

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)

Authors:

William D. Pargaman, Austin
Saunders, Norval, Pargaman & Atkins

Meredith N. McIver, Austin
Osborne, Helman, Knebel & Scott

ETLAC Co-Chairs and Principal Presenters:

Craig Hopper, Austin
Hopper Mikeska

Lauren Davis Hunt, Austin
Osborne, Helman, Knebel & Scott

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1. The Preliminaries.

1.1 Introduction and Scope. The 87th 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 I¹ 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 7 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

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.

¹ 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. Beginning with the 2019 update, in an effort to be green (for anyone getting a hard copy), we published an entirely separate supplement containing the actual statutory language that's changing, or being added, rather than adding it as attachments to this paper itself. Sometime after the 2021 session is over, you'll be able to find that supplement containing the changed or added statutory language – or at least the language we deem worthy to include – by pointing your browser to:

www.snpalaw.com/resources/2021LegislativeSupplement

Be sure to check for an updated paper and supplement shortly after the Governor's June 20th deadline for signing or vetoing bills passed late in the session. In an even later version, we'll 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.² 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. 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.

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

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

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

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Title search: Legislative Update

Also available as part of the eCourse

[Legislative Update 2021: Estate Planning and Trusts](#)

First appeared as part of the conference materials for the
23rd Annual Estate Planning, Guardianship and Elder Law Conference session
"Legislative Update"