

REPTL, Meet T-REP. T-REP, Meet REPTL.

The 2023 Texas Estate and Trust Legislative Update

(Including Decedents' Estates, Guardianships, Trusts,
Powers of Attorney, and Other Related Matters)

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(See the note on page 2 about hyperlinking to the online version of this paper.)

Note: This 2023 Texas Estate and Trust Legislative Update has been prepared by T-REP and provided to REPTL members by agreement between the two organizations.

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Legal Experience

Bill Pargaman joined the Austin law firm of Brink Bennett Pargaman Atkins + Sanchez in July of 2021. He has been certified as a specialist in Estate Planning and Probate Law by the Texas Board of Legal Specialization (since 1986) and is a Fellow in the American College of Trust and Estate Counsel (since 1994). He is very active in the Real Estate, Probate and Trust Law Section of the State Bar of Texas, having served as REPTL's Chair for the 2015-2016 bar year, as chair of its Estate and Trust Legislative Affairs Committee for the 2009, 2011, and 2013 legislative sessions, and as a Council member and chair of REPTL's Trusts Committee from 2004 to 2008.

Bill's practice involves the preparation of wills, trusts and other estate planning documents, charitable planning, and estate administration and alternatives to administration. He advises clients on the organization and maintenance of business entities such as corporations, partnerships, and limited liability entities. He represents nonprofit entities with respect to issues involving charitable trusts and endowments. Additionally, he represents clients in contested litigation involving estates, trusts and beneficiaries, and tax issues.

Education

- Doctor of Jurisprudence, *with honors*, University of Texas School of Law, 1981, Order of the Coif, Chancellors
- Bachelor of Arts, Government, *with high honors*, University of Texas at Austin, 1978, Phi Beta Kappa

Professional Licenses

- Attorney at Law, Texas, 1981

Court Admissions

- United States Tax Court

Prior Experience

- Saunders, Norval, Pargaman & Atkins, L.L.P., 2012-2021
- Brown McCarroll, L.L.P. (now Husch Blackwell LLP), 1981 – 2012

Speeches and Publications

Mr. Pargaman has been a speaker, author, or course director at numerous seminars, including:

- State Bar of Texas (TexasBarCLE) – Advanced Estate Planning and Probate Course, Advanced Estate Planning Strategies Course, Estate Planning and Probate Drafting Course, Advanced Guardianship Law Course, Advanced Real Estate Law Course, Advanced Real Estate Drafting Course, Advanced Tax Law Course, State Bar College Summer School, State Bar Annual Meeting, Practice Skills for New Lawyers, Essentials for the General Practitioner, Miscellaneous Webcasts, and more
- Real Estate, Probate and Trust Law Section Annual Meeting
- University of Texas Estate Planning, Guardianship, and Elder Law Conference
- South Texas College of Law Wills and Probate Institute
- Estate Planning & Community Property Law Journal Seminar
- Texas NAELA Summer Conference
- University of Houston Law Foundation General Practice Institute, and Wills and Probate Institute

William D. Pargaman (cont.)

- Austin Bar Association Estate Planning and Probate Section Annual Probate and Estate Planning Seminar
- Austin Bar Association and Austin Young Lawyers Association Legal Malpractice Seminar
- Dallas Bar Association Probate, Trusts & Estate Section
- Houston Bar Association Probate, Trusts & Estate Section
- Tarrant County Probate Bar Association
- Hidalgo County Bar Association Estate Planning and Probate Section
- Bell County Bench Bar Conference
- Midland College/Midland Memorial Foundation Annual Estate Planning Seminar
- Austin Chapter, Texas Society of Certified Public Accountants, Annual Tax Update
- Texas Bankers Association Advanced Trust Forum
- Texas Credit Union League Compliance, Audit & Human Resources Conference
- Estate Planning Councils in Austin, Amarillo, Corpus Christi, Houston, Lubbock, San Antonio, and Tyler
- Austin Association of Life Underwriters

Professional Memberships and Activities

- American College of Trust and Estate Counsel, Fellow, 1994-Present
- State Bar of Texas
 - Real Estate, Probate and Trust Law Section (REPTL), Member (Chair, 2015-2016)
 - REPTL Council, Member, 2004–2008
 - Estate and Trust Legislative Affairs Committee, Member, 2000–Present (Chair, 2008–2013)
 - Public Service Committee, Chair, 2013–2014
 - Trusts Committee, Member, 2000–2010 (Chair, 2004–2008)
 - Uniform Trust Code Study Project, Articles 7–9 & UPIA, Subcommittee Member, 2000–2003
 - Continuing Legal Education Committee, 2018-Present
 - Texas Board of Legal Specialization (Estate Planning and Probate Law), Examiner, 1995-1997
- Texas Real Estate and Probate Institute (T-REP) (Board Member, 2022-Present)
- Estate Planning Council of Central Texas, Member, 1981-2019 (President, 1991-1992)
- Austin Bar Association, Member
 - Estate Planning and Probate Section, Member (Chair, 1992-1993, Board Member, 1997-1999)

Honors

- Recipient, TexasBarCLE STANDING OVATION award, 2014
- Listed in The Best Lawyers in America® (2019 & 2023 Trusts & Estates “Lawyer of the Year” in Austin, TX)
- Listed in *Texas Super Lawyers* (Texas Monthly)
- Listed in The Best Lawyers in Austin (Austin Monthly)

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EDUCATION

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- Samford University Cumberland School of Law, Birmingham, Alabama (J.D., 2011)
- Washington & Lee University, Lexington, Virginia (B.A. in Politics, 2008)

CERTIFICATIONS AND ADMISSIONS

- Board Certified, Estate Planning and Probate Law, Texas Board of Legal Specialization
- Admitted to Practice: State Bar of Texas; United States Tax Court

PROFESSIONAL ACTIVITIES AND HONORS

- The College of the State Bar of Texas, Member
- Real Estate, Probate, and Trust Law Section of the State Bar of Texas, Member
 - Decedents' Estates Committee, 2022-Present
 - Leadership Academy, 2018-2019
- Tax Section of the State Bar of Texas, Member
- Austin Bar Association Estate Planning and Probate Section, Member
- Estate Planning Council of Central Texas, Member
- Texas Super Lawyers Rising Star, 2021-2023

PUBLICATIONS AND PRESENTATIONS

- Co-Author, "Face Masks, Zoom, and Quarantinis" Welcome to...The 2021 Texas Estate and Trust Legislative Update" State Bar of Texas, Advanced Estate Planning and Probate Course (2021)
- Presenter/Co-Author, "Teaching the ABCs to Your Trustees: How to Provide Practical Instructions to New Trustees," State Bar of Texas, Handling Your First (or Next) Trust Course (2021)
- Co-Author, "Language to Include in Your Estate Planning Documents: Suggestions from Trust and Estate Litigators," State Bar of Texas, Estate Planning and Probate Drafting (2020)
- Co-Author, "Transfer Restrictions in Business Entities," State Bar of Texas, Advanced Estate Planning & Probate Course (2020)
- Co-Author, "How to Request (and Get) a PLR," *Texas Tax Lawyer*, Spring 2013, Vol. 40, No. 2

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EDUCATION

- Baylor University School of Law, Waco, TX (J.D., 2007)
- Rhodes College, Memphis, TN (B.A. in International Studies, Minor in Spanish, Phi Beta Kappa, cum laude, 2001)

PROFESSIONAL ACTIVITIES & HONORS

- Chair, Legislative Affairs Committee, Texas Real Estate & Probate Institute, 2022-Present
- Chair, Legislative Affairs Committee, State Bar of Texas, Real Estate, Probate & Trust Law Section, 2021
- Co-Chair, Legislative Affairs Committee, State Bar of Texas, Real Estate, Probate & Trust Law Section, 2019-2021
- Council Member, State Bar of Texas, Real Estate Probate & Trust Law Section, 2016-2020
- Chair, Fiduciary Litigation Committee, State Bar of Texas, Real Estate Probate & Trust Law Section, 2017-2021
- Texas Rising Star, Texas Monthly Magazine and Texas Rising Star Magazine: 2016 – 2018
- Trust Code Committee, State Bar of Texas, Real Estate Probate & Trust Law Section, 2011 – 2013
- Texas Bar Foundation
- Texas Bar College

CLE PRESENTATIONS AND PAPERS

- *Venue and Jurisdiction in Probate Proceedings*, Estate Planning & Community Property Law Journal, Texas Tech University School of Law, Author, June, 2022
- *Standing and Capacity in Trusts and Estates*, State Bar of Texas, Advanced Estate Planning and Probate Course, Speaker and Author, June 2022
- *Venue and Jurisdiction in Probate Proceedings*, State Bar of Texas, Fiduciary Litigation, Author and Speaker, December 2021
- *Legislative Update*, State Bar of Texas, Advanced Estate Planning and Probate Course, Speaker, June 2021
- *What Every Planner Needs to Know About Fiduciary Litigation*, State Bar of Texas, Advanced Estate Planning Strategies, Panelist, March 2021
- *Alternatives to Tortious Interference with Inheritance*, Estate Planning & Community Property Law Journal, Texas Tech University School of Law, Co-Author, March 1, 2021
- *Legislative Update*, Elder Law Section of San Antonio Bar Association, January 2021
- *Alternatives to Tortious Interference with Inheritance*, State Bar of Texas, Advanced Estate Planning & Probate, Panelist, June 2020
- *Legislative Update*, Corpus Christi Estate Planning Council, Speaker, September 2019
- *Strategies for Suing and Defending Fiduciary Decision Making*, State Bar of Texas Fiduciary Litigation Course, Author and Speaker, December 2018
- *Case Development Strategies*, State Bar of Texas, Fiduciary Litigation Course, Panelist, December 2016
- *Standing and Capacity to Sue in Estate and Trust Litigation*, State Bar of Texas, Tarrant County Probate Litigation Seminar, Author and Speaker, September 2016

LAUREN DAVIS HUNT (cont.)

- *Standing and Capacity to Sue in Estate and Trust Litigation*, State Bar of Texas, Fiduciary Litigation Course, Author and Speaker, December 2015
- *The Client is Incapacitated – What do you do next?*, State Bar of Texas, Advanced Estate Planning and Probate Course, Author and Speaker, June 2014
- *Decanting with No Sour Grapes*, State Bar of Texas, Estate Planning & Probate Drafting Course, Panelist, October 2013
- *Capacity, Standing and Jurisdiction*, State Bar of Texas, Advanced Estate Planning and Probate Course, Author and Speaker, June 2013
- *Informal Demand or Formal Discovery: The Debate on Obtaining Information from Fiduciaries Under Their Duty to Disclose*, State Bar of Texas, Fiduciary Litigation, Moderator, 2011
- *Exculpatory Clauses*, State Bar of Texas, Trial of a Fiduciary Litigation Case, Co-Author and Co-Speaker, December 2009

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¹ For those who care and are viewing an electronic version of this paper, the color of the horizontal lines is “Viva Magenta” (Pantone 18-1750), the Pantone 2023 “Color of the Year.”

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REPTL, Meet T-REP. T-REP, Meet REPTL.

The 2023 Texas Estate and Trust Legislative Update

(Including Decedents' Estates, Guardianships, Trusts, Powers of Attorney, and Other Related Matters)

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1. The Preliminaries.

1.1 Thank You, Bill. Bill Pargaman, long-time author of this paper, died on August 3, 2023. A friend and teacher to many, he was deeply committed to his family, community, and the State Bar. Bill spent more than two decades contributing to the Real Estate, Probate, and Trust Law section of the State Bar of Texas, serving on the Trusts and Legislative Affairs Committees, REPTL Council, and ultimately as Chair of REPTL in 2015-2016. Following his tenure as REPTL Chair, he continued his service to the State Bar by volunteering countless hours researching, writing, speaking, and advancing legislation to further the practice of law in estate planning and probate. Bill was instrumental in forming the Texas Real Estate and Probate Institute and served on its inaugural board beginning in 2022.

Beyond his dedication to the law, Bill was always ready to help others, often employing dry humor and the full force of his sharp mind. As Melissa Willms observed in her August 9, 2023 REPTL e-blast, Bill had a remarkable "willingness to share his knowledge typically not with just a pat answer but thoughtfully and comprehensively." This was certainly true of my experience with him. I benefited from Bill's generous mentorship and vast knowledge on a variety of subjects¹ while co-authoring this paper with him. I miss you, Bill, and thank you. My next Johnnie Walker Black is raised for you.

1.2 Introduction and Scope. The 88th Regular Session of the Texas Legislature spans the 140 days beginning January 10, 2023 and ending May 29, 2023. 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 I² 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.)

1.3 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, we are human. And have been known to make mistakes.
- 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, T-REP, 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!). Meredith occasionally enjoys a cold beer while making evening additions to this paper.
- 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 T-REP 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.

¹ One of these was Bill's proficiency with Microsoft Word. We had several calls and Zoom meetings where he educated me about many handy formatting tools including style separators, nonbreaking hyphens and nonbreaking spaces, and color customization to match the Pantone Color of the Year.

² In this paper, "I" refers to Bill Pargaman, the author of this legislative update since the 2009 legislative session.

However, starting in the 2021 legislative session, 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.

- 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 1.6 below for obtaining copies of the actual bills themselves so you may review and analyze them yourself before relying on any information in this paper.

1.4 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 8 on page 8**.

1.5 A Note About Linking to the Electronic Version. The primary location where this paper will be posted is [the REPTL Estate & Trust Legislative Update page](#). I would recommend using the following link to find the most recent version of the paper:

www.reptl.org/Private/DrawOnePage.aspx?PageID=119

You'll find the current and previous legislative updates going as far back as 1983 (although I'm only responsible for the updates beginning in 2009). Once you click on the link to an update, you should open a new browser tab with a PDF version of this paper. However, **don't** copy that URL, because it will only be a link to that particular version of the paper, and will only work so long as that version remains posted.

1.6 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. Later, I revised the 2009-2017 updates also to move the statutory language to separate supplements. Sometime after the 2023 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 on the same [REPTL Estate & Trust Legislative Update page](#).

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 2023 regular legislative session that spans from January through May is "88(R) – 2023"). 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 2023 Decedents' Estates bill prepared by T-REP, you'd type "HB 2821" 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:

2.1 REPTL. In years past, the Real Estate, Probate & Trust Law Section of the State Bar of Texas ("REPTL") was active in proposing legislation. However, starting with the 88th Legislative Session, the Texas Real Estate and Probate Institute, or T-REP, will take the lead on legislative initiatives. The reason this legislative role has moved from REPTL to T-REP is discussed in detail in **Part 3 beginning on page 3**. (*We strongly encourage you to read Part 3.*)

Despite REPTL's reduced role in the legislative process, it will continue to educate its members on important legislative changes in the areas of real estate, decedents' estates, trusts, and other areas of interest. Additionally, with its more than forty-year history and breadth of expertise in developing legislative packages and working to get them enacted, REPTL provides guidance to T-REP that is worthy of acknowledgment. REPTL's officers during the session were:

- Denise Cheney of Austin, Chair
- Melissa Willms of Houston, Chair-Elect/Secretary
- Richard Crow of Houston, Treasurer
- Craig Hopper, Immediate Past Chair

Following REPTL's annual section meeting on July 13, 2023, assuming nothing unexpected happens, REPTL's officers will be:

- Melissa Willms of Houston, Chair
- Richard Crow of Houston, Chair-Elect/Secretary
- Lora Davis of Dallas, Treasurer
- Denise Cheney of Austin, Immediate Past Chair

2.2 T-REP. Following the July, 2021, 5th Circuit ruling in *McDonald v. Sorrels*, REPTL essentially terminated all of its legislative activities. While *McDonald* permits REPTL to support legislation that is "germane to the practice of law," the scope of germane

legislation is extremely limited, so that “permission” is of limited value. In the summer of 2022, T-REP was formed as an independent entity by a group of practitioners who had previously had substantial involvement in the legislative process (many through REPTL) so that there would still be some entity promoting the type of legislation that REPTL had previously worked on.

2.3 The Statutory Probate Judges. The vast majority of probate and guardianship cases are heard by the judges of the Statutory Probate Courts (19 of them in 10 of Texas’ 15 largest counties). Judge Guy Herman of the Probate Court No. 1 of Travis County (Austin) is the Presiding Statutory Probate Judge and has been very active in promoting legislative solutions to problems in our area for many years.

2.4 The Bankers. There are two groups of bankers that T-REP deals with. One is the Wealth Management and Trust Division of the Texas Bankers Association (“TBA”), which tends to represent the larger corporate fiduciaries, while the other is the Independent Bankers Association of Texas (“IBAT”), which tends to represent the smaller corporate fiduciaries, although the distinctions are by no means hard and fast.

2.5 The Texas Legislative Council. Among other duties, the Texas Legislative Council³ provides bill drafting and research services to the Texas Legislature and legislative agencies. All proposed legislation must be reviewed (and usually revised) by Leg. Council before a Representative or Senator may introduce it. In addition, as part of its continuing statutory revision program, Leg. Council was the primary drafter of the Texas Estates Code, a nonsubstantive revision of the Texas Probate Code.

(a) The Authors and Sponsors. All legislation needs an author, the Representative or Senator who introduces the legislation. A sponsor is the person who introduces a bill from the other house in the house of which he or she is a member. Many bills have authors in both houses originally, but either the House or Senate version will eventually be voted out if it is to become law; and so, for example, the Senate author of a bill may become the sponsor of a companion House bill when it reaches the Senate. In any event, the sponsor or author controls the bill and its fate in their respective house. Without the dedication of the various authors and sponsors, legislative success in this session could not be

possible. The unsung heroes are the staffs of the legislators, who make sure that the bill does not get off track.

2.6 The Committees. All legislation goes through a committee in each chamber. In the House, most bills in our area go through the House Committee on Judiciary and Civil Jurisprudence, or “Judiciary.” In the Senate, in recent sessions, most bills in our area went through the Senate Committee on State Affairs, or “State Affairs,” because in 2015, Lt. Gov. Patrick dissolved the Senate Committee on Jurisprudence, or “Jurisprudence,” where most of our bills used to go. However, he resurrected Jurisprudence for the 2021 session, so our bills are mostly split between that committee and State Affairs.

3. REPTL and T-REP

3.1 REPTL. The Real Estate, Probate & Trust Law Section of the State Bar of Texas has had a very robust legislative program for decades, especially on the probate side. However, due to the July 2021 5th Circuit opinion in the *McDonald* case, REPTL is no longer actively involved in promoting legislative packages before the Texas Legislature. This role is being advanced by a new, independent organization, the Texas Real Estate and Probate Institute, or T-REP.



3.2 The *McDonald* Case.⁴ In March of 2019, three Texas attorneys sued officers and directors of the State Bar of Texas (SBOT or the State Bar), alleging a violation of the attorneys’ First Amendment rights. By being required to join the State Bar, which they argued was engaged in political and ideological activities that were not germane to the regulation of the legal profession or the improvement of the quality of legal services, they claimed they were required to subsidize those activities. They also challenged State Bar programs they claimed exceeded “core regulatory functions.” Let’s unpack some of the basics of their arguments.

(a) Texas Has a Mandatory Bar Association. State bar associations are of two types, “mandatory” and “voluntary.” Mandatory bars, also known as “integrated” bars, require that attorneys be members and pay dues as a condition of practicing law. Texas has a mandatory bar. All licensed attorneys must join. The

opinion was issued, it was *McDonald v. Sorrels*. By the time the U.S. Supreme Court denied certiorari in April of 2022, the case was *McDonald v. Firth*. The SBOT maintains a website with a timeline of the proceedings in the litigation and [links to key documents](#).

³ We usually refer to the Texas Legislative Council as simply “Leg. (pronounced “ledge”) Council.”

⁴ Note that pleadings, rulings, and opinions in this case changed from year to year as the name of the President of the State Bar of Texas changed. When the case was originally filed, it was *McDonald v. Longley*. When the 5th Circuit

State Bar is a public corporation and an administrative agency administered by the Supreme Court of Texas. In states with voluntary bars, the licensing function is handled by a separate state agency, while membership in the bar is voluntary.

(b) Activities of a Mandatory Bar Association Must be Germane to the Practice of Law.

Because membership in a mandatory bar is exactly that – mandatory – there are limits on what activities a mandatory bar may conduct, based primarily on First Amendment concerns that it is impermissible to require someone to pay dues to sponsor “speech” they may not agree with. For many years, the primary source for those limits has been the 1990 Supreme Court case of *Keller v. State Bar of California*, 496 U.S. 1, 5 (1990). To extremely oversimplify that case, the Supreme Court held that activities conducted by mandatory bar associations must be “germane” to the practice of law.

(c) Approval Process for REPTL’s Legislative Proposals. In order to assure compliance with *Keller*, all State Bar sections are required to go through an approval process to assure that their legislative proposals complied with the *Keller* standards. In the past, State Bar rules required, among other things, that legislative proposals (i) did not carry the potential of deep philosophical or emotional division among a substantial segment of the State Bar’s membership; (ii) were in the public interest; (iii) were not primarily intended to provide an economic benefit to the State Bar’s members; (iv) were not designed to promote or impede the political candidacy of any person or party; and (v) could not be construed to advocate political or ideological positions (citing *Keller*). The approval process required sections to circulate their proposals among all other State Bar sections and committees for comment, submit them to the State Bar (along with any comments and responses to same) by the middle of the year prior to the next legislative session, appear at a meeting of the Legislative Policy Subcommittee of the State Bar’s board of directors, and then obtain approval from the full board of directors, usually in September of nonlegislative years. REPTL followed these detailed procedures for all of its previous legislative proposals, and a more detailed description of that process was included in prior legislative updates.

(d) The Courts Weigh in on SBOT Activities.

In *McDonald*, the federal district court denied the plaintiffs’ motion for partial summary judgment and granted the State Bar’s cross-motion in May of 2020. The plaintiffs appealed to the 5th Circuit. In July of 2021, the 5th Circuit upheld the constitutionality of the vast

majority of the Bar’s challenged activities, including their CLE and annual meeting programming, diversity initiatives,⁵ the Texas Bar Journal, and the bulk of its access to justice initiatives. However, the court found that parts of the State Bar’s legislative efforts were not germane, specifically mentioning as an example REPTL’s 2019 legislation relating to Texas trust law:

[The State Bar’s] lobbying for changes to Texas trust law is germane to the extent the changes affect lawyers’ duties when serving as trustees, and non-germane to the extent the changes do not.⁶

In November of 2021, the plaintiffs filed a petition for writ of certiorari with the U.S. Supreme Court. In April of the following year, the U.S. Supreme Court denied certiorari.⁷

(a) Do REPTL’s Proposals Meet the McDonald Test?

Very few of REPTL’s proposed legislative changes apply just to lawyers. The test is not whether a REPTL legislative proposal is uncontroversial; it’s whether the proposal is germane to the core functions of the State Bar. After the 5th Circuit opinion in the *McDonald* case was issued, the State Bar changed its legislative rules to require that sections wishing to propose legislation include in their submission a detailed explanation of “how the proposed legislation addresses the State Bar, the regulation of lawyers, the functioning of state or federal courts, or the functioning of the legal system, such that the State Bar’s taking of a position regarding the proposed legislation will comply with *Keller v. State Bar of California*, 496 U.S. 1 (1990), and *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021).”

3.3 But Wait -- Isn’t REPTL Membership Voluntary?

You may be wondering why the court cited a portion of REPTL’s legislative package as an example of a nongermane activity when membership in REPTL is completely voluntary. The 5th Circuit opinion acknowledged that membership in the State Bar’s numerous sections is completely voluntary. However, it found that the State Bar’s mandatory dues supported the sections’ legislative efforts in several ways:

First, the legislative program must be approved by the Bar’s board, placing the entire Bar’s imprimatur on it. Second, the voluntary sections are funded in part by the Bar’s general fund. And third, the Bar funds a Government Relations Department (“GRD”), which “manages and coordinates the State Bar’s legislative program.”⁸

⁵ *McDonald v. Sorrels*, 4 F.4th 229 (5th Cir. 2021).

⁶ *Id.* at 248.

⁷ *Firth v. McDonald*, 142 S.Ct. 1442 (2022).

⁸ *McDonald*, 4 F.4th at 239.

In my opinion, REPTL receives very little financial support from the State Bar's general fund. However, the State Bar is not about to allow individual sections to lobby for whatever legislative changes they want without some type of internal review and approval process that would lead to the State Bar's imprimatur on the legislative proposals.

3.4 Introducing T-REP. While the *McDonald* case has been seen as a victory for the State Bar as a whole (since the court upheld most of the State Bar's functions as a mandatory association), it is a loss for most sections' legislative efforts. In response to REPTL's future inability to propose the types of legislation it has in the past, a number of people currently or formerly involved with REPTL's efforts formed a new, independent, organization: the Texas Real Estate and Probate Institute, or T-REP,⁹ in the summer of 2022. While it is anticipated that REPTL and T-REP will communicate and cooperate, great pains were taken to assure that T-REP is independent of, and not controlled by, REPTL.



(a) Composition of T-REP's Board. The T-REP bylaws provide for a board of directors consisting of between three and 20 members. There are two ex-officio members of the board: the then-serving REPTL chair and REPTL's immediate past-chair. During the 2023 legislative session, those officers were Denise Cheney, a real estate lawyer, and Craig Hopper, a probate lawyer, respectively, both of whom are from Austin. However, no other then-serving REPTL officer may be elected to the T-REP board, and a majority of the board must consist of persons who are neither past-chairs of REPTL nor currently-serving REPTL Council members. Except for the ex-officio members of the board, members of the board will serve staggered four-year terms.

(b) Members of T-REP's Board. T-REP's small initial board of directors quickly elected a much larger board, consisting of 11 members in addition to the two ex-officio members. The names of those 11 members, the expiration dates of their staggered terms, and whether they are real estate (RE) or probate lawyers (P) are:

- *Denise Cheney* (ex-officio) (RE)
- *Craig Hopper* (ex-officio) (P)¹⁰
- *Melissa Willms* (ex-officio) (P)¹¹
- Mickey Davis (2025) (P)¹²
- *Eric Reis* (2025) (P)¹³
- *Roland Love* (2025) (RE)
- *Bill Pargaman* (2025) (P)
- *Reid Wilson* (2025) (RE)
- Howard Cohen (2027) (RE)
- Jim Dougherty (2027) (RE)
- Lauren Hunt (2027) (P)
- Marc Markel (2027) (RE)
- Shannon Guthrie (2027) (P)
- Gene Wolf (2027) (P)

Including the ex-officio members, only six of the 13 board members are past-chairs or current officers. Shannon Guthrie serves as T-REP's initial chair/president; Roland Love serves as vice chair, and Gene Wolf serves as secretary/treasurer.

3.5 What Will T-REP Do? T-REP has formed committees that will carry on much of the legislative work that was previously carried on by REPTL committees. Because of REPTL's inability to lobby for most legislation, the work of its committees will likely scale back. REPTL has entered into a State Bar-approved contract to pay T-REP to keep REPTL, and its membership, informed of legislative activities affecting REPTL's members.¹⁴ T-REP will conduct its own legislative activities,¹⁵ both with respect to proposing legislation and monitoring other legislation in areas of

⁹ We anticipate that T-REP will apply for a federal income tax exemption under Section 501(c)(6) of the Internal Revenue Code. This is the section typically used by business leagues, chambers of commerce, real estate boards, and boards of trade. While the organization will not be taxed on its income, contributions to this type of organization are not tax-deductible by the donor as a charitable contribution (they may be deductible as business expenses).

¹⁰ Through REPTL's 2023 annual section meeting in July.

¹¹ Following REPTL's 2023 annual section meeting.

¹² While the general rule is that terms will be four years, the bylaws call for terms to begin and end in odd-numbered years (right after a legislative session), and rather than have some initial directors serve one-year terms, these initial terms are either three or five years.

¹³ The names of current or past REPTL chairs are italicized.

¹⁴ This legislative update, along with the similar update prepared on real estate matters, constitutes a large portion of that service.

¹⁵ Note that until recently the "RE" or real estate side of REPTL usually did not have a legislative package, but was very active in monitoring legislation filed in its areas of interest. It DID have some clean-up bills in the 2021 session (that did not pass), and T-REP tried to get those bills passed this year. **SB 1767** (Creighton) (**HB 3423** (Bryant) was its companion), like 2021's **HB 3502** (Lambert, *et al.*) and **SB 1939** (Creighton), contained nonsubstantive updates relating to electronic voting by members and directors of condominium owners' associations and property owners' associations. Unfortunately, neither **SB 1767** nor **HB 3423** passed this session either. **SB 1768** (Creighton | Bryant)

interest to REPTL members, and report back to REPTL on both. T-REP has hired a lobbyist and legislative research assistants; positions that REPTL previously paid for.¹⁶

In future years, T-REP intends to put together lists of proposals in much the same way REPTL did in the past by gathering ideas from a variety of sources. These may be ideas that T-REP board of directors or REPTL members come up with, or they may be suggestions from practitioners around the state, accountants, law professors, legislators, judges – you name it. Most suggestions will receive at least some review. If you have ideas for the 2025 legislative package, you can contact T-REP's officers.

3.6 Will T-REP Coordinate With REPTL?

Coordinate, no. However, T-REP anticipates consulting with REPTL and taking advantage of the latter's expertise in developing its legislative packages and reviewing others' legislation in areas of interest to REPTL members. In addition, we anticipate that from time to time, REPTL may come up with legislative ideas that it will pass along to appropriate T-REP committees. There will likely be a number of current REPTL Council members or officers working on, and even chairing, most T-REP committees. This cooperation will facilitate communication between the two groups. However, unlike in the past, neither the REPTL Council nor the State Bar will have any further role in approving the legislative packages that T-REP chooses to propose, and when people testify on legislation proposed by T-REP, they will be testifying on behalf of T-REP, not REPTL. Since members of the Legislature are used to seeing witnesses testifying on behalf of REPTL, it may take a session or two for them to get used to the new regime.

3.7 What's Left for REPTL to Do? First and foremost, remember that REPTL will provide funding to T-REP to provide legislative monitoring services – which it will pass on to REPTL section members. Even though REPTL will no longer be conducting its own legislative activities, it will still provide its members

(**HB 3422** (Bryant) was its companion), like 2021's **HB 3503** (Lambert | Creighton) and **SB 1938** (Creighton), cleans up the Residential Construction Liability Act to eliminate references to the repealed Texas Residential Construction Act, revises Property Code rules regarding representation in justice courts to adopt the clearer Supreme Court rules on the same subject, and corrects obsolete references to Vernon's Statutes found throughout the Property Code. **SB 1768** was signed by the Governor on May 29, 2023, and is effective immediately. Finally, **SB 2493** (Middleton | Bryant) (**HB 3405** (Bryant) was its companion), like 2021's **HB 3504** (Lambert), cleans up outdated provisions in Prop. Code Chs. 92 (Residential Tenancies) and 94 (Manufactured Home Tenancies).

legislative updates regarding significant bills affecting real estate, probate, and trust law through its contract with T-REP. REPTL will also provide the same great benefits it's been providing for years, including:

- The REPTL Reporter.
- The REPTL Leadership Academy.
- The REPTL CLE Library.
- CLE discounts at a number of TexasBarCLE seminars.
- Discounted subscription to the State Bar's Online CLE Library.
- Partial funding of Title Standards Joint Editorial Board with the Oil, Gas, and Energy Resources Law (OGERL) Section and free access to the most current Title Examination Standards.

4. Resources Regarding the Legislative Process.

4.1 Where You Can Find Information About Filed Bills. You can find information about any of the bills mentioned in this paper (whether or not they passed), including text, lists of witnesses and analyses (if available), and actions on the bill, at the Texas Legislature Online website: www.legis.state.tx.us. The website allows you to perform your own searches for legislation based on your selected search criteria. You can even create a free account and save that search criteria (go to the "My TLO" tab). Additional information on following a bill using this site can be found at:

www.legis.state.tx.us/resources/FollowABill.aspx

4.2 Where You Can Find Information About Previous Versions of Statutes. I frequently see requests on Glenn Karisch's [Texas Probate E-Mail List](#) for older versions of statutes, such as the intestacy laws applicable to a decedent dying many years ago. You can find old law on your own (for free) rather than asking the list, and I'll use our intestacy statutes as an example.

- Former Texas Probate Code Sec. 38 had the rules for non-community property. If you've got a copy of it with the enactment information,¹⁷ you'll see that it

However, despite the fact that **SB 2493** passed the Senate 31-0 and the House 139-4 (2 present not voting), it was vetoed by the Governor on June 15, 2023. His veto proclamation stated: "While updating our laws about landlord-tenant relations is important, it is simply not as important as cutting property taxes. This bill can be reconsidered at a future special session only after property tax relief is passed."

¹⁶ Jocelyn Dabeau, T-REP's new lobbyist, and Barbara Klitch, who provides invaluable service tracking legislation for T-REP, assist T-REP before and during the legislative session.

¹⁷ If you don't have a copy of the Probate Code with enactment information, you can get one! Prof. Gerry Beyer's website

came from “Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.” That means it was part of the original Probate Code and was never amended. The key information you’ll need is that it was from the **54th Legislature**, and it’s found in **chapter 55**.

- Next, go to the search page of the Legislative Reference Library:
www.lrl.state.tx.us/legis/billsearch/lrlhome.cfm
- Since you’ve got the session and chapter number, use the option to “Search by session law chapter.” Click the down arrow and scroll down to “54th R.S. (1955).” Then type “55” as the Chapter number. Click “Search by chapter.”
- You’ll arrive at a page that has a hyperlink to chapter 55. Click on that and Voilà – you’ve got a PDF of the entire original Probate Code! Since Sec. 38 was never amended prior to its repeal on December 31, 2013 (and replacement by Estates Code Secs. 201.001 and 201.002), you’ve got the language of that section as it existed before 1993.
- Former Texas Probate Code Sec. 45 had the rules for community property. The PDF you just downloaded had the version in effect when the Probate Code went into effect in 1956. But if you’ve got the enactment information, you’ll see that it was amended by Acts 1991, 72nd Leg., ch. 895, § 4, eff. Sept. 1, 1991, and by Acts 1993, 73rd Leg., ch. 846, § 33, eff. Sept. 1, 1993.
- If you’re researching the law applicable to someone who died before September 1, 1991, look no further – the original version was still the law. But if your decedent happened to die on or after September 1, 1991, but before September 1, 1993, you need to see what the 1991 amendment did. Go back to the search page mentioned above. Scroll to 72nd R.S. (1991) (you don’t want either of the “called sessions”), type in 895 for the chapter number, and click on the search button. Again, click on the hyperlink to chapter 895, and you’ll download all of that chapter. You need to scroll down to Section 4 of the act to find the 1991 amendment to Texas Probate Code Sec. 45.
- The same procedure should work for any bill or amendment.

4.3 Summary of the Legislative Process.

Watching the process is like being on a roller coaster; one minute a bill is sailing along, and the next it is in dire trouble. And even when a bill has “died,” its substance may be resurrected in another bill. The real work is done in committees, and the same legislation must ultimately

pass both houses. Thus, even if an identical bill is passed by the Senate as a Senate bill and by the House as a House bill, it cannot be sent to the Governor until either the House has passed the Senate bill or vice-versa. At any point in the process, members can and often do put on amendments which require additional steps and additional shuttling. It is always a race against time, and it is much easier to kill legislation than to pass it. You can find an “official” description of how a bill becomes a law prepared by the Texas Legislative Council at:

tlc.texas.gov/docs/legref/legislativeprocess.pdf

4.4 Other Legislative Information and Resources. Leg. Council has also prepared a guide designed to help interested persons track the work of current legislatures and research the work of past legislatures. You can download a copy at:

tlc.texas.gov/docs/legref/gtli.pdf

5. Key Dates.

Key dates for the enactment of bills in the 2023 legislative session include:¹⁸

- **Tuesday, November 8, 2022** – General election for federal, state, and county offices on the first Tuesday after the first Monday in November of even-numbered years. [*Election Code, Sec. 41.002, U.S. Statutes at Large, 28th Congress, 2nd Session, p. 721*]
- **Monday, November 14, 2022** – Prefiling of legislation for the 88th Legislature begins.
- **Tuesday, January 10, 2023** (1st day) – 88th Legislature convenes at noon on the second Tuesday in January of each odd-numbered year. [*Government Code, Sec. 301.001*]
- **Friday, March 10, 2023** (60th day) – Deadline for filing most bills and joint resolutions. [*House Rule 8, Sec. 8; Senate Rule 7.07(b); Senate Rule 10.01 subjects joint resolutions to the rules governing proceedings on bills*]
- **Monday, May 8, 2023** (119th day) – Last day for House committees to report House bills and joint resolutions. [*a “soft” deadline that relates to House Rule 6, Sec. 16(a), requiring 36-hour layout of daily calendars prior to consideration, and House Rule 8, Sec. 13(b), the deadline for consideration*]
- **Thursday, May 11, 2023** (122nd day) – Last day for House to consider nonlocal House bills and joint resolutions on **second** reading. [*House Rule 8, Sec. 13(b)*]

(professorbeyer.com) contains a copy of the Probate Code as it existed immediately prior to its repeal effective December 31, 2013, with post-1955 amendment information following each section. Click on Legal Updates | Texas

Estates Code, and you’ll find the link to the final Probate Code at the upper portion of the page.

¹⁸ As we pass each deadline, we’ll mark it in red.

- **Friday, May 12, 2023** (123rd day) – Last day for House to consider nonlocal House bills and joint resolutions on **third** reading. [*House Rule 8, Sec. 13(b)*]
- **Saturday, May 20, 2023** (131st day) – Last day for House committees to report Senate bills and joint resolutions. [*relates to House Rule 6, Sec. 16(a), requiring 36-hour layout of daily calendars prior to consideration, and House Rule 8, Sec. 13(c), the deadline for consideration*]
- **Tuesday, May 23, 2023** (134th day) – Last day for House to consider most Senate bills and joint resolutions on **second** reading. [*House Rule 8, Sec. 13(c)*]
- **Wednesday, May 24, 2023** (135th day) – Last day for House to consider most Senate bills or joint resolutions on **third** reading. [*House Rule 8, Sec. 13(c)*]
Last day for Senate to consider any bills or joint resolutions on third reading. [*Senate Rule 7.25; Senate Rule 10.01 subjects joint resolutions to the rules governing proceedings on bills*]
- **Friday, May 26, 2023** (137th day) – Last day for House to consider Senate amendments. [*House Rule 8, Sec. 13(d)*]
Last day for Senate committees to report all bills. [*relates to Senate Rule 7.24(b), but note that the 135th day (two days earlier) is the last day for third reading in the senate; practical deadline for senate committees is before the 135th day; Senate Rule 10.01 subjects joint resolutions to the rules governing proceedings on bills*]
- **Sunday, May 28, 2023** (139th day) – Last day for House to adopt conference committee reports. [*House Rule 8, Sec. 13(e)*]
Last day for Senate to concur in House amendments or adopt conference committee reports. [*relates to Senate Rule 7.25, limiting a vote on the passage of any bill during the last 24 hours of the session to correct an error in the bill*]
- **Monday, May 29, 2023** (140th day) – Last day of 88th Regular Session; corrections only in House and Senate. [*Sec. 24(b), Art. III, Texas Constitution; House Rule 8, Sec. 13(f); Senate Rule 7.25*]
- **Sunday, June 18, 2023** (20th day following final adjournment) – Last day Governor can sign or veto

bills passed during the previous legislative session. [*Section 14, Art. IV, Texas Constitution*].¹⁹

- **Monday, August 28, 2023** (91st day following final adjournment) – Date that bills without specific effective dates (that could not be effective immediately) become law. [*Sec. 39, Art. III, Texas Constitution*] (Note that most bills in recent years include a standard specific effective date of September 1st of the year of enactment.)

6. If You Have Suggestions ...

If you have comments or suggestions, you should feel free to contact any of T-REP's board members identified in Section (b) on page 5.

7. The T-REP Bills.

7.1 The Original T-REP Legislative Package.

T-REP's 2023 legislative package consists of a number of bills covering four general areas: (i) decedents' estates; (ii) guardianships; (iii) trusts; and (iv) powers of attorney and advance directives. Section 35(a), Article III, of the Texas Constitution contains the "one-subject" rule:

No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject.

Because of this rule, T-REP (or sometimes Leg. Council) will strip out provisions from one or more of the "general" bills that may violate the one-subject rule and place them in separate, smaller bills. In each of the substantive sections of this paper, we will identify any T-REP bills and begin with descriptions of them.

7.2 Consolidation of Bills. As hearings begin, legislators often ask interested parties to try to consolidate as many of the various bills on similar subjects as possible, in order to reduce the number of bills that would need to move through the legislature. Pursuant to this request, in the past, REPTL and the statutory probate judges would often agree to consolidate all or a portion of a number of other bills into one or more of REPTL's bills. Now that will likely happen with T-REP's bills. Therefore, keep in mind that not everything that may end up in a T-REP bill by the time it passes was originally a T-REP proposal. Where non-T-REP provisions have been added to T-REP bills,

¹⁹ A few words of further explanation about this deadline. This provision states the general rule that if the Governor doesn't return a vetoed bill to the Legislature within 10 days (*excluding Sundays*) after it's presented to him (*gender specific pronoun in original*), it becomes law as if [s]he'd signed it. Regular sessions of the Legislature always end on a Monday, which means that there are two Sundays included in the 10 calendar days preceding adjournment. Since we don't

we'll attempted to identify the original bill[s] that served as the source of the amendments.

8. Decedents' Estates.²⁰

8.1 T-REP Decedents' Estates Bill. Last session, REPTL's Decedents' Estates bill, **HB 2182** (Moody), passed the House and was recommended for the Local and Uncontested calendar in the Senate. However, it failed to pass the Senate on the last day for consideration. T-REP's Decedents' Estates bill, **SB 1373** (Hughes | Smithee) (**HB 2821** (Smithee) was its companion), is mostly the same bill that REPTL proposed last session, with a handful of new provisions.

SB 1373 was signed by the Governor on May 24, 2023, and is effective September 1, 2023.

(a) Qualified Delivery Method (Sec. 22.0295). Several Estates Code sections require notices to be sent by certified or registered mail, return receipt requested. However, there has been an ongoing problem getting green cards back to show that the notice was delivered, and this problem was only exacerbated by the COVID-19 pandemic. This change provides a new "qualified delivery method" to address this problem. Newly-permitted delivery methods include hand delivery by courier (with proof of delivery) or a private delivery service designated by the Secretary of the Treasury under IRC Section 7502(f)(2). (We believe that **IRS Notice 2016-30** contains the current list of designated delivery services.) Conforming changes are made throughout the Estates Code.

(b) Community Property Subject to Creditors' Claims (Sec. 101.052). This change clarifies that community property is subject not only to the debts of the deceased spouse, but also the debts of the surviving spouse, by deleting the words "of Deceased Spouse" from the title of Section 101.052 (which currently reads "Liability of Community Property for Debts of Deceased Spouse") and clarifying that the survivor's interest in the deceased spouse's sole management community property becomes liable for the survivor's debts, and the deceased spouse's interest in the survivor's sole management community property passes to the beneficiaries subject to the deceased spouse's debts.

(c) Brokerage Accounts Can be Multiple-Party Accounts (Sec. 113.001). The definition of "account" under Chapter 113 regarding multiple-party accounts includes accounts holding cash deposits, accounts holding securities, and "another similar arrangement." This is a clarification of existing law that

brokerage accounts are a type of account governed by that Chapter.

(d) Property Listed in Heirship Application (Sec. 202.005). Under current law, an application to determine heirship requires "a general description of all property belonging to the decedent's estate or held in trust for the benefit of the decedent." The proposed legislation clarifies that only property that is subject to distribution in the heirship proceeding (real estate located in Texas and all personal property other than non-probate property) must be listed in the application.

(e) Service on Minors Who Are At Least 16 Years Old (Secs. 202.056 & 258.002). The age at which a minor can waive citation in an heirship proceeding or a proceeding to probate a lost will would be raised from 12 to 16.

(f) Affidavit of Heirship as Evidence (Sec. 202.151). This change clarifies that an affidavit of heirship or judgment complying with Section 203.001 may serve as evidence in an heirship proceeding (as an alternative to testimony from two disinterested witnesses). Additionally, a creditor may serve as a witness if otherwise credible.

(g) Foreign Wills Not Meeting Texas Requirements (Sec. 251.053). Section 251.053 would be amended to clarify that an out-of-state written will need comply with the laws of that jurisdiction only if the will does not otherwise meet the requirements of a valid written will under Texas law.

(h) Convicted Felon Can Serve with Court Approval (Sec. 304.003). Under current law, a convicted felon is ineligible to serve as an executor or administrator. T-REP's proposed change would have permitted a felon to serve if all distributees agree in an application for probate, an application for administration, or a separate document consenting to the application in which the distributees indicate their knowledge of the conviction. However, an amendment to the Senate version of the bill on the House floor replaced this provision with the language found in **HB 3331** (Thimesch, *et al.* | Hughes), which would allow a convicted felon named as executor in the will who is otherwise qualified to serve if the court approves the person's appointment.

(i) Declaration Under Penalties of Perjury In Lieu of Oath (Secs. 305.001-305.003, 305.051-305.053, & 305.055). A COVID-inspired change would allow a personal representative to submit a declaration under penalties of perjury in order to qualify that would serve the same purpose as an oath signed before a notary.

²⁰ In general, section references throughout this part of the paper are to the Texas Estates Code unless otherwise noted.

(This is similar to the declaration authorized in 2021 in lieu of a guardian's oath.)

Drafting Tip

A statutory example of the new form where a will is admitted:

My name is _____ (insert name of "executor of the will" or "administrator with the will annexed" as it appears on the order appointing the person as executor or administrator with the will annexed), my date of birth is _____ (insert date of birth of "executor of the will" or "administrator with the will annexed," as applicable), and my address is _____ (insert street, city, state, zip code, and country of "executor of the will" or "administrator with the will annexed," as applicable). I declare under penalty of perjury that the writing offered for probate is the last will of _____ (insert name of testator), so far as I know or believe. I also solemnly declare that I will well and truly perform all the duties of _____ (insert "executor of will" or "administrator with the will annexed," as applicable) for the estate of _____ (insert name of testator).

(j) Sale of Personal Property in Dependent Administration (Sec. 356.105). A 2019 revision to Estates Code Section 356.551 required administrators in a dependent administration to report only "successful bids or contracts for the sale" of real property to the court. The proposed legislation would make this change applicable to sales of personal property as well.

(k) References to "Community Debts" (Secs. 453.003 & 453.006-453.007). Several sections of the Estates Code refer to "community debts," much to the chagrin of law school professors throughout the state (here's looking at you, Prof. Featherston). This change removes most references to "community debts" and specifies that "community debts" are "debts for which a portion of community property is liable for payment."

(l) Surviving Spouse's Rights Over Community Property (Sec. 453.009). This section clarifies that during the administration of a deceased spouse's estate, the surviving spouse may retain possession, control, and power over property that was the surviving spouse's sole management community property during the deceased spouse's life.

8.2 Definition of Adoptive Parent (Sec. 201.054). Sec 201.054 deals with the inheritance rights of adopted children. **HB 4765** (Dutton | Hughes) adds a definition of "adoptive parent" as a parent (i) who adopted a child through a statutory procedure, or (ii) considered by a court to have equitably adopted a child or adopted a child by acts of estoppel.

HB 4765 was signed by the Governor on June 11, 2023, and is effective September 1, 2023.

8.3 Emergency Intervention Concerning Decedent's Estate (Secs. 152.001 - 152.004 & 152.051). **HB 3474** (Leach, *et al.* | Hughes, *et al.*), an omnibus bill relating to the administration of the judicial branch discussed elsewhere in this paper, was amended to include the substance of **HB 3157** (Leach). The Estates Code already provides for an emergency intervention to pay for a decedent's funeral and burial expenses. This amendment expands that procedure to include an application for reimbursement of those expenses and expands the time for the application from the 90th day after death to 9 months after death.

HB 3474 was signed by the Governor on June 13, 2023, and is generally effective September 1, 2023.

8.4 Child Support Obligor's Inability to Assign Inherited Property (Sec. 122.201). Prop. Code Sec. 240.151(g) already bars a disclaimer by a child support obligor if the obligor has been determined to be in arrears in those obligations. **SB 869** (West | Smithee) provides that if you haven't disclaimed inherited property under Property Code Ch. 240, an assignment under Estates Code Ch. 122 is ineffective if you're a child support obligor. (Remember, this only includes persons whose child support obligations are in arrears.) A key change made in a Senate floor amendment at T-REP's request is that a personal representative without knowledge of the child support obligation has no liability for transferring property pursuant to the obligor's assignment.

SB 869 was signed by the Governor on May 23, 2023, and is effective September 1, 2023.

8.5 Delinquent Child Support Claim (Sec. 355.102). A delinquent child support claim against a decedent is already classified as a Class 4 claim. **SB 870** (West | Smithee) allows an administratively determined claim to be evidenced by a certified child support payment record.

SB 870 was signed by the Governor on May 23, 2023, and is effective September 1, 2023.

8.6 Supreme Court's Promulgation of Will Forms. Back in 2015, **SB 512** (Zaffirini | Thompson, S.) directed the Supreme Court to promulgate forms with accompanying instructions for use in certain probate matters or in making certain wills, including simple wills for married and single individuals with adult, minor, or no children. The forms and instructions were to be written in plain, easy-to-understand language, with a conspicuous statement that the form was not a substitute for legal advice. Spanish language translations would be made available for the purpose of assisting in

understanding the forms, but those translations would not be submitted to the Supreme Court. Any court would be required to accept a promulgated form unless completed in a way that caused a substantive defect that could not be cured.

It took a while, but the Supreme Court posted will forms and instructions for comment on September 6, 2022, in [Misc. Docket No. 22-9076](#). Then, on May 5, 2023, the Court gave final approval to those forms and instructions in [Misc. Docket No. 23-9022](#). They are posted at:

www.txcourts.gov/forms

Texas Legal Services Center has also posted these forms with explanations on its website, TexasLawHelp.org, at:

texaslawhelp.org/article/will-forms-approved-by-the-supreme-court-of-texas

8.7 Nonsubstantive Change to TODD Statute (Est. Code Sec. 114.106). Take a look at Sec. 12.1 on page 18 for a description of a changed cross-reference to another statute in one of our TODD statutes.

8.8 Procedural Matters Affecting Decedents' Estates. Don't forget to check out matters that may affect decedents' estates discussed in Parts 14 – Jurisdiction and Venue and 15 – Court Administration.

9. Guardianships and Persons With Disabilities.

9.1 The T-REP Guardianship Bill. T-REP's Guardianship bill is [SB 1457](#) (Zaffirini | Thompson, S.) ([HB 3184](#) (Thompson, S., *et al.*) was its companion).

[SB 1457 was signed by the Governor on May 24, 2023, and is effective September 1, 2023.](#)

(a) Qualified Delivery Method (Sec. 1002.0265). Similar to the qualified delivery proposal for decedents' estates, this change would allow citations and notices in guardianship proceedings to be hand-delivered, mailed by certified or registered mail with return receipt requested, or sent by a private delivery service described in Section 7502 of the Internal Revenue Code. (Under current law, the method of delivery is limited to certified or registered mail.) A return receipt or proof of delivery with the recipient's signature is required. The applicant or movant is required to pay the cost of delivery of the citation or notice.

(b) Service on Attorney Ad Litem (Sec. 1051.055). This addition would require citation to be served on the proposed ward's attorney ad litem if one has been appointed.

(c) Written Designation of Guardian (Sec. 1104.103). Section 1104.103 currently allows the surviving parent who is serving as guardian of the person of an adult ward to name a successor guardian of the

person in the parent's will or other written instrument to serve in the event the parent dies or becomes incapacitated. The proposed legislation expands this power to parents who are serving as guardian of the estate as well. In addition, it allows for the designation to take effect in the event that the parent resigns and allows the parent to name different eligible persons to serve as guardian of the person and guardian of the estate.

(d) Expenditures for Ward (Sec. 1151.0525). This addition would allow the guardian of the person to apply to the court to access, manage, and spend up to \$20,000 of the ward's assets for the ward's benefit annually, without the appointment of a guardian of the estate. Bond and an annual report of expenditures would be required if the court grants this power.

(e) Republication of Notice to Unsecured Creditors Not Required (Sec. 1153.005). Under current law, a successor guardian of the estate is not required to resend a notice to secured creditors or known unsecured creditors if notice had been provided by a prior guardian. The change proposed to Section 1153.005 would also waive the requirement that a notice to unsecured creditors be republished in a newspaper, resolving a discrepancy between requirements for successor estate administrators, who are *not* required to republish the notice, and guardians of the estate, who *are*.

(f) Compensation for Guardian of the Person (Sec. 1155.002). The guardian of the ward would be permitted to receive compensation of the greater of \$3,000 or 5% of the ward's income annually.

(g) No Guardian Required for Small Transactions (Secs. 1351.001, 1351.052, 1352.052, 1352.102, 1355.001, 1355.002). Several provisions of the Estates Code permit a sale or mortgage of a minor or foreign ward's Texas-based of property without the appointment of a guardian of the estate if the property is worth \$100,000 or less. This would increase the amount to \$250,000. It also adjusts the definition of a resident and non-resident creditor in Estates Code Sections 1355.001 and 1355.002.

(h) Delivery of Community Property to Guardian of the Estate (Sec. 1353.004). If a spouse cannot serve as community administrator or guardian of an incapacitated spouse's estate, the court may order the spouse with capacity to deliver half of the joint management community property to an appointed guardian of the estate of the incapacitated spouse. This change would allow the court to order a third-party in possession of such property to deliver it to the guardian if the spouse fails to comply.

(i) Nonresident Creditors (Sec. 1355.002). Section 1355.002, allowing for the withdrawal of funds owing to a nonresident creditor who is either a minor or incapacitated person, was amended in 2021. However, the 2021 amendments did not allow for the deposit of sale proceeds for nonresident creditors who do not have a guardian in their resident states. This updates the Code section to allow for withdrawal of funds without a guardian needing to be appointed in the creditor's state.

9.2 Multiple Guardianship Changes. SB 1624 (Zaffirini, *et al.* | Leach) contains a number of changes relating to guardianships and supports and services.

SB 1624 was signed by the Governor on June 18, 2023, and is effective September 1, 2023.

(a) Duty of AAL or Attorney for Ward (Secs. 1054.001, 1054.003, 1054.006, & 1054.007). An attorney ad litem's duty or an attorney retained by the ward or proposed ward's duty, includes representing the ward or proposed ward's *expressed wishes*. The attorney ad litem or retained attorney is also granted access to the proposed ward's relevant records.

(b) Retention of Attorney for Ward (Secs. 1054.006 & 1202.101). If a ward or proposed ward purports to retain an attorney, on the motion of any party, the court may hold a hearing to determine whether the ward or proposed ward has the capacity to retain an attorney. If not, the court may appoint an attorney ad litem.

(c) Appointment of GAL (Sec. 1054.051). A guardian ad litem must not be an interested person, nor may the GAL be appointed as an AAL (with exceptions).

(d) Court Investigator Training (Sec. 1054.157). A court investigator and court visitor must complete two hours of training, including one hour on alternatives to guardianship and supports and services every two years.

(e) Examination of Proposed Ward (Sec. 1101.103). A late House floor amendment authorizes a psychologist to perform an incapacity exam on an adult proposed ward if the proposed ward's alleged incapacity results from a mental condition. See also Section 9.5(b) on page 14 regarding the authority of advanced practice registered nurses to provide capacity determinations.

(f) Ward's Bill of Rights (Sec. 1151.351). Adds to the wards' bill of rights the ability to have private communications with physicians or other medical professionals, unless the court, after hearing, orders private communications limited due to the risk of substantial harm to the ward or unduly burdening the physician or medical professional.

(g) Annual Report (Sec. 1163.101). A guardian of the person's annual report must include a description of the supports and services the ward has received, including details, and information regarding action the guardian is taking to encourage the development of the ward's maximum self-reliance and independence. The guardian must also provide an opinion regarding whether the ward has sufficient capacity with supports and services to have capacity restored or the guardianship modified.

(h) Annual Review (Secs. 1201.052 & 1201.053). A court conducting an annual review of a guardianship may conduct a hearing regarding that review. In a statutory probate court, that review should include a follow-up report by the court investigator or court visitor at least every third year.

(i) Evidence of Capacity With or Without Supports and Services (Secs. 1202.152 & 1202.1521). The statute requiring a physician's letter or certificate in a restoration proceeding is retitled and revamped to expand the items a court must consider to include:

- a letter or certificate signed by a licensed physician or psychologist or certified by the Health and Human Services Commission that follows requirements listed in the statute;
- a statement from a representative of the local mental health or intellectual and developmental disability authority listing services received by the ward and their effectiveness;
- medical records;
- affidavits of treating professionals regarding the effectiveness of supports and services;
- documentation from a health care provider providing supports or services to the ward under Medicaid;
- an affidavit of the ward's employer or day habilitation program manager regarding the ward's ability to perform necessary tasks;
- documentation from the Social Security Administration identifying the ward's representative payee; or
- any other evidence demonstrating the ward's capacity.

If allegations of the ward's incapacity are based on intellectual disability, the letter or certificate must instead provide:

- the physician or psychologist's opinion regarding whether the ward has capacity with supports and services to provide food, clothing, and shelter for the ward, care for the ward's physical health, and manage the ward's financial affairs;

- how the ward's ability to communicate decisions is affected by the ward's mental capacity; and
- any other information required by the court.

(j) Judicial, Investigator, and Visitor Training (Gov't Code Sec. 22.0133). At least once every two years every judge with jurisdiction to hear guardianship proceedings and each court investigator and court visitor must have at least one hour of training relating to guardianship alternatives and supports and services.

9.3 More Guardianship Changes. SB 2248 (Zaffirini | Murr) contains more changes relating to guardianships.

SB 2248 was vetoed by the Governor on June 18, 2023, therefore none of the changes described below will go into effect (except to the extent included in other bills that have been signed by the Governor). Despite passing 31-0 in the Senate and 133-5 (1 present, not voting) in the House, **the Governor's veto proclamation** acknowledged that this bill was important, but "simply not as important as cutting property taxes."

SB 12 (Zaffirini), which appears to be identical to **SB 2248**, was filed in the second called session but no action was taken prior to adjournment.

(a) Qualified Delivery Method (Secs. 1002.0265, 1023.002-1023.004, 1156.052). This change allows for use of a qualified delivery method similar to the T-REP Guardianship bill. See Sec. 9.1(a), above.

(b) Deposits to Reduce Bond (Secs. 1105.002 & 1105.157). A guardian wishing to reduce bond may deposit cash and securities into the registry of the court (in addition to the existing option of depositing them with a financial institution).

(c) Additional Duties of Guardian of the Person (Sec. 1151.051). New additional duties of a guardian of the person include the duty to notify the court (i) if the ward has died or is admitted to a medical facility for acute care for a period of three or more days; (ii) of a change in the ward's residence or address within 30 days of the change; and (iii) of a change in the guardian's residence, address, phone number, and any other contact information within 30 days of the change.

(d) Costs of Proceeding (Sec. 1155.151). Payment of costs of a guardianship proceeding out of the guardianship estate will require a finding that the payment is in the ward's best interest.

(e) Allowance for Minor and Adult Incapacitated Children (Sec. 1156.052). The provision authorizing payment of an allowance for the education and maintenance of the ward's spouse or

dependent is clarified to authorize payment for the ward's spouse, *minor children, or adult incapacitated children*.

(f) Discharge of Guardian (Secs. 1203.006, 1204.151, & 1204.152). The procedures for discharging a guardian are clarified to include canceling any letters and discharging any sureties.

(g) Affidavit of Citation and Notice on Presentation of Final Account (Sec. 1204.105). Before a guardian's final account is considered, the guardian must file an affidavit (or the guardian's attorney must file a certificate) stating (1) the name of each person cited, indicating the method of service; (2) the name of each person waiving citation; and (3) that each person was provided a copy of the final account, indicating the method of delivery.

(h) Citation and Notice in Temporary Guardianship (Sec. 1251.005). Citation on the proposed ward must be by *personal* service, and notice on the proposed ward's appointed attorney must comply with Rule 21a, TRCP.

(i) But That's Not All! Additional changes that would have been made by **SB 2248** are discussed in Sec. 15.2 on page 19.

9.4 Speaking of Criminal History Record Information (Secs. 1104.402, 1104.404, & 1104.405). **HB 4123** (Guillen | Zaffirini) (**SB 1785** (Zaffirini) was its companion) relates to the release of criminal history record information to state agencies and those agencies' handling of the information. For guardianship proceedings, the clerk of the county having venue of a guardianship proceeding will be liable if damage or loss results to a guardianship or ward because of the clerk's neglect or failure to obtain the required criminal history record information. The clerk is not required to obtain a state (DPS) criminal history record information for a proposed guardian if the Judicial Branch Certification Commission has already done so, but the clerk must still obtain federal (FBI) criminal history record information for the proposed guardian. The commission is prohibited from disseminating criminal history record information that was obtained from the FBI for purposes of determining whether a proposed guardian is eligible for certification as a guardian. The court may use the criminal history record information only to determine whether to appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, the HHSC, or any other person proposed to serve as a guardian, other than an attorney or a person who is a certified guardian.

HB 4123 was signed by the Governor on June 13, 2023, and is effective immediately.

9.5 Determination of Incapacity. Several bills deal with the determination of incapacity.

(a) Evidence Required for Individual With Intellectual Disability (Secs. 1101.104, 1202.152, 1202.1521, & 1202.155). **SB 1606** (Zaffirini | Leach) provides that if an intellectual disability is the basis for a proposed ward’s incapacity, or was the basis if a ward’s capacity is to be restored, a letter or certificate is required from a physician or psychologist who is licensed or certified by the HHSC, and who preferably has either a relationship with the proposed ward or experience examining individuals with an intellectual disability. The letter or certificate must be dated no earlier than 120 days prior to the filing of the application, show that the [proposed] ward has been examined within that time period, describe the incapacity and its degree, states whether the ward has capacity, or would with supports and services, to do any of the activities listed in Sec. 1202.152(b)(1), and state how the [proposed] ward’s ability to communicate decisions about the [proposed] ward is affected by his or her mental health.

SB 1606 was signed by the Governor on June 18, 2023, and is effective September 1, 2023.

(b) APRNs Authorized to Determine Incapacity (Secs. 1101.100, 1101.1011, 1101.103 - 1101.104, 1102.002, 1202.054, & 1202.152). **HB 3009** (VanDeaver | Zaffirini), like 2021’s **HB 3126** (VanDeaver), authorizes an advanced practice registered nurse under Occupations Code Sec. 301.152, acting under a physician’s supervision, to prepare the letter or certificate to the court as to a proposed ward’s incapacity or the restoration of a ward’s capacity. The opinion of the APRN in that situation must be signed by the supervising physician and is considered the opinion of that physician. See also Section 9.2(e) on page 12 regarding the authority of psychologists to provide capacity determinations.

HB 3009 was signed by the Governor on June 18, 2023, and is effective September 1, 2023.

9.6 Contact Info Affidavit (Secs. 1101.003 & 1151.056). **HB 266** (Swanson, *et al.* | Zaffirini, *et al.*) requires the applicant in a guardianship proceeding to file an affidavit with the court containing known contact info for each person entitled to notice of the proceeding. Note that this is filed with the court, not the clerk, and remains privileged and confidential. The court is to provide a copy to the guardian upon appointment, if different than the applicant.

HB 266 was signed by the Governor on May 23, 2023, and is effective September 1, 2023.

9.7 Delivery of Notices in Guardianships (Secs. 1002.0265, 1051.052, 1051.055, 1051.056, 1051.104, 1051.153, 1153.001, 1153.003 & 1203.052). **HB 785** (Swanson | Zaffirini, *et al.*) adds private delivery services designated by the U.S. Secretary of the Treasury under IRC Section 7502(f)(2) (*e.g.*, FedEx, UPS, & DHL) as a “qualified delivery method” for notices in a guardianship proceeding. (This would essentially do the same thing as a similar provision in the T-REP Guardianship bill. See Sec. 9.1(a) above.) The delivery expense would be taxable as costs in the proceeding. Further, once a proposed ward has been personally served and is represented by an AAL, citation must be served on the latter.

HB 785 was signed by the Governor on May 23, 2023, and is effective September 1, 2023.

9.8 Commitment of Individual With Intellectual Disability to State Supported Living Center (H&S Code Sec. 593.052). **SB 944** (Kolkhorst | Lambert) would allow a guardian or parent of an individual with an intellectual disability, or an interdisciplinary team recommending placement, to petition the court to commit the individual to long-term placement in a state supported living center if the court determines beyond a reasonable doubt that the proposed resident meets the requirements for commitment to a residential facility.

SB 944 was signed by the Governor on June 18, 2023, and is effective September 1, 2023.

9.9 Prevention of Abuse of Elderly and Disabled. A number of bills address the problems arising from fraud and abuse of the elderly and disabled.

(a) Failure to Report Abuse. A change proposed in **SB 189** (Miles, *et al.* | Rose, *et al.*) makes it a Class A misdemeanor for a landlord of a boarding home facility to fail to report abuse, neglect, or exploitation of a resident of the facility if the landlord has actual knowledge of it. **SB 187** (Miles | Reynolds, *et al.*) would have made it a state jail felony to fail to report to law enforcement or DFPS²¹ a reasonable cause belief that a resident of a group home has suffered bodily injury due to assault, neglect, or an omission in care. While it didn’t pass, its language was tacked onto **SB 189** the last week of the session.

SB 189 was signed by the Governor on June 18, 2023, and is effective September 1, 2023.

(b) Abandoning or Endangering an Elderly or Disabled Individual. **HB 2187** (Davis, *et al.* | Menéndez), like 2021’s **HB 1581** (Davis), would expand the scope of the felony of abandoning or endangering a child to include the same actions against

²¹ The Department of Family and Protective Services.

an elderly or disabled individual. Conforming amendments are made to Estates Code Sec. 201.062(a) (basis for an order declaring a parent may not inherit from or through a child) and Sec. 1104.353(b) (adding a presumption that it is not in the best interest of a ward to appoint as guardian a person who has been finally convicted of abandoning or endangering a child, elderly individual, or disabled individual).

HB 2187 was signed by the Governor on June 13, 2023, and is effective September 1, 2023.

(c) Definition of Exploitation. The committee substitute for **SB 576** (Menéndez, *et al.* | Thierry) creates a rebuttable presumption that any transfer or use of an elderly individual’s property by a caregiver constitutes wrongful financial abuse or exploitation of an elderly individual that individual had been diagnosed with dementia, Alzheimer’s, or a related disorder. Upon receiving a report of alleged abuse or exploitation that DFPS constitutes a financial abuse offense, DFPS must immediately notify a law enforcement agency.

SB 576 was signed by the Governor on June 18, 2023, and is effective September 1, 2023.

(d) Transfer of Investigation of Certain Abuse Allegations. **HB 4696** (Noble | Miles, *et al.*) (**SB 2103** (Miles) was its companion) transfers some investigations of abuse, neglect, and exploitation from DFPS to the Health and Human Services Commission.

HB 4696 was signed by the Governor on June 13, 2023, and is effective September 1, 2023.

(e) Medicaid Issues. **HB 54** (Thompson, S., *et al.* | Zaffirini, *et al.*) increases the personal needs allowance of Medicaid recipients who reside in a skilled nursing facility from \$60 to \$75/month. An inflation adjustment provision originally in the bill has been removed.

HB 54 was signed by the Governor on June 12, 2023, and is effective September 1, 2023.

9.10 Procedural Matters Affecting Guardianships. Don’t forget to check out the matters affecting guardianships discussed in Parts 14—Jurisdiction and Venue. and 15—Court Administration.

10. Trusts.²²

10.1 The T-REP Trusts Bill. The 2021 REPTL Trusts bill, **HB 2179** (Moody), failed to pass the Senate, after passing the House and being referred to the Local and Uncontested calendar in the Senate. This session’s T-REP’s Trusts bill contains many of the same

provisions and is **HB 2196** (Smithee | Parker) (**SB 1649** (Parker) was its companion).

HB 2196 was signed by the Governor on June 9, 2023, and is effective immediately.

(a) Homesteads Owned by Revocable Trusts (Sec. 41.0021). Tax Code Section 11.13(j) provides a homestead property tax exemption for a residence owned by a trust if the settlor or a beneficiary has the right to use the residence “rent free and without charge except for taxes and other costs and expenses.” Meanwhile, Property Code Section 41.0021 provides homestead creditor protection for a residence owned by a trust if the settlor or a beneficiary has the right to use the residence “at no cost . . . , other than payment of taxes and other costs and expenses” specified in the trust. A 2019 bankruptcy case out of San Antonio (*In Re Cyr*²³) held that a trust owning a residence that used the Tax Code phrase – “rent free and without charge” – and not the Property Code phrase – “at no cost” – **did not** qualify for the homestead exemption for creditor purposes. The bankruptcy court’s ruling was reversed by the district court in late 2020.²⁴ The district court found that the bankruptcy court’s distinction between the phrases “rent free and without charge” and “at no cost” elevated form over substance.

Nevertheless, T-REP’s change seeks to eliminate any future argument by adding “or rent free and without charge” following “at no cost” to the Property Code provision.

Drafting Tip
Use of the full phrase “at no cost, or rent free and without charge” in your trust agreements should assure qualification for the homestead exemption both for tax and creditor purposes.

(b) Rule Against Perpetuities. (Sec. 112.036). A 2021 non-REPTL bill changed the longstanding law of the rule against perpetuities in Texas. Many found the new Section 112.036 to be confusing at best. The T-REP bill attempts clarify the “effective date” of an interest in a trust, with particular attention to an interest transferred to a trust with a different effective date than that which governed the original interest. Additionally, T-REP’s proposal requires an interest to vest **the later of** 300 years after the effective date **or** 21 years after a life in being at the time of the effective date, plus a period of gestation. As filed in the House, the T-REP bill moved a 2021 addition prohibiting a trust provision from preventing the sale of a real property asset of the trust for

²² Section references in this Part 10 are to the Texas Property Code unless otherwise noted.

²³ **605 B.R. 784** (Bankr. W.D. Tex. 2019).

²⁴ *Cyr v. SNH NS Mtg Properties 2 Trust*, No SA:19-CV-0911-JKP, 2020 WL 7048603 (W.D. Tex. Nov. 30, 2020).

more than 100 years to a new Section 112.0365. However, the chair of Senate Jurisprudence (who was responsible for the 2021 addition of the 100-year provision) wanted it left where it was. T-REP acceded to his wishes.

(For more RAP-related news, take a look at Sec. 18.20 on page 25.)

Drafting Tip

Regardless of the confusion regarding the effective date language, how do you draft your documents in the meantime while we're waiting for the Texas Supreme Court to rule on the constitutionality of the 2021 amendment to Section 112.036? (If you're interested, I've got an extended discussion of the constitutionality question in a special supplement to the 2021 legislative update.) Here's a suggestion for your consideration. My wills and trusts have a perpetuities savings provision that requires trusts to vest by the end of the "perpetuities period." Then, in the definitions portion at the back of the will, I use a lives-in-being definition using the settlor's descendants and the descendants of Queen Elizabeth, II, as measuring lives. (QEII's descendants are included in case the settlor has very few descendants.) Here's a proposed revised definition that attempts to take into account the fact that the 2021 amendments may, or may not, be constitutional (this language would be in the will of a married testator):

(M) The "perpetuities period" means:

(1) If the amendments to Texas Trust Code Section 112.036 made by Acts 2021, 87th Leg., R.S., Ch. 792 (H.B. 654), Sec. 1, eff. September 1, 2021, are held by the Supreme Court of Texas to not violate the Texas constitutional prohibition against perpetuities, then the perpetuities period is the period ending one day prior to 300 years following the date of my death.

(2) If the amendments referred to in the preceding subparagraph have not been held constitutional by the Supreme Court of Texas, then the perpetuities period is the period ending twenty-one years after the death of the survivor of my spouse, myself, my descendants, and the descendants of Queen Elizabeth, II, of England who are alive at the time of my death.

I'm not saying that this language is perfect, but it's food for thought in drafting your own language.

(c) Spendthrift Provisions and Testamentary General Powers of Appointment (Sec. 112.035).

Fairly old Texas caselaw leads to the conclusion that mere possession of a testamentary general power of appointment at death, without exercising the power, does not subject the property covered by the power to the holder's creditors' claims. This agrees with the position

found in the Restatement 2nd of Property, but is contrary to the position currently found in the Restatement 3rd of Property. This change codifies the position found in the Second Restatement. It also provides that exercising a general power in favor of those who would otherwise receive the property will not expose it to the holder's creditors.

(d) Decanting Into the Same Trust? (Sec. 112.0715).

In 2019, REPTL's Trusts bill attempted to "clarify" that the second trust to which trust assets are decanted may be created under the same trust instrument as the first trust in order to avoid the need to retitle assets or obtain a new tax identification number. A number of people (including me) were skeptical that the attempt was successful. This session's change is an attempt at further clarification, expressly stating that the second trust may use the same name as the first trust, and the same TIN "subject to applicable federal law."

(e) Attorney Ad Litem for Trust Proceedings (Sec. 115.014).

This change requires the court to make a determination that the appointment of an *attorney ad litem* in a trust proceeding is necessary for the adequate representation of a minor or incompetent beneficiary before appointing an attorney ad litem, similar to the existing requirement for appointment of a *guardian ad litem* in a trust proceeding.

10.2 Conveyance to Trust (Sec. 114.087; Prop. Code Sec. 5.028).

SB 801 (Hughes, *et al.* | Longoria) provides that a conveyance or bequest to a trust is considered a conveyance or bequest to the trustee of the trust. In addition, a certification of trust recorded in the county where real property is located is presumed to correctly identify the trust and its trustee, and may be relied upon by a purchaser or lender. The trustee may be, but is not required to be, identified by a correction instrument under Property Code §5.028. The changes would apply to instruments executed before, on, or after their September 1st effective dates. (This is a response to the *Fugedi* case. In this case, a federal district court held in 2021 that a deed conveying title to a trust, as opposed to a trustee, was void and could not be corrected. The following year, the 5th Circuit voided the lower court's opinion and recognized Texas courts' approach of looking past mere formalities to see if a grantee can be ascertained in order to give effect to the instrument.)

SB 801 was signed by the Governor on June 2, 2023, and is effective September 1, 2023.

10.3 Noncharitable Trust Without Ascertainable Beneficiary (Secs. 112.121–112.124).

HB 2333 (Allison | Flores) authorizes the creation of a noncharitable trust without an ascertainable beneficiary. We believe that this is what's commonly known as a

“purpose trust.” This is a trust designed to accomplish a particular purpose, such as the preservation of collections, the maintenance of a family compound, or the continuation of a business for its employees. Google it. Since a purpose trust does not have beneficiary to enforce its terms, one or more trust enforcers must be appointed to ensure that the trust's purposes are met. The trust enforcer has the same rights as a beneficiary but serves as a fiduciary. Assets in excess of amounts needed to fulfill the trust's purpose are distributable as provided in the trust instrument or to the settlor or the settlor's successors if the trust instrument does not otherwise provide for a taker in default. (Originally, this bill contained provisions for a “commercial legacy trust,” but these were removed at T-REP’s request.)

HB 2333 was signed by the Governor on June 18, 2023, and is effective immediately.

10.4 Regulation of State Trust Companies (Fin. Code Secs. 182.502 & 184.002). **SB 1646** (Parker | Lambert, *et al.*) (**HB 3576** (Lambert was its companion and **HB 1186** (Slawson) was similar), like 2021’s **HB 3849** (Slawson), makes some minor changes to the rules for converting a trust institution into a state trust company. Officers and directors are required to have sufficient *fiduciary* experience, as opposed to *banking* experience. It also replaces a requirement that a state trust company dispose of certain real property that is subject to the limitation on its investment in state trust company facilities with a requirement that the company comply with regulatory accounting principles in accounting for its investment in and depreciation of trust company facilities, furniture, fixtures, and equipment.

SB 1646 was signed by the Governor on May 19, 2023, and is effective immediately.

11. Disability Documents.

11.1 The T-REP Financial Power of Attorney Bill.²⁵ T-REP’s Financial Power of Attorney bill is **SB 1650** (Parker | Smithee) (**HB 3562** (Smithee) was its companion).

SB 1650 was signed by the Governor on May 24, 2023, and is effective September 1, 2023.

(a) Individuals Instead of Persons and References to Attorneys-in-Fact (Secs. 751.002, 751.00201, 752.001, & 752.107). These sections remove a handful of references to an “attorney-in-fact” that were added back by other bills after REPTL removed those references in prior sessions and changes the word “person” to “individual” to make it clear that the power of attorney provisions apply only to a power

of attorney signed by an individual. The bill also clarifies that the statutory power regarding business operation transactions applies to limited liability companies. (The original provision was adopted long before LLCs became a widely-used business entity.)

(b) Revocation of Power of Attorney on Appointment of Guardian of the Estate (Secs. 751.052 & 751.133). In 2017 **HB 1974** redesignated Section 751.133 and amended it. **SB 39** also amended Section 751.052. The two sections have similar, overlapping provisions. T-REP’s proposal repeals Section 751.052 and adds those provisions to Section 751.133.

(c) Protective Agency (Sec. 751.251). This change clarifies the type of government agency that can bring an action for construction, enforceability, or activity under a durable power of attorney. The description is intended to include the DFPS as an agency that can utilize this section. The change also allows the court to award costs and attorney’s fees.

(d) Disclaimers (Prop. Code Sec. 240.008). This change allows an agent to make a disclaimer without court approval, even if the agent receives the property after the disclaimer is made. A disclaimer of this type is only permitted if the principal grants the authority to make a disclaimer and the agent is an ancestor, spouse, or descendant of the principal.

11.2 The T-REP Medical Power of Attorney Bill (H&S Code Secs. 166.163 & 166.164). T-REP’s Medical Power of Attorney bill, **HB 2589** (Howard), once again proposes to make the statutory form of medical power of attorney optional so that people can use the *Five Wishes* document, the *ABA’s simple form*, or some other form as a standalone document. Currently, Texas appears to be one of only five states that mandate use of a state form. Under the proposed legislation, the only requirements are that a medical power must be in writing and contain the principal’s name, date of execution, and designation of an agent to be valid. **Once again, this bill failed to pass.** It never even received a hearing. However, read about **HB 4989** discussed in Sec. 23.2 below. It didn’t pass, but it made it much farther through the process.

11.3 The T-REP Anatomical Gift Bill (H&S Code Secs. 692.003, 692.005, & 692A.005-692A.007). A person who is physically unable to sign a statement of anatomical gift may direct another individual to sign on his or her behalf, but that statement must be witnessed by two persons. T-REP’s Anatomical Gift bill, **SB 2186** (Zaffirini | Thompson, S.) (**HB 3041** (Thompson, S.)

²⁵ Section references in Part 11 are to the Texas Estates Code unless otherwise noted.

was its companion), allows a statement of anatomical gift, a revocation of same, or a refusal to make an anatomical gift that is signed at the direction of a person who is physically unable to sign, to be acknowledged in the presence of a notary instead of two witnesses. It also moves the provision providing that an anatomical gift made through an online donor registry does not require any witnesses or the consent of any person from repealed Health and Safety Code Chapter 692 to the replacement Chapter 692A. (Chapter 692 was amended during the same legislative session in which it had already been repealed and replaced by Chapter 692A.)

SB 2186 was signed by the Governor on June 2, 2023, and is effective September 1, 2023.

Drafting Tip

When my clients bring this up, I usually encourage them to register at the Glenda Dawson Donate Life Texas Registry which allows them to become organ, eye, and tissue donors. That way, the client's wishes will be documented and readily available to health care providers at the time of donation, while access to the anatomical gift form you've prepared may not be. Anyone can register at:

www.donatelifetexas.org

The registry also has partnerships with the Texas DPS and DMV that allow individuals to join the donor registry when applying for or renewing their driver's license, ID, or vehicle registration.

Should the client want to donate something in addition to organs, eyes, and tissue, then the separate anatomical gift statement may still be warranted.

11.4 The T-REP Disposition of Remains Bill (H&S Code Secs. 711.002 & 711.004). The T-REP Disposition of Remains bill, **SB 1300** (Hughes | Thompson, S.) (**HB 2980** (Thompson, S.) was its companion), amends the provision authorizing removal of an individual's remains (Sec. 711.004) so that the same persons (and in the same order or priority) who control disposition of that individual's remains (under Sec. 711.002) must consent to any subsequent removal of the remains.

SB 1300 was signed by the Governor on May 29, 2023, and is effective September 1, 2023.

11.5 Directives and Medical Decisions Made on Behalf of Patients (H&S Code Secs. 166.0445, 166.046, 166.0465, 166.052, 166.054, 166.202-166.206, 166.209, 313.004). **HB 3162** (Klick, *et al.* | Springer, *et*

al.) (**SB 1724** (Springer) and **SB 1952** (Hughes, *et al.*) were similar bills) provides additional protections for a health care professional who refuses to honor the advance directive or treatment decision of a patient who has been declared incompetent or incapable of communication. It includes factors that an ethics or medical review committee must consider.

HB 3162 was signed by the Governor on June 17, 2023, and is effective September 1, 2023.

11.6 Living Donor Education Program (H&S Code Ch. 54). **SB 1249** (Hancock, *et al.* | Oliverson) requires the Department of State Health Services to establish a living organ donor education program.

SB 1249 was signed by the Governor on May 19, 2023, and is effective September 1, 2023.

12. Nontestamentary Transfers.

12.1 Nonsubstantive Change to TODD Statute (Est. Code Sec. 114.106). The Estates Code went into effect at the beginning of 2014, almost ten years ago. Since then, most of these legislative updates reported on bills that made nonsubstantive changes to other statutes that contained out-of-date references to old Probate Code provisions. We thought that was finished in 2019 when REPTL's substantive code update bill (**HB 2780** (Wray | Rodríguez)) made final revisions that Leg. Council couldn't make. We may still be right, but now the shoe is on the other foot. This session, **HB 4611** (Price | Johnson) is a nonsubstantive revision of our health and human services laws, and because of a change made by that bill to the Gov't Code, a reference in Estates Code Sec. 114.106(b) to former Sec. 531.007 of the Gov't Code is changed new Sec. 546.0403.

HB 4611 was signed by the Governor on June 12, 2023, and is generally effective April 1, 2025.

13. Exempt Property.

13.1 Continuation of Exemption of Elderly Person for Surviving Spouse Without Reapplication (Tax Code Sec. 11.43). **SB 1381** (Eckhardt, *et al.* | Hefner) continues the homestead exemption of the surviving spouse of a deceased homestead claimant who was at least 65²⁶ without having to reapply for the exemption.

SB 1381 was signed by the Governor on May 27, 2023, and is effective January 1, 2024.

²⁶ The bill caption, not your authors, uses the term "elderly" to describe an individual who is at least 65. At least one of your authors qualifies as elderly under this definition.

14. Jurisdiction and Venue.

14.1 Transfer of Probate or Guardianship Case to County With Proper Venue (Est. Code Secs. 33.101-33.103, 33.105, 1023.006, & 1023.007). **SB 1612** (Zaffirini | Orr, *et al.*) (**HB 3403** (Orr) was a similar companion) requires the clerk to use the electronic filing system to transfer a probate or guardianship case to a court in another county. Similar provisions are included for cases under the Family Code. (See also Sec. 15.1(a) below and Sec. 15.2 below.)

SB 1612 was signed by the Governor on May 27, 2023, and is generally effective January 1, 2024, although certain sections are effective September 1, 2023.

15. Court Administration.

15.1 Omnibus Courts Bill. **HB 3474** (Leach, *et al.* | Hughes, *et al.*), an omnibus bill relating to the administration of the judicial branch, ended up with several items specifically applicable to our areas of practice.

HB 3474 was signed by the Governor on June 13, 2023, and is generally effective September 1, 2023.

(a) Transfer of Probate and Guardianship Cases (Est. Code Secs. 33.101, 33.102, 33.103, 33.105, 1023.006, & 1023.007). Originally, **HB 2893** (Clardy | Zaffirini, *et al.*) required the probate clerk of a transferring court to use the electronic filing system when sending case documents to the transferee court. An original will must be transferred to the transferee court at the expense of the party requesting the transfer. It also required the transferring clerk to record any unrecorded documents in a guardianship within 10 working days after the date a transfer order. However, most of these provisions were rolled into **HB 3474** (Leach, *et al.* | Hughes, *et al.*), an omnibus bill relating to the administration of the judicial branch. The provisions moved in and out of **HB 3474**, but ended up in the conference committee report, which is all that matters. However, in the transfer of language among bills, the requirement that the original will be transferred to the new court was dropped. (See also Sec. 14.1 above.)

(b) New Statutory Probate Courts. Our 2021 legislative update let you know about the opening of Travis County's new Probate Courthouse. On January 24, 2023, the Travis County Commissioners Court approved asking the legislature to finally create a second statutory probate court. Travis County is one of only two counties with a population in excess of 1 million with only one probate court (Collin County is the other). **HB 3474** (Leach, *et al.* | Hughes, *et al.*) (**SB 1462** (Hughes) was its Senate companion) is a lengthy bill relating to the administration of the judicial

branch. After emerging from House Judiciary, **HB 3474** created new statutory probate courts in Bexar, Cameron, Montgomery, and Travis Counties. A House floor amendment also added a 5th statutory probate court in Harris County. The new probate courts in Bexar, Cameron, and Harris Counties would be created effective September 1st, while the new probate courts in Montgomery and Travis Counties would be created effective October 1st. (Originally, there were standalone bills creating the new probate courts in Bexar County (**HB 2567** (Allison)) and Montgomery County (**HB 1436** (Metcalf)), but as noted above, those were rolled into **HB 3474**.)

(c) Delivery of Court Orders Through Electronic Filing System (Gov't Code Secs. 80.002). **HB 525** (Vasut, *et al.*) would have required statutory county courts, district courts, and appellate courts to deliver copies of orders to the parties through the state's electronic filing system. While it didn't pass, most of its language was incorporated into **HB 3474** prior to its final passage. Unfortunately, the language only applies to statutory county courts, district courts, and appellate courts, but not to statutory probate courts.

15.2 Transfer of Guardianship Cases (Est. Code Secs. 1023.002, 1023.005, 1023.006, 1023.007, 1023.0071 & 1023.008). **SB 2248** (Zaffirini | Murr) also would have required the clerk of a transferring court to use the electronic filing system when sending guardianship case documents to the transferee court **and** establishes a \$45 fee payable to the transferee clerk **in lieu of any other fees**. (See also Secs. 14.1 and Sec. 15.1(a) above.)

SB 2248 was vetoed by the Governor on June 18, 2023, therefore this change will not go into effect. See Sec. 9.3 above for additional details on the veto.

SB 12 (Zaffirini), which appears to be identical to **SB 2248**, was filed in the second called session but no action was taken prior to adjournment.

15.3 Associate Judges for Guardianship and Protective Services Proceedings (Gov't Code Ch. 54A). Last session, **HB 79** (Murr | Zaffirini) authorized associate judges to hear guardianship and protective services proceedings in courts other than statutory probate courts. This session, **HB 4128** (Murr, *et al.* | Zaffirini) (**SB 1726** (Zaffirini) was its companion) clarifies that such an associate judge is considered a state employee for all purposes, and has broad authority to oversee and monitor guardianship and protective services proceedings in accordance with the order referring proceedings to the associate judge.

HB 4128 was vetoed by the Governor on June 17, 2023, therefore this change will not go into effect. Despite

passing 138-6 (3 present, not voting) in the House and 30-1 in the Senate, [the Governor's veto proclamation](#) claimed that this bill would “[build] a new state bureaucracy ... [and] burdened state taxpayers and given outsized authority to associate judges.” The Governor’s proclamation is wrong. No new bureaucracy would have been created by the bill. Nor would I consider giving associate judges in statutory county courts “outsized authority.”

SB 15 (Zaffirini), which appears to be identical to **HB 4128**, was filed in the second called session but no action was taken prior to adjournment.

15.4 Bond of Statutory County Court Judges (Gov’t Code Secs. 25.0006 & 26.001). **SB 2292** (Zaffirini | Murr) increases the bond requirement of statutory county court judges who preside over probate or guardianship cases to a flat \$500,000.

SB 2292 was vetoed by the Governor on June 18, 2023, therefore this change will not go into effect. Despite passing 31-0 in the Senate and 118-20 (1 present, not voting) in the House, [the Governor's veto proclamation](#) acknowledged that this bill was important, but “simply not as important as cutting property taxes.”

SB 11 (Zaffirini), which appears to be identical to **SB 2292**, was filed in the second called session but no action was taken prior to adjournment.

15.5 Repeal of Mandatory Retirement Age for Judges (Const. Art. V, Sec. 1). **HJR 107** (Price, *et al.* | Hinojosa) (**HJR 39** (Vasut, *et al.*) and **SJR 40** (Hinojosa) were similar bills), like 2021’s **HJR 66** (Vasut, *et al.*), would repeal or increase the mandatory retirement age for state judges and justices.

HJR 107, filed with the Secretary of State on May 16, 2023, will appear on the November 7th ballot.

15.6 Photo ID Required to File Document With County Clerk (Local Gov’t Code Sec. 191.010). **HB 1195** (Holland | Hall) (**SB 319** (Hall, *et al.*) was its companion) would allow a county clerk of any county to require a photo ID from anyone attempting to file a document in person in the real property records of the county. (Currently, this statute only applies to counties with a population of 800,000 or less.)

HB 1195 was signed by the Governor on June 9, 2023, and is effective immediately.

15.7 Grievances Involving Guardianships, Decedents’ Estates, and Trusts. **HB 5010** (Schofield | Hall) (**SB 2462** (Hall) was its companion) didn’t hit our radar (or this paper) until the last full week of the session. According to the House Committee Report of the introduced version of the bill:

“Inconsequential complaints against Texas attorneys are overwhelming the Texas State Bar every year, costing taxpayer money and state resources, and burdening Texas attorneys in a time-consuming and nerve-wracking complaint process initiated by people with no personal legal interest in the underlying matter. In the grievance process, grievances that merit a full investigation and disposition are classified by the bar as ‘complaints,’ and those that on their face do not rise to the level of a complaint are classified as ‘inquiries’ and do not receive the same level of investigation and disposition. **HB 5010** would require a grievance to be submitted by a person who has a cognizable individual interest in or connection to the legal matter or facts alleged in the grievance in order for the grievance to be classified as a ‘complaint.’ A grievance filed by a person who lacks a cognizable interest in the matter would be classified as an ‘inquiry.’”

The bill made it through the House and ended up on the Senate floor on May 19th. There, the Senate sponsor offered a floor amendment that classified grievances as complaints if they are submitted by not only a person with a cognizable interest in the legal matter, but also:

- (i) a family member of a ward in a guardianship proceeding that is the subject of the grievance;
- (ii) a family member of a decedent in a probate matter that is the subject of the grievance;
- (iii) a trustee of a trust or an executor of an estate if the matter that is the subject of the grievance relates to the trust or estate;
- (iv) the judge, prosecuting attorney, defense attorney, court staff member, or juror in the legal matter that is the subject of the grievance; or
- (v) a trustee in a bankruptcy that is the subject of the grievance.

In other words, anyone fitting within one of those categories need not separately show a cognizable interest in the legal matter. The floor amendment was adopted, the bill passed the Senate as amended, and five days later, the House concurred in the Senate amendments.

HB 5010 was signed by the Governor on June 18, 2023, and is effective September 1, 2023.

16. Selected Family Law Issues.

16.1 Reimbursement Claims Between Marital Estates (Fam. Code Secs. 3.401, 3.402, 3.404, 3.406, and 3.411). **HB 1547** (Cook | Hughes) revises Family Code provisions regarding reimbursement between marital estates. A “claim for reimbursement exists when one or both spouses use property of one marital estate to confer on the property of another marital estate a benefit,

which, if not repaid, would result in unjust enrichment to the benefited estate.” The two estates are called “the benefited estate” and the “conferring estate.” The specific statutory list of possible claims for reimbursement is replaced with an explanation of what it means for one marital estate to confer a benefit on another marital estate: one or both spouses used (1) property of the conferring estate to pay a debt, liability or expense that in equity and good conscience should have been paid from the benefited estate’s property, (2) property of the conferring estate to make improvements to the benefited estate’s real property, which results in an enhancement in value of the benefited estate’s real property, or (3) time, toil, talent or effort to enhance the value of property of a separate estate beyond that reasonably necessary to manage and preserve the spouse’s separate property. Other provisions deal with required proof, calculation of the value of, and offsets against, the benefit conferred, and the court’s determination whether unjust enrichment will occur in the absence of reimbursement.²⁷

HB 1547 was signed by the Governor on June 9, 2023, and is effective September 1, 2023.

16.2 72-Hour Waiting Period. Several bills affect the minimum 72-hour waiting period between the issuance of a marriage license and the marriage ceremony. **HB 4183** (Price, *et al.* | Sparks, *et al.*) adds a justice of the peace to the list of judges who can waive the waiting period. A session-end Senate amendment added associate judges appointed under Family Code Ch. 201 or Gov’t Code Chs. 54A (criminal district or county courts).

HB 4183 was signed by the Governor on June 13, 2023, and is effective September 1, 2023.

16.3 Who May Conduct Marriage Ceremonies (Fam. Code Sec. 2.02). **HB 907** (Moody | Hinojosa) and **SB 794** (Hinojosa), like 2021’s **HB 451** (Moody), allow any current, former, or retired federal or state judge to conduct a marriage ceremony, rather than listing a whole bunch of different types of judges.

HB 907 was signed by the Governor on June 9, 2023, and is effective September 1, 2023.

17. Stuff That Doesn’t Fit Elsewhere.

17.1 Permanent Authorization of Remote Proceedings. In **Misc. Docket No. 23-9004**, the Texas Supreme Court gave final approval to new Texas Rules of Civil Procedure 21d and 500.10 and amendments to

existing Rules 21, 500.2, 501.4, and 505.1 designed to make remote judicial proceedings more available on a permanent basis, at least where the parties don’t object.

17.2 Remote Online Notarization (Gov’t Code Ch. 406). Remember a few years ago when we were going through a pandemic and wondering how we were going to get wills and other estate planning documents executed when we were supposed to avoid being in the same room together? Gov. Abbott signed a couple of orders in the Spring of 2020 that temporarily suspended the requirement that a traditional notary be in the physical presence of the signer so that we could have remote ink notarization, at least for the estate planning and real estate documents specified in the orders. However, those suspension orders terminated in September of 2021. **SB 1780** (Parker | Capriglione) (**HB 5004** (Capriglione) was its companion) isn’t exactly a permanent statutory enactment of those orders. We already had online notarization, but that was limited to notarization of electronic signatures. This bill expands the authority of online (but not traditional) notaries so that they can notarize wet ink signatures. It’s a project of the AARP, and their lobbyist has informed us that they’re trying to engraft the provisions of the **Revised Uniform Law on Notarial Acts** – onto our existing statute.

SB 1780 was signed by the Governor on May 27, 2023, and is effective January 1, 2024.

17.3 Updated Terminology. **HB 446** (Craddock, *et al.* | Kolkhorst, *et al.*) (**SB 332** (Kolkhorst) was its Senate companion) is a code update bill that, among other things, modernizes terminology used in statutes by changing numerous statutory references from “mental retardation” to “intellectual disabilities.” (**HB 530** (Wu) and **SB 362** (Zaffirini) would have made similar terminology changes.)

HB 446 was signed by the Governor on May 15, 2023, and is effective September 1, 2023.

17.4 Disposition of Unclaimed or Abandoned IOLTA Funds. **SB 658** (Perry, *et al.* | Leach) (**HB 1763** (Leach) was its companion) requires the Comptroller to deposit unclaimed, unidentified, or abandoned funds in an IOLTA account into the judicial fund used for programs approved by the Supreme Court to provide basic legal services.

SB 658 was signed by the Governor on June 18, 2023, and is effective September 1, 2023.

²⁷ Prof. Featherston pointed out that the introduced version of the bill only contemplated using the unjust enrichment claim in making a just and right division of the community estate. That wouldn’t work if a reimbursement claim existed at the

death of a spouse since there is no “just and right division” of the community estate at that point. At T-REP’s suggestion, the language determining the unjust enrichment as part of the just and right division was deleted by the time the bill passed.

17.5 Exchange of Driver’s License for Personal Identification Certificate. **HB 1275** (Plesa, *et al.* | Hughes) requires the DPS to adopt procedures allowing someone who is at least 65 to apply for a personal identification certificate online or by phone if the person surrenders his or her driver’s license and that license complies with the federal REAL ID program.) (**HB 1169** (Shaheen), **SB 1749** (Hughes), and **HB 2218** (Thimesch) were similar bills.)

HB 1275 was signed by the Governor on June 12, 2023, and is effective September 1, 2023.

18. A Little Lagniappe.

We are [mostly] happy to report the following developments critical to the future of Texas:

18.1 Daylight Saving Time. Most recent sessions have seen a number of bills relating to daylight saving time. This session is no exception:

- **HB 417** (Schofield) and **HJR 22** (Schofield), **SB 2329** (Bettencourt) and **SJR 86** (Bettencourt, *et al.*), **HB 1422** (Metcalf, *et al.* | Hughes, *et al.*), and **HB 2591** (Shaheen) require the state to observe daylight saving time year-round, both in the portion of the state that officially uses central time (*i.e.*, most of us), and the portion that officially uses mountain time (*i.e.*, El Paso and environs).
- **HB 1101** (Goodwin) and **HJR 80** (Goodwin), along with **HB 1931** (Rogers, *et al.*), and **HJR 100** (Rogers) propose a referendum on whether to stick with daylight saving time year-round or standard time year-round. The voters’ choice would go into effect January 1, 2024.
- **HB 1425** (Metcalf) and **HJR 82** (Metcalf) propose a referendum on whether or not to stick with daylight saving time year-round. If it passed, we’d stick with daylight saving time. If it didn’t pass, we’d continue to alternate.
- **SB 1297** (Zaffirini) proposes sticking with standard time year-round, but also proposes a referendum (**SJR 68**) on whether or not to stick with daylight saving time or standard time year-round, and authorizes a future legislature to enact the voters’ choice.
- **SJR 9** (Zaffirini) proposes a constitutional amendment abolishing daylight saving time, effective with the end of DST on November 3, 2024.

18.2 The Texas Sovereignty Act. **HB 384** (Bell) and **SB 313** (Hall) are repeats of 2021’s **HB 1215** (Bell, C., *et al.*) and **HB 2930** (Schofield), which in turn were repeats of 2019’s **HB 1347** (Bell, C., *et al.*), which in turn is a repeat of 2017’s **HB 2338** (Bell) and **SB 2015** (Creighton). They’re a silly attempt to ignore the Supremacy Clause of the U.S. Constitution (**Article VI, Clause 2**). If you’re interested in a further description of the bill, read about it in my 2017 legislative update in the attachment discussing bills that didn’t pass. (The 2017 version got out of committee but died on the House floor. The 2019 and 2021 versions never got out of committee.)

18.3 State District of Austin. Back in 2021, **HB 2289** (Schofield) and **HJR 105** (Schofield) would have converted the portion of Austin near the Capitol into a “State District” that would serve as the seat of state government. **HB 4521** (Cain) and **HJR 162** (Cain) would have gone way further, converting the entire City of Austin into the District of Austin. This year, Rep. Patterson has taken over the reins from Rep. Cain. **HB 714** (Patterson) and **HJR 50** (Patterson) would require the governing body of the district to submit notice of each of its actions to the lieutenant governor and speaker of the House. The state legislature could amend or repeal local laws, or enact its own local laws.

18.4 STILL Saving Historic Muny District. Speaking of Austin, the 2017 session’s legislative update²⁸ contained an entire “special supplement” discussing **SB 822** which would have required the UT System to transfer the property known to Austinites as the Muny Golf Course to the Parks and Wildlife Department. The bill did not pass, but discussions between UT and Austin about the future of the golf course (or at least the land on which it sits) continued. In 2019, no similar bill was filed, but **SB 2553** (Watson | Howard) created the **Save Historic Muny District** to provide a mechanism for the community to directly contribute to securing the golf course from UT by voting to pay a fee that would help fund the acquisition of the property. The district and UT have not yet reached an agreement. The original authorization for the district was set to expire May 31, 2021, in the absence of an agreement, but the expiration date was extended to May 31, 2023, by 2021’s **SB 390**. This session, **HB 2867** (Howard | Eckhardt) (**SB 1316** (Eckhardt) was its companion) extends the expiration date to May 31, 2025. Meanwhile, people continue to play golf at **Muny**.

HB 2867 was signed by the Governor on June 10, 2023, and is effective immediately.

²⁸ Remember, you can find prior legislative updates going back as far as 1983 on [REPTL’s Estate & Trust Legislative Updates page](#).

18.5 Say Goodbye to the “Tampon Tax.” **SB 379** (Huffman, *et al.* | Howard, *et al.*) gets rid of what has been nicknamed as the “tampon tax.” It eliminates the state sales tax on not only tampons, but other feminine hygiene products such as sanitary pads and menstrual cups. Unlike similar bills in previous sessions, it also eliminates sales tax on diapers, baby wipes and bottles, maternity clothing, and products for pumping breast milk. Other bills with similar provisions included **HB 300** (Howard, *et al.* | Huffman, *et al.*), **HB 70** (Howard), **HB 510** (Wu), **HB 1265** (Button), **HB 2320** (Harris, C.), and **SB 128** (Springer, *et al.*).

SB 379 was signed by the Governor on June 18, 2023, and is effective September 1, 2023.

18.6 Should We or Shouldn't We? **HB 3596** (Slaton) proposes we hold a statewide [nonbinding] referendum on whether Texas should reassert itself as an independent nation. (I think we unsuccessfully tried a different version of this back in 1861.) If that referendum is approved, then something called the Texas Independence Commission, consisting of the lieutenant governor; the speaker of the House; four senators appointed by the lieutenant governor, one of whom must be the chair of Senate State Affairs; and four members of the House appointed by the Speaker, one of whom must be the chair of House State Affairs, are tasked with recommending how to amend our constitution to accommodate the needs of an independent nation (including renaming the State of Texas to the Republic of Texas) and “transitional issues which must be negotiated with the government of the United States of America.” (Aside from the fact that this bill never received a hearing, chances of its passage were further hindered by the fact that Rep. Slaton resigned from the House on May 8th and became the first representative expelled from the House since 1927 the following day.)

18.7 Texas Energy Resources Commission. No, this would not be a new state agency. Under **HB 4788** (Anchia) and **SB 1701** (Johnson, *et al.*), this would be the new name of the Railroad Commission of Texas, which has nothing to do with the regulation of railroads. While the new name would more accurately reflect the purpose of the commission, neither bill received a hearing, dooming them to failure like similar proposals in 2005, 2009, 2011, 2013, 2015, 2017, and 2019.

18.8 Recall of U.S. Senator. Under **HB 5065** (Harrison), a U.S. Senator from Texas could be recalled (and the office declared vacant) with a mere majority vote of both chambers of the Texas legislature.

18.9 We're In The Money! **HB 4911** (Martinez Fischer) directs the Comptroller to make a one-time

\$500 payment to every Texas resident to whom the DPS has issued a form of identification and whose listed address is in Texas. **HB 5301** (Plesa) directs the Comptroller to make a one-time \$500 payment to every eligible Texas resident. To be eligible, the resident must be at least 18, reside in Texas lawfully, not be incarcerated, and make an application to the Comptroller.

18.10 Whose Money? The People's Money! **HB 3019** (Harrison) prohibits (1) any state official or agency from (2) referring to money held by this state, a state agency, or a state official that may be used only for a public purpose of this state (3) in an official document, publication, or notice (4) using any phrase other than “the people's money.” Common terms and phrases that **may not be used** include government funds; government money; public funds; public money; state funds; and state money. This prohibition **would not apply** to a state statute; the Texas Constitution; a document or publication of state agency rules that must rely on statutory or constitutional phrasing for reasons of legal clarity; or a reference to money the state holds in trust for the benefit of a person other than this state or a governmental entity of this state.

18.11 Pedestrian Use of Sidewalk (Trans. Code Sec. 552.006). Pedestrians and where they should walk have been the subject of proposed legislation for a number of sessions. We write “proposed” because it never seems to pass. Transportation Code Sec. 552.006(a) says that if there's a sidewalk adjacent to a roadway that's accessible to a pedestrian, the pedestrian should use it. Sec. 552.006(b) says that if there isn't a sidewalk, a pedestrian walking on a highway should walk on the left side of the road, or on the shoulder facing oncoming traffic. Back in 2015, **HB 2554** (White, M., *et al.*) tried to repeal subsection (b). It made it to the House Local & Consent Calendar committee, but never received a floor vote (and therefore never made it to the Senate). In 2017, **HB 1350** (Cain, *et al.*) did the same thing, but never even received a committee hearing. It appears the defenders of pedestrian freedom took a rest in 2019, but they were back in 2021 with **HB 3925** (Cain, *et al.*). That effort made it out of the house by mid-May but never went anywhere in the Senate. The record vote on the House floor was 92 in favor, 49 against, and 2 present but not voting. Several representatives felt the need to add statements to the record vote. One noted that he was away from his desk when the vote was taken but would have voted no. Another was shown voting yes but would have voted no. A third was away from his desk but would have voted yes. This session, they're increasing the chances of passage by introducing the bill twice. **HB 1277** (Cain, *et al.* | West) (**HB 396** (Collier) was a

duplicate bill) does the same thing as the three prior attempts but adds an exception to the pedestrian requirement if the left side of the roadway or the shoulder of the highway facing oncoming traffic is obstructed or unsafe. The fourth time is the charm!

HB 1277 was signed by the Governor on June 13, 2023, and is effective September 1, 2023.

18.12 Automobiles. Here are several bills relating to your automobile.

(a) Protecting Your Right to Drive. HJR 106 (Schaefer) would enshrine in our constitution a person’s “right to travel in a vehicle using human decision-making.” Apparently, Rep. Schaefer is concerned about the day when the technology in autonomous driving vehicles becomes so advanced that some government agency might try to prevent a person from driving the car on their own. I’m guessing he’ll give you his steering wheel when you pry it from his cold, dead hands. If this sounds familiar, it’s because **HJR 98** (Schaefer) tried to do the same thing in 2021. That resolution never received a hearing. This time, **HJR 106** adds a provision that any law or regulation that attempts to abridge this new constitutional right would be void and unenforceable.

(b) No More Temporary Vehicle Tags. Many of you may have heard of the numerous problems generated by the temporary paper license plates issued by dealers when a car is sold. The House Committee Report for **HB 718** (Goldman, *et al.* | West) (**SB 2567** (West) was its companion) states that our temporary paper license plate system provides criminals an easy way to disguise vehicles, avoid prosecution, and inflate a public safety problem. News reports indicate that fraudulent paper license plates have resulted in the death of law enforcement, enabled drug cartels and human smugglers to avoid law enforcement, and created a more than \$200 million black market industry in Texas. This bill eliminates the use of paper license plates in Texas beginning sometime in 2025.

HB 718 was signed by the Governor on June 12, 2023, and is generally effective July 1, 2025.

(c) No More Vehicle Inspections. The House Committee Report for **HB 3297** (Harris, Cody, *et al.* | Middleton, *et al.*) (**SB 1708** (Middleton) was its companion and **HB 4420** (Goldman) was identical) states that most states have done away with their mandatory vehicle inspection programs since the federal government ended that requirement in 1976. It concludes that the impact of mandatory vehicle safety inspections on road safety is not strong enough to justify the program’s existence. Therefore, this bill eliminates

regular mandatory vehicle safety inspections for noncommercial vehicles.

HB 3297 was signed by the Governor on June 13, 2023, and is effective January 1, 2025.

18.13 Duty to (Substitute) Teach. SB 1262 (Menéndez) would require each member of the legislature to substitute teach at a public school in the member’s district at least one school day each school year. There’s no indication of which subject should be taught. Lists would be maintained of each member who doesn’t fulfill the teaching requirement, and those lists would be made public!

18.14 State Ammunition Manufacturing Facility. SB 1851 (Flores) (and **HB 3539** (Troclair, *et al.*), which is very similar) would establish the Texas Ammunition Manufacturing Facility as a state agency within the DPS. Its purpose would be to “manufacture quality ammunition for use by law enforcement for training and to ensure public safety and the general public for recreational shooting, hunting, self-defense and all other legal purposes as protected by the Second Amendment to the United States Constitution.” While this may smack of socialism in a state that loves capitalism and free enterprise, the ammunition could be sold only to law enforcement agencies, wholesalers, and distributors, but not directly to consumers (or to foreign countries).

18.15 Protecting Your Electronic Devices. HB 1936 (Lozano) and **SB 417** (Paxton, *et al.*) require a manufacturer of an electronic device such as smart phone or tablet capable of connecting to the Internet²⁹ that is activated in this state to automatically enable a filter capable of preventing users of the device who are minors from accessing or displaying explicit material. The filter must enable the user of the device to circumvent the filter by entering a password or code. But it doesn’t say that the user who may circumvent the filter must be an adult?

18.16 Don’t Bogart That Joint! Okay, I realize I’m showing my age when the title for this section refers to ingesting cannabis products by means of smoking them. Yes, I know it’s more common to ingest edible versions, but I’m not aware of a catchy title that refers to that method of ingestion. Nevertheless, **HB 1937** (González, Jessica, *et al.*), an act “relating to the regulation of the cultivation, manufacture, processing, distribution, sale, testing, transportation, delivery, transfer, possession, use, and taxation of cannabis and cannabis products and local regulation of cannabis establishments; authorizing the imposition of fees; requiring an occupational license; creating a criminal

²⁹ Capitalized in the bill.

offense; imposing a tax," would authorize personal use, possession, transportation and transfer without remuneration up to 2.5 ounces of cannabis (no more than 15 grams of which may be in the form of cannabis concentrate). An adult could even possess and process an additional 7.5 ounces in the adult's private residence so long as it's stored in a locked container. The bill also authorizes licensed cannabis growers and retailers.

18.17 You Betcha! HB 1942 (Leach, *et al.*) and **HJR 102** (Leach, *et al.*), along with **SB 715** (Kolkhorst, *et al.*) and **SJR 39** (Kolkhorst, *et al.*), add Chapter 2005, titled the Texas Sports and Entertainment Recovery Act, to the Occupations Code. It would legalize a variety of types of wagering, subject to appropriate regulations, of course.

18.18 Just Say No (to Balloons). HB 3300 (Guerra) makes it a Class C misdemeanor to knowingly release a balloon (filled with lighter-than-air gas) outside a roofed structure. It's also an offense to organize an event knowing such a balloon release will occur if the release does, in fact, occur. There are two defenses to prosecution: (1) the balloon was released for meteorological or scientific purposes and the release was authorized by a governmental entity; or (2) the released balloon was inflated with hot air and designed for eventual recovery.

18.19 What a Drag! HB 643 (Patterson, *et al.*), **HB 708** (Shaheen), **HB 1266** (Schatzline), and **SB 476** (Hughes, *et al.*) redefine a sexually oriented business to include a nightclub, bar, restaurant, or similar commercial enterprise that provides a drag performance, meaning "a performance in which a performer exhibits a gender identity that is different than the performer's gender assigned at birth using clothing, makeup, or other physical markers and sings, lip syncs, dances, or otherwise performs before an audience for entertainment." I don't know about where you live, but in Austin, one of our most popular (and longest-running) entertainment venues is **Esther's Follies**, which describes itself as Austin's #1 comedy troupe, featuring sketch comedy, political satire, and magic. While often raunchy, I don't consider Esther's to be a sexually oriented business. Yet it often features performers who exhibit "a gender identity that is different than the performer's gender assigned at birth." This bill would subject Esther's to the same restrictions placed on sexually oriented businesses.

18.20 It's a Small World After All. This is section going to be a long and winding road, and while it may not be readily apparent how it's relevant to estates and trusts (and it's not a *Texas* legislative update), for those of you willing to follow the road, you'll be rewarded at the end. If you're not inclined to follow this

road, feel free to skip to the next section without fear of recrimination.

In the Spring of 2022, the Florida legislature passed, and Gov. Ron DeSantis signed, the Parental Rights in Education Act, nicknamed by many as the "Don't Say Gay" bill. It prohibited discussion about sexual orientation and gender identity in some elementary school grades. The chief executive of Disney (Florida's largest employer) eventually criticized the bill. In retaliation for Disney's position (according to some), the legislature passed a bill abolishing Disney World's special tax district that had essentially let it function as its own municipal government since it opened in 1967. That was set to go into effect June of this year. However, earlier this year, it came to light that abolition of the tax district would transfer a significant burden to the taxpayers of the two counties that Disney World straddles, including the assumption of about \$1 billion in debt. Back at the drawing board, the legislators decided to keep the special tax district, but allowed the governor, rather than Disney, to appoint all of the members of its board.

Disney announced it was ready to work with the new board. However, on February 8th, while the legislature was reviving the tax district but placing it under the governor's control, the tax district's board (still controlled by Disney) adopted restrictive covenants and a development agreement giving Disney control over future construction in the district without the board's approval. While this action wasn't noticed at the time (notice of the meeting was published in the Orlando Sentinel on two separate dates in January), it came to light in late March when members of the incoming new board realized and announced that the board lost its practical ability to do anything other than maintaining roads and basic infrastructure. Further, the agreement prohibited the tax district from using the Disney name or any of its characters (specifically mentioning Mickey Mouse) without Disney's approval.

Here's where we get to the estate planning connection. As all this was coming to light during the last week of March, one of my partners mentioned that the contract included a "royal lives" clause similar to the perpetuities definition I include in my estate planning documents, which uses the descendants of Queen Elizabeth II as measuring lives (see the Drafting Tip on page 16). That's what got me to look into this Florida brouhaha. It turns out that Section 7.1 of the **February 8th restrictive covenants** provides that the provisions of agreement are to last in perpetuity, or, if that term is determined to violate the rule against perpetuities, "until twenty one (21) years after the death of the last survivor of the descendants of King Charles III, King of England living as of the date of this Declaration." (I would point out

that my “royal lives” clause is more expansive in that it includes Charles’ siblings and their descendants as additional measuring lives.)

So there you go. The RAP, derided by some as an anachronistic relic, rises again. I told you we’d get there eventually. It’s a Small World.³⁰

18.21 Places. Here are some official place designations:

- **Cajun Capital.** **HCR 61** (Manuel | Creighton) designates Port Arthur as the official Cajun Capital of Texas. **HCR 61 was signed by the Governor on June 9, 2023.**
- **Celebration Capital.** **HCR 104** (Slawson | Birdwell) designates Granbury as the official Celebration Capital of Texas. **HCR 104 was signed by the Governor on June 11, 2023.**
- **Deer Capital of the Texas Hill Country.** **HCR 82** (Murr | Flores) designates Llano as the official Deer Capital of the Texas Hill Country (but not the entire state). **HCR 82 was signed by the Governor on June 9, 2023.**
- **Dogwood Trails Capital.** **HCR 105** (Harris, Cody | Nichols) (**SCR 45** (Nichols) was its companion) designates Palestine as the official Dogwood Trails Capital of Texas. **HCR 105 was signed by the Governor on June 11, 2023.**
- **Halloween Capital.** **HCR 9** (Shaheen) designates Celina as the official Halloween Capital of *North* Texas. (This resolution never received a hearing.)
- **Peanut Capital.** **HCR 83** (Guillen | Zaffirini) designates Floresville as the official Peanut Capital of Texas. **HCR 83 was signed by the Governor on June 9, 2023.**
- **Pickle Capital.** **HCR 45** (Cook | Birdwell) redesignates Mansfield as the official Pickle Capital of Texas. **HCR 45 was signed by the Governor on June 9, 2023.**

- **Rice Capital.** **HCR 42** (Leo-Wilson | Creighton) designates Winnie as the official Rice Capital of Texas. **HCR 42 was signed by the Governor on June 9, 2023.**
- **Stagecoach Capital.** **HCR 27** (Stucky | Parker) redesignates Bridgeport as the official Stagecoach Capital of Texas. **HCR 27 was signed by the Governor on June 11, 2023.**
- **Sweets Capital.** **SCR 36** (Hughes) designates Mineola as the official Sweets Capital of Texas (replacing the city’s previous designation as the City of Festivals). (This resolution never received a hearing in the House.)
- **Wellness Capital.** **HCR 4** (Rogers | King) designates Mineral Wells as the official Wellness Capital of Texas. The people of Mineral Wells must have been on pins and needles waiting on the Governor to take action, but **HCR 4 was signed by the Governor on June 18, 2023, the last day he could take action on the resolution.**

18.22 Dates. Here are some official date designations:

- **Cotton Day.** **SR 268** (Perry) recognizes March 7, 2023, as Cotton Day at the State Capitol. (Cotton was named the Official State Fiber and Fabric of Texas in 1997 by **HCR 228** (Jones, *et al.* | Duncan).)
- **Pink Granite Day.** **HR 524** (Howard) recognizes March 8, 2023, as Pink Granite Day at the State Capitol. (This resolution is not honoring the material that forms the bulk of the Capitol’s exterior. Rather, it honors the **Pink Granite Foundation**, a nonprofit organized in 2017 committed to educating women working in politics and public policy.)
- **Save Your Tooth Month.** **HR 895** (Howard) recognizes May as Save Your Tooth Month (and pays tribute to hardworking endodontists who work with general dentists to save our teeth).

³⁰ Here’s more digression from the main purpose of this legislative update. I have never been to a Disney theme park. However, when I was a young boy, my family lived in a suburb of New York City just a few miles west of the George Washington bridge that crosses the Hudson River leading into Manhattan. In 1964 and 1965, my family took me several times to the New York World’s Fair in Queens. By far and away, my favorite exhibit was the UNICEF exhibit sponsored by Pepsi that had been designed by the Walt Disney Company. The working title for the exhibit was “Children of the World.” The original idea was to use the national anthems of each country represented in the exhibit, all playing all at once. That didn’t work, so Walt asked his staff songwriters,

Robert and Richard Sherman, to write a single song that could be translated into many languages and played as a round. They then wrote “**It’s a Small World (After All)**.” Walt liked it so much that he renamed the attraction “It’s a Small World” and recreated a version of the exhibit at Disneyland, and later Disney World when it opened a few years later, and now numerous Disney theme parks across the globe. I liked it so much that I replayed the 45 RPM record of the song that a relative had given me over and over again. Because of that (and likely the fact that it is constantly played at all of the Disney theme park installations), it is thought that the song is the most replayed song of all time.

- **Supermarket Employee Day.** **HR 311** (Harris, Cody) and **SR 205** (Hughes) recognizes February 22, 2023, as Supermarket Employee Day, calling on Texans to honor the hardworking and dedicated supermarket employees of our state. (Sorry we didn't add this in time for you to honor your favorite hardworking and dedicated supermarket employee on February 22nd.)

18.23 Mascots. **HR 885** (Metcalf) elects the children of House members to the office of mascot, and **HR 886** (Metcalf) designates the grandchildren of House members as honorary mascots. (Each of the children and grandchildren is named in the respective resolution, and an official copy of the resolution is to be delivered to them.)

19. The End.

It's been fun. Let's do it again sometime.

Selected Bills that *DID NOT* Pass

20. Decedents' Estates.

20.1 Several Decedents' Estates Changes. **SB 2249** (Zaffirini) contained several technical changes relating to decedents' estates. Here are some of them:

(a) Removal of Personal Representative (Sec. 361.052). The bill would have added a new subsection (a-1) clarifying that the court may remove a PR on its own motion after the PR has been notified by CMRRR, or on complaint of an interested person after the PR has been cited by personal service. (The change was that removal on the court's own motion would no longer require personal service.)

(b) Cancellation of Letters and Discharge of Sureties (Secs. 362.012, 362.013, 405.001, 405.007, & 405.009). This bill provided that if no assets remain on final settlement of an estate, the court should enter an order canceling any letters issued to the PR and discharging and releasing the sureties on the PR's bond and if all property in an independent administration is ordered distributed, the court's order should cancel any letters.

20.2 The Uniform Electronic Estate Planning Documents Act (Est. Code Ch. 2501). **SB 1779** (Parker) would have enacted the Uniform Electronic Estate Planning Documents Act. It included the **Uniform Electronic Wills Act** (UEWA or the eWills Act). The Uniform Electronic Wills Act is designed to allow testators to execute an electronic will and allow probate courts to give electronic wills legal effect. You can read more detail about the bill, including provisions dealing with non-testamentary estate planning documents, in Section 23.1 on page on page 31. Also take a look at the discussion of remote online notarization in Section 17.2 on page 21.

20.3 No 30-Day Waiting Period for Inherited Firearm. **SB 910** (Menéndez) would have imposed a 30-day waiting period on the sale of a firearm to someone under 21. However, the waiting period wouldn't apply if the firearm is inherited.

20.4 Assault Weapons (New H & S Code Ch. 769). **HB 925** (Dutton) would have placed restrictions on the manufacture, transport, sale or purchase of certain firearms such as assault and large caliber weapons. However, the restrictions would not apply to the disposition of such a firearm by the executor or administrator of an estate as authorized by the probate court. (That exception is the only reason this bill is mentioned in this paper.)

20.5 New Firearms Regulations Don't Apply to Inherited Firearms. **HB 3996** (Bryant) and **SB 1274**

(Gutierrez, *et al.*) would have enacted a new regime regulating the transfer of firearms. However, it wouldn't have applied to the transfer of firearms by inheritance or bequest.

20.6 Persons Disqualified to Serve as Personal Representatives (Sec. 304.003). **HB 942** (Dutton) (like 2021's **HB 2923** (Dutton)) would have added the decedent's spouse to the list of individuals who are disqualified from serving as personal representative if a suit (i) for dissolution of the marriage, (ii) affecting the parent-child relationship, or (iii) involving DFPS was pending at the decedent's death.

20.7 Certain Restitution as Class 4 Claim (Sec. 355.102). **HB 4715** (Vasut) would have imposed a restitution claim in favor of the victim of a sexual offense that results in the victim becoming pregnant, and then categorizes that claim as a Class 4 claim against the estate of the offender.

20.8 Estate's Recovery of Exemplary Damages for Homicide (Const. Art. XVI, Sec. 26). **HJR 166** (Thompson, S., *et al.*) was a proposed constitutional amendment that would entitle a decedent's surviving spouse, children, or parents, or the decedent's estate to recover exemplary damages for a homicide.

21. Guardianships and Persons With Disabilities.

21.1 "Independent Guardianships" for Minor Wards with Profound Intellectual Difficulties (Secs. 1054.001, 1054.151, 1103A.001-1103A.003, 1105.101, 1106.002, 1163.101, & 1201.052). **HB 653** (Allison, *et al.*) and **SB 2549** (Middleton) (like 2021's **HB 1675** (Allison, *et al.* | Kolkhorst)) would have enacted "Caleb's law," allowing a caregiver parent to be appointed as "independent guardian of the person" for a proposed minor ward who will still require a guardianship after reaching majority due to a "profound intellectual disability" without the need for the appointment of a court investigator. The guardianship application must include an affidavit showing that the proposed guardian meets certain qualification requirements, a doctor letter making the determination of profound disability, and a request for appointment of an independent guardian without the appointment of a court investigator. Unless the court finds that it is not in the best interest of the ward, an independent guardian is not required to file an annual account or annual report. The only required probate court action is a review at the discretion of the court, no more than once every five years (unless the guardian of the person is also the guardian of the ward's estate), to determine whether the guardianship should be continued, modified or

terminated. However, if at any time the court receives a claim that the guardianship is no longer in the ward's best interest, the court may take any action it determines necessary.

(At the Senate Jurisprudence hearing on the 2021 version of this bill, there were four witnesses who testified in favor of the bill and about 25 against, including four statutory probate judges, a county court at law judge, several other court staffers, and representatives from the Texas Guardianship Association, The ARC of Texas, and Disability Rights Texas. In addition, representatives from Coalition of Texans with Disabilities, Easter Seals Central Texas, Texas Advocates, and the Texas chapter of the National Association of Social Workers either registered against the bill without testifying or provided written testimony against it.)

21.2 Scope of Supported Decision-Making Agreement (Secs. 1357.051 & 1357.056). **SB 1638** (Zaffirini) expands the scope of a supported decision-making agreement to include legal information and legal proceedings involving the supported person.

21.3 Intervention by Interested Person; Removal With Notice (Secs. 1055.003 & 1203.052). **HB 4970** (Darby) would have revised the guardianship intervention provisions to require the court to find that an intervention would harm the ward or proposed ward, or that the proposed intervenor is not acting in the ward's or proposed ward's best interest before denying the motion to intervene. The court would be required to allow discovery by the proposed intervenor *prior* to a hearing on the proposed intervenor's motion, and the proposed intervenor could force the appointment of a GAL, regardless of whether the court granted the motion to intervene. The bill also adds a guardian's failure to maintain the required bond as a ground for removal with notice.

21.4 Settlement of Minor's Claims Without Guardianship (Civ. Prac. & Rem. Code Ch. 150D, Prop. Code Sec. 141.008). **HB 3393** (Johnson, J.) would have authorized a person with legal custody of a minor to settle a claim of the minor if no guardian or GAL has been appointed, the claim is no greater than \$25,000, any settlement funds are paid into the court's registry or directly to an annuity provider, and the person settling on the minor's behalf provides an affidavit to the effect that the settlement will fully compensate the minor or there's no practical way to recover more from the other party.

21.5 Psychologists Authorized to Determine Incapacity (Secs. 1101.103 & 1202.152). **HB 4107** (Canales) would have authorized a psychologist to prepare the letter or certificate to the court as to a

proposed ward's incapacity or the restoration of a ward's capacity.

21.6 Prevention of Abuse of Elderly and Disabled. A number of bills addressed the problems arising from fraud and abuse of the elderly and disabled.

(a) Investigation of Abuse or Neglect of an Elderly or Disabled Individual. **HB 3329** (Thimesch, *et al.* | West) would have prevented DFPS from refusing to conduct or delaying an investigation of a report of abuse, neglect or abandonment of an elderly person or person with a disability based on the fact that the person is temporarily hospitalized.

(b) Consecutive Sentences. **HB 802** (Gervin-Hawkins) would have amended the Penal Code to allow for consecutive sentences for an accused convicted of more than one criminal offense of injury to a child, elderly individual, or disabled individual under Penal Code Section 22.04 if each offense arises out of the same criminal episode.

(c) Failure to Report Abuse. **HB 1421** would have increased the criminal penalty from a misdemeanor to a felony if a peace officer encounters suspected abuse, neglect, or exploitation of an elderly person while on the job and fails to report it.

(d) Misrepresenting Medical History of an Elderly, Disabled, or Minor Individual. **HB 3381** (Cook, *et al.*) would have made it a felony to knowingly misrepresent the medical history of a child, elderly individual, or disabled individual to a health care provider with the intent to obtain unnecessary medical treatment that causes the patient to suffer bodily or mental injury.

(e) Peace Officer's Required Reporting of Suspected Abuse to DFPS. **SB 2079** (Menéndez) would have required a peace officer with information about suspected abuse, neglect, or exploitation of an elderly person or a person with a disability to report that information to DFPS.

21.7 Medicaid Issues. Many, many bills are filed each session that in some way relate to Medicaid. Here are descriptions of a selected few of them:

(a) Wages of At-Home Providers. In January 2023, the Texas Health and Human Services Commission increased salaries and starting pay for jobs at state hospitals and state supported living centers. **HB 1430** (Meza, *et al.*) sought similarly increased wages for at-home care providers by setting the minimum wage for personal attendants providing services to Medicaid recipients and the family care program administered by HHSC. The bill defines "personal attendants" as individuals providing non-medical services that enable

an individual to engage in daily living activities or perform physical functions required for independent living. This change would increase the minimum wage to \$15 per hour in 2024 and \$17 per hour in later years for contracts between managed care organizations and the HHSC.

(b) Personal Needs Allowance. HB 2526 (Campos) would have increased the personal needs allowance of Medicaid recipients who reside in a skilled nursing facility from \$60 to \$100/month.

22. Trusts.

22.1 Self-Settled Asset Protection Trusts (Secs. 112.036, & 112.151-112.162). HB 4376 (VanDeaver) and **SB 2317** (Hughes) would have added protection for self-settled asset protection trusts. Here's a description of some (but not all) of its provisions. To be entitled to spendthrift protection from the settlor's creditors, the trust must be irrevocable, not **require** any distributions to the settlor, and not be intended to hinder, delay or defraud creditors. At least one trustee must be a Texas resident, a trust company that maintains a Texas office, or a financial institution with trust powers that maintains a Texas office. It remains protected even if the settlor:

- may prevent distributions;
- holds a lifetime or testamentary special power of appointment in favor of others;
- is a beneficiary of a charitable remainder trust (even if the settlor may release the retained interest in favor of the remainder beneficiaries);
- is entitled to an annuity or unitrust distribution so long as the amount does not exceed the portion considered income for federal income tax purposes, or RMD's with respect to retirement plans;
- is entitled to a GRAT or GRUT payment under the income tax regulations;
- is entitled to occupy a residence held in a QPRT or entitled to a qualified annuity interest;
- is entitled to income or principal in the discretion of another person;
- is authorized to use real or personal property held in the trust.

A trustee's discretion is pretty much absolute, without any requirement that the trustee consider the beneficiary's needs, resources, or station in life.

A creditor of the settlor at the time of a transfer to a self-settled asset protection trust may not challenge the transfer after the later of two years after the transfer or the 180th day after the date on which the creditor discovers, or reasonably should have discovered, the transfer. A person who becomes a creditor of the settlor

after a transfer to a self-settled asset protection trust may not challenge the transfer after two years from the date of the transfer. If a creditor does bring a challenge to a transfer within the required time, the creditor bears the burden of proving that it was a fraudulent transfer by clear and convincing evidence, or that it violates a legal obligation to the creditor. An "advisor" to the settlor or trustee is also provided broad protection. If the trustee of a self-settled asset protection trust decants property to a second trust, the second trust is considered a self-settled asset protection trust if it meets the requirements of such a trust, and the property is considered to have been transferred to the trust on the date of the original transfer to the first trust.

A House Floor Amendment removes protection against the collection of court-ordered child support.

Well, at least no one could accuse the people behind this bill of overreaching.

22.2 Shortened SOL to Review Trust Accounting (Sec. 113.153). SB 843 (Hinojosa), like 2021's **HB 653** (Lucio, III), would have required a trust beneficiary to object to a trustee's accounting within 180 days after a copy of the accounting has been delivered to the last known address of the beneficiary. Failure to object would constitute approval of the accounting. Absent fraud, intentional misrepresentation, or material omission, the trustee is released from liability relating to all matters in the accounting. This new provision would **not** apply to a trustee required to file regular accountings with a court pursuant to the trust's terms or a separate court order.

22.3 Liability of Corporate Trustee After Merger (Sec. 114.009). HB 1552 (Guillen, *et al.*) was originally identical to **SB 843**. However, a House Judiciary substitute instead added a new Trust Code section limiting the liability of a financial institution that accepts a trust following its merger with or acquisition of the prior trustee to the lesser of \$10 million or the value of all distributions made by the prior trustee.

22.4 Perpetual Care Trust Funds (H&S Code Sec. 712.021). HB 3252 (Meza) would have allowed a corporation holding a perpetual care trust fund with a balance in excess of that required by statute or rule to petition the Banking Department of Texas to allow it to use that excess to either expand the perpetual care cemetery or "enhance the corporation's administrative capabilities with regard to maintaining and caring for the perpetual care cemetery."

23. Disability Documents.

23.1 The Uniform Electronic Estate Planning Documents Act (Est. Code Ch. 2501). SB 1779 (Parker) would have enacted the Uniform Electronic

Estate Planning Documents Act. UEEPDA (pronounced u-eeep-dah) was adopted by the Uniform Laws Commission last summer. According to its [website](#), this act is intended to fill a gap in the law regarding the execution of certain estate planning documents between the Uniform Electronic Transactions Act (UETA),³² which authorizes electronic execution of many commercial documents, and the [Uniform Electronic Wills Act](#) (UEWA or the eWills Act) (adopted by the ULC in 2019), which only applies to wills, and not other estate planning documents. UEEPDA authorizes electronic execution of trusts, powers of attorney, and some other estate planning documents, but also has a “placeholder” to include adoption of the eWills Act if a state has not already enacted it. [SB 1779](#) (Parker) includes the eWills Act. Also take a look at the discussion of remote online notarization in Section 17.2 on page 21.

While the following description is lengthy, it is still a summary and not a complete description of the act. The act would authorize electronic execution of both wills (an “electronic will”) and “non-testamentary estate planning documents” including a record readable as text that creates, exercises, modifies, releases, or revokes:

- (i) a trust instrument;
- (ii) a trust power that under the terms of the trust requires a signed record;
- (iii) a certification of a trust under Property Code Sec. 114.086;
- (iv) a durable power of attorney under the Estates Code;
- (v) an agent’s certification under Estates Code Sec. 751.203 of the validity of a power of attorney and the agent’s authority;
- (vi) a power of appointment;
- (vii) an advance directive as defined in Health and Safety Code Sec. 166.002;
- (viii) a record directing disposition of an individual’s body after death;
- (ix) a designation of guardian for the signing individual;
- (x) a declaration of appointment of a guardian for a minor child or adult child with a disability of the signing individual;
- (xi) a mental health treatment declaration;
- (xii) a community property survivorship agreement;
- (xiii) a disclaimer under Property Code Chapter 240; and
- (xiv) any other record intended to carry out an individual’s intent regarding property or health care while incapacitated or on death

The act **does not** apply to a deed of real property or certificate of title for a motor vehicle, watercraft, or aircraft.

The act does not require any document to be executed electronically, but if it is eligible to be electronically signed under the act, it may not be denied legal effect solely because it is in electronic form. Any document required to be notarized may be electronically notarized. **More controversially**, if a document is required to be witnessed in the presence of the signer, the presence requirement is satisfied if the signer and the witness are in each other’s “electronic presence,” which allows them to be in different locations while communicating in real time as if they were physically present in the same location. This would be a significant change to existing Texas law.

An individual may create a certified paper copy of the electronic document by affirming under penalty of perjury that the paper copy is a complete and accurate copy of the document.

The portions of the act applicable to electronic wills also authorize electronic presence of witnesses. Forms are provided for making the electronic will self-proving at the time of execution or at a later date. A will executed electronically but not in compliance with this act is validated if executed in compliance with the law of the jurisdiction where the testator (1) is physically located when the will is signed or (2) is domiciled or resides when the will is signed or when the testator dies.

23.2 Permissive Forms of Medical Power (H&S Code Secs. 166.012, 166.163, & 166.164). [HB 4989](#) (Bhojani, *et al.*) would have allowed a health care provider or residential care provider to presume that an advance directive under the chapter has been validly executed in the absence of actual knowledge to the contrary. It then directs the executive commissioner of the Health and Human Services Commission to review and approve (by December 1st) medical power of attorney forms promulgated by a national nonprofit organization or the Commission on Law and Aging, American Bar Association, that have been approved by at least 40 other states. You may then use one of those forms or our current statutory form.

23.3 The Anti-Norwood Bill: Financial Powers of Attorney and Home Equity Loans (Secs. 751.203 & 752.051; Const. Art. XVI, Sec. 50). If you go back and read Special Supplement No. 1 in my 2015 legislative update, you’ll understand why the

³² If you’re interested, you can read more about why UETA doesn’t apply to most estate planning documents in my article, *“SIGNING” WITHOUT SIGNING - What Estate Planners Should Know About the Federal E-Sign Act and The Texas*

Uniform Electronic Transactions Act, presented at TexasBarCLE’s 2017 Estate Planning & Probate Drafting Course.

Norwood case held that powers of attorney used in a home equity loan must be signed in the office of a lender, an attorney, or a title company, and why it would take a constitutional amendment to fix this problem. **HB 264** (Toth, *et al.*) and **HJR 20** (Toth, *et al.*), like 2021's **HB 2284** (Toth) and **HJR 104** (Toth), attempted to partially fix the problem. If a home equity loan borrower is (1) located out of state at the time of closing and a member of the U.S. armed forces, (2) has a disability that prohibits travel or is quarantined, or (3) is incarcerated, the borrower may close the loan from a remote location using online notarization or through an agent under a financial power of attorney that expressly grants the agent the authority to engage in a home equity loan transaction and who must appear in person at the closing. **HJR 124** (Swanson) contained a simpler solution to the *Norwood* problem. It would have repealed the requirement that the closing of a home equity loan take place at the office of a lender, an attorney, or a title company.

23.4 Directive for Physician Diagnosis and Texas Patients' Bill of Rights (H&S Code Sec. 166.012 & Ch. 185). **HB 1873** (Campos) would have authorized a new written directive that an adult may execute requiring that any diagnosis or treatment be provided only by a physician. It would also have enacted a new Texas Patients' Bill of Rights, the purpose of which is to assure that patients are provided the necessary information to make informed decisions on health care services.

23.5 Directives and DNRs for Pregnant Women (H&S Code Secs. 166.033, 166.049, 166.083, 166.084, & 166.098). **HB 647** (Hinojosa) and **SB 2465** (Eckhardt), like 2021's **HB 102** (Hinojosa), and 2019's **HB 1071** (Hinojosa), would have removed the current statutory prohibition against withdrawal of life-sustaining treatment or CPR from a pregnant patient. Instead, it allows a woman of child-bearing age to make her own decision regarding the effect of pregnancy on a decision regarding life-sustaining treatment. Conforming amendments are made to the statutory forms.

23.6 OOHDNR Orders (H&S Code – Multiple Sections). **SB 2039** (Johnson) would have allowed a physician assistant or an advanced practice registered nurse to validate an out-of-hospital DNR order. The bill would have also permitted the use of an electronic copy or photograph of the original out-of-hospital DNR order for any purpose for which the original may be used. **Control of Disposition of Remains (H&S Code Sec. 711.002).** **HB 2852** (Smith, *et al.*) would have provided that a person otherwise authorized to control the disposition of a decedent's remains may not do so if (1) the decedent was married to the person and the

decedent had filed for dissolution of the marriage; or (2) the decedent had filed an application for a protective order against the person. The court with jurisdiction for probate proceedings is directed to expedite proceedings to resolve a dispute over the disposition of a decedent's remains.

24. Nontestamentary Transfers.

24.1 Disclosure of Automatic Premium Loans (Ins. Code Sec. 1101.301). **HB 1498** (Guerra, *et al.*) would have required disclosure prior to issuance of a life insurance policy of a provision automatically paying the premium out of a policy's cash value if any premium remains unpaid following the grace period.

24.2 Disclosure of Insurance Beneficiary to Funeral Director (Ins. Code Secs. 1103.201-1103.206). **HB 1554** (Raymond) (like 2021's **HB 643** (Raymond)) would have required a life insurance company to disclose a policy's beneficiary to a funeral director conducting the insured's funeral upon request, but only if the death benefit is \$15,000 or less and issued by a Texas company. The request must be made by a funeral director handling a funeral in Texas, and the director must be provided information by (and written consent from) the family leading to a reasonable belief that the decedent was insured, but no one knows who the beneficiary is.

25. Exempt Property.

25.1 Self-Settled Asset Protection Trusts (Secs. 112.036, 112.151-112.162). See Section 22.1 on page 31 for a discussion of **HB 4376** (VanDeaver) and **SB 2317** (Hughes), which would have added protection for self-settled asset protection trusts.

25.2 Continuation of Limit on Homestead Valuation Increase (Tax Code Sec. 23.23; Const. Art. VIII, Sec. 1(i)). **SB 639** (Miles), **SB 1409** (Miles), and **SJR 38** (Miles) would have continued the annual 10% limit on the increase in a homestead's valuation for property tax purposes beyond the death of the owner and the owner's spouse if the first "heir property owner" to acquire the property as "heir property" continues to occupy it as his or her homestead. (The quoted terms are not defined.)

25.3 Continuation of Exemption if Homestead Transferred to Surviving Spouse or Child (Tax Code Secs. 11.43, 23.54, & 23.541). **HB 2397** (Guillen) would have continued an owner's property tax homestead exemption if the homestead was transferred to a surviving spouse or surviving child.

25.4 Freeze on Homestead Valuation (Tax Code Sec. 23.23; Const. Art. VIII, Sec. 1(i)). **SB 1065** (Middleton) and **SJR 55** (Middleton) freeze the property

tax value of a homestead at its market value for the first year the owner qualifies for the homestead exemption. In addition, if the property changes ownership by reason of inheritance or under a will, the value remains frozen so long as the person acquiring the homestead still qualifies for the property tax homestead exemption.

25.5 Additional Exempt Property (Civ. Prac. & Rem. Code Sec. 31.002). **SB 775** (Zaffirini) (**HB 3481** (Leach) was its companion) requires a court order relating to collection of judgments on consumer debt to exempt an amount to cover basic needs equal to \$3,000 from freezing and turnover.

25.6 Waiver of Penalties and Interest on Decedent's Delinquent Property Taxes (Tax Code Sec. 33.011). **HB 4604** (Jones, J.) would have allowed a person who inherits property or is appointed personal representative of an estate that includes property with delinquent property tax to request a waiver of penalties and interest until the fifth anniversary of the date the person inherits the property or is appointed personal representative. The waiver must be requested within 180 days of the inheritance or appointment, and the grant of the waiver is mandatory.

25.7 Exempt Property Used in Trade or Profession (Prop. Code Sec. 42.002). **HB 3170** (Leach) would have added a requirement that tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession, **be used by a member of a family or single adult in that person's trade or profession** to qualify for the exemption.

26. Jurisdiction and Venue.

26.1 Assignment of Statutory Probate Judge in County Without Statutory Probate Court or County Court at Law (Est. Code Sec. 32.003). In a county without a statutory probate court or a county court at law, if a contested matter arises, Sec. 32.003(a) allows the judge on its own motion, or requires the judge on the motion of any party, to either request the assignment of a statutory probate judge (SPJ) to hear the contested matter or transfer the contested matter to district court. Sec. 32.003(b) provides that if a party files a motion for the assignment of an SPJ prior to a transfer to district court, then the judge must assign an SPJ and may not transfer the matter to district court. **SB 1331** (Perry) would have repealed Sec. 32.003(c), which allows a party to request the assignment of an SPJ before a matter is contested, and would have added Sec. 32.003(a-1), which requires a party to notify the county judge 10 days prior to requesting the assignment of an SPJ to hear a contested matter. (That gives the judge time to transfer the matter to district court before the party can request the assignment of an SPJ under Sec. 32.003(b).)

27. Court Administration.

27.1 Statutory Construction. **HB 2139** (Burrows, *et al.*) would have prohibited courts from inquiring what legislators intended when interpreting statutes, and requires them to look solely to the statutory text. It even includes the following cite: "See, e.g., Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 417, 419 (1899) ("We do not inquire what the legislature meant; we ask only what the statute means.") The bill goes on in a similar vein.

27.2 De Novo Review. **HB 1947** (Harrison, *et al.*) would have required a court reviewing a provision of state law to "interpret the meaning and effect of the provision de novo, without deference to a state agency's interpretation of the provision."

27.3 Payment of Costs Associated with Assigned Statutory Probate Judge (Sec. 352.054; Gov't Code Sec. 25.0022). **HB 251** (Murr) was similar to 2021's **HB 262** (Murr), which was similar to 2019's **HB 3267** (Murr), which in turn is similar to 2017's **HB 1744** (Murr | Perry). If the judge of a constitutional county court requests, on his or her own motion, the assignment of a statutory probate judge under Estates Code Section 32.003, the court **may** order the estate to reimburse the county for the costs of the assignment. If a party requests the assignment, and the request is granted, then the court **must** order that the county be reimbursed for those costs, with the costs allocated among the estate and the parties as the court considers equitable.

As I pointed out in prior updates, setting aside situations where parties agree to hire a "private judge," I am not aware of any other situation under Texas law where a party is required to pay for a judge.

27.4 Notice of Conveyance. Gov't Code Sec. 51.901 already provides that if a court, district, county, or municipal clerk has reason to believe certain filed documents are fraudulent, including a document purporting to place a lien on property, the clerk is required to send notice to the last known address of the debtor or obligor. **HB 1823** (Sherman) would have added a notification requirement to the grantor of documents that purport to convey property.

27.5 Discrimination Relating to Law License. **SB 559** (Hughes, *et al.* | Cain, *et al.*) (**HB 2846** (Cain, *et al.*) was its companion), similar to 2021's **SB 247** (Perry, *et al.*) and **HB 3940** (Cain, *et al.*), would have amended the State Bar Act to prohibit rules or policies that (1) limit someone's ability to obtain or renew a law license based on the person's sincerely held religious belief; or (2) burden the person's free exercise of

religion, freedom of speech regarding a sincerely held religious belief; membership in any religious organization; or freedom of association.

28. Selected Family Law Issues.

28.1 Court-Ordered Support of Adult Child With Disability. **HB 3446** (Dutton, *et al.*) would have allowed a court to impose a child support obligation of the parents of an adult with a medically determinable disability until the adult reaches 21, or for up to three years, if the adult is already 21.

28.2 Repeal of Waiting Period (Fam. Code Secs. 2.204 and 6.110). **SB 486** (Hinojosa) would have repealed the 72-hour waiting period between the issuance of a marriage license and the marriage ceremony.

28.3 Void Marriages and Divorce Decrees (Fam. Code Secs. 6.202 & 9.401). Fam. Code Sec. 6.202 provides that a marriage is void if either party has an undissolved prior marriage. The later marriage becomes valid once the prior marriage is dissolved if the parties have lived together and represented themselves as husband and wife following dissolution of the prior marriage. **HB 3431** (Dutton | Hughes) would have removed that validation if a party didn't know, and a reasonably prudent person would not have known, that the later void marriage was entered into when the other party had an existing marriage. The bill also voids a decree of divorce or annulment if the court rendering the decree lacked jurisdiction because the marriage was void under the laws of the jurisdiction in which the marriage was entered into.

28.4 Who Can (or Can't) Get Married. Several bills addressed who can and cannot get married. (Or is it who may or may not get married?)

(a) Minimum Marriage Age (Fam Code Sec. 2.009). The Family Code requires both applicants for a marriage license to be at least 18, or to have their disabilities of minority removed by a court. **HB 924** (Rosenthal), like 2021's **HB 1590** (Rosenthal), required both applicants to be at least 18. Period.

(b) Same-Sex Marriages. **HB 970** (Zwiener) and its companions, **SB 82** (Johnson) and **SB 111** (Menéndez), along with **HJR 61** (Johnson, Julie) and its companion, **SJR 15** (Johnson), **HB 1685** (Hernandez), **SB 2046** (Whitmire), **SB 81** (Johnson), and **HB 3160** (Moody) all proposed statutes or constitutional amendments designed to repeal statutes relating to the criminality of homosexual conduct and repeal the constitutional and statutory prohibitions against same-sex marriages or the creation or recognition of any legal

status similar to marriage. **HB 5031** (Bryant) also attempted to modify gender-specific terminology

28.5 Who May Conduct Marriage Ceremonies (Fam. Code Sec. 2.02). Several bills addressed who may conduct marriage ceremonies.

(a) Master or Magistrate. **SB 235** (Hinojosa) would have allowed a master or magistrate appointed under Government Code Chapter 54 to conduct a marriage ceremony.

(b) Any Authorized Religious Person. **HB 1884** (Bhojani) would have allowed any person authorized by a religious organization to conduct a marriage ceremony (not just a Christian minister or priest, a Jewish rabbi, or an "officer" of a religious organization).

28.6 Exclusive Occupancy of Residence Pending Divorce (Fam. Code Sec. 6.502). **HB 2094** (Manuel, *et al.*) would have allowed a court to grant exclusive occupancy to a spouse pending divorce if during the pendency of the suit, or during the three years prior to filing of the suit, the other spouse has been convicted of (or placed on deferred adjudication for) a felony offense involving family violence committed against the filing party or a member of that party's family or household, or continuous violence against the family under Penal Code Sec. 25.11.

28.7 Homosexual Conduct. **HB 2055** (Jones, V., *et al.*), would have modified the statutory requirements for certain sex education classes to eliminate any statements that homosexual conduct is a criminal offense (but leaves in statements that it's not an acceptable lifestyle).

29. Stuff That Doesn't Fit Elsewhere.

29.1 Capitol View Corridor. Gov't Code Ch. 3151 establishes certain Capitol View Corridors designed to protect the view of the Capitol dome from a number of places in Austin where it was still visible when the predecessor to the chapter was enacted 40 years ago. The chapter already contains three limited exceptions to its applicability: DKR-Texas Memorial Stadium (which is still limited to 666 feet above sea level), development on 11th Street pursuant to the East 11th and 12th Streets Redevelopment Program (but still limited to 600 feet above sea level); and the redevelopment of the old Robert Mueller Municipal Airport property in east Austin. **HB 4499** (Harris, C.) would have added as an exception an areas three blocks wide (from San Jacinto Blvd. on the west to Red River St. on the east), extending a half block north and south of East Seventh Street (if I'm reading the bill correctly).

