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TEXAS LEGISLATIVE UPDATE

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I. INTRODUCTION

The 84th Legislature ended its regular session on June 1, 2015. According to the Texas Legislative Reference Library, a total of 6,476 bills and resolutions were introduced during the session.¹ As of June 1st, over 1,300 bills have been passed and sent to Governor Abbott,² some of which already have been signed into law.³

This paper summarizes selected legislative proposals that, if they became law, could have a noticeable impact on the practice of civil trial and appellate law in Texas. The bills summarized herein are based on the content of each bill at the time of submission. For the final status of each bill and additional background information about the same, please visit Texas Legislature Online at <http://www.capitol.state.tx.us> and/or subscribe to the author's e-newsletter by following the directions at the end of this article.

II. LEGISLATION THAT HAS PASSED

A. Attorneys – Practice of Law

SB 534 - Oath of Persons Admitted to Practice Law in Texas⁴

SB 534 amends section 82.037 of the Government Code and revises the oath taken by all attorneys admitted to practice law in Texas so as to require attorneys to conduct themselves “with integrity and civility in dealing and communicating with the court and all parties.”

On May 15, 2015, Governor Abbott signed SB 534 into law. Because SB 534 was passed by a vote of at least two-thirds of all the members elected to both the House and Senate, the law took effect on May 15th.

¹ Legislative Reference Library of Texas, 84th Legislature Legislative Statistics (May 29, 2015).

² Id.

³ 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.

⁴ Act of May 5, 2015, 84th Leg., R.S., S.B. 534 (to be codified as an amendment of TEX. GOV'T CODE ANN. §82.037).

HB 7 - Repeal of Occupation Tax⁵

HB 7 addresses the use of certain statutorily-dedicated revenue and includes provisions that repeal various occupation taxes, including the \$200 annual attorney occupation tax.

HB 7 was sent to Governor Abbott on June 1, 2015. If the Governor signs the bill into law, the changes in the law addressed in HB 7 would become effective on September 1, 2015. The changes in the law made by HB 7 would not affect a surcharge, additional fee, additional charge, fee increase, tax, or late fee imposed before the effective date.

B. Damages

SB 735 - Availability and Use of Certain Evidence in Connection with an Award of Exemplary Damages⁶

SB 735 will amend section 41.011 of the Texas Civil Practice and Remedies Code (CPRC) to define “net worth” to mean “the total assets of a person minus the total liabilities of the person on a date determined appropriate by the trial court.” SB 735 also adds section 41.0115 to the CPRC, which would provide as follows:

“Sec. 41.0115. DISCOVERY OF EVIDENCE OF NET WORTH FOR EXEMPLARY DAMAGES CLAIM. (a) On the motion of a party and after notice and a hearing, a trial court may authorize discovery of evidence of a defendant's net worth if the court finds in a written order that the claimant has demonstrated a substantial likelihood of success on the merits of a claim for exemplary damages. Evidence submitted by a party to the court in support of or in opposition to a motion made under this subsection may be in the form of an affidavit or a response to discovery. (b) If a trial court authorizes discovery under Subsection (a), the court's order may only authorize use of the least burdensome method available to obtain the net worth evidence. (c)

⁵ Act of June 1, 2015, 84th Leg., R.S., H.B. 7 (2015).

⁶ Act of May 30, 2015, 84th Leg., R.S., Tex. S.B. 735 (to be codified as an amendment of TEX. CIV. PRAC. & REM. CODE ANN. §41.001 and at §41.0115).

When reviewing an order authorizing or denying discovery of net worth evidence under this section, the reviewing court may consider only the evidence submitted by the parties to the trial court in support of or in opposition to the motion described by Subsection (a)."

By way of floor amendment, the House amended SB 735 to include the following language: *"If a party requests net worth discovery under this section, the court shall presume that the requesting party has had adequate time for the discovery of facts relating to exemplary damages for purposes of allowing the party from whom net worth discovery is sought to move for summary judgment on the requesting party's claim for exemplary damages under Rule 166a(i), Texas Rules of Civil Procedure."*

On May 30, 2015, SB 735 was sent to Governor Abbott. If signed by the Governor, the changes in the law addressed in SB 735 would become effective on September 1, 2015. The changes in the law made by SB 735 would apply only to an action filed on or after the effective date.

C. Deceptive Trade Practices

HB 1265 - Deceptive Trade Act or Practice Involving a Solicitation in Connection with a Good or Service⁷

HB 1265 amends section 17.46(b) of the Business & Commerce Code to provide that the term "false, misleading, or deceptive acts or practices" will include the following:

(28) delivering or distributing a solicitation in connection with a good or service that represents that the solicitation is sent on behalf of a governmental entity when it is not, or resembles a governmental notice or form that represents or implies that a criminal penalty may be imposed if the recipient does not remit payment for the good or service;

(29) delivering or distributing a solicitation in connection with a good or

service that resembles a check or other negotiable instrument or invoice, unless the portion of the solicitation that resembles a check or other negotiable instrument or invoice includes the following notice, clearly and conspicuously printed in at least 18-point type: "SPECIMEN-NON-NEGOTIABLE;"

(30) in the production, sale, distribution, or promotion of a synthetic substance that produces and is intended to produce an effect when consumed or ingested similar to, or in excess of, the effect of a controlled substance or controlled substance analogue, as those terms are defined by section 481.002 of the Health and Safety Code, making a deceptive representation or designation about the synthetic substance, or causing confusion or misunderstanding as to the effects the synthetic substance causes when consumed or ingested; or

(31) a licensed public insurance adjuster directly or indirectly soliciting employment, as defined by section 38.01 of the Penal Code, for an attorney, or a licensed public insurance adjuster entering into a contract with an insured for the primary purpose of referring the insured to an attorney without the intent to actually perform the services customarily provided by a licensed public insurance adjuster, provided that this subdivision may not be construed to prohibit a licensed public insurance adjuster from recommending a particular attorney to an insured.

On June 1, 2015, HB 1265 was sent to Governor Abbott. If signed by the Governor, HB 1265 would become effective on September 1, 2015 and apply only to a cause of action that accrues on or after the effective date.

HB 2573 - Deceptive Trade Practice Related to the Use of Certain Words to Imply that a

⁷ Act of May 30, 2015, 84th Leg., R.S., H.B. 1265 (to be codified as an amendment of TEX. BUS. & COM. CODE ANN. §17.46(b)).

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