopt conference committee reports. [*House Rule 8, Sec. 13(e)*]  
Last day for Senate to concur in House amendments or adopt conference committee reports. [*relates to Senate Rule 7.25, limiting a vote on the passage of any bill during the last 24 hours of the session to correct an error in the bill*]
- **Monday, May 31, 2021** (140<sup>th</sup> day) – Last day of 87<sup>th</sup> Regular Session; corrections only in House and Senate. [*Sec. 24(b), Art. III, Texas Constitution; House Rule 8, Sec. 13(f); Senate Rule 7.25*]
- **Sunday, June 20, 2021** (20<sup>th</sup> day following final adjournment) – Last day Governor can sign or veto bills passed during the previous legislative session. [*Section 14, Art. IV, Texas Constitution*].<sup>8</sup>

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<sup>7</sup> As we pass each deadline, we'll mark it in red.

<sup>8</sup> A few words of further explanation about this deadline. This provision states the general rule that if the Governor doesn't return a vetoed bill to the Legislature within 10 days (*excluding Sundays*) after it's presented to him (*gender specific pronoun in original*), it becomes law as if [s]he'd signed it. Regular sessions of the Legislature always end on a Monday, which means that there are two Sundays included in the 10 calendar days preceding adjournment. Since we don't

count those Sundays, this means that for regular sessions, the 10-day period is really a 12-day period. **However**, if the Governor can't return it because the Legislature has adjourned by the end of this 12-day period, the Governor has until 20 days (*no Sunday exclusion*) after adjournment to veto it. Therefore, bills passed in the 2021 regular session must be sent to the Governor by May 19<sup>th</sup> in order to avoid the 20-day post adjournment deadline.

- **Monday, August 30, 2021** (91<sup>st</sup> day following final adjournment) – Date that bills without specific effective dates (that could not be effective immediately) become law. [*Sec. 39, Art. III, Texas Constitution*] (Note that most bills in recent years include a standard specific effective date of September 1<sup>st</sup> of the year of enactment.)

## **5. If You Have Suggestions ...**

If you have comments or suggestions, you should feel free to contact the chairs of the relevant REPTL committee[s] identified in Section 1.6 on page 2. Their contact information can be found on their respective committee pages at [www.reptl.org](http://www.reptl.org).

## **6. The REPTL Bills.**

### **6.1 The Original REPTL Legislative Package.**

REPTL's 2021 legislative package consists of a number of bills covering four general areas: (i) decedents' estates; (ii) guardianships; (iii) trusts; and (iv) powers of attorney and advance directives. Sec. 35(a), Article III, of the Texas Constitution contains the "one-subject" rule:

No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject.

Because of this rule, we (or sometimes Leg. Council) strip out provisions from one or more of the "general" bills that may violate the one-subject rule and place them in separate, smaller bills. In each of the substantive sections of this paper, we will identify any REPTL bills and begin with descriptions of them.

### **6.2 Consolidation Into REPTL Bills.**

As hearings begin, legislators often ask interested parties to try to consolidate as many of the various bills on similar subjects as possible, in order to reduce the number of bills that would need to move through the legislature. Pursuant to this request, REPTL representatives and the statutory probate judges usually agree to consolidate all or a portion of a number of other bills into one or more of REPTL's bills. Therefore, keep in mind that not everything that ends up in a REPTL bill by the time it passes was originally a REPTL proposal. Where non-REPTL provisions have been added to REPTL bills, we've attempted to identify the original bill[s] that served as the source of the amendments.

## **7. Decedents' Estates.<sup>9</sup>**

**7.1 REPTL Decedents' Estates Bill.** REPTL's Decedents' Estates bill is **HB 2182** (Moody) and **SB 1937** (Hughes).

**(a) Qualified Delivery Method (Sec. 22.0295).** Several Estates Code sections require notices to be sent by certified or registered mail, return receipt requested. However, there has been an ongoing problem getting green cards back to show that the notice was delivered, and this problem was only exacerbated by the COVID-19 pandemic. This change provides a new "qualified delivery method" to address this problem. Newly-permitted delivery methods include hand delivery by courier (with proof of delivery) or a private delivery service designated by the Secretary of the Treasury under IRC Sec. 7502(f)(2). (I believe that **IRS Notice 2016-30** contains the current list of designated delivery services.)

**(b) Community Property Subject to Creditors' Claims (Sec. 101.052).** This change clarifies that community property is subject not only to the debts of the deceased spouse, but also the debts of the surviving spouse, by deleting the words "of Deceased Spouse" from the title of Sec. 101.052 (which currently reads "Liability of Community Property for Debts of Deceased Spouse") and clarifying that the survivor's interest in the deceased spouse's sole management community property becomes liable for the survivor's debts, and the deceased spouse's interest in the survivor's sole management community property passes to the beneficiaries subject to the deceased spouse's debt.

**(c) Property Listed in Heirship Application (Sec. 202.005).** Under current law, an application to determine heirship requires "a general description of all property belonging to the decedent's estate or held in trust for the benefit of the decedent." The proposed legislation clarifies that only property that is subject to distribution in the heirship proceeding (real estate located in Texas and all personal property other than non-probate property) must be listed in the application.

**(d) Service on Minors Who Are At Least 16 Years Old (Secs. 202.056 & 258.002).** The age at which a minor could waive citation in an heirship proceeding or a proceeding to probate a lost will would be raised from 12 to 16.

**(e) Affidavit of Heirship as Evidence (Sec. 202.151).** This change clarifies that an affidavit of heirship or judgment complying with Sec. 203.001 may serve as evidence in an heirship proceeding (as an

<sup>9</sup> In general, section references throughout this paper are to the Texas Estates Code unless otherwise noted.

alternative to testimony from two disinterested witnesses).

**(f) Applicant’s Last Three Digits (Secs. 256.052, 257.051, & 301.052).** In 2017, the Estates Code was amended to require that applications for probate and for letters testamentary or letters of administration include the last three numbers of the applicant’s and the decedent’s driver license and social security numbers. This change would eliminate that requirement for the applicant, but not the decedent.

**(g) Use of Unsworn Declaration for Oaths (Secs. 305.001-305.003, 305.051-305.053, & 305.055).** A COVID-inspired change would allow a personal representative to submit an unsworn declaration in order to qualify that would serve the same purpose as an oath signed before a notary.

***Drafting Tip***

A statutory example of the new form where a will is admitted:

My name is \_\_\_\_\_ (insert name of “executor of the will” or “administrator with the will annexed” as it appears on the order appointing the person as executor or administrator with the will annexed), my date of birth is \_\_\_\_\_ (insert date of birth of “executor of the will” or “administrator with the will annexed,” as applicable), and my address is \_\_\_\_\_ (insert street, city, state, zip code, and country of “executor of the will” or “administrator with the will annexed,” as applicable). I declare under penalty of perjury that the writing offered for probate is the last will of \_\_\_\_\_ (insert name of testator), so far as I know or believe. I also solemnly declare that I will well and truly perform all the duties of \_\_\_\_\_ (insert “executor of will” or “administrator with the will annexed,” as applicable) for the estate of \_\_\_\_\_ (insert name of testator).

**(h) Sale of Personal Property in Dependent Administration (Sec. 356.105).** A 2019 revision to Estates Code Sec. 356.551 required administrators in a dependent administration to report only “successful bids or contracts for the sale” of real property to the court. The proposed legislation would make this change applicable to sales of personal property as well.

**(i) Removal of References to “Community Debts” (Secs. 453.003 & 453.006-453.007).** Several sections of the Estates Code refer to “community debts,” much to the chagrin of law school professors throughout the state (here’s looking at you, Prof. Featherston). This change replaces references to “community debts” with “debts for which some community property is liable for payment.”

**7.2 Electronic Wills Act and Other Online Notarizations ([mostly]Ch. 259).** **HB 2662** (Krause) is a lengthy bill with the caption: “An act relating to the elimination of certain regulations waived during the

coronavirus disease (COVID-19) pandemic.” Buried halfway through it is the same version of the Electronic Wills Act that was introduced last session (**HB 3848** (Longoria)) prior to the final adoption of the uniform act by the Uniform Laws Commission in July of 2019. The ULC provides this description of the uniform act:

“The Uniform Electronic Wills Act permits testators to execute an electronic will and allows probate courts to give electronic wills legal effect. Most documents that were traditionally printed on paper can now be created, transferred, signed, and recorded in electronic form. Since 2000 the Uniform Electronic Transactions Act (UETA) and a similar federal law, E-SIGN have provided that a transaction is not invalid solely because the terms of the contract are in an electronic format. But UETA and E-SIGN both contain an express exception for wills, which, because the testator is deceased at the time the document must be interpreted, are subject to special execution requirements to ensure validity and must still be executed on paper in most states. Under the new Electronic Wills Act, the testator’s electronic signature must be witnessed contemporaneously (or notarized contemporaneously in states that allow notarized wills). States will have the option to include language that allows remote witnessing. The act will also address recognition of electronic wills executed under the law of another state. For a generation that is used to banking, communicating, and transacting business online, the Uniform Electronic Wills Act will allow online estate planning while maintaining safeguards to help prevent fraud and coercion.”

A complete description of the details of the Uniform Act is beyond the scope of this paper, but you can read up on the uniform act [here](#), and I suspect that Prof. Beyer will circulate his own detailed description of this act if it passes in Texas.

But before we leave this bill, it would also permanently permit the remote notarization of the oath of a personal representative, and permit electronic signatures on financial powers of attorney and medical directives with online notarization through two-way audio-video conference technology.

**7.3 Parents Who May Not Inherit From Child (Sec. 201.062).** **HB 3110** (Meyer) amends Sec. 201.062, which authorizes a probate court to prevent a parent from inheriting by intestacy from a child under certain conditions set forth in the statute. It changes the words “child pornography” to “child sexual abuse material” to track with amended language in the Penal Code.

**7.4 Persons Disqualified to Serve as Personal Representatives (Sec. 304.003).** **HB 2923** (Dutton) adds the decedent’s spouse to the list of individuals who



are disqualified from serving as personal representative if a suit (i) for dissolution of the marriage, (ii) affecting the parent-child relationship, or (iii) involving DFPS<sup>10</sup> was pending at the decedent's death.

**7.5 Actions Without Court Approval (Sec. 351.052).** **HB 151** (Landgraf) is a reprise of 2019's **HB 2762** (Landgraf). It adds additional actions that may be taken by a dependent administrator without court approval, including hiring an accountant, bookkeeper, or other tax professional; a real estate agent; or an appraiser to assist with valuations. In addition, the administrator would have authority to pay all reasonable costs necessary to exercise their duty of care or related to any of the other powers listed in Sec. 351.052. These last two provisions go a long way towards gutting the court's supervisory role in dependent administrations.

**7.6 Claims for Cost of Certain Electrical Service (Secs. 355.102 & 355.103).** **HB 1337** (Krause) resurrects 2019's **HB 3777** (Krause). It adds claims for the cost of electrical service provided to a decedent who had been designated as a critical care residential customer to funeral expenses and expenses of last illness as Class 1 claims.

**7.7 Administration of Unclaimed Property (Sec. 551.005; Ins. Code Secs. 1109.0139, 1109.013, 1109.051-1109.056, 1109.101, 1109.151-1109.154; & Prop. Code Secs. 72.001, 72.405, & Ch. 74).** **HB 1514** (Landgraf) and **SB 789** (Zaffirini) require notice to the comptroller by certified mail or e-mail of an order to deliver funds to the comptroller under Sec. 551.005, rather than requiring that the comptroller be served as a party. Conforming amendments are made to the Insurance and Property Codes regarding the report, delivery, claims process, and disposition of abandoned property.

**7.8 Expedited Death Certificate for Religious Purposes (H&S Code<sup>11</sup> Sec. 193.0025).** If a commissioner's court in a county with a medical examiner allows, **HB 1011** (Turner, J.) lets an individual request expediting the completion of a death certificate if (1) the expedited certificate is necessary for religious purposes, (2) the decedent's remains will be interred, entombed, buried, or cremated in a foreign country, and (3) the requestor is authorized to receive a copy of the certificate.

**7.9 Required Statement in Disclaimer Regarding Child Support (Prop. Code Sec. 240.009).** Prop. Code Sec. 240.151(g) bars a disclaimer by a child support obligor if the obligor has been determined to be in arrears in those obligations. **HB 2952** (Neave) and **SB 286** (West) require all disclaimers to contain a sworn

statement regarding whether the disclaimant is a child support obligor whose disclaimer is barred that section.

**7.10 State Estate Tax (New Tax Code Ch. 212).** **HB 4453** (Talarico) would enact a new 5% tax on the taxable estate of Texas residents, as determined under the Internal Revenue Code without the deduction of any Texas estate tax. (Tax proceeds would be used to provide one-time \$1,000 payments (adjusted for inflation) to a person who adopts or gives birth to a child in Texas.)

**7.11 Satisfaction of a Reverse Mortgage after Surviving Borrower's Death (Fin. Code Secs. 343A.001-343A.002).** **SB 362** (Miles) delays foreclosure on a decedent's residence that served as security for a reverse mortgage for six months from the decedent's death if the residence is inherited by an immediate family member.

**7.12 Procedural Matters Affecting Decedents' Estates.** Don't forget to check out the matters affecting decedents' estates discussed in Parts 13—Jurisdiction and Venue. and 14--Court Administration.

## **8. Guardianships and Persons With Disabilities.**

**8.1 The REPTL Guardianship Bill.** REPTL's Guardianship bill is **SB 626** (Zaffirini) and **HB 2178** (Moody). It is very similar to the 2019 REPTL Guardianship bill (**SB 667** (Zaffirini | Thompson, S.)) that was vetoed by Gov. Abbott.

**(a) Matters Related to Guardianship Proceeding (Sec. 1021.001).** This section has contained two definitions of a matter related to a guardianship proceeding: subsection (a) for counties **without** a statutory probate court, and subsection (b) for counties **with** a statutory probate court. This change leaves subsection (a) to define those matters in counties without **either** a statutory probate court or a county court at law and inserts a new subsection (a-1) applicable to counties without a statutory probate court but with a county court at law (adding the interpretation and administration of a trust in which a ward is a beneficiary).

**(b) Unsworn Declarations in Lieu of Sworn Oath (Secs. 1052.052, 1103.003, 1105.001-1105.003, 1105.051-1105.052, 1105.103, & 1251.101).** Similar to the change in REPTL's Decedents' Estates bill (see Section 7.1(g)), this change allows a guardian to submit an unsworn declaration in order to qualify that would serve the same purpose as an oath signed before a notary.

<sup>10</sup> The Department of Family and Protective Services.

<sup>11</sup> References to "H&S Code" are to the Health & Safety Code.

**Drafting Tip**

A statutory example of the new form where a person is named as guardian:

My name is \_\_\_\_\_ (insert guardian's name as it appears on the order appointing the person as guardian), my date of birth is \_\_\_\_\_ (insert the guardian's date of birth), and my address is \_\_\_\_\_ (insert street, city, state, zip code, and country of the guardian). I declare under penalty of perjury that the information in this declaration is true and correct. I solemnly declare that I will discharge faithfully the duties of guardian of \_\_\_\_\_ (insert "the person," "the estate," or "the person and estate") of \_\_\_\_\_ (insert the ward's name), an incapacitated person, according to law, signed on \_\_\_\_\_ (insert the date of signing).

**(c) Wards' Bill of Rights (Sec. 1151.351).**

This change amends the right set forth in subsection (b)(12) to clarify that only a court investigator or guardian ad litem (and not an attorney ad litem) may be appointed to investigate a complaint relating to modification or termination of a guardianship, which is consistent with the procedure set forth in Sec. 1202.054.

**(d) Notice to Creditors (Sec. 1153.001).** This change requires that the general notice to creditors be published in a newspaper of general circulation in the county, rather than one printed in the county. The notice must be posted only if there's no newspaper of general circulation. (This is similar to the 2017 change relating to publication of the notice to creditors in decedents' estates.)

**(e) Attorney's Fees (Sec. 1155.054).** This is a terminology change. Instead of **requiring** a party to reimburse certain attorney's fees, a court may **order** the party to reimburse those fees.

**(f) Sale of Personal Property in Guardianship (Sec. 1158.105).** Guardians are required to report only "successful bids or contracts for the sale" of personal property to the court.

**(g) Sale of Real Property at Public Auction (Secs. 1158.401-1158.405).** This change specifies that a public sale of real estate is required to be made at public auction and provides the mandatory terms regarding location and time of the auction.

**(h) Private Sale of Real Estate (Secs. 1158.451 & 1158.502).** This change specifies that the guardian of the estate may enter into a contract for a private sale of real estate. The procedure for the sale of an easement or right of way is the same as the procedure for a private sale.

**(i) Sale of Real Property in Guardianship (Secs. 1158.551-1158.554 & 1158.556-1158.558).**

Guardians are required to report only "successful bids or contracts for the sale" of real estate to the court. This change also provides additional terms that must be reported to the court and requires the court to consider the manner in which the auction was held or the contract for which the report was made.

**(j) Agency References (Secs. 1163.005 & 1163.101).** References to the Department of Aging and Disability Services are changed to the Health and Human Services Commission, while references to the Guardianship Certification Board are changed to the Judicial Branch Certification Commission.

**(k) Ch. 1301 Management Trusts.** Several changes are made relating to management trusts under Ch. 1301.

**(i) Notice (Sec. 1301.0511).** The notice provisions for an application to create a management trust are made identical to the provisions applicable to the creation of a guardianship. Plus, any currently serving guardian must also be served.

**(ii) Termination (Secs. 1301.101 & 1301.203).** If a management trust is created for a minor who is also incapacitated for some reason other than minority, the management trust must terminate on the beneficiary's death or when the beneficiary regains capacity.

**(iii) Accounting (Sec. 1301.154).** Both the guardian of the estate and the guardian of the person must receive a copy of the annual account (not either).

**(l) Sale of Property by Nonresident Guardian (Secs. 1355.002 & 1355.105).** These changes clarify that money held in the clerk's registry is to be paid to a nonresident guardian, not the nonresident minor or incapacitated ward.

**8.2 Miscellaneous Guardianship Matters.** Many of the procedural issues contained in **SB 615** (Zaffirini) affecting guardianships are discussed in Parts 13—Jurisdiction and Venue, and 14—Court Administration. Here are some other issues addressed in that bill related solely to guardianships, many of which were included in 2019's **SB 1426**, the language of which was eventually added to that session's REPTL Guardianship bill (that passed but was vetoed).

**(a) Attorney Certification (Sec. 1054.201 & Gov't Code Sec. 81.114).** Any attorney representing **any** person in a guardianship proceeding must obtain guardianship education certification, not just the applicant's attorney and any court-appointed attorney. (An attorney who doesn't have the certification may enter an appearance but must complete the course requirements within 14 days and prior to filing any

substantive pleading.) A guardianship certification course must be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar.

**(b) Applicant's Former Name and Liquid Assets (Sec. 1101.001).** An application for guardianship must include the applicant's former name, if any, and the approximate value of the proposed ward's liquid assets (instead of "property").

**(c) Waiver of Guardianship Training (Sec. 1101.153).** If an order appointing a guardian waives the training requirement, it must contain a finding that the waiver is in accordance with rules adopted by the Supreme Court.

**(d) Attendance at Legal Proceeding (Sec. 1151.005).** A guardian may not be excluded from attending a legal proceeding in which the ward is a party or participating as a witness.

**(e) Citation for Appointment of Temporary Guardian (Sec. 1251.005).** Citations in a temporary guardianship must include a statement notifying a person interested in the estate or welfare of a ward that they may file a request to be notified of filings.

**(f) Final Report in Temporary Guardianship (Sec. 1251.153).** Requires a temporary guardian to file a final report at the termination of the temporary guardianship.

**(g) Transfer of Guardianship to Foreign Jurisdiction (Sec. 1253.001).** Another non-REPTL provision that comes from [SB 1975](#) allows a court to transfer a guardianship to a foreign jurisdiction to which the ward has permanently moved on its own motion, not just on motion of the guardian.

**(h) Criminal History of Guardian (Gov't Code Sec. 155.205).** Proposed non-resident guardians must provide a *finger-print-based* criminal history record, while proposed Texas resident guardians must provide a *name-based* criminal history record.

**8.3 Minor Wards with Profound Intellectual Difficulties (Secs. 1054.001, 1054.151, 1103A.001-1103A.003, 1105.101, 1106.002, 1163.001-1163.0025, 1163.101, & 1201.052).** [HB 1675](#) (Allison), which would be known as "Caleb's law," allows a caregiver parent to be appointed as "independent guardian of the person" for a proposed minor ward who will still require a guardianship after reaching majority due to a profound intellectual disability" without the need for the appointment of a court investigator. The guardianship application must include an affidavit showing that the proposed guardian meets certain qualification requirements and a doctor letter making the

determination of profound disability. Unless the court finds that it is not in the best interest of the ward, an independent guardian is not required to file an annual account or annual report. The only required probate court action is a review at the discretion of the court, no more than once every five years (unless the guardian of the person is also the guardian of the ward's estate), to determine whether the guardianship should be continued, modified or terminated. However, if at any time the court receives a claim that the guardianship is no longer in the ward's best interest, the court may take any action it determines necessary.

**8.4 Incapacity of Guardian or Proposed Guardian (Secs. 1101.002 & 1203.0521).** [HB 3394](#) (Metcalf) allows a court, on its own motion or on the application of an interested person, to appoint an AAL and a court investigator or GAL to investigate whether a guardian should be removed due to incapacity. If necessary, the court may appoint physicians to examine the guardian

**8.5 Examination of Proposed Ward (Secs. 1101.103, 1101.104, 1102.002, 1202.054, & 1202.152).** [HB 3126](#) (VanDeaver) permits an incapacity determination to be made by an APRN (advanced practice registered nurse).

**8.6 Pilot Program to Establish Public Guardians (Secs. 1104.326-1104.349).** In 2019, [SB 1426](#) (Zaffirini | Thompson, S.) appeared to be a second attempt to pass 2017's [SB 1325](#) (Zaffirini | Thompson, S.). This non-REPTL bill was added to [SB 667](#) on the House floor. It authorized a commissioners court to establish an "office of public guardian." This addition was cited by Gov. Abbott as the reason he vetoed the REPTL bill. This session, [SB 960](#) (Zaffirini) directs the Office of Court Administration to develop a pilot program under which the OCA can assist one or more counties that elect to establish an office of public guardian.

**8.7 Criminal Conduct of Proposed Guardian. (Sec. 1104.353; Penal Code Sec. 72.04).** Under [HB 3599](#) (Leach), a proposed guardian's "final conviction of threatened terroristic violence" triggers a presumption that it would not be in the best interests of the proposed ward to appoint that person as guardian.

**8.8 Use of Criminal History Records (Secs. 1104.401-1104.411; Gov't Code Secs. 152.203-152.2035, 155.206-155.207, 411.114, 411.1386-411.13861, & 411.1408-411.1409).** [SB 1411](#) (Zaffirini) contains provisions similar to those Sen. Zaffirini added to REPTL's 2019 Guardianship bill (that was vetoed) relating to criminal history record information for certification, registration, and licensing for certain court positions and other judicial purposes, including for the appointment of a private professional guardian.

**8.9 Critical Care Decisions by Private Professional Guardians. (Secs. 1151.051 & 1151.057).** **HB 3063** (Smithee) allows a private professional guardian who has been appointed as guardian of the person to make critical care or end-of-life decisions for the ward only if the private professional guardian obtains the informed consent of the ward's closest living next of kin.

**8.10 Notice and Filing Requirements in Court Proceeding Involving Person with Mental Illness.** **SB 213** (Zaffirini) and **HB 3469** (Hinojosa) revise the notice and filing requirements in a proceeding involving a person with mental illness. Personal delivery of a copy of the notice must be made by a constable or sheriff of the county. Additionally, if a person files a copy of an original signed document with the clerk, that person must maintain possession of the original signed copy and make it available for inspection by the parties or the court.

**8.11 Temporary Guardian for Social Security Benefits (Secs. 1251A.001-1251A.103).** **HB 2439** (White) permits the appointment of a temporary guardian with the limited power to receive social security benefits including SSI and SSDI benefits if the court is presented with sufficient evidence that a person may be incapacitated and probable cause exists for the need for the immediate appointment of a guardian.

**8.12 Supported Decision-Making Agreements (Gov't Code Secs. 57A.001-57A.002 & CP&R Code<sup>12</sup> Sec. 21A.002).** **SB 824** (Zaffirini) permits a supporter under a supported decision-making agreement to be present at the arraignment, hearing, examining trial, or other criminal proceeding in which the supported person is a defendant and to provide support at a civil proceeding or deposition in which the supported person is a party or a witness.

**8.13 Guardianship Abuse, Fraud, and Exploitation Program (Gov't Code Secs. 72.121 & 72.1221).** Last session, **SB 31** (Zaffirini, *et al.* | Smithee, *et al.*) established a guardianship abuse, fraud, and exploitation deterrence program within the Office of Court Administration. This session, **HB 3896** (Smithee) and **SB 692** (Zaffirini) authorize that program's access to financial records concerning a ward or the ward's estate for purposes of conducting reviews and audits under the program.

**8.14 Professional's Disclosure of Mental Health Information.** **HB 260** (Thompson, S.) relieves a professional from civil liability for making a permitted disclosure of mental health information in good faith

under Health and Safety Code Sec. 611.004(a)(2). **HB 549** (Thompson, S.) and **SB 1193** (Zaffirini) is similar but does not contain a good faith standard.

**8.15 Settlement of Claims on Behalf of a Minor (CP&R Code Secs. 150D.001-150D.008 & Prop. Code Sec. 141.008).** **HB 903** (Oliverson) permits a person having legal custody of a minor to enter into a settlement agreement on the minor's behalf if (1) a guardian ad litem has not been appointed, (2) the value of the claim does not exceed \$25,000, (3) the money is paid in the manner as provided in new Chapter 150D, and (4) the person entering into the settlement agreement on the minor's behalf attests that to the best of the person's knowledge, the minor will be fully compensated by the settlement, or there is no practical way to obtain additional amounts from the party entering into the settlement agreement. The attorney representing the minor's custodian must keep the affidavit in the attorney's file until the minor's 23<sup>rd</sup> birthday. The settlement funds may not be withdrawn except pursuant to a court order, the minor's reaching age 18, or on the minor's death.

**8.16 Prevention of Abuse of Elderly and Disabled.** A number of bills address the problems arising from fraud and abuse of the elderly and disabled.

**(a) Access to Financial Records by the Guardianship Abuse, Fraud, and Exploitation Program.** See Sec. 8.14 on page 12.

**(b) Financial Abuse of Elderly Persons.** **HB 1156** (Thierry) creates an offense if a person knowingly engages in financial abuse of an elderly individual, including financial exploitation committed by a person who has a relationship of confidence or trust with the elderly individual. This includes breach of fiduciary duties such as the duty owed to the principal by an agent under a financial power of attorney or abuse of guardianship powers that results in unauthorized appropriation, sale, or transfer of another person's property.

**(c) Hold on Account of Vulnerable Adult Upon Suspicion of Financial Exploitation.** **HB 4477** (Thompson, S.) allows a financial institution to place a hold on any transaction in a vulnerable adult's account if there is reason to believe the transaction involves financial exploitation and the institution has submitted a report of the suspected exploitation to DFPS. A "vulnerable adult" is an elderly person, a person with a disability, or an individual receiving protective services.

**(d) Definition of Exploitation.** **SB 2037** (Menéndez) prohibits the definition of "exploitation" in

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<sup>12</sup> References to "CP&R Code" are to the Civil Practice & Remedies Code.

investigations of abuse, neglect, or exploitation by certain care providers against an individual receiving care from excluding loans made to a care provider by the person receiving care.

**(e) Visitation Rights.** Several bills grant residents of long-term care facilities the right to designate an essential caregiver for visitation. These include **HB 892** (Frank), **HB 2324** (Sanford), **HB 2897** (Hernandez), **SB 25** (Kolkhorst), **SB 267** (Kolkhorst), **SB 1195** (Paxton), **HJR 46** (Frank), **SJR 19** (Kolkhorst), **SJR 48** (Paxton), and **HJR 110** (Sanford). Amendments in the House to **SB 25** allow the facility to revoke an individual's designation if that essential caregiver violates the facility's safety protocols and the resident has the right to immediately appoint a replacement. Other bills address the rights of visitors other than "essential caregivers." **SB 1956** (Creighton) requires hospitals to allow patients to have at least one visitor during periods of disaster. **SB 1201** (Hughes) requires hospitals and residential facilities to permit seriously ill or dying patients to have in-person visitation with religious counsel. **HB 3998** (Krause) prohibits political entities from limiting an individual's access to an imminently dying member of the individual's family.

**(f) Continuous Sexual Abuse of a Disabled Person.** **HB 375** (Smith) creates the offense of continuous sexual abuse of a disabled individual, defined as two or more acts of sexual abuse during a period of 30 or more days in duration, regardless of whether the acts are committed against one or more victims.

**(g) Obtaining Unneeded Medical Treatment by Deception; Continuous Abuse.** **HB 1773** (Cook) creates the offense of knowingly providing false medical history to a health care provider to obtain unneeded medical treatment for a child, elderly individual, or disabled individual. The bill also creates the offense of continuous abuse of a child, elderly individual or disabled individual, defined as two or more acts of abuse during a period of 30 or more days but less than 5 years in duration, regardless of whether the acts are committed against one or more victims.

**(h) Abandoning or Endangering an Elderly or Disabled Individual.** **HB 1581** (Davis) expands the scope of the felony of abandoning or endangering a child to include the same actions against an elderly or disabled individual. Conforming amendments are made to Estates Code Sec. 201.062(a) (basis for an order declaring a parent may not inherit from or through a child) and Sec. 1104.353(b) (adding a presumption that it is not in the best interest of a ward to appoint as

guardian a person who has been finally convicted of abandoning or endangering a child, elderly individual, or disabled individual).

**(i) Fraudulently Securing Document Execution.** **SB 109** (West) makes it a criminal offense to fraudulently secure document execution if a person, with the intent to defraud, causes another person to execute a document affecting property, a service, or the pecuniary interest without that person's effective consent. The offense also includes causing a public servant to file or record a purported judgment of a court or judicial entity that was not expressly created under state or federal law without the public servant's effective consent. Consent is not effective if it is (1) induced by deception or coercion, (2) given by a person who due to youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions, or (3) given by a person who by reason of advanced age is known by the actor to have a diminished capacity to make informed and rational decisions about the reasonable disposition of property.

**(j) Pilot Program to Prevent Financial Exploitation of Elderly.** **HB 1800** (Lopez) directs DFPS to create a "pilot program to establish community collaboratives under which entities with an interest in preventing financial exploitation of elderly persons collaborate to help prevent, protect against, and prosecute that exploitation and otherwise improve the financial security of elderly persons."

**8.17 Modification of Order Following Conservator's Death (Fam. Code Sec. 156.106).** **HB 1849** (Sanford) and **SB 733** (Paxton) authorize temporary modification of an existing order relating to the appointment of a conservator or possession of or access to a child upon the conservator's death.

**8.18 Procedural Matters Affecting Guardianships.** Don't forget to check out the matters affecting guardianships discussed in Parts 13—Jurisdiction and Venue. and 14—Court Administration.

## **9. Trusts.<sup>13</sup>**

**9.1 The REPTL Trusts Bill.** REPTL's Trusts bill is **HB 2179** (Moody) and **SB 1933** (Hughes).

**(a) Homesteads Owned by Revocable Trusts (Sec. 41.0021).** Tax Code Sec. 11.13(j) provides a homestead property tax exemption for a residence owned by a trust if the settlor or a beneficiary has the right to use the residence "rent free and without charge except for taxes and other costs and expenses." Meanwhile, Prop. Code Sec. 41.0021 provided

<sup>13</sup> Section references in this Part 9 are to the Texas Property Code unless otherwise noted.

homestead creditor protection for a residence owned by a trust if the settlor or a beneficiary has the right to use the residence “at no cost . . . , other than payment of taxes and other costs and expenses” specified in the trust. A 2019 bankruptcy case out of San Antonio (*In Re Cyr*<sup>14</sup>) held that a trust owning a residence that used the Tax Code phrase – “rent free and without charge” – and not the Property Code phrase – “at no cost” – **did not** qualify for the homestead exemption for creditor purposes. The bankruptcy court’s ruling was reversed by the district court in late 2020.<sup>15</sup> The district court found that the bankruptcy court’s distinction between the phrases “rent free and without charge” and “at no cost” elevated form over substance.

Nevertheless, REPTL’s change seeks to eliminate any future argument by adding “or rent free and without charge” following “at no cost” to the Property Code provision.

### *Drafting Tip*

Use of the full phrase “at no cost, or rent free and without charge” in your trust agreements should assure qualification for the homestead exemption both for tax and creditor purposes.

### **(b) Spendthrift Provisions and Testamentary General Powers of Appointment (Sec. 112.035).**

Fairly old Texas caselaw leads to the conclusion that mere possession of a testamentary general power of appointment at death, without exercising the power, does not subject the property covered by the power to the holder’s creditors’ claims. This agrees with the position found in the Restatement 2<sup>nd</sup> of Property, but is contrary to the position currently found in the Restatement 3<sup>rd</sup> of Property. This change codifies the position found in the Second Restatement. It also provides that exercising a general power in favor of those who would otherwise receive the property will not expose it to the holder’s creditors.

### **(c) Attorney Ad Litem for Trust Proceedings (Sec. 112.054).**

This change requires the court to make a determination that the appointment of an *attorney ad litem* in a trust proceeding is necessary for the adequate representation of a minor or incompetent beneficiary before appointing an attorney ad litem, similar to the existing requirement for appointment of a *guardian ad litem* in a trust proceeding.

### **(d) Decanting Into the Same Trust?**

**(Sec. 112.0715).** In 2019, REPTL’s Trusts bill attempted to “clarify” that the second trust to which trust assets are decanted may be created under the same trust instrument as the first trust in order to avoid the need to

retitle assets or obtain a new tax identification number. A number of people (including me) were skeptical that the attempt was successful. This session’s change is an attempt at further clarification, expressly stating that the second trust may use the same name as the first trust, and the same TIN “subject to applicable federal law.”

### **9.2 Rule Against Perpetuities (Sec. 112.036).**

**HB 654** (Lucio, III) and **SB 1377** (Johnson) are the latest attempt to modify the statutory rule against perpetuities. It appears identical to 2019’s **HB 3744** (Burrows) and 2017’s **HB 2842** (Burrows) and would change the perpetuities period to a fixed 300-year time limit measured from the “effective date” of the trust. The “effective date” is not defined (*e.g.*, when created? when irrevocable?). It would apply to trusts with an effective date on or after September 1, 2021, and to trusts with an earlier date if the trust instrument provides that interests vest under the statutory provision applicable to trusts on the date the interest vests (which seems a bit circular).

As with those previous bills, I question whether a statutory change would pass constitutional muster. It’s not clear to me that our constitutional prohibition against “perpetuities” would allow the legislature to so dramatically extend the common law perpetuities period. If you’re interested, see the discussion in the Special Supplement on the Delaware Tax Trap in [2017’s legislative update](#).

I believe this is a complete list of all attempts to modify Sec. 112.036 with a short description of what they did and how far they got:

- 1999’s **HB 1553** (repeal of statutory RAP; left pending in House Financial Institutions)
- 2001’s **HB 1608** and **SB 698** (RAP doesn’t apply to trusts but interests in trusts must vest within 1,000 years; both bills left pending in House Calendars)
- 2003’s **HB 2239** and **SB 534** (same as 2001 bills; left pending in both House Financial Institutions and Senate Jurisprudence)
- 2005’s **HB 2561** (RAP doesn’t apply to trusts; left pending in House Financial Institutions)
- 2009’s **HB 990** (200-year RAP; no vote after placement on House General State Calendar)
- 2011’s **HB 372** and **SB 261** (same as 2009 bill; left pending in House Judiciary, no action on Senate bill)
- 2013’s **HB 2189** (500-year RAP; left pending in House Judiciary subcommittee)
- 2017’s **HB 2842** (300-year RAP; left pending in House Judiciary)
- 2019’s **HB 3744** (same as 2017 bill; left pending in House Calendars)

<sup>14</sup> 605 B.R. 784 (Bankr. W.D. Tex. 2019).

<sup>15</sup> *Cyr v. SNH NS Mtg Properties 2 Trust*, No SA:19-CV-0911-JKP, 2020 WL 7048603 (W.D. Tex. Nov. 30, 2020).

- 2021's **HB 654** and **SB 1377** (same as 2017 and 2019 bills)

**9.3 Shortened SOL to Review Trust Accounting (Sec. 113.153).** **HB 653** (Lucio, III) requires a trust beneficiary to object to a trustee's accounting within 180 days after a copy of the accounting has been delivered to the last known address of the beneficiary. Failure to object would constitute approval of the accounting. Absent fraud, intentional misrepresentation, or material omission, the trustee is released from liability relating to all matters in the accounting.

**9.4 Regulation of State Trust Companies.** **HB 3849** (Slawson) makes some minor changes to the rules for converting a trust institution into a state trust company. Officers and directors are required to have sufficient *fiduciary* experience, as opposed to *banking* experience, and a cross reference to another section is corrected.

## **10. Disability Documents.**

**10.1 The REPTL Financial Power of Attorney Bill (Secs. 751.002, 751.00201, 752.001, & 752.107).** REPTL's Financial Power of Attorney bill, **HB 2183** (Moody) and **SB 1932** (Hughes), removes a handful of references to an "attorney-in-fact" that were added back by other bills after REPTL removed those references in prior sessions and changes the word "person" to "individual" to make it clear that the power of attorney provisions apply only to a power of attorney signed by an individual. The bill also clarifies that the statutory power regarding business operation transactions applies to limited liability companies. (The original provision was adopted long before LLCs became a widely-used business entity.)

**10.2 The REPTL Medical Power of Attorney Bill (H&S Code Secs. 166.1525, 166.160, 166.163, & 166.164).** REPTL's Medical Power of Attorney bill, **HB 2180** (Moody) and **SB 1934** (Hughes), once again proposes to make the statutory form of medical power of attorney optional so that people can use the *Five Wishes* document, the *ABA's simple form*, or some other form as a standalone document. Currently, Texas appears to be one of only five states that mandate use of a state form. Under the proposed legislation, the only requirements are that a medical power must be in writing and contain the principal's name, date of execution, and designation of an agent to be valid.

In order to make this more palatable to the Texas Medical Association and the Texas Hospital

Association, both of which opposed this change in 2017 and 2019, an attending physician, health or residential care provider, or agent of either will be protected from an unprofessional conduct claim just because of an assumption that the medical power was valid when made (absent actual knowledge to the contrary). Additionally, new Sec. 166.1525 provides that that if two or more persons are named as co-agents, then unless the medical power provides otherwise, the agents will have authority to act independently of each other. If the co-agents disagree on a treatment decision, a third party may elect whether to follow the treatment decision of any of them, or, instead, follow the treatment decision of the next named alternate agent. The third party will be protected from any civil or criminal liability or disciplinary action for following the treatment decisions of one or more agents as outlined in the medical power or the statute.

**10.3 The REPTL Anatomical Gift Bill (H&S Code Secs. 692.003, 692.005, & 692A.005-692A.007).** REPTL's Anatomical Gift bill, **HB 2697** (Moody) and **SB 212** (Zaffirini), would allow a statement of anatomical gift, a revocation of same, or a refusal to make an anatomical gift to be acknowledged in the presence of a notary instead of two witnesses.<sup>16</sup> (This is REPTL's third or fourth try at getting this simple change passed.) It also moves the provision providing that an anatomical gift made through an online donor registry does not require any witnesses or the consent of any person from repealed Health and Safety Code Chapter 692 to the replacement Chapter 692A. (Chapter 692 was amended during the same legislative session in which it had already been repealed and replaced by Chapter 692A.)

### ***Drafting Tip***

When my clients bring this up, I usually encourage them to register at the Glenda Dawson Donate Life Texas Registry which allows them to become organ, eye, and tissue donors. That way, the client's wishes will be documented and readily available to health care providers at the time of donation, while access to the anatomical gift form you've prepared may not be. Anyone can register at:

<https://www.donatelifetexas.org/>

The registry also has partnerships with the Texas DPS and DMV that allow individuals to join the donor registry when applying for or renewing their driver's license, ID, or vehicle registration.

<sup>16</sup> In 2009, when **HB 2027** replaced the Uniform Anatomical Gift Act found in Ch. 692 with the *Revised* Uniform Anatomical Gift Act found in new Ch. 692A, **SB 1803** separately amended Sec. 692.003(d) of the old act. That left

subsection (d) in place, but the rest of Sec. 692.003 was repealed, along with the rest of Ch. 692. The REPTL bill repeals the scrap of Ch. 692 that's left.

Should the client want to donate something in addition to organs, eyes, and tissue, then the separate anatomical gift statement may still be warranted.

10.4 **The REPTL Disposition of Remains Bill (H&S Code Secs. 711.002 & 711.004).** The REPTL Disposition of Remains bill, **HB 2181** (Moody) and **SB 1931** (Hughes), amends the provision authorizing removal of an individual's remains (Sec. 711.004) so that the same persons (and in the same order or priority) who control disposition of that individual's remains (under Sec. 711.002) must consent to any subsequent removal of the remains.

10.5 **Individuals Not Authorized to Dispose of Remains (Sec. 152.102; H&S Code Sec. 711.002; Occ. Code Sec. 651.460).** **SB 1139** (Zaffirini) removes a person detained, arrested, or indicted for certain offenses under Penal Code Title 5 relating to the decedent's death from the default list of persons authorized to dispose of a decedent's remains under Health and Safety Code Sec. 711.002. Examples of those offenses include homicide, kidnapping, unlawful restraint, etc.

10.6 **Durable POAs and Home Equity Loans (Est. Code Sec. 752.051 & Fin. Code Secs. 343.002 & 343.301-343.302).** **HB 2284** (Toth) removes the requirement that a borrower be physically present at the closing of a home equity loan if the borrower (1) is located outside of Texas and a member of the U.S. armed forces, (2) has a disability that prohibits travel or is quarantined, or (3) is incarcerated. In those cases, the borrower may close the loan from a remote location using online notarization or through an agent under a durable power of attorney that expressly grants the agent the authority to engage in a home equity loan transaction on behalf of the borrower and who must appear in person at the closing. The requirement that a durable power of attorney used to sign home equity loan documents be signed at the office of the lender, an attorney, or a title company is eliminated if the principal meets one of the exceptions set forth above. That last part actually requires a constitutional amendment, found in **HJR 104** (Toth). For a history of the use of powers of attorney in home equity loan transactions, see Special Supplement No. 1 in my **2015 Legislative Update**. Note that the proposed constitutional amendment modifies the requirement that the power of attorney be signed at the office of the lender, an attorney, or a title company by adding "except as otherwise provided by statute," opening the door for further revisions to this requirement by future legislatures without the need for further constitutional amendments.

10.7 **Release of Unclaimed Property to Agent (Prop. Code Sec. 74.501).** **HB 1981** (Craddick) permits the comptroller to release unclaimed property to an agent

under a limited power of attorney from the owner or the owner's heirs that authorizes the agent to receive the unclaimed property. The execution of that power must be in the presence of two witnesses who are at least 14 years old.

10.8 **Advance Directives.** Here are several bills related to advance directives:

(a) **Permissive Forms for Directives and MPOAs (H&S Code Secs. 166.012, 166.013, 166.031, 166.0325, 166.0335, 166.036, 166.102, & 166.163).** **HB 936** (Raymond) bears some similarity to 2019's **HB 1082** (Raymond) and **SB 1786** (Zaffirini). It creates a presumption of validity of advance directives under Ch. 166 in the absence of actual knowledge to the contrary and directs the executive commissioner of the Department of State Health Services to review and designate alternate allowable forms. A designated alternate form must:

- 1 be promulgated by a state or national nonprofit;
- 2 be written in plain language;
- 3 include fields for the declarant's name and the date of execution;
- 4 to be used as a directive, allow a declarant to provide health care instructions;
- 5 to be used as a medical power, allow a declarant to name an agent and specify or limit decisions the agent may make, meet the requirements for a medical power other than use of the statutory form, and *prohibit the appointment of two or more co-agents with concurrent authority*; and
- 6 require the declarant to sign and date the directive before two witnesses or one notary.

(b) **Physicians Refusing to Honor Directive (H&S Code Secs. 166.012, 166.046-166.0465, 166.052, 166.054, 166.202-166.206, 166.209 & 313.004).** **HB 3099** (Coleman) amends the procedure for when an attending physician refuses to honor a patient's advance directive or health care or treatment decision including the requirements and time-period for notice to a patient or surrogate for ethics or medical committee meetings.

(c) **End-of-Life Matters and Hospice Care (H&S Code Secs. 166.012, 166.046-166.0466, 166.052, 166.054, 166.202-166.206, 166.209 & 313.004).** **SB 1944** (Lucio) provides for end-of-life and hospice care matters including patient and provider autonomy, ethics or medical committee policies, physician's refusal to honor an advance directive, reporting requirements regarding ethics or medical committee processes, and DNR orders.

(d) **Directives and DNRs for Pregnant Women (H&S Code Secs. 166.033, 166.049, 166.083, 166.084, & 166.098).** **HB 102** (Hinojosa) appears



similar to 2019's **HB 1071** (Hinojosa) and would allow a woman of child-bearing age to make her own decision regarding the effect of pregnancy on a decision regarding life-sustaining treatment. Conforming amendments are made to the statutory forms.

(e) **Restrictions on Refusal to Comply with Directive (H&S Code Secs. 166.002, 166.045-166.046, 166.051-166.052, 166.054, 166.158 & 166.166).** **SB 1381** (Creighton) restricts the refusal to comply with an advance directive or treatment decision by providing that a health care professional, facility, or ethics or medical committee cannot override or refuse to honor a patient's advance directive or treatment decision directing life-sustaining treatment because the patient is elderly, disabled, or terminally ill.

(f) **Execution of DNRs by Nurses and Physician Assistants (H&S Code Secs. 166.081-166.084, 166.087-166.089, 166.092, 166.095, 166.102, 166.203, 166.205 & 193.005).** **SB 1752** (Johnson, N.) authorizes an advanced practice registered nurse or a physician assistant to sign an out-of-hospital DNR order.

(g) **Revocation of DNRs for Admitted Patients (H&S Code Sec. 166.205).** **HB 2943** (Frank) requires a physician to revoke a DNR if an individual "whose direction or treatment decision was the basis for issuing the DNR" expresses that intent. Currently, the patient's agent under a MPOA or legal guardian must express that intent.

(h) **Respecting Texas Patients' Right to Life Act (Gov't Code Sec. 25.0021(b); H&S Code Secs. 166.045, 166.046, 166.051, & 166.052).** **HB 2609** (Parker) and **SB 917** (Hughes) enact the Respecting Texas Patients' Right to Life Act of 2021 and are similar to the introduced versions of 2019's **HB 3158** (Raymond) and **SB 2089** (Hughes), which appeared to be another attempt to pass 2017 legislation called the Texas Patient Autonomy Restoration Act (**HB 4090** (Klick) and **SB 1213** (Hughes, *et al.*)). This year's attempt provides that if an attending physician refuses to comply with a patient's advance directive or a patient's or family's decision to choose treatment necessary to prevent the patient's death, life-sustaining treatment must be provided until the patient can be transferred to a health care provider willing to honor the patient's directive or treatment decision.

**10.9 Death When Certain Functions Have Ceased (H&S Code Secs. 671.001-671.002).** **HB 4329** (Canales) provides procedures to determine death has occurred when artificial means of life support preclude a determination that spontaneous respiratory and circulatory functions have ceased.

**10.10 Disregard of Mental Health Declarations (CP&R Code Sec. 137.008).** **HB 4208** (Murr) requires a judicial determination that a principal was incompetent when he or she executed a declaration for mental health treatment in order for a health care provider to act contrary to the principal's wishes.

## **11. Nontestamentary Transfers.**

**11.1 Notice to Life Insurance Policy Owner (Ins. Code Sec. 1101.351).** When a life insurance policy owner requests a change affecting the policy, **HB 1745** (Bailes) requires an insurer to provide the owner written notice stating that the owner should consult with a licensed insurance agent or financial advisor before making the change, that the owner may contact the Texas Department of Insurance for more information, and the department's contact information.

**11.2 Disclosure of Insurance Beneficiary to Funeral Director (Ins. Code Secs. 1103.201-1103.202).** **HB 643** (Raymond) requires a life insurance company to disclose a policy's beneficiary to a funeral director conducting the insured's funeral upon request.

## **12. Exempt Property.**

**12.1 Rules for Expedited Assertion of Exemptions (Gov't Code Sec. 22.0042).** As introduced, **HB 3613** (Leach) and **SB 644** (Zaffirini) would have added an amount on deposit (in one or more accounts) equal to the monthly equivalent of 250% of the federal poverty guidelines for a family of four to the list of exempt property. The exemption would not apply to court-ordered alimony, child support, or spousal maintenance payments. However, when the House bill emerged from Judiciary, it was replaced with language that directs the Texas Supreme Court to adopt rules that (1) establish a simple, expedited procedure for judgment debtors to assert an exemption to the seizure of personal property by judgment creditors or court-appointed receivers, (2) require a stay for a reasonable period in a proceeding to allow the assertion of an exemption, and (3) require a court to promptly set a hearing and stay proceedings pending that hearing if a judgment debtor timely asserts an exemption.

**12.2 Sale of Non-Homestead Property by Individual to Entity (Prop. Code Sec. 42.002).** **HB 2424** (Murr) would add subsections (e)-(j) to the Prop. Code Sec. 41.002 definition of a "homestead" for creditor protection purposes. If an individual sells property that does not meet the definition of an urban homestead to an entity in which the individual or the individual's spouse has an ownership interest, then the individual will be estopped from later claiming the conveyance was a "pretended sale" of a homestead under Texas Const. Art. XVI, Sec. 50(c) (a transaction

used with the intention to subvert constitutional limitations on permitted liens against a homestead) so long as certain procedural requirements and criteria regarding the parcel and conveyance are met, including the contemporaneous recording of the individual's "Affidavit Regarding Conveyance To An Entity." The individual will be estopped from later claiming the conveyance was a pretended sale. The spouse of a married individual must join in the affidavit.

### 13. Jurisdiction and Venue.

13.1 **Venue for Probate of Wills (Sec. 33.1011), HB 2427** (Murr) and **SB 156** (Perry) authorize transfer of a probate proceeding to the county of the executor's residence after issuance of letters if no immediate family member resides in the county of the decedent's residence. (This is in addition to the current grounds for transfer for the convenience of the estate under Sec. 33.103.) This is the same as the final version of 2019's **SB 192** (Perry | Murr).

13.2 **Notices in Guardianship Transfer and Removal Proceedings (Secs. 1023.004 & 1203.052), HB 1296** (Metcalf) modifies the method of notice to a guardian on a court's motion to transfer the guardianship to another county from citation by personal service to notice by certified mail, return receipt requested. Further, the method of notice given to a private professional guardian or a guardianship program for removal for failure to maintain required certification is clarified to be by certified mail, return receipt requested.

13.3 **Transfers, Mediation, and Termination of Guardianships (Secs. 1023.005, 1023.008, 1023.011, 1055.151-1055.152, 1202.001, & 1202.231-1202.235; Gov't Code Sec. 155.301), HB 3318** (Neave) and **SB 1129** (Zaffirini) modify rules relating to (i) transfers of guardianships, (ii) mediation of contested guardianships, and (iii) guardianship mediation training.

13.4 **Jurisdiction of County and Justice Courts. SB 419** (Miles) increases the maximum amount in controversy to determine (i) concurrent jurisdiction of the county and justice courts in civil matters and (ii) original jurisdiction of a justice court in civil matters in which exclusive jurisdiction is not in the district or county court from \$20,000 to \$50,000.

### 14. Court Administration.

14.1 **Miscellaneous Decedents' Estates and Guardianship Procedural Matters. SB 615** (Zaffirini) covers several procedural issues relating to decedents'

estates and guardianship proceedings. All but the last of these changes were included in 2019's **SB 1975** (Zaffirini | Thompson, S.), the language of which was eventually added to REPTL's Guardianship bill, **SB 667** (Zaffirini | Thompson, S.), which in turn was vetoed by the Governor.

(a) **Electronic Transfer of Clerk's File (Secs. 33.101-33.103 & 1023.006-1023.007)**. One change authorizes transfer of the clerk's file in **either** electronic or paper form when a case is transferred (i) because venue is proper in another county, (ii) because the transferring court does not have priority of venue, or (iii) for the convenience the estate.

(b) **Citation Signed Under Court's Seal (Secs. 51.003 & 1051.003)**. A citation of notice issued by the county clerk must be signed under the *court's* seal, not the clerk's seal.

(c) **Personal Service in Heirships (Sec. 202.054)**. A court may already require citation on distributees by personal service in an heirship proceeding. This change allows any disinterested person to serve the citation on a distributee who is absent or a nonresident.<sup>17</sup>

(d) **References Changed from Independent Executor to Administrator (Secs. 351.351, 404.0036, & 404.005)**. Several references to "independent executor" are changed to "independent administrator." Note that the definition of independent executor includes an independent administrator, but the converse is not true. *See* Estates Code Sec. 22.017.

(e) **Notice of Appointment of Temporary Administrator (Sec. 452.006)**. A temporary administrator is already required to notify the decedent's known heirs of the appointment by certified mail. This change requires the administrator to file proof of service in the same manner required for service by mail under Sec. 51.103.

(f) **Recording of Non-English Foreign Wills (Sec. 503.002)**. When an authenticated copy of a foreign will and its probate is recorded in the deed records, if any portion is not in English, it must be accompanied by an English translation, the accuracy of which is sworn to.

(g) **Last Three Digits (CP&R Code Sec. 30.014)**. Another change extends the Civil Practice & Remedies Code provision requiring a party's initial pleading in a civil action to include the last three numbers of the party's driver's license and social security numbers in district, county, and statutory county

<sup>17</sup> Keith Branyon, author of *Texas Probate Forms and Procedures*, has pointed out to us that this "change" is already included in Est. Code Sec. 51.051(b)(2), and previously was

included in former Probate Code Sec. 33(f)(1) going back to January 1, 1972.

courts to specifically include probate and guardianship proceedings, and to specifically apply to statutory probate courts.

**(h) Bond Extended to Visiting Judge (Gov't Code Secs. 25.0006, 25.00231, & 26.001).** The coverage of the bond of the judge of a constitutional county court, statutory county court, or statutory probate court is extended to any visiting judge assigned to the court.

**(i) Fewer Jurors in Probate Proceedings (Gov't Code Sec. 25.0027).** The parties in a trial proceeding in a statutory probate court may agree to try the case with fewer than 12 jurors.

**(j) Defense of Visiting Judge (Gov't Code Sec. 74.141).** Adds a visiting judge in a probate or guardianship matter to the list of judges the AG's office will defend if the judge is sued in his or her capacity as judge.

**14.2 Remote Technology in Probate and Guardianship Proceedings.** Several bills permanently authorize "Zoom hearings."

**(a) Probate and Guardianship Proceedings (Secs. 53.108 & 1053.106).** **HB 1447** (Minjarez) and **SB 759** (Menéndez) permit decedents' estates and guardianship proceedings to be conducted remotely using teleconference and videoconference technology. The remote proceedings would be considered conducted in open court.

**(b) All Proceedings (Gov't Code Secs. 21.009 & 21.013).** **HB 3611** (Leach), **HB 4081** (Crockett), and **SB 690** (Zaffirini) authorize all Texas courts to conduct a hearing or other proceeding as a remote proceeding in which one or more of the participants, including a judge, party, attorney, witness, court reporter, juror, or other individual, attends the proceeding remotely through the use of technology and the Internet. On March 23<sup>rd</sup>, Chief Justice Nathan Hecht urged the legislature to pass either of the first two bills in his biennial [State of the Judiciary address](#), noting that online access is efficient, saving time formerly spent driving to court and waiting, sometimes hours, for a case to be called. It has vastly improved public participation in legal proceedings, particularly by people limited by income, child care, transportation, or job needs. For example, Justice Hecht noted that "participation rates in high-volume dockets like child custody and traffic cases [have] flip[ped] from 80% no-shows to 80% appearances."

**14.3 Service on Certain Organizations in Will Contest or Construction Suits (Sec. 55.053).** **HB 1297** (Metcalf) requires a party (rather than the court) to provide service on an institution of higher education or charitable organization that is a necessary party in a will contest or construction suit.

**14.4 Payment of Costs Associated with Assigned Statutory Probate Judge (Sec. 352.054; Gov't Code Sec. 25.0022).** **HB 262** (Murr) is similar to 2019's **HB 3267** (Murr), which in turn is similar to 2017's **HB 1744** (Murr | Perry). If the judge of a constitutional county court requests, on his or her own motion, the assignment of a statutory probate judge under Est. Code Sec. 32.003, the court **may** order the estate to reimburse the county for the costs of the assignment. If a party requests the assignment, and the request is granted, then the court **must** order that the county be reimbursed for those costs, with the costs allocated among the estate and the parties as the court considers equitable.

As I pointed out in 2017 and 2019, setting aside situations where parties agree to hire a "private judge," I am not aware of any other situation under Texas law where a party is required to pay for a judge.

**14.5 Qualification of Judges (Gov't Code Secs. 24.001, 25.0014 & 25.0033).** **HB 3053** (Rodriguez) disqualifies a person found to be a vexatious litigant from serving as district judge, statutory county judge, or statutory probate judge.<sup>18</sup> **HB 1839** (Stephenson) prohibits the election or appointment of a person as a district judge who is older than 74 on the date of election or appointment.

**14.6 Appointment of Deputy Clerk in Statutory Probate Court (Gov't Code Sec. 25.017).** **HB 3908** (Pacheco) changes the effective date of a deputy clerk's appointment by eliminating the need for written confirmation by the statutory probate judge.

**14.7 Associate Judges for Guardianship and Protective Services Proceedings (Gov't Code Ch. 54A).** Existing Subchapter C of Gov't Code Ch. 54A authorizes associate judges in statutory probate courts. In 2019, **SB 536** (Zaffirini | Murr) would have added a new Subchapter D that would authorize the appointment of associate judges to hear guardianship and protective services proceedings in courts other than statutory probate courts. Despite the fact that the bill passed 29-2 in the Senate and 140-1 in the House, **SB 536** was vetoed by Gov. Abbott based on his claim that this would unnecessarily throw state money and

<sup>18</sup> In 2020, just such a person defeated a 10-year incumbent district judge in the Travis County Democratic primary, and, given that this was in Travis County, won the general election

in an uncontested race. On March 5, 2021, the 3<sup>rd</sup> Court of Appeals in Austin [rejected that judge's appeal](#) of the vexatious litigant ruling.

bureaucracy at a perceived problem. This session, **HB 79** (Murr) and **SB 691** (Zaffirini) appear to be another attempt to enact similar legislation.

**14.8 Eligibility of Former Statutory Probate Judge as Visiting Judge (Gov't Code Sec. 74.055).** **HB 3966** (Morales, E.) prohibits the assignment of a former statutory probate judge as a visiting judge if that judge resigned or retired in lieu of discipline by the State Commission on Judicial Conduct.

**14.9 Composition of Courts of Appeals.** Hunt County is currently within the jurisdiction of the Fifth and Sixth Courts of Appeals. Gregg, Rusk, Upshur, and Wood Counties are currently within the jurisdiction of the Sixth and Twelfth Courts of Appeals. **HB 339** (King), **HB 2613** (Murr), and **SB 11** (Huffman) would put Hunt, Upshur, and Wood Counties solely within the jurisdiction of the Sixth Court of Appeals and Gregg and Rusk Counties solely within the jurisdiction of the Twelfth Court of Appeals. However, a committee substitute for **SB 11** was reportedly approved at an April 1<sup>st</sup> Senate Jurisprudence committee hearing that, according to news reports, would consolidate the 14 courts of appeal into 7. According to the Dallas Morning News, Sen. Huffman claimed that, "The current system creates inefficiency and confusion for litigants. ... It is so important to the jurisprudence and judicial economy of our state that we address these issues." However, justices from across Texas criticized the proposal, warning that it would knock Black and Hispanic justices off those courts and refocus attention on nettlesome administrative matters, just as the courts are facing a deluge of cases delayed by the pandemic. The district that currently includes Dallas County would expand from six counties to 21, reaching south to Austin and west to Llano and San Saba. Tarrant County would end up in a district extending to Waco, Wichita Falls and Texarkana. I write "reportedly approved" because as of this writing, the legislature's website does not show any action on the bill even though the minutes of the April 1<sup>st</sup> meeting show that the committee substitute was approved. Later reports are that Sen. Huffman has decided not to move forward with the bill at this time. Stay tuned...

**14.10 Creation of New "Texas Court of Appeals."** **SB 1529** (Huffman) would create a new statewide "Texas Court of Appeals," composed of six elected justices sitting in Austin, with exclusive appellate jurisdiction over "all cases or any matters

arising out of or related to a civil case brought by or against the state or a state agency, board, or commission or by or against an officer of the state or a state agency, board, or commission."

**14.11 Effect of Supreme Court Rules on Procedural Statutes (Gov't Code Sec. 22.004(c)).** **SB 2226** (Hughes) wasn't introduced until April 26<sup>th</sup>.<sup>19</sup> It does one thing – repeal Gov't Code Sec. 22.004(c). Sec. 22.004 gives the Supreme Court "full rulemaking power in the practice and procedure in civil actions, except that its rules may not abridge, enlarge, or modify [a litigant's] substantive rights. Subsection (c) states that a rule adopted by the Supremes repeals all conflicting laws (or parts of laws) governing practice and procedure. I guess that this means that a rule of procedure set forth in a statute **couldn't** be changed by the Supreme Court. The bill, as introduced, contains no effective date.

**14.12 New Denton Statutory Probate Court and Bexar County Changes (Secs. 51.103 & 1051.103; Fam. Code Sec. 155.207; Gov't Code Secs. 25.0172, 25.0173, 25.0631, 51.3071, 51.403 & 72.037).** **HB 3774** (Leach) and **SB 1530** (Huffman) create a second statutory probate court in Denton County, make changes to the appointment of probate deputy clerks and statutory county court dockets in Bexar County, and also change procedures for transferring cases, service of process, specialty court programs. (They also add new courts in a number of counties.

**14.13 Recovery of Attorney's Fees.** Several bills amend Civil Practice and Remedies Code Sec. 38.001, which authorizes the recovery of attorney fees in certain civil actions. Currently, that section authorizes recovery from an individual or corporation for eight different civil claims, including a claim on an oral or written contract.

**(a) Governmental Entities and Private "Organizations."** **HB 1358** (Vasut), **HB 1578** (Landgraf), and **HB 2020** (Meyer) broaden the class of entities against whom the attorney's fees may be recovered to include the state, a state agency, state institution, or any "organization" defined in Business Organizations Code Sec. 1.002(62) (essentially, any entity covered by the BOC<sup>20</sup>).

**(b) Just "Organizations."** **HB 2917** (Schofield) just broadens the class of entities against whom the attorney's fees may be recovered to any

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<sup>19</sup> Senate Rule 7.07(b) requires a four-fifths vote to introduce a bill after the first 60 days of the session. In this case, permission to introduce the bill was granted without objection.

<sup>20</sup> An "organization" includes a corporation, limited or general partnership, limited liability company, business trust, REIT,

joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, savings and loan association, or other organization, regardless of whether the organization is for-profit, nonprofit, domestic, or foreign.

“organization” defined in Business Organizations Code Sec. 1.002.<sup>21</sup>

(c) **“Other Type of Corporate Entity.”** **HB 3695** (Johnson, Julie) includes limited liability companies, limited partnerships, and “any other type of corporate entity” as sources for recovering attorney’s fees.

(d) **“Other Legal Entity.”** **HB 3349** (Rosenthal) authorizes recovery of attorney’s fees from an individual, corporation, “or other legal entity,” but specifically excludes recovery from the state.

(e) **“Another Person.”** **HB 3377** (Krause) and **SB 808** (Hughes) changes the entities against whom attorney’s fees may be recovered from “an individual or corporation” to “another person.”<sup>22</sup>

**14.14 New Travis County Probate Courthouse.** Travis County’s original courthouse has been busting at the seams for years, and the Commissioners Court has had difficulty getting voter approval for a new courthouse. (Officially the original courthouse is the Heman Marion Sweatt Travis County Courthouse – as in the first black person admitted to the UT School of Law. See *Sweatt v. Painter*, 339 U.S. 629 (1950).) About ten years ago, the Feds built a new United States Courthouse in Austin (with timely help from the 2008-9 stimulus package) and in 2012 vacated the U.S. Courthouse that had been built in 1936.<sup>23</sup> They couldn’t find any other federal agencies willing to move in, at the end of 2016, Travis County acquired it (for free) to hold its probate courts and probate clerks. My understanding is that they spent well over \$20 million on renovations, and our probate court and clerks moved to the new “Travis County Probate Courthouse,” located just a few blocks from the original Travis County Courthouse, in October of 2020. If you’re interested, you can view a short video tour at <https://youtu.be/frN0GQSDm9M> (there’s also a link to that video on [the Probate Court’s website](#)). They appear to have done a very nice job restoring the courthouse, and “snazzy” seems to me to be an appropriate adjective for it.

While one of the reasons for the move to the new probate courthouse was to immediately provide room for a second statutory probate court (and eventually a third and fourth court), due to uncertainties related to (1) 2019’s legislative cap on property tax increases and (2) the pandemic’s affect on county revenue, the

commissioners court decided to punt that decision to 2023.

## **15. Selected Family Law Issues.**

**15.1 Modification of Order Following Conservator’s Death.** See Sec. 8.18 on page 13.

**15.2 Who Can (or Can’t) Get Married.** Several bills address who can and cannot get married. (Or is it who may or may not get married?)

(a) **Minimum Marriage Age (Fam Code Sec. 2.009).** The Family Code requires both applicants for a marriage license to be at least 18, or to have their disabilities of minority removed by a court. **HB 1590** (Rosenthal) requires both applicants to be at least 18. Period.

(b) **Same-Sex Marriages.** **HB 1037** (Beckley | Johnson, Ann) and **SB 129** (Johnson) update terminology in a number of statutes to recognize that the parties to a marriage may be of the same sex. **HB 1038** (Beckley | Johnson, Ann) and **SB 261** (Menéndez | Johnson) also repeal statutes relating to the criminality of homosexual conduct. **HJR 58** (Beckley) is a constitutional amendment that would repeal the constitutional prohibition against same-sex marriages or the creation or recognition of any legal status similar to marriage. **HJR 159** (González, Mary) does the same thing.

**15.3 Who May Conduct Marriage Ceremonies (Fam. Code Sec. 2.02).** Several bills address who may conduct marriage ceremonies.

(a) **Any Judge.** **HB 451** (Moody) allows any current, former, or retired federal or state judge to conduct a marriage ceremony, rather than listing a whole bunch of different types of judges.

(b) **Governor, Lt. Governor, or Legislator.** **HB 2479** (Pacheco) adds the current governor, lieutenant governor, or member of the state legislature to the list of people authorized to conduct a marriage ceremony. However, those officials may not use the services of a state employee during normal working hours nor postage or stationery purchased with state funds. Further, they can’t receive any remuneration, nor any gift worth more than \$50.

(c) **A Muslim Imam.** **HB 2039** (Talarico) specifically adds a Muslim imam to the list of persons authorized to conduct a marriage ceremony. (They’re

subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.”

<sup>23</sup> This is only included in the paper because I practice in Travis County, and therefore care about it.

<sup>21</sup> See footnote 20.

<sup>22</sup> The Code Construction Act (Gov’t Code [Ch. 311](#)), specifically [Sec. 311.005\(2\)](#), which applies to the Civil Practice and Remedies Code, defines “person” to include “corporation, organization, government or governmental

already authorized to do so as “an officer of a religious organization and who is authorized by the organization to conduct a marriage ceremony,” but the only specific religious figures currently expressly listed are Christian ministers and priests and Jewish rabbis.)

**15.4 Marriage by Zoom.** **HB 675** (Ramos | Cook) allows a spouse-to-be to participate in his or her marriage ceremony through the use of video conference technology if that person is a member of our armed forces stationed in another country in support of a military operation who is unable to attend the marriage ceremony in person.

**15.5 How May (or Must) Marriages Be Ended.** Several bills address the end of the marriage relationship.

**(a) Concealed Divorce.** Concealment of a prior divorce can be a ground for annulment of a marriage if the party seeking the annulment hasn’t cohabited with the other party since the former party discovered (or reasonably should have discovered) the divorce. **HB 3005** (Ramos) requires the cohabitation to end within a year of the discovery, rather than immediately. Further, the bill would change the statute of limitations for this annulment proceeding from the first anniversary of the marriage to the first anniversary of discovery of the divorce.

**(b) Fraud, Duress, or Force.** A party may seek an annulment if the other party induced the marriage by fraud, duress or force, and the first party ceased cohabitation since learning of the fraud or being freed of the duress or force. **HB 3007** (Ramos) requires the cohabitation to end within a year after learning of the fraud or being freed of the duress or force, rather than immediately.

**(c) Impotency.** A party may seek an annulment if that party did not know that the other party was permanently impotent at the time of the marriage, and the first party ceased cohabitation upon learning of the impotency (Ouch!). **HB 3008** (Ramos) requires the cohabitation to end within a year after learning of the impotency, rather than immediately.

**(d) Date of Marriage in Divorce Decree.** **HB 1013** (Dutton) requires divorce decrees to include the date of the marriage (except in the case of common law marriages).

## **16. Stuff That Doesn’t Fit Elsewhere.**

**16.1 Clients With Diminished Capacity (Proposed Disciplinary Rule 1.16).** We hope that you voted on the proposed amendments to our Disciplinary Rules of Professional Conduct and Rules of Disciplinary Procedure in the referendum that ended March 4<sup>th</sup>. All

of them passed, but we’ll focus on the first proposed change. Current Disciplinary Rule 1.02(g) reads:

### **Rule 1.02. Scope and Objectives of Representation**

\* \* \*

(g) A lawyer shall take reasonable action to secure the appointment of a guardian or other legal representative for, or seek other protective orders with respect to, a client whenever the lawyer reasonably believes that the client lacks legal competence and that such action should be taken to protect the client.

That rule has been criticized because it gives a lawyer no options short of seeking a guardian or other protective orders. The proposed amendment deletes that subsection and replaces it with new Rule 1.16, which is based on [ABA Model Rule 1.14](#). A summary of the proposed new rule prepared by State Bar staff provides:

Proposed Rule 1.16 is intended to provide improved guidance when a lawyer represents a client with diminished capacity. Among its provisions, Proposed Rule 1.16 permits a lawyer to take reasonably necessary protective action when the lawyer reasonably believes that a client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client’s own interest. Proposed Rule 1.16 provides a non-exhaustive list of actions a lawyer may be authorized to take, including informal consultations that may be prohibited under the current Rules.

The next step is for the Texas Supreme Court to consider adoption of the proposal. Those deliberations will take place [May 4<sup>th</sup> from 9 am to noon](#) and may be viewed on the Court’s [YouTube channel](#). You can read the text of Proposed Rule 1.16 and learn more about all of the proposed amendments on [the State Bar’s Rules Vote page](#).

## **17. A Little Lagniappe.**

We are [mostly] happy to report the following developments critical to the future of Texas:

**17.1 Farewell Barton Springs?** **HB 1683** (Landgraf, *et al.*) and **SB 1734** (Springer) would prohibit state agencies and political subdivisions from contracting with or providing assistance to any federal agency or official attempting to enforce a federal oil and gas statute, rule, or regulation relating to oil and gas production that imposes as restriction or prohibition that doesn’t exist under state law. (Wouldn’t this raise a [Supremacy Clause](#) issue?) Regardless of the merits of this legislation, what the heck does it have to do with Barton Springs, you ask? Well, Barton Springs is the

home of two federally designated endangered species, the Austin blind salamander and the Barton Springs salamander. Because of their presence, Austin must hold a permit from the U.S. Department of Fish and Wildlife to keep the pool open to the public. That permit requires the city to protect the salamanders' habitat, which in turn requires the city to participate in legal and regulatory actions to protect local water quality. That sometimes puts the city at odds with oil and gas companies. For example, Austin recently sued Kinder Morgan alleging the company had violated the Endangered Species Act while building its Permian Highway Pipeline. The city believes these types of actions would be prohibited if the bill passes, leading to a loss of an operating permit for the Springs.

### 17.2 **Our Long National Nightmare Is Over.**

Well, maybe it's not been that long. Or that nightmarish. Or related in any way to estates, trusts, legislative matters, etc. In other words, this doesn't really belong here. But you're going to get the story anyway.

Earlier this year, I was in the mood for some [Grape-Nuts cereal](#) (a Post-brand cereal some of you may recognize that contains neither grapes nor nuts), something I hadn't had in years. My daughter, who was temporarily living with us, asked if I wanted anything from the grocery store. I asked for Grape-Nuts. When she came home, she told me how hard they were to find, but that she eventually found them. She didn't. She brought home Grape-Nuts *Flakes*. Similar taste, but lacking that crunchy texture. She didn't know the difference.

Turns out I couldn't find Grape-Nuts either. After worrying whether they'd been discontinued, I learned from a Google search that there's been a national shortage of both varieties due to production difficulties late last year that may or may not have been pandemic-related.

In a March 24<sup>th</sup> [press release](#) titled "*It's Official: The Great Grape-Nuts Cereal Shortage Is Over,*" Post announced that the cereal was once again shipping at full capacity. Post also offered to reimburse those who paid inflated prices during the shortage (reaching as much as \$110/box!). Those who paid \$10 or more for a box could submit a receipt and be partially refunded up to \$115. There's a catch, though. Receipts had to be received by April 15<sup>th</sup>, and the *total* amount refunded by the company would not exceed \$10,000. Now you can rest easy.

17.3 **Big Changes to Presidential Elections.** [HB 1425](#) (Goodwin) and [SB 130](#) (Johnson | Miles) would enact the [National Popular Vote Interstate Compact](#). As I understand it, that compact is designed to make the votes of every voter in every state, not just those of voters in battleground states, count in

presidential elections. Each state enacting the compact would agree to award **all** of its electors to the winner of the national popular vote. It would go into effect once states with 270 electoral votes (the minimum required to win the presidency) had adopted it. This compact would avoid the need for an amendment to the U.S. Constitution. According to the website behind the proposal, it has already been enacted in 15 states plus the District of Columbia with 195 electoral votes. That number may be out-of-date given the reallocation of House districts as a result of the 2020 census.

I wouldn't hold your breath on this one. Neither has been scheduled for a committee hearing. It was previously introduced in 2011 ([HB 1498](#) (Raymond) and [SB 919](#) (Ellis)) and 2017 ([HB 496](#) (Minjarez | Israel)). Of those, only one (the 2011 House bill) even got a hearing.

17.4 **License to Hunt Bigfoot (and Reward for Capture!).** On February 1<sup>st</sup>, in an effort to increase tourism [dollars spent] near the Ouachita Mountains, an Oklahoma legislator introduced [HB 1648](#) (Humphrey) directing the Oklahoma Wildlife Conservation Commission to promulgate rules establishing a big foot hunting season. (Yes, the legislation spells Bigfoot as two words. I don't.) Those rules would set annual season dates and create any needed special hunting licenses and fees. While not included in the introduced version of the bill, Rep. Humphrey said he didn't want Bigfoot killed, so he would work with the state wildlife and tourism departments to craft final language that specifies only the trapping of Bigfoot. He also hopes to secure at least \$25,000 that can be used as a bounty for the first person to trap the creature. (Note that the representative's [press release](#), unlike the legislation, spells Bigfoot the way I do.) Note that Honobia, Oklahoma, holds an annual [Bigfoot Festival and Conference](#). Are the anticipated attendees people interested in Bigfoot, or the Bigfoots (Bigfeet?) themselves?

17.5 **Speaking of Hunting...** The April 21<sup>st</sup> episode of *The Late Show With Stephen Colbert* brought this bill to my attention. I'm not a hunter, but apparently breeding bigger deer for game hunting is a thing. According to [HuffPost](#), Jason Abraham of Canadian, Texas, has cloned somewhere between 35 and 40 deer over the past decade. Last November, the Texas Parks and Wildlife Department issued a regulation forbidding deer cloning based on a fear that it could introduce unknown biological variables into wildlife populations and make it harder to track chronic wasting disease. TPWD officials had apparently thought their rules already barred cloning, but issued the clarifying rule when it learned that breeders interpreted the rules as permitting cloning. To Abraham's rescue comes [HB 1781](#) (Krause | Martinez) which makes two small

statutory changes explicitly permitting the propagation of breeder deer by cloning. I feel like I should add some editorial comment here, but I'm not sure what it would be.

17.6 **Dedicated to Ken Herman.** [Ken Herman](#) is a political reporter and columnist for the Austin American-Statesman, and his columns often provide material for the Lagniappe portion of this paper. This time, I'm compiling them all in one section. (Note that some bills described elsewhere in this Lagniappe portion may have been the subject of a Ken Herman column, but I'm only listing here the ones I first learned of from him.)

**(a) Monday Might Be Thursday.** The Texas Senate adjourned Thursday, March 11<sup>th</sup>, until Tuesday, March 16<sup>th</sup>, but decided to reconvene Monday, March 15<sup>th</sup> and initially call it the previous Thursday in order to file [SB 2142](#) (Hughes), refer it to Senate Jurisprudence, vote it out of committee, send it to the floor, pass it there, and send it to the House, all in that same calendar day. What was so important about this bill? It's the one directing the PUC to order ERCOT to correct the reported \$16 billion in overcharges for wholesale electricity costs during a 30+ hour period in the middle of Freeze Week in February.

**(b) Who is a "Native Texan?"** [SCR 28](#) (Springer) defines a "native Texan" as someone born in Texas, or born outside Texas to Texas residents in military service who return to Texas within 30 days of the child's birth for the purpose of taxation. (I didn't move to Texas until I was 10, and I didn't need no stinkin' resolution to tell me that I wasn't a "native Texan.") Herman points out you can be a native Texan if born here, even if your parents aren't United States citizens, and whether or not their presence in the U.S. is documented. In a subsequent column, Herman pointed out that the author of the resolution, Drew Springer, R-Muenster, is **not** a native Texan. He's a native Oklahoman! Herman quotes a tweet by Ray Harwick noting that Springer's campaign website describes him as "a firm believer that life begins at conception." If that's the case, Harwick asks why Texas citizenship doesn't begin then? "I wasn't born there, but the deal went down in Floydada and got moved to Oklahoma for the big arrival."

**(c) What is a "Bicycle?"** [HB 3665](#) (Ordaz Perez) helpfully defines a bicycle as anything "generally recognized as a bicycle, regardless of the number of wheels."

**(d) What Time is It?** Here are bills and resolutions relating to daylight savings time (some of which I found on my own):

- [HB 1405](#) (Larson) and [SB 471](#) (Menéndez), along with proposed constitutional amendments [HJR 78](#) (Larson) and [SJR 30](#) (Menéndez), require a statewide referendum asking voters whether they prefer observing standard time year-round, or daylight saving time year-round. The voters' choice would then become law. Note that no provision is included authorizing the current practice of switching back and forth. (These are retreads from 2019.)
- [SJR 13](#) (Zaffirini) and [SJR 68](#) (Bettencourt | Menéndez) are proposed constitutional amendments that would **exempt** the state from observing daylight saving time.
- [HB 1896](#) (Schofield, *et al.*) and [HJR 94](#) (Schofield, *et al.*) would **observe** daylight saving time year-round.

**(e) State District of What?** [HB 2289](#) (Schofield) and [HJR 105](#) (Schofield) would pull a "State District" that would serve as the seat of state government out of the middle of central Austin. The initial boundaries would be MLK Blvd. on the north, Trinity St. on the east, 10<sup>th</sup> Street on the south, and Lavaca St. on the west. (The district wouldn't include those streets themselves, so the state wouldn't be responsible for maintaining them.) The State District would have the powers of a home-rule municipality and would be governed by five directors selected by the Governor.

[HB 4521](#) (Cain) and [HJR 162](#) (Cain) go waaaay farther. They would convert the entire City of Austin into the District of Austin. The governing body of the district would have to submit notice of each of its actions to the lieutenant governor and speaker of the house. The state legislature could amend or repeal local laws, or enact its own local laws.

**(f) Right to Choose.** No, not **that** right to choose. The right to choose a lane. [HJR 98](#) (Schaefer) would enshrine in our constitution a person's "right to travel in a vehicle using human decision-making." Apparently, Rep. Schaefer is concerned about the day when the technology in autonomous driving vehicles becomes so advanced that some government agency might try to prevent a person from driving the car on their own. I'm guessing he'll give you his steering wheel when you pry it from his cold, dead hands.

**(g) SXSU Eligible for MERP?.** No, Austin's famous South By Southwest Conference and Festivals would not, in some manner, become eligible for the Medicaid Estate Recovery Program, a development that might legitimately fall within the areas covered by this paper. Rather, [HB 2420](#) (Howard | Israel) would add



SXSW to the list of events eligible for the state's Major Events Reimbursement Program under [Gov't Code Ch. 478](#). You've probably heard of this program. It allows the state and a local governmental to use a portion of state and local sales tax gains generated over a 12-month period from certain major championships or events to reimburse the event organizers for certain event-related costs.

**(h) Another Secession Proposal. [HB 1359](#)** (Biedermann, *et al.*) would conduct a referendum on whether Texas should secede from the United States and establish an independent republic. As I've asked in descriptions of similar proposals in previous legislative updates, didn't we settle this issue about 160 years ago?

**(i) Van Arsdale's List.** Several years ago, I learned about Corbin Van Arsdale's bill list from one of Ken Herman's columns. Van Arsdale is a former member of the Texas House (2003-2009), was elected to the Cedar Park City Council in 2014, and has served as Cedar Park's Mayor since 2018. Every other year, after the legislature's bill-filing deadline, he creates a list of interesting bill captions (you know, the part at the beginning of a bill that begins "An Act relating to ...") and picks a winner. Herman then devotes a [column](#) to the list. This year's column begins with several of Herman's favorite previous winners: 2019's act "relating to operating a motor vehicle while a person is occupying the trunk of the vehicle," and 2017's co-winner, "relating to the regulation of men's health and safety; creating a civil penalty for unregulated masturbatory emissions." Here are a few of Herman's favorite captions from this year's list:<sup>24</sup>

- AN ACT relating to requiring trauma training for certain attorneys ([HB 566](#) (Lopez) and [SB 904](#) (Perry)).
- AN ACT relating to an exemption from sales tax for certain malt beverages on July 4 ([HB 940](#) (Raymond | Guillen)).
- AN ACT relating to fraudulent medical priority boarding of ferries operated by TXDOT ([HB 1182](#) (Middleton)).
- AN ACT relating to preserving religious liberty from nativist jurisprudence ([HB 2401](#) (Middleton)).
- AN ACT relating to requiring public schools to use the wet bulb globe temperature to determine whether conditions are unsatisfactory for student outdoor activities due to severe heat ([HB 2876](#) (Howard)).

- AN ACT relating to pedestrian use of a sidewalk ([HB 3925](#) (Collier)). (Note that this is identical to 2017's [HB 1350](#), which had six authors or co-authors. That attempt didn't even receive a hearing.)
- AN ACT relating to drug testing members of the legislature to establish or maintain eligibility for membership in the elected class of the Employees Retirement System of Texas ([HB 4171](#) (Middleton)).
- AN ACT relating to prohibiting certain contracts or agreements between a public institution of higher education and a Confucius Institute ([SB 1779](#) (Creighton)).

**(j) City Hall.** In a nonlegislative item, Herman drew our attention to a book published earlier this year called *City Hall: Masterpieces of American Civic Architecture*. In this book, writer/photographer Arthur Drooker celebrates the architecture of 15 U. S. city halls, including Austin's. Drooker calls it the most unconventional city hall in the country. If you come to Austin to see it, don't miss the armadillo tail extending 49' over 2<sup>nd</sup> Street several stories up on the north side of the building. Keep Austin Weird.

**17.7 Places.** Here are some official place designations:

- **Pie Capital.** [HCR 12](#) (Zwiener) and [SCR 22](#) (Campbell) designate Kyle as the official Pie Capital of Texas.
- **Mermaid Capital.** [HCR 13](#) (Zwiener) and [SCR 9](#) (Zaffirini) designate San Marcos as the official Mermaid Capital of Texas.
- **Barrel Racing Capital.** [HCR 23](#) (Murr) designates Llano as the official Barrel Racing Capital of Texas.
- **Hip-Hop Capital.** [HCR 32](#) (Reynolds) designates Missouri City as the official Hip-Hop Capital of Texas.
- **Highest Town.** [HCR 33](#) (Morales, E.) and [SCR 11](#) (Blanco) designate Fort Davis as the official Highest Town in Texas. (I assume this refers to its elevation of 4,892 feet, and not a different meaning of "highest.")
- **Oldest Community.** [HCR 101](#) (Wilson) designates Florence, home of the Gault Archaeological Site, as the oldest community in Texas.

<sup>24</sup> Note that several on Van Arsdale's 2021 list already appear elsewhere in this Part 17.

- **Halloween Capital (of North Texas).** **HCR 103** (Sanford) designates Celina as the official Halloween Capital of North Texas.
- **Texas Chili Parlor.** **HCR 90** (Rodriguez) doesn't name the Texas Chili Parlor, located a couple of blocks from the Capitol, as an official anything, but does pay tribute to it after 45 years of existence.

17.8 **Symbols.** Here are some official designations of state symbols:

- **State Handgun.** **HCR 15** (Leman) and **SCR 20** (Schwertner) recognize the 1847 Colt Walker pistol as the official handgun of the State of Texas.
- **State Mushroom.** **HCR 61** (Leman) and **SCR 38** (Campbell) designate the Texas star mushroom as the official State Mushroom of Texas.
- **State Knife.** **SCR 7** (Springer) designates the Bowie knife as the official State Knife of Texas. Last session, **HCR 86** (Springer | Fallon) made the same designation, but it was vetoed by the Governor. His veto statement provided:

“This is the kind of resolution that a Texas Governor would sign without thinking. Fortunately, with a little thinking and study, it was learned that a statement contained in the resolution is factually incorrect: it identifies the location of Jim Bowie's “Sandbar Fight” as “near Natchez, Louisiana,” when in fact the fight occurred near Natchez, Mississippi. So, as a thinking Governor, I think it best not to sign a factually incorrect resolution and instead to allow the Legislature to consider this next session.”

This time, **SCR 7** corrects that embarrassing error.

- **State Moustache.** In heralding the facial hair of Rep. Andrew Murr as “truly a Murr-stache for the ages, a magnificent, two-fisted soup-strainer that will haunt the dreams of Representative Murr's colleagues and constituents and echo through the

annals of Texas lore for as long as the Lone Star flag waves over the rugged bluffs and canyons of the Hill Country;” **HR 871** (Patterson) designates Rep. Murr's moustache as the Official Moustache of the House of Representatives of the 87<sup>th</sup> Legislature.

- **State Soft Drink.** **HB 4554** (Cain, *et al.*) designates Dr Pepper as the State Soft Drink. Note that this is a bill, not a resolution. It would be enshrined (if enacted) as Gov't Code Sec. 3101.014. It has no high-falutin' recitals like resolutions. It just puts Dr Pepper in the statute. Ken Herman suggests adding civil penalties for anyone who inserts a nonexistent period in Dr Pepper. And prevent anyone who violates that rule from being considered a native Texan.

17.9 **Dates.** Here are some official date designations:

- **The Day After the Super Bowl.** **HB 371** (Fierro | Guillen) designates the day after the Super Bowl as a state holiday.
- **El Día de las Madres.** **HB 697** (Morales, Christina) commemorates May 10<sup>th</sup> as Mexican Mother's Day. I only mention this because it's the day after most of us north of the border celebrate Mother's Day on Sunday, May 9<sup>th</sup>. According to the resolution, in “some Mexican cities, it is customary for children to begin the day by serenading their mothers at their bedside, and some even engage mariachi bands to accompany them.”

17.10 **Mascots.** **HR 885** (Metcalf) elects the children of House members to the office of mascot, and **HR 886** (Metcalf) designates the grandchildren of House members as honorary mascots. (Each of the children and grandchildren is named in the respective resolution, and an official copy of the resolution is to be delivered to them.)

## 18. The End.

It's been fun. Let's do it again sometime.