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Looking Back at the 87th Texas Legislature:
An Overview of Bills that Passed, Bills that Died, and
Bills that May Live Again

Jerry D. Bullard
Adams, Lynch & Loftin, P.C.

Senator Nathan Johnson
Texas State Senate, District 16

Author contact information:
Jerry D. Bullard
Adams, Lynch & Loftin, P.C.
3950 Highway 360
Grapevine, TX 76051

jdb@all-lawfirm.com
(817) 552-7742

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I. INTRODUCTION

The 87th Legislature ended its regular session on May 31, 2021. According to the Texas Legislative Reference Library, a total of 7,148 bills and resolutions were introduced during the session.¹ 1,525 bills and resolutions (1,073 bills; 8 resolutions) were passed and sent to Governor Abbott.² Of that total, one has been vetoed as of June 3rd.³ The remainder will either be signed by the Governor, allowed to become law, or vetoed.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. Attorney's Fees

[HB 1578 – Recovery of Attorney's Fees in Certain Civil Cases](#)

- **Summary:** HB 1578, filed by [Rep. Brooks Landgraf \(R – Odessa\)](#), amends section 38.001 of the Civil Practice & Remedies Code (CPRC) to include any type of organization as defined under the Business Organizations Code, but excludes “a quasi-governmental entity authorized to perform a function by state law, a religious organization, a charitable organization, or a charitable trust.” [Note: Since 2014, Texas courts of appeals have consistently held that a trial court cannot order limited partnerships, limited liability companies, or limited liability partnerships to pay attorney's fees because section 38.001 of the CPRC does not permit such a recovery. See, e.g., *CBIF Limited Partnership, et al. v. TGI Friday's, Inc., et al.*, No. 05-15-00157-CV, 2017 WL 1455407 (Tex. App.—Dallas April 21, 2017, pet. denied) (mem. op.); *Alta Mesa Holdings, L.P. v. Ives*, 488 S.W.3d 438 (Tex. App.—Houston [14th Dist.] 2016, pet. denied); *Fleming & Associates, LLP v. Barton*, 425 S.W.3d 560 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). In response to these decisions, legislators filed bills in 2015, 2017, and 2019 to expand the scope of the statute to include all business organizations. However, the bills failed to pass.]
- **Effective date:** September 1, 2021. The changes in law made by HB 1578 apply only to an award of attorney's fees in an action commenced on or after the effective date.

¹ Legislative Reference Library of Texas, 87th Legislature Bill Statistics (June 3, 2021).

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.

[HB 2416 – Recovery of Attorney’s Fees as Compensatory Damages](#)

- **Summary:** HB 2416, filed by [Rep. Barbara Gervin-Hawkins \(D – San Antonio\)](#), adds section 38.0015 to the CPRC and allows a person to recover reasonable attorney’s fees from an individual, corporation, or other entity from which recovery is permitted under section 38.001 of the CPRC as compensatory damages in breach of a construction contract cases. However, HB 2416 does not create or imply a private cause of action or independent basis to recover attorney’s fees.
- **Effective date:** September 1, 2021. The changes in law addressed in HB 19 apply only to a cause of action that accrues on or after the effective date.

B. Civil Liability/Causes of Action

[HB 19 – Procedure, Evidence, and Remedies in Civil Actions Involving Motor Vehicle Accidents](#)

- **Summary:** HB 19, filed by [Rep. Jeff Leach \(R – Plano\)](#), amends the CPRC to provide specific procedural and evidentiary guidelines for cases arising out of motor vehicle accidents, especially commercial motor vehicle accidents. The version of HB 19 voted out of a House committee addressed the following topics (among other things):
 - **Bifurcated trials:** Much like the bifurcation process under section 41.009 of the CPRC, if requested by a defendant no later than the 120th day after the date the defendant bringing the motion files the defendant’s original answer, HB 19 requires a bifurcated trial in commercial motor vehicle accident actions when a claimant seeks to recover exemplary damages. In the first phase of a bifurcated trial, the trier of fact will determine liability and the amount of compensatory damages. In the second phase, the trier of fact will determine liability for and the amount of exemplary damages.
 - **Violation of regulatory standards:** HB 19 provides that, in a civil action involving a commercial motor vehicle, a defendant’s failure to comply with a regulation or standard is admissible into evidence in the first phase of a bifurcated trial only if, in addition to complying with other requirements of law: (1) the evidence tends to prove that failure to comply with the regulation or standard was a proximate cause of the bodily injury or death for which damages are sought; and (2) the regulation or standard is specific and governs, or is an element of a duty of care applicable to, the defendant, the defendant’s employee, or the defendant’s property or equipment when any of those is at issue in the action. However, nothing in HB 19 prevents a claimant from pursuing a claim for exemplary damages relating to the defendant’s failure to comply with other applicable regulations or standards, or from presenting evidence on that claim in the second phase of a bifurcated trial.
 - **Direct actions against an employer:** Under HB 19, in a civil action involving a commercial motor vehicle, an employer defendant’s liability for damages caused by the ordinary negligence of a person operating the defendant’s commercial motor vehicle shall be based only on respondeat superior if the

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