

# ADVOCATE

TEXANS FOR LAWSUIT REFORM: MAKING TEXAS A BEACON FOR CIVIL JUSTICE IN AMERICA

## SEPTEMBER 2019

### IN THIS ISSUE

- Leadership Matters ..... 1
- Meeting Texas' Challenges Head On... 2
- An Active, Productive Session for Civil Justice ..... 3
- Strong Legislative Leaders Produce a Successful Session..... 4
- 2019's Dynamic Civil Justice Agenda... 7
- Consensus Building is the Heart of TLR's Legislative Advocacy ..... 11
- Going to the Dogs ..... 12

### OUR MISSION

Texans for Lawsuit Reform is a volunteer-led organization working to restore fairness and balance to our civil justice system through political action, legal, academic and market research, and grassroots initiatives. The common goal of our more than 18,000 supporters is to make Texas the Beacon State for Civil Justice in America.

1701 Brun Street, Suite 200  
Houston, Texas 77019  
www.tortreform.com  
tlr@tortreform.com

f | @lawsuitreform



Leg Ad Pd for by Texans for Lawsuit Reform  
Richard J. Trabulsi Jr., Chairman  
919 Congress, Suite 455, Austin, TX 78701

## Leadership Matters



The 86th Legislature passed a wide array of meaningful civil justice bills, making it a landmark session for TLR initiatives. More broadly, this session was one of the most successful in a decade in producing consensus improvements in public education, property tax relief and health care, all with bipartisan participation and support. The election of a seasoned legislator, **Dennis Bonnen**, as the new speaker of the Texas House created an opportunity for collaboration that **Gov. Greg Abbott** and **Lt. Gov. Dan Patrick** seized. Their coordinated leadership, combined with the hard work of legislators of both parties in both chambers, yielded stunning results for the state.

In Texas, the minority party is respected by the majority party and is a full participant in the legislative process. Even though Republicans hold every statewide elected office and have majorities in the House and Senate, Democrats hold meaningful committee assignments, including chairmanships, and author or joint-author significant legislation. Lt. Gov. Patrick regularly points out that of the 1,641 bills and resolutions passed by the Senate in the 85th Legislature (2017), only 23 (1.4 percent) were passed without Democrat votes. While a similar analysis has not yet been completed for the 2019 session, the vast majority of passed bills had overwhelming bipartisan support and only a few passed on purely partisan lines. In almost every session, the Senate passes the biennial budget unanimously or with only one or two protest votes against it.

Speaker Bonnen enlisted the entire House membership in a cooperative manner to improve civil and criminal justice and public education, achieve a balanced budget and protect our children from exploitation, among other policy objectives. He named a Democrat from El Paso, Joe Moody, as speaker *pro tempore* and appointed Democrats to chair important committees, such as Business and Industry, Transportation, and Insurance. The speaker also brought the most conservative members of the Republican Caucus into the fold, allowing them to be fully engaged in crafting and passing legislation.

Gov. Abbott campaigned last year on a platform of property tax relief and improving public education. He rallied public opinion to these causes and engaged vigorously in the legislative process to achieve success. Leadership matters, and Texas is fortunate that our governor, lieutenant governor and speaker worked with each other on critical issues. Members of both parties in the House and Senate worked diligently and with civility to find common cause for the people of Texas. One result was that TLR-supported bills passed with overwhelming bipartisan majorities, as you will learn in this *Advocate*.

Richard J. Trabulsi Jr.,  
TLR Chairman



## Meeting Texas' Challenges Head On

*By Sen. Joan Huffman, Chair, Senate State Affairs*

---

With the dust just having settled from the 86th Legislative Session, it's a good time to take a look at what your Texas Legislature accomplished this year.

My Senate colleagues and I worked to pass critical legislation that will benefit every Texan, including a balanced budget, historic school finance reform and property tax reform. We funded much-needed disaster relief and preparedness initiatives, which are particularly important to Senate District 17 and other areas along the Gulf Coast. Furthermore, we enacted safety and security measures to help protect our most valued asset—our Texas school children. As a former prosecutor and criminal court judge who has long advocated for stronger measures against sexual predators, I'm especially pleased by multiple pieces of legislation that will combat sexual assault and human trafficking, as well as support the survivors of these heinous crimes.

The Senate State Affairs Committee, of which I serve as chair, also plays a critical role in issues related to the civil justice system. One significant reform I sponsored was **House Bill 2826**, authored by **Rep. Greg Bonnen**, which brings much-needed transparency into the contingency fee contracting process between local governments and private attorneys. After learning of rampant legal action against contractors, especially related to school building construction, I knew it was important to take action to reduce unwarranted legal suits and protect taxpayer funds against overzealous attorneys. It was starkly clear that these lawsuits were being manufactured by a small group of lawyers attempting to extort settlements and reap enormous legal fees from contractors, to the detriment of local governments, and ultimately, taxpayers.

The proliferation of these contingency fee agreements has prevented many reputable companies, particularly contractors and subcontractors, from doing business with local governments. These frivolous lawsuits even resulted in increased contract costs for our local school districts. To end this unfair practice, House Bill 2826 ensures local governments can get well-qualified attorneys at a fair rate and that the

hiring of outside, contingency fee lawyers is openly discussed in a public forum.

With these reforms, local governments will also be able to retain legal awards resulting from lawsuits by requiring contingency fee contracts to be based on a reasonable hourly rate and not a percentage rate. Finally, to ensure appropriate oversight and enforcement, the bill moves the approval of these contracts from the Texas comptroller to the attorney general, giving the state's top lawyer the authority to review and approve contracts between local governments and private attorneys.

Regarding judicial compensation, the primary obstacle to giving Texas judges pay raises in the past has been the link between district judge salaries and legislator retirement annuities. Due in part to this obstacle, our hard-working judges have received only two pay raises since 2000.

In order to have qualified men and women on our bench, we must ensure they are adequately compensated. That is why I crafted a solution, detailed in **House Bill 2384**, that avoids the legislator retirement annuity link entirely by capping a judge's base salary and creating a new system of tiers that are tied to judicial longevity. Put simply, the state rewards judges who choose to remain on the bench while keeping legislator annuities the same.

House Bill 2384 will give judges who have served at least one term a 10 percent pay increase and judges who have served two terms or more a 20 percent pay increase. Furthermore, the bill lowers the eligibility requirement for longevity pay to 12 years from 16 years, and increases that longevity pay to 5 percent (up from 3.1 percent). House Bill 2384 will reward seniority, encourage retention and ensure the Legislature does not need to revisit the issue of judicial compensation every session. The solution that I put forth, and that the Legislature adopted, is also very cost-effective in comparison to alternative proposals considered.

These bills are just a few that the Legislature passed this session to address the challenges facing our great state. Now it's time to see that work in action, and prepare to meet the challenges ahead. ■



## An Active, Productive Session for Civil Justice

*By Rep. Jeff Leach, Chair, House Judiciary and Civil Jurisprudence*

---

The 86th Legislative Session was a collaborative and transformative one for Texas. With a new speaker at the helm, the Texas House gaveled in on January 8, ready to tackle some of the most pressing challenges facing our state. I am confident that, after 140 days of hard work, the Legislature delivered results that will benefit all Texans for a long time to come.

This session was a meaningful one for me personally because I was blessed to be appointed by Speaker Dennis Bonnen as chairman of the House Committee on Judiciary and Civil Jurisprudence (JCJ). This committee has jurisdiction over all legislation and policies that affect our civil justice system, including our civil courts—from the number of judges on a court, to the types of cases a particular court can hear, to the rules and procedures that govern attorneys and the practice of law in specific cases. Many of the historic tort reforms Texas has advanced over the past 25 years have passed through this important committee. And I am happy to report that, with the hard work and commitment of my fellow committee members, this legislative session was no different.

As the bill author, I'm particularly proud of **House Bill 3336**, which will improve Texans' access to courts. We know litigation can be so expensive and time consuming that many Texans simply cannot afford to participate in the legal system. We also know that we already have some practices and procedures that help make our courts more accessible for Texans. Our justice of the peace courts, for example, resolve small matters quickly, fairly and inexpensively. We also have a procedure for expediting civil cases to help ensure they move through the courts more quickly and efficiently.

House Bill 3336 builds on these existing mechanisms. It doubles the civil jurisdiction of justice of the peace courts so more Texans can access them to resolve their small civil disputes. It also expands the existing expedited case procedures to apply to more cases. Because of its positive impact for Texans, House Bill 3336 was supported by a wide variety of stakeholders

who saw the importance of ensuring Texans of all means and backgrounds can have their day in court.

The input from stakeholders—the very people who live and work under these laws every day—cannot be understated. Without it, we lawmakers simply wouldn't have the critical context and feedback necessary to pass good laws.

A clear example of this is another bill that I authored this session, **House Bill 2730**.

This bill amended the Texas Citizens Participation Act (TCPA), also known as the state's anti-SLAPP statute, which was being used in ways the Legislature never intended, creating a huge logjam in the legal system and resulting in an outcry from lawyers, judges and citizens.

The TCPA was originally passed to protect Texans' rights to free speech and public association and to ensure a powerful entity couldn't silence them in a matter of public concern. It was often used—correctly—by the media to defend against libel suits, and by individuals protesting overreaching developers in their neighborhoods.

But it was also used in ways beyond the stated purpose of the statute, such as to prevent the State Bar from disciplining a lawyer who was engaged in an extortion scheme, or to prevent a company from protecting trade secrets. Clearly, the statute needed fixing.

A highly motivated and active group of stakeholders—including media organizations, attorneys, current and former judges and others—came together to preserve the critical protections in the TCPA while helping refine the bill's language to prevent unintended consequences. While these discussions were often spirited, even contentious, they led to reforms that enable the TCPA to continue to protect Texans' rights while cutting off its use in inappropriate cases.

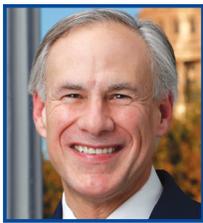
These bills represent a fraction of those considered by my hardworking colleagues on the JCJ Committee, and I am grateful and proud of the work we did together this session for our civil justice system. ■



## Strong Legislative Leaders Produce a Successful Session

By Mary Tipps, TLR Executive Director

As my colleagues note throughout this edition of *The Advocate*, the 2019 Legislative Session was one of the most successful and impactful for our state’s civil justice system. Not only did the Legislature pass critical and necessary reforms to address lawsuit abuses, but it also took meaningful steps that will impact the quality of our judiciary now and into the future.



Gov.  
Greg Abbott



Lt. Gov.  
Dan Patrick



Speaker  
Dennis Bonnen

Also critical to efforts to pass significant legislation is the support of key committee chairs, whose leadership encourages thoughtful debate and input into the

process that helps shape and improve bills. **Sen. Joan Huffman (R-Houston)**, a former judge, chaired the Senate State Affairs Committee, which heard many of the important reforms Texas passed this session. **Rep. Jeff Leach (R-Plano)**, an accomplished attorney, chaired the House Judiciary and Civil Jurisprudence Committee, which was ground zero for reforms in the House. Both Sen. Huffman and Rep. Leach served as bill authors for major reform legislation, bringing an added layer of expertise and understanding to both the legislative negotiating process and to conversations about the bills in hearings.

The Texas Senate, which has strongly supported efforts to strengthen Texas’ economy by reforming our legal system, was again active this session. In the Texas House, bill authors were critical in building consensus among their colleagues—both Democrats and Republicans—which led to broad bipartisan support for TLR-advocated bills.

For the second session in a row, **Rep. Greg Bonnen (R-Friendswood)** authored TLR’s top priority bill. In 2017, it was **House Bill 1774** to correct the lawsuit abuse conducted by storm-chasing plaintiff lawyers. This session it was **House Bill 2826** concerning the hiring of contingency fee lawyers by local governments, which was co-authored by **Rep. Barbara Gervin-Hawkins (D-San Antonio)**, **Rep. Craig Goldman (R-Fort Worth)**, **Rep. Oscar Longoria (D-Mission)** and **Rep. Leach**. **Sen. Huffman** served as the Senate sponsor of the bill.

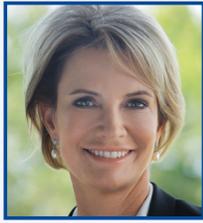
Texas is blessed to have such principled, dedicated men and women serving in the Legislature. We are grateful for all the work they and their staffs have done to enact smart, common-sense reforms to Texas’ legal system. ■

*“From everyone who has been given much, much will be demanded; and from the one who has been entrusted with much, much more will be asked.”*

– Luke 12:48 –

## THE LEADERSHIP BEHIND TEXAS' 2019 LEGAL REFORMS

---



*Sen. Dawn  
Buckingham*

### **SENATE BILL 1189** **Attorney Advertising**

---

*Author:* **Sen. Dawn Buckingham (R-Lakeway)**,  
chair of Nominations

*Co-Authors:* **Sen. Brandon Creighton (R-Conroe)**,  
chair of Higher Education

**Sen. Pat Fallon (R-Prosper)**

**Sen. Eddie Lucio Jr. (D-Brownsville)**,  
chair of Intergovernmental Relations

*Sponsor:* **Rep. Giovanni Capriglione**  
**(R-Southlake)**

*Co-Sponsors:* **Rep. Jeff Leach (R-Plano)**,  
chair of Judiciary and Civil Jurisprudence

**Rep. Toni Rose (D-Dallas)**

**Rep. J.D. Sheffield (R-Gatesville)**

**Rep. John Zerwas (R-Richmond)**,  
chair of Appropriations



*Rep. Giovanni  
Capriglione*



*Sen. Eddie  
Lucio Jr.*



*Rep. J.D.  
Sheffield*



*Sen.  
Bryan Hughes*

### **SENATE BILL 2140** **Attorney General Penalty Power**

---

*Author:* **Sen. Bryan Hughes (R-Mineola)**,  
chair of Administration

*Sponsor:* **Rep. Dustin Burrows (R-Lubbock)**,  
chair of Ways and Means



*Rep.  
Dustin Burrows*



*Sen. Brandon  
Creighton*

### **SENATE BILL 2342** **Access to Courts**

---

*Author:* **Sen. Brandon Creighton (R-Conroe)**,  
chair of Higher Education

*Sponsor:* **Rep. Jeff Leach (R-Plano)**,  
chair of Judiciary and Civil Jurisprudence



*Rep.  
Jeff Leach*

## THE LEADERSHIP BEHIND TEXAS' 2019 LEGAL REFORMS

---



*Rep.  
Stephanie Klick*

### **HOUSE BILL 3233** **Judicial Campaign Fairness Act**

---

*Author:* **Rep. Stephanie Klick (R-Fort Worth)**,  
chair of Elections

*Sponsor:* **Sen. Pat Fallon (R-Prosper)**



*Sen.  
Pat Fallon*



*Rep.  
Andy Murr*

### **HOUSE BILL 3300** **Motion to Dismiss**

---

*Author:* **Rep. Andy Murr (R-Junction)**

*Co-Authors:* **Rep. Morgan Meyer (R-Dallas)**,  
chair of General Investigating

**Rep. Tom Oliverson (R-Cypress)**

**Rep. Reggie Smith (R-Van Alstyne)**

**Rep. John Wray (R-Waxahachie)**

*Sponsor:* **Sen. Joan Huffman (R-Houston)**,  
chair of State Affairs



*Rep.  
Reggie Smith*



*Rep.  
Joe Moody*

### **HOUSE BILL 2730** **SLAPP**

---

*Author:* **Rep. Jeff Leach (R-Plano)**,  
chair of Judiciary and Civil Jurisprudence

*Co-Authors:* **Rep. Dustin Burrows (R-Lubbock)**,  
chair of Ways and Means

**Rep. Morgan Meyer (R-Dallas)**,  
chair of General Investigating

**Rep. Joe Moody (D-El Paso)**,  
speaker *pro tempore*

**Rep. Four Price (R-Amarillo)**,  
chair of Calendars

*Sponsor:* **Sen. Bryan Hughes (R-Mineola)**,  
chair of Administration



*Sen.  
Bryan Hughes*



*Rep.  
Four Price*



*Rep.  
Morgan Meyer*

# 2019's Dynamic Civil Justice Agenda

TLR just completed one of our busiest and most successful legislative sessions, helping enact laws that, among other things, strengthen our legal system, protect consumers and ensure the right to speak freely. Gov. Abbott signed every TLR-supported bill that was passed this session, the majority of which will take effect on September 1.

We began the session with a list of priority bills we hoped to see passed, including disclosure requirements for attorney TV advertisements, increased access to courts, and rules for local government contingent fee contracting.

We also joined the debate on a number of issues that were not TLR priority matters, including the effort to amend Texas' anti-SLAPP statute. And as we have done in prior sessions, we devoted significant resources to following thousands of bills as they moved through the legislative process to ensure the critical reforms implemented over the past 25 years were not eroded.

**The following is a description of TLR's priority bills and bills to which the TLR team devoted substantial time during the 2019 legislative session:**

## HOUSE BILL 2826 (BONNEN/HUFFMAN)

### Transparency in Local Government Contingency Fee Contracting

TLR's top priority bill in 2019 was **House Bill 2826**, which amended existing statutes and used existing



*Rep. Greg Bonnen*



*Rep. Barbara Gervin-Hawkins*



*Rep. Oscar Longoria*

procedures to create transparency and consistency in local government contracting for contingent fee legal services. The bill was authored by **Rep. Greg Bonnen** and joint authored by **Rep. Barbara Gervin-Hawkins, Rep. Craig Goldman, Rep. Jeff Leach** and **Rep. Oscar Longoria**.

The problem we identified exists in multiple contexts in Texas today and throughout the U.S. For example, a small group of lawyers in Texas solicit local governments (particularly school districts) for construction defect lawsuits against general contractors. The law firms use their "experts" to evaluate the facilities. If any construction or design defect is found—and these hired guns always say they have found defects—a multimillion-dollar lawsuit is filed to recover the cost of repairs. The lawyers front the litigation costs and are paid on

a contingent fee basis, creating a "no risk" opportunity for the local government. In these lawsuits, which are typically filed up to 10 years after construction was completed, the contractors seldom had any pre-suit indication that there was an issue with the facility.

The general contractors bring virtually all subcontractors into the lawsuit, creating a massive lawsuit involving dozens of insured defendants. This creates a large pot of money from which the plaintiff lawyer can extract a settlement. The result of this lawyer-driven litigation strategy is that many contractors will no longer bid on government construction work, and when they do, they build a lawsuit premium into the cost.

Environmental litigation presents another opportunity for lawyer-driven government litigation. Texas law allows both the state of Texas and local governments to enforce environmental laws and seek remediation of contaminated property. Any time environmental damage is found, the state or local government can obtain an injunction to prevent further pollution, as well as damages for past pollution and penalties of up to \$25,000 per day for the wrongful conduct that led to the pollution.

Some Texas attorneys file penalty-only lawsuits on behalf of local governments against property owners who already worked successfully with the Texas Commission on Environmental Quality (TCEQ) to remediate a polluted site. Again, the attorneys promise

*continued on page 8*

no-cost, contingent fee litigation to the governmental entity. As a consequence, a property owner can fully cooperate with TCEQ and still face a lawyer-inspired lawsuit and substantial liability.

Opioid-related litigation is yet another example of lawyers driving local governments to file lawsuits. When the opioid crisis came to the forefront, plaintiff attorneys began contacting local officials in Texas, pitching “no risk” contingent fee litigation that would put revenue in the coffers of the local governments. Many cities and counties signed on, apparently agreeing to widely varying contingent fee rates.

While we believe local governments must have the freedom to contract with outside attorneys, the existing process invited enterprising lawyers to recruit government entities for lawsuits, some of which should have been avoided. Since 1999, there have been guidelines governing state-level contracts with contingent fee attorneys. The procedures help ensure that, when litigation is needed, the state keeps more of the money that is recovered. House Bill 2826 makes the longstanding rules governing state-level contingent

fee contracting applicable to all local governments in Texas. It also requires local governments to conduct the attorney-retention process in open meetings (to prevent the all too common “brother-in-law” deals), and gives the Texas attorney general the right to review and approve contracts to ensure local governments are not duplicating the state’s efforts.

In addition to working for the passage of House Bill 2826, TLR also supported the general contractors, architects and engineers in their successful effort to pass two important bills related to construction litigation. **House Bill 1734** requires school districts to make the repairs for which damages are awarded in a construction defect lawsuit instead of spending the money on unrelated items. **House Bill 1999** requires a government entity to provide a pre-suit notice and time for repairs to be made before a construction defect lawsuit is filed. Both of these common-sense measures, coupled with House Bill 2826, should reduce the number of unneeded and meritless lawsuits while maintaining local governments’ ability to bring a lawsuit when a construction defect truly exists.

### **SENATE BILL 1189 (BUCKINGHAM/CAPRIGLIONE)** **Common-Sense Disclosures in Legal Services Ads**

Texans are inundated by television ads for legal services. Many ads use dramatic language and frightening images to catch people’s attention and compel them to call an 800 number to sign-up for legal services. Ads about prescription drugs often imply the drug has been recalled when it hasn’t, or is under investigation by the FDA when it isn’t. Evidence gathered by the FDA shows that drug ads frighten viewers (often elderly people), who sometimes discontinue use of critical medications without consulting their doctors, leading to serious injuries and death.

Many of the ads, whether for drugs or other products, are sponsored by client harvesters, who are attorneys and *non-attorneys* from inside and outside of Texas. Their ads generate clients, who they essentially sell in bulk to other attorneys for a share of the fees generated by the cases. Often, the clients have no idea the advertiser will not actually represent them, which is information any consumer of services is entitled to know.

**Senate Bill 1189**, another of TLR’s top priority bills in 2019, requires that TV ads for prescription drug claims state: “Do not stop taking a prescribed medication without first consulting a physician.” No matter what the content, ads for legal services must identify the sponsor of the ad and state: “This is a paid advertisement for legal services.” Additionally, the ad must state the identity of the attorney or law firm primarily responsible for providing the legal services *or* the manner the client’s case is referred to an attorney if the advertiser is not a lawyer.

Senate Bill 1189 provides that ads for legal services cannot use “medical alert,” “health alert,” “drug alert,” or “public service announcement,” which suggest the advertiser is offering professional, medical or government agency advice about medications or medical devices. The ads also cannot display the logo of a federal or state government agency to suggest government sponsorship or use “recall” when referring to a product that has not been recalled by a government agency or by voluntary act.

## SENATE BILL 2342 (CREIGHTON/LEACH) Enhancing Texans' Access to Courts

---

Another of TLR's major priorities for this session was making litigation less expensive and time consuming so Texans can pursue legitimate claims in court.

Texas has a three-tier, state-run trial court system. In the first tier are justice of the peace (JP) courts. Each Texas county has at least one of these courts, which currently handle civil cases with no more than \$10,000 in controversy. Each of these courts handles thousands of cases every year. They are efficient and accessible, both procedurally and geographically.

In Texas' second tier of trial courts are the 247 county courts at law. Most of these have civil jurisdiction beginning at \$200 and capped at \$200,000, but 61 county courts at law in 20 Texas counties have civil jurisdiction exceeding the standard \$200,000 cap. Many of the extended-jurisdiction courts have unlimited civil jurisdiction, like a district court.

Without regard to the amount in controversy, civil cases filed in county courts at law are tried to six-person juries. Consequently, a \$100 million lawsuit pending in a county court at law in Dallas would be tried to six jurors. If the same case were filed in a district court in Dallas, it would be presented to 12 jurors. Studies indicate that smaller juries are more likely to reach anomalous decisions. When the stakes are high, 12 jurors are better than six, which is why the Texas Constitution requires 12-person juries in felony criminal cases.

In Texas' third tier of trial courts are its 472 district courts, most of which have general criminal and civil jurisdiction, with civil jurisdiction starting at \$200 and having no upper limit. At least one district court serves every Texas county.

Having a three-tier trial structure is logical only if the structure serves a meaningful purpose. A structure in which there are easily accessed courts for quick, fair and inexpensive resolution of the smallest civil cases

(tier one), courts that provide a quick and reasonably priced resolution for modest sized cases (tier two), and courts capable of handling high-stakes or complex cases (tier three) is a rational system. However, having courts in the middle tier (county courts at law) that have the same jurisdiction as courts in the upper tier (district courts) is not rational, and neither is providing that the two upper tier courts can hear cases with as little as \$200 in controversy.

**Senate Bill 2342** did not seek to reshape the entire judicial system, but instead, to take important steps toward rationalizing Texas' existing three-tier system. In Senate Bill 2342, JP court jurisdiction is increased from \$10,000 to \$20,000, making these efficient courts available for a larger number of small civil disputes. Standard county court at law jurisdiction is increased from \$200,000 to \$250,000 in Senate Bill 2342, making these tier two courts available for a larger universe of modest-sized civil disputes. Under this provision, 185 county courts at law see their jurisdiction increased, while the 61 county courts at law that now hear cases having more than \$250,000 in controversy will retain their current jurisdiction.

Senate Bill 2342 also requires the Texas Supreme Court to adopt rules to promote the prompt, efficient and cost-effective resolution of any civil action with less than \$250,000 in controversy that is filed in a county court at law. This change moves the county courts at law back toward their historic and logical role as tier two trial courts handling modest-sized civil cases quickly and at lower cost.

Finally, Senate Bill 2342 requires the use of a 12-person jury in a county court at law if the amount in controversy in the case exceeds \$250,000 unless all of the parties agree to a jury composed of fewer jurors. Under this provision, when the county court at law is effectively acting as a substitute district court, then the case is treated as if filed in a district court.

---

Catch up on the latest tort reform news in TLR's blog, *For the Record*.  
Visit [www.tortreform.com/for-the-record](http://www.tortreform.com/for-the-record).

---

### **HOUSE BILL 3300 (MURR/HUFFMAN)**

#### **Making Texas' Motion to Dismiss Statute More Useful**

The existing motion to dismiss rule *requires* that attorney's fees be assessed against the losing party when a motion to dismiss is filed. Because many judges are reluctant to grant a meritorious motion to dismiss if it will burden the losing party with paying the winning party's legal fees, attorneys are reluctant to file legitimate motions to dismiss and expose their clients to the legal costs if the motion is denied. **House Bill 3300** changes the word "shall" to "may," allowing judicial discretion in shifting legal fees when granting or denying a motion to dismiss.

### **SENATE BILL 2140 (HUGHES/BURROWS)**

#### **Reining in a Potential Abuse of Government Power**

Texas' attorney general has tremendous authority to seek civil penalties under the Texas Deceptive Trade Practices Act. This authority could be subject to serious abuse, in part due to the very high per-violation penalty of \$20,000. **Senate Bill 2140** reduces the per-violation penalty by half, to \$10,000.

### **HOUSE BILL 3233 (KLICK/FALLON)**

#### **Clarifying the Judicial Campaign Fairness Act**

The Judicial Campaign Fairness Act was ambiguous in some places and probably unconstitutional in others. It was confusing to donors who were trying to comply with the law. **House Bill 3233** amends the act to address some of the ambiguities and delete the parts that are unconstitutional, while preserving the protections that ensure judicial campaigns are conducted fairly and ethically.

### **HOUSE BILL 3040 (HUNTER/HUFFMAN)**

#### **Establishing the Judicial Selection Commission**

This bill establishes a commission to study how the state selects its judges. The commission will have 15 members: four appointed by the governor, four appointed by the lieutenant governor, four appointed by the speaker, and one each appointed by the chief justice of the Texas Supreme Court, the presiding judge of the Texas Court of Criminal Appeals and the board of directors of the State Bar of Texas.

### **HOUSE BILL 2730 (LEACH/HUGHES)**

#### **Addressing Abuses in Texas' Anti-SLAPP Statute**

When the Legislature passed the Texas Citizens' Participation Act in 2011, it wanted to ensure a powerful entity couldn't use a frivolous lawsuit to bully Texans out of exercising their rights of free speech and association. However, the law has been used in ways the Legislature never intended—for example, to shield actions like extortion and theft of trade secrets—which wasted time and resources. **House Bill 2730** is the product of feedback from key stakeholders, including media organizations, attorneys and judges who work with this law every day. It helps guarantee Texans can exercise their constitutional rights of speech and association, while making adjustments to prevent the statute's overly broad application.

### **OTHER TLR ACTIVITY IN 2019**

In some cases, the reason for TLR's engagement on a bill may not always be apparent. For example, TLR supported **Senate Bill 711**, which allows the Texas Department of Motor Vehicles to include a notice that a vehicle is subject to a manufacturer's recall on the report that is generated when the vehicle completes its yearly safety inspection.

Airbags manufactured by Takata are found in millions of vehicles sold in the U.S. Some of these airbags have been reported to spray dangerous metal shards through the passenger cabin when the airbag deploys in a crash. Cars with Takata airbags have been recalled by the National Highway Transportation Safety Administration. Unfortunately, many owners of vehicles equipped with these airbags have not returned to their dealerships for repairs. If Senate Bill 711 results in a greater percentage of these airbags being replaced, then the number of airbag-related injuries—and the lawsuits that follow—will be reduced. It is a win for the safety of consumers, but a side benefit is that fewer people will need to access Texas' judicial system to address an injury that might have been prevented.

*continued on page 12*



Please visit [www.tortreform.com](http://www.tortreform.com) to learn more about TLR's legislative priorities this session.



# Consensus Building is the Heart of TLR’s Legislative Advocacy

By Lee Parsley, TLR General Counsel

As every admirer of *Schoolhouse Rock* knows, the journey from idea to law is long and fraught (a quick refresher can be found on YouTube). There are 101 ways for a bill to die in the legislative process, and only one way for a bill to become law. That’s the challenge of legislative advocacy.

Here are the statistics for the past three regular sessions of the Texas Legislature:

HOUSE BILLS				
SESSION	INTRODUCED	PASSED BOTH HOUSES	VETOED	BECAME LAW
86th (2019)	4,765	969	41	928 (19.5%)
85th (2017)	4,333	700	36	664 (15.3%)
84th (2015)	4,207	819	32	787 (18.7%)
SENATE BILLS				
SESSION	INTRODUCED	PASSED BOTH HOUSES	VETOED	BECAME LAW
86th (2019)	2,559	460	15	445 (17.4%)
85th (2017)	2,298	511	14	497 (21.6%)
84th (2015)	2,069	504	9	495 (23.9%)
COMBINED				
SESSION	INTRODUCED	PASSED BOTH HOUSES	VETOED	BECAME LAW
86th (2019)	7,324	1,429	56	1,373 (18.7%)
85th (2017)	6,631	1,211	50	1,161 (17.5%)
84th (2015)	6,276	1,323	41	1,282 (20.4%)

A bill filed in the 86th Session had a less than 20 percent chance of becoming law, which is pretty typical. We at TLR try to increase our odds of passing legislation in a number of ways, the most meaningful of which is through multi-faceted consensus building.

In the months preceding a legislative session, we draft what we think is the best solution to a clearly identified problem. The drafting includes input from our business allies who will be affected by the change in law. Often, these stakeholders are not of one mind about the problem or solution. So we draft, re-draft and re-draft again to build consensus around a solution.

Often, we start our work to build a consensus before the Legislature convenes. Many members of the Legislature are subject-matter experts on our issues, while others provide critical guidance about the legislative realities in a particular session. The legislators who author and sponsor our bills always have a major impact on both the substance and drafting of the final products. We in TLR are mindful that our role is a supportive one to the legislators themselves.

Finally, we almost always seek input from opponents of the bills we are advocating. When the opponents of legislation engage with us in a constructive manner, it

always improves the finished product. When they simply try to obstruct a bill, then we proceed without them.

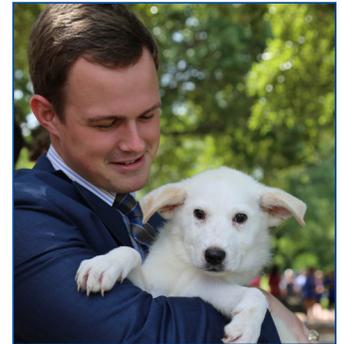
This session, we benefitted from a particularly productive dialogue with the Texas Trial Lawyers Association (TTLA) on many of our flagship bills. For example, TTLA suggested that the bill to regulate attorney television advertisements (**Senate Bill 1189**) include a “safe harbor” for advertising attorneys. We agreed. The law that becomes effective September 1 provides that an attorney who obtains State Bar pre-approval of her advertisements cannot be pursued by the attorney general or a local prosecutor for failing to comply with the advertising requirements unless the attorney is given the opportunity to withdraw the ad from the airwaves and refuses to do so. With this change, the bill passed the House 114 to 19 and the Senate 31 to zero.

On the local government contracting bill (**House Bill 2826**), TTLA sought a review process to ensure the attorney general cannot capriciously refuse to approve a local government’s contingent fee contract. We agreed, and the bill passed the House 102 to 40 and the Senate 27 to four.

This session was proof to us again that creating good public policy can be achieved while listening to others, both friends and opponents. ■

## Going to the Dogs

In partnership with Arnold Public Affairs and Austin Pets Alive, **TLR** sponsored the second Puppy Paws and Makin' Laws. After a wildly successful first event last session, we decided to expand this year to host two mornings of puppy snuggles on the Capitol grounds. All legislators and staff were invited, and the puppies were available for stress relief, photos and most importantly—adoption! ■ *Photos courtesy of Freddie Thompson*



2019's Dynamic Civil Justice Agenda, *continued from page 10*

### TLR ALSO ACTIVELY SUPPORTED THESE BILLS IN THE 2019 LEGISLATIVE SESSION

- ✓ **SB 230**—providing immunity to landowners for recreational use of private property for rock climbing
- ✓ **SB 346**—consolidating and repealing court costs
- ✓ **SB 489**—protecting from disclosure the home addresses of judges who may be subject to harassment and even death threats
- ✓ **SB 658**—making permanent a records archive fee charged by clerks to preserve historic court records
- ✓ **SB 891**—the omnibus bill creating new courts in Texas
- ✓ **SB 1414**—clarifying the law on the late fees apartment owners can charge, to reduce class action litigation
- ✓ **HB 685**—providing immunity to court clerks related to public access to court records
- ✓ **HB 1693**—reducing unfairness arising from the timing in the use of affidavits to prove the reasonableness of medical bills in a lawsuit
- ✓ **HB 1767**—specifying the evidence that may be introduced regarding employee compensation in a utility rate case
- ✓ **HB 1941**—prohibiting unconscionable charges by some healthcare facilities
- ✓ **HB 2102**—strengthening the law prohibiting roofing contractors from paying deductibles
- ✓ **HB 2103**—making clear that roofing contractors cannot act as public insurance adjusters
- ✓ **HB 2362**—altering the standard of care in ER and obstetrics cases
- ✓ **HB 2929**—making clear that a hospital lien filed in a lawsuit does not violate the fraudulent lien statute
- ✓ **HB 3557**—protecting critical infrastructure from intentional vandalism