

**80th LEGISLATIVE SESSION
LEGISLATIVE UPDATE
DALLAS BAR ASSOCIATION**

SEPTEMBER 14, 2007

Senator Royce West

Chairman – Intergovernmental Relations

Member:

Finance Committee

Education Committee

Sub-committee on Higher Education

Health & Human Services Committee

THE 80TH SESSION

- Changes affecting lawyers, judges, and the court process...

- WHAT PASSED
- WHAT DIDN'T
- WHAT'S TO COME?

THESE PASSED...

HB 1602 (Van Arsdale) Jones Act Venue

- As filed, HB 360 (Straus) eliminated mandatory venue in the plaintiff's county of residence for both the Jones Act and Federal Employers Liability Act (FELA) cases.
- Opposition from railroad workers and the industry combined with significant political opposition (see Duncan's SB 1204) to HB 360 led the way for Representative King to introduce and pass HB 1602 which eliminated mandatory venue for the plaintiff in only Jones cases.

SB 378 (Wentworth, et al)

The "Castle Doctrine"

- This bill changes the presumption in the Penal Code and the Civil Practice and Remedies Code so that the use of force is presumed justified against unlawful intruders into homes, vehicles, or places of business or employment.
- There is no longer any duty to retreat.
- The bill as originally filed contained a loser pays provision, allowing the prevailing party in a resulting civil action to recover fees and costs. The loser pays provision was removed and SB 378 passed both chambers.

HB 1572 (Woolley/West) Law Enforcement Privilege & Civil Discovery

- Amends the Civil Practices and Remedies Code to provide that the investigation materials of a non-party law enforcement agency is privileged from discovery in a civil action unless the court, after an in camera inspection, determines the discovery is relevant and there is a specific need for the discovery.

SB 168 (Ellis) \$65 Fee to Fund Legal Services for the Poor

- This bill continues the \$65 annual fee imposed on lawyers to fund legal services for the poor. The fee was scheduled to expire on September 1, 2007.

SB 496 (Duncan) Indigent Representation

- S.B. 496 expands the limits on the use of Fund 540 to allow the fund to be used to train law enforcement officers, law students and other participants in cases of indigent representation.
- Under the prior law, use of the funds was limited to training judges and attorneys.

HB 1237 (Farabee) Lawyer Privacy

- HB 1237 allows a licensed attorney the ability to choose to restrict public access to the attorney's home address and phone number, email address, social security number and date of birth by notifying the State Bar on a form to be provided by the State Bar.
- Current law is unclear on this point.

HB 3928 (Keffer) Putting the Tax on Law Firms

- This bill clarifies that limited liability partnerships are subject to the state's margin tax, closing what some defined as a "loophole" for some law, accounting and other service provider firms organized as limited liability partnerships.

CSHB 3928 (Keffer) Tax Relief for Law Firm(s) –for Pro Bono Cases

- **HB 3928 allows law firms subject to the state's new margin tax to deduct up to \$500 for each pro bono case handled by the firm.**

SB 749 (Janek) Judicial Compensation/Resources in Asbestos/Silica Litigation

- Authorizes additional pay for the presiding judge of asbestos or silica multi-district litigation.
- Authorizes the presiding judge to appoint up to four staff members to address the additional workload.
- Authorizes the state's MDL panel, at the request of the MDL pretrial court, to issue writs of mandamus to require trial courts to set trial dates in asbestos and silica cases.

SB 1182 (Watson) Court Fees

- Increases filing fees in the Texas Supreme Court and Courts of Appeal by \$50.00.
- The fees are to be deposited in a dedicated fund for the court to defray increasing costs.

HB 2766 (Eiland) Location for Court Proceedings in an Emergency

- Allows the presiding administrative judge to designate an alternate location for judicial proceedings during and after a disaster in certain coastal counties.
- This bill is a result of disruptions in the court system following Hurricane Rita.

SB 406 (Wentworth) Probate Recusal Motion

- Requires a probate judge, before further proceedings in a case in which a motion for the recusal or disqualification of the judge has been filed, to request that the presiding judge of the statutory probate courts assign a judge to hear the motion.

SB 593 (Wentworth) Notice to Beneficiaries

- Requires the personal representative of the decedent's estate, including an independent executor or independent, to give notice to each beneficiary named in the will whose identity is known or, through reasonable diligence, can be ascertained, and to file an affidavit with the court listing the beneficiaries notified.
- Under current law, beneficiaries of wills where an executor or independent is appointed may not learn of the will or their rights until it is too late for them to take steps to protect their interests.

HB 342 (Naishtat)

Giving deference to Foreign Jurisdiction

- Authorizes a Texas court in which a guardianship proceeding is filed - and in which venue of the proceeding is proper - to delay further action in the proceeding if another guardianship proceeding involving a matter at issue here in the Texas proceeding is filed in a foreign court and venue of the proceeding in the foreign court is proper.
- The goal is to save legal costs in the Texas court and to only suspend proceedings to determine which court would be the most proper forum.

HB 391 (Harnett) Updating the Process

- Addresses several areas regarding wills and estates and is based on recommendations made by the Real Estate, Probate, and Trust Section of the State Bar of Texas.
- Perhaps the most significant provision authorizes a court to declare a marriage void after the decedent's death if:
 - A proceeding under Chapter 6 (Suit for Dissolution of Marriage), Family Code, to declare a marriage void based on the lack of mental capacity of one of the parties to the marriage is pending on the date of death of one of those parties, or
 - A guardianship proceeding in which a court is requested under Chapter 6 to declare a ward's (or proposed ward's) marriage void based on the lack of mental capacity of the ward or proposed ward is pending on the date of death of the ward or proposed ward.

Several bills made changes regarding various jurisdictional amounts concerning the justice, county, and small claims courts to try to decrease the backlog in some of the higher level courts...

- SB 618 (Wentworth) increases the maximum jurisdictional amount in civil matters for the constitutional county courts, justice courts, and small claims courts from \$5,000 to \$10,000;
- SB 1413 (Hinojosa) increases from \$20 to \$250 the judgment or the amount in controversy for cases that may be appealed or removed from a justice court; and
- SB 1416 (Hinojosa) increases from \$20 to \$250 the amount in controversy for a final judgment that may be appealed from a small claims court.

These Bills Didn't Pass...

CSSB 1204 (Duncan) Court Reorganization

- This was probably the most controversial court related bill of the Session.
- Part of a package of bills supported by Texans for Lawsuit Reform.
- Opposition included lawyers, judges, elected officials... a vary broad range.
- Key offending provision – statewide panel on complex cases could remove case from local trial judge and reassign to a judge determined by the panel to be "Qualified."

...continued

- Final negotiated bill removed the removal provision and substituted a provision that allowed a special panel to provide additional resources to a trial court to handle a complex case.
- A final negotiated bill finally passed the Senate with an agreement to pass the HB 3281 and HB 1602 (also negotiated).
- Ultimately, SB 1204 died in the House on a point of order.

SB 1782 (West) Arbitration Disclosure and Reform

- This bill passed the Senate by a wide margin, but died in the House Calendars Committee. This bill would have amended the Texas Arbitration Act in several respects including:
- Prohibits an order compelling arbitration from violating rights protected by the United States and Texas Constitutions.
- Provides the right of appeal from an order compelling arbitration based on constitutional violations.
- Provides basic qualifications for arbitrators.
- Prohibits a court from appointing an unqualified arbitrator.
- Authorizes a trial court to vacate, modify or correct an award as if the award were a judgment entered by a court without a jury.
- Requires an appellate court reviewing a judgment entered on an award to apply the same standard of review as if the judgment were entered by a court sitting without a jury.
- Requires arbitrators to disclose certain information about the arbitration proceeding and award to the Office of Court Administration unless otherwise limited by the parties.

HB 3281 (King) Paid or Incurred

- One section of the major tort reform legislation of the 2003 Session (HB 4) contained a provision that limited recovery of medical or healthcare expenses incurred to the amount actually paid or incurred by or on behalf of the claimant.
- This provision has caused disagreement among lawyers and judges regarding its meaning and scope. For example, some have contended that the statute prohibits the recovery of future medical or healthcare expenses.
- The bill passed both Chambers but was vetoed by Governor Perry.
- HB 3281 (Paid or Incurred), HB 1602 (Jones Act Venue) and SB 1204 were part of a Senate negotiated package of "reform" supported mainly by Texans for Lawsuit Reform.

SB 105 (West) University of North Texas School of Law in Dallas

- This bill, creating a new law school in Dallas as part of the UNT system, was attached as an amendment to H.B. 3057, which authorizes governmental entities to exercise the right of eminent domain to cure urban blight. That bill passed the Senate, but was killed on a point of order in the House on May 26, 2007.
- The Dallas-Fort Worth area is the fifth most populous area in the country, but does not have a public, affordable law school.

What's Next?

Court Reorganization

- Sen. Duncan may be expected to bring back the court reorganization bill for another attempt.
- In the meantime, the complex-case issue is back and was posted on the agenda for the Texas Supreme Court Advisory Committee's Aug. 24-25 meeting.
- Jeff Boyd, a partner in Thompson & Knight in Austin who is chairman of the Legislative Mandates Subcommittee, says the subcommittee is drafting proposed rules for dealing with complex cases.

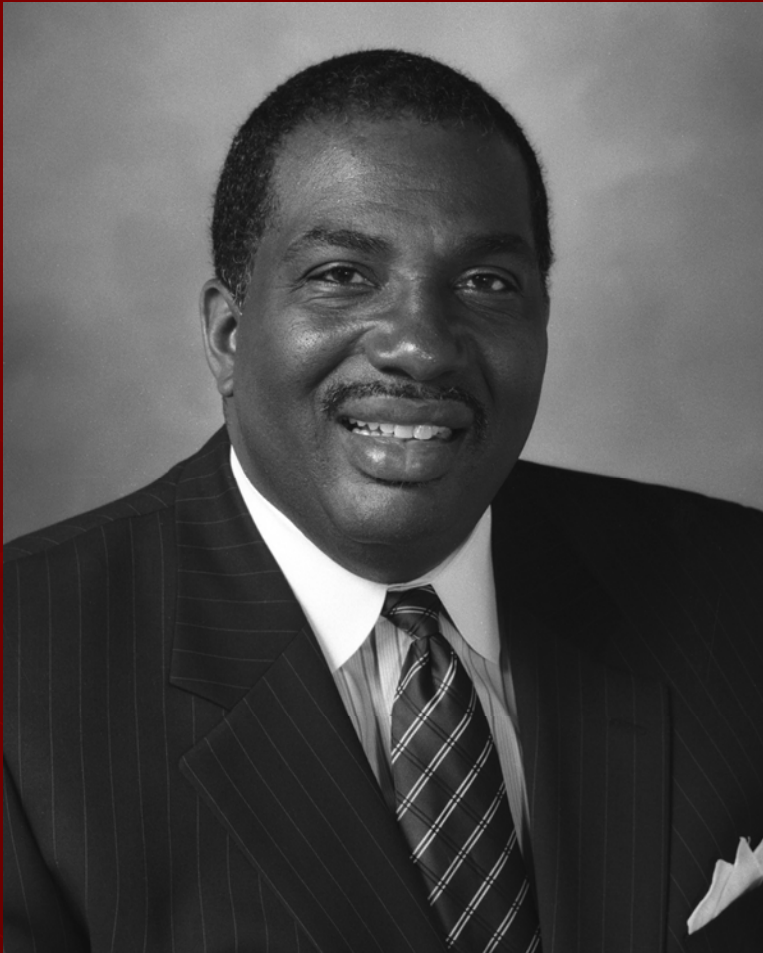
Arbitration Reform and Reporting (West)

- For the third Session the Arbitration Bill died in the House.
- This last Session, the bill had broad support including Texas Association of Defense Counsel and The Texas Civil Justice League.
- With the continued and growing concerns with fairness issues related to mandatory arbitration the issue will continue to generate interest at the Capitol.

Dallas Law School (West)

- I will continue to work to bring a law school to the Dallas area.

My office door is always open!



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