

Presented:29th Annual Conference on State and Federal Appeals

June 20-21, 2019

Austin, Texas

Looking Back at the 86th Texas Legislature:
A Survey of Selected Bills that Passed and Those that
Didn't (But You Should Know About Anyway)

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I. INTRODUCTION

The 86th Legislature ended its regular session on May 27, 2019. According to the Texas Legislative Reference Library, a total of 7,795 bills and resolutions were introduced during the session.¹ 1,525 bills and resolutions (1,429 bills; 96 resolutions) were passed and sent to Governor Abbott.² Of that total, 58 were vetoed.³ The remainder were either signed by the Governor or allowed to become law.⁴

This paper summarizes legislative proposals that could have a noticeable impact on the practice of civil trial and appellate law in Texas. For more detailed information about each bill and additional background information about the same, please visit Texas Legislature Online at <http://www.capitol.state.tx.us> and/or subscribe to Jerry Bullard's e-newsletter by following the directions at the end of this article.

II. LEGISLATION THAT PASSED

A. Architects and Engineers

SB 1928 – Certificate of Merit in Certain Actions Against Licensed or Registered Professionals⁵

SB 1928 amends section 150.001 of the Civil Practice and Remedies Code (CPRC) to: (1) substitute “claimant” for “plaintiff;” (2) define “claimant” as “a party, including a plaintiff or third-party plaintiff, seeking recovery for damages, contribution, or indemnification;” and (3) define “complaint” as “any petition or other pleading which, for the first time, raises a claim against a licensed or registered professional for damages arising out of the provision of professional services by the licensed or registered professional.” SB 1928 also amends section 150.002 to provide that the required complaint be supported by an affidavit of a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor who “practices” (as opposed to just being “knowledgeable”) in the area of practice of the defendant.

Effective date: June 10, 2019. The changes in the law addressed in SB 1928 were effective on June 10th and apply only to an action or arbitration proceeding commenced on or after June 10th.

¹ Legislative Reference Library of Texas, 86th Legislature Bill Statistics (June 17, 2019).

² Id.

³ Id.

⁴ As a general rule, the governor has ten (10) days upon receipt of a bill to sign it, veto it, or allow the bill to become law without a signature. However, if a bill is sent to the governor within ten (10) days of final adjournment, he has until twenty (20) days after adjournment to act on the bill. If the governor neither signs nor vetoes the bill within the allotted time, the bill becomes law. TEXAS CONST. ART. IV, § 14.

⁵ Act of May 25, 2019, 86th Leg., R.S., S.B. 1928 (to be codified as an amendment to TEX. CIV. PRAC. & REM. CODE ANN. §§150.001 and 150.002).

B. Attorney Advertising

SB 1189 – Prohibition of Deceptive Advertising of Legal Services⁶

SB 1159 amends the State Bar Act by adding a section to address “a television advertisement that promotes a person's provision of legal services or solicits clients to receive legal services.” SB 1189 prohibits advertisements for legal services that: (1) present the advertisement as a “medical alert,” “health alert,” “drug alert,” “public service announcement,” or use a substantially similar phrase that “suggests to a reasonable viewer the advertisement is offering professional, medical, or government agency advice about medications or medical devices rather than legal services;” (2) display the logo of a federal or state government agency in a manner that suggests to a reasonable viewer that the advertisement is presented by a federal or state government agency or by an entity approved by or affiliated with a federal or state government agency; or (3) use the term “recall” when referring to a product that has not been recalled either by a government agency or through an agreement between a manufacturer and government agency.

SB 1189 requires legal services advertisements to contain the following disclosures, both verbally and visually: (1) at the beginning of the advertisement, “This is a paid advertisement for legal services.”; (2) the identity of the sponsor of the advertisement; and (3) either: (a) the identity of the attorney or law firm primarily responsible for providing solicited legal services to a person who engages the attorney or law firm in response to the advertisement; or (b) the manner in which a responding person’s case is referred to an attorney or law firm if the sponsor of the advertisement is not legally authorized to provide legal services. Further, SB 1189 will require that legal services advertisements soliciting clients who may allege an injury from a prescription drug approved by the U.S. Food and Drug Administration (FDA) include the following verbal and visual statement: “Do not stop taking a prescribed medication without first consulting with a physician.”

SB 1189 also creates formatting requirements for warnings and disclosures. A visual statement to appear in an advertisement must be presented clearly, conspicuously, and for a sufficient length of time for a viewer to see and read the statement. A court could not find that a visual statement in an advertisement is noncompliant with the statute if the statement is presented in the same size and style of font and for the same duration as a visual reference to the telephone number or Internet website of the entity a responding person contacts for the legal services offered or discussed in the advertisement. A verbal statement required to appear in an advertisement must be audible, intelligible, and presented with equal prominence as the other parts of the advertisement. A court could not find that a verbal statement in an advertisement is noncompliant with the statute if the statement is made at approximately the same volume and uses approximately the same number of words per minute as the voice-over of longest duration in the advertisement.

⁶ Act of May 25, 2019, 86th Leg., R.S., S.B. 1189 (to be codified at TEX. GOV’T CODE ANN. §§81.151–81.156).

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First appeared as part of the conference materials for the
29th Annual Conference on State and Federal Appeals session
"Looking Back at the 86th Texas Legislature"