

A golden scale of justice and a wooden gavel resting on a book. The scale is positioned on the right side of the image, with its pans hanging from a central beam. The gavel is positioned on the left side, with its head resting on a book. The background is dark, making the golden and wooden elements stand out.

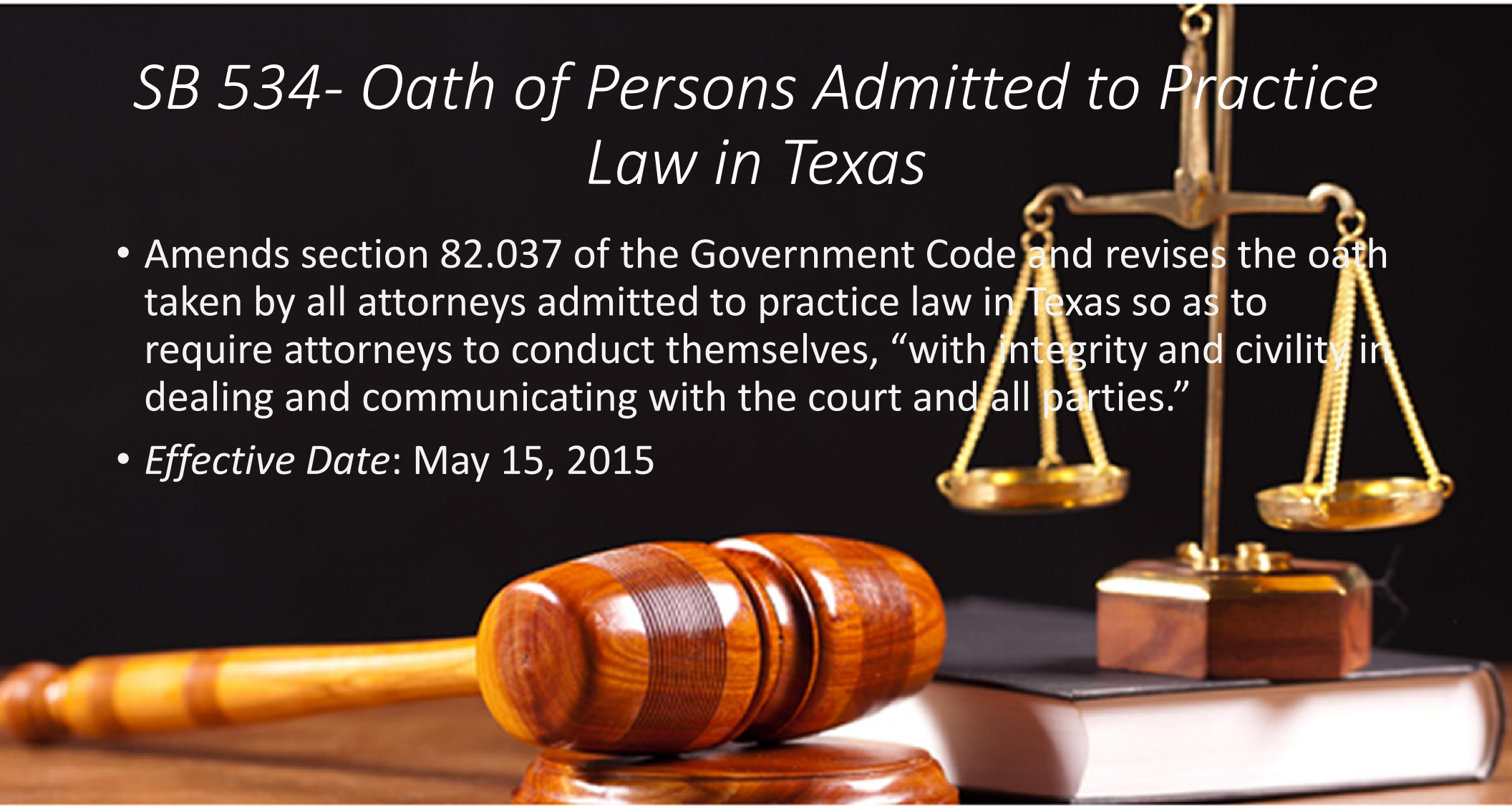
# Houston Bar Association: Litigation Section

2015 Legislative Updates for Litigators

By: Judge Mike Engelhart, 151<sup>st</sup> District Court

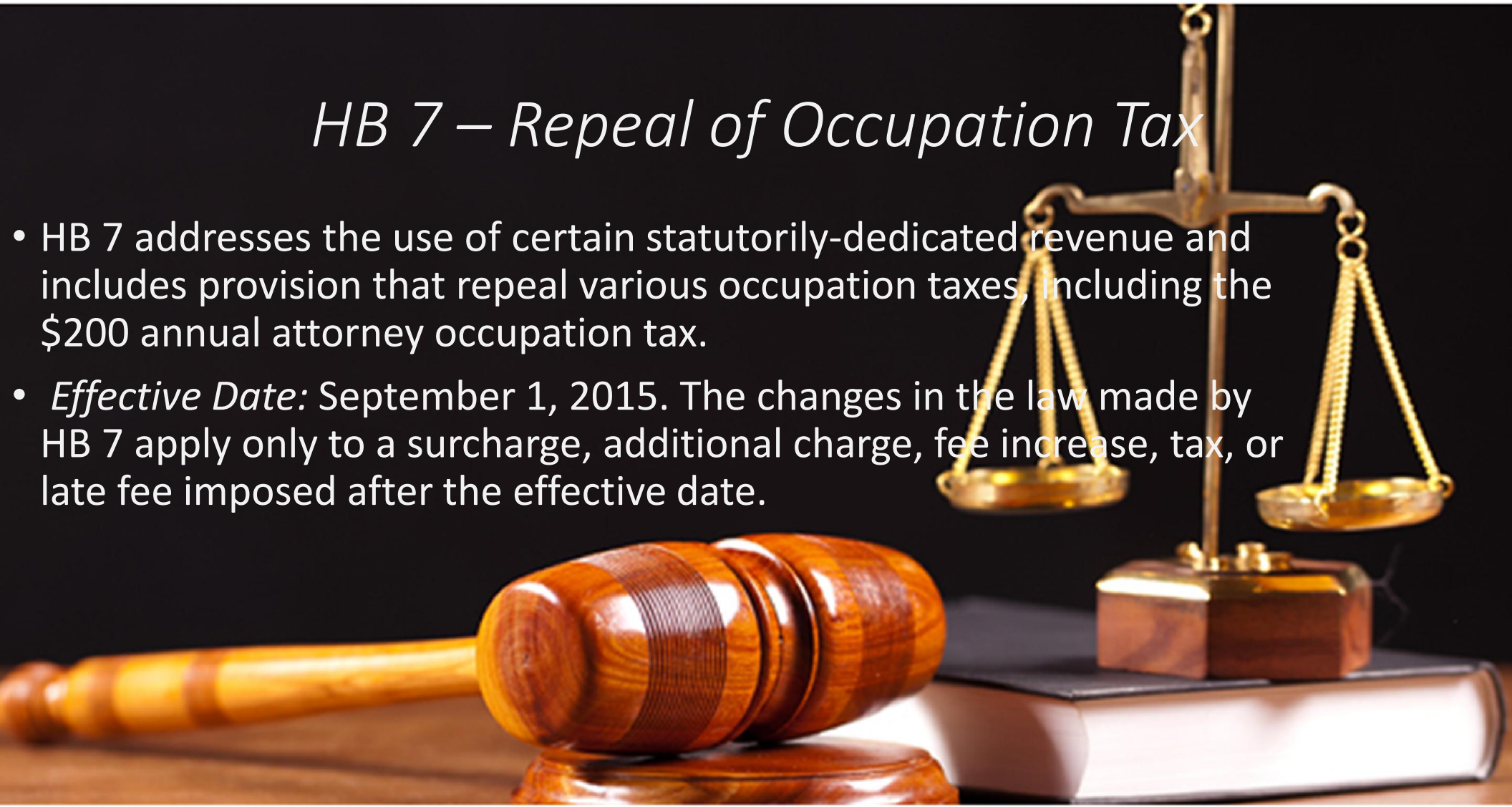
## *SB 534- Oath of Persons Admitted to Practice Law in Texas*

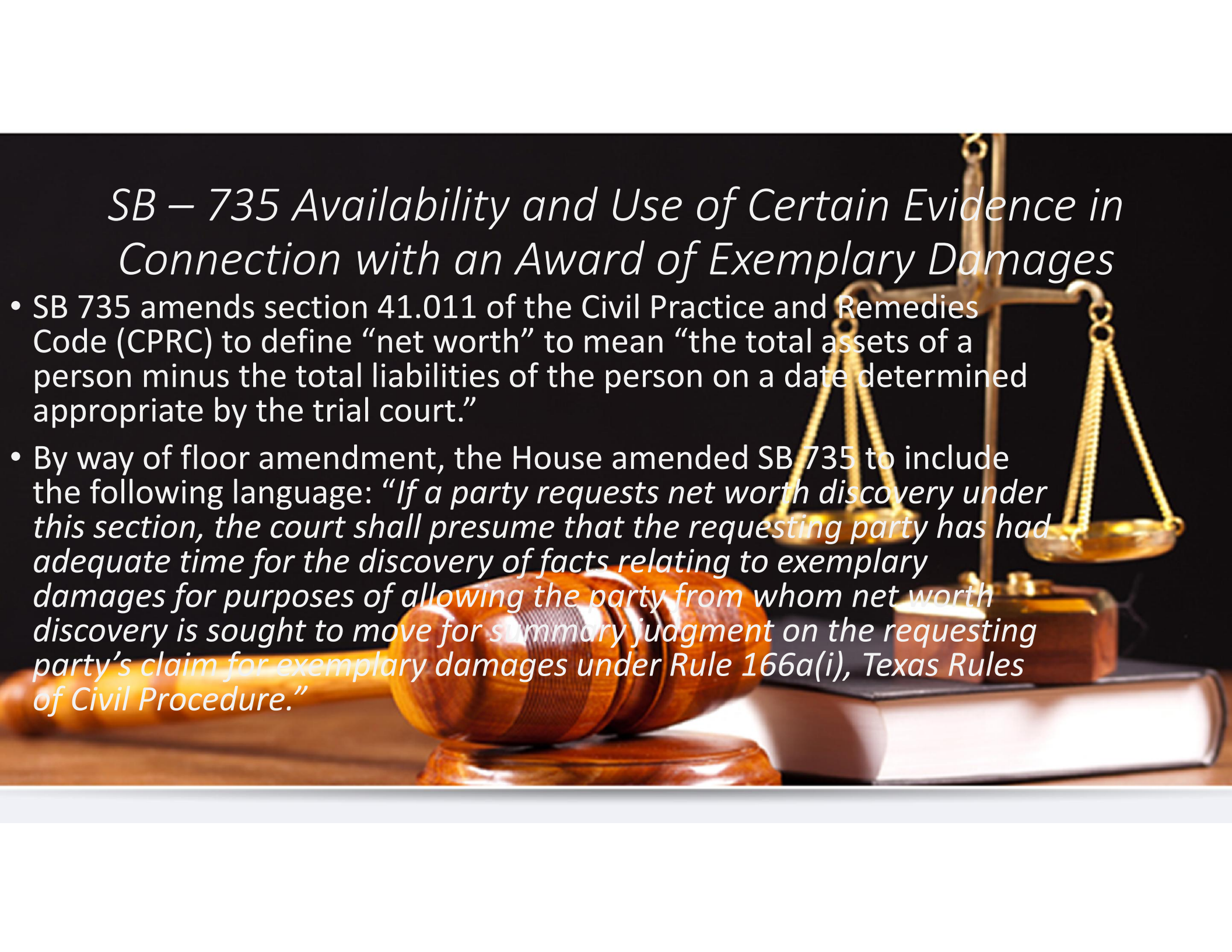
- Amends section 82.037 of the Government Code and revises the oath taken by all attorneys admitted to practice law in Texas so as to require attorneys to conduct themselves, “with integrity and civility in dealing and communicating with the court and all parties.”
- *Effective Date:* May 15, 2015



## *HB 7 – Repeal of Occupation Tax*

- HB 7 addresses the use of certain statutorily-dedicated revenue and includes provision that repeal various occupation taxes, including the \$200 annual attorney occupation tax.
- *Effective Date:* September 1, 2015. The changes in the law made by HB 7 apply only to a surcharge, additional charge, fee increase, tax, or late fee imposed after the effective date.



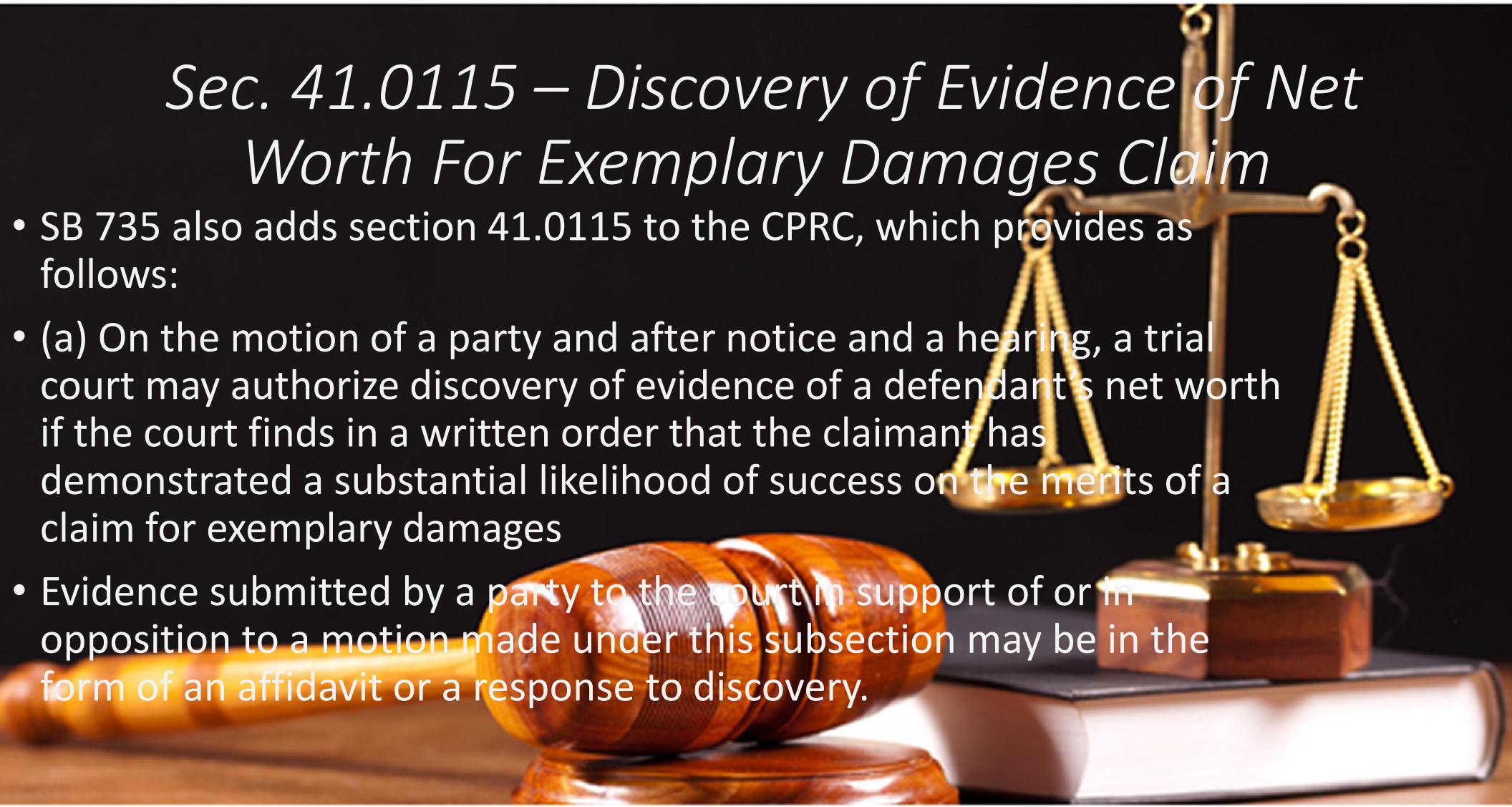


## *SB – 735 Availability and Use of Certain Evidence in Connection with an Award of Exemplary Damages*

- SB 735 amends section 41.011 of the Civil Practice and Remedies Code (CPRC) to define “net worth” to mean “the total assets of a person minus the total liabilities of the person on a date determined appropriate by the trial court.”
- By way of floor amendment, the House amended SB 735 to include the following language: *“If a party requests net worth discovery under this section, the court shall presume that the requesting party has had adequate time for the discovery of facts relating to exemplary damages for purposes of allowing the party from whom net worth discovery is sought to move for summary judgment on the requesting party’s claim for exemplary damages under Rule 166a(i), Texas Rules of Civil Procedure.”*

## *Sec. 41.0115 – Discovery of Evidence of Net Worth For Exemplary Damages Claim*

- SB 735 also adds section 41.0115 to the CPRC, which provides as follows:
- (a) On the motion of a party and after notice and a hearing, a trial court may authorize discovery of evidence of a defendant's net worth if the court finds in a written order that the claimant has demonstrated a substantial likelihood of success on the merits of a claim for exemplary damages
- Evidence submitted by a party to the court in support of or in opposition to a motion made under this subsection may be in the form of an affidavit or a response to discovery.



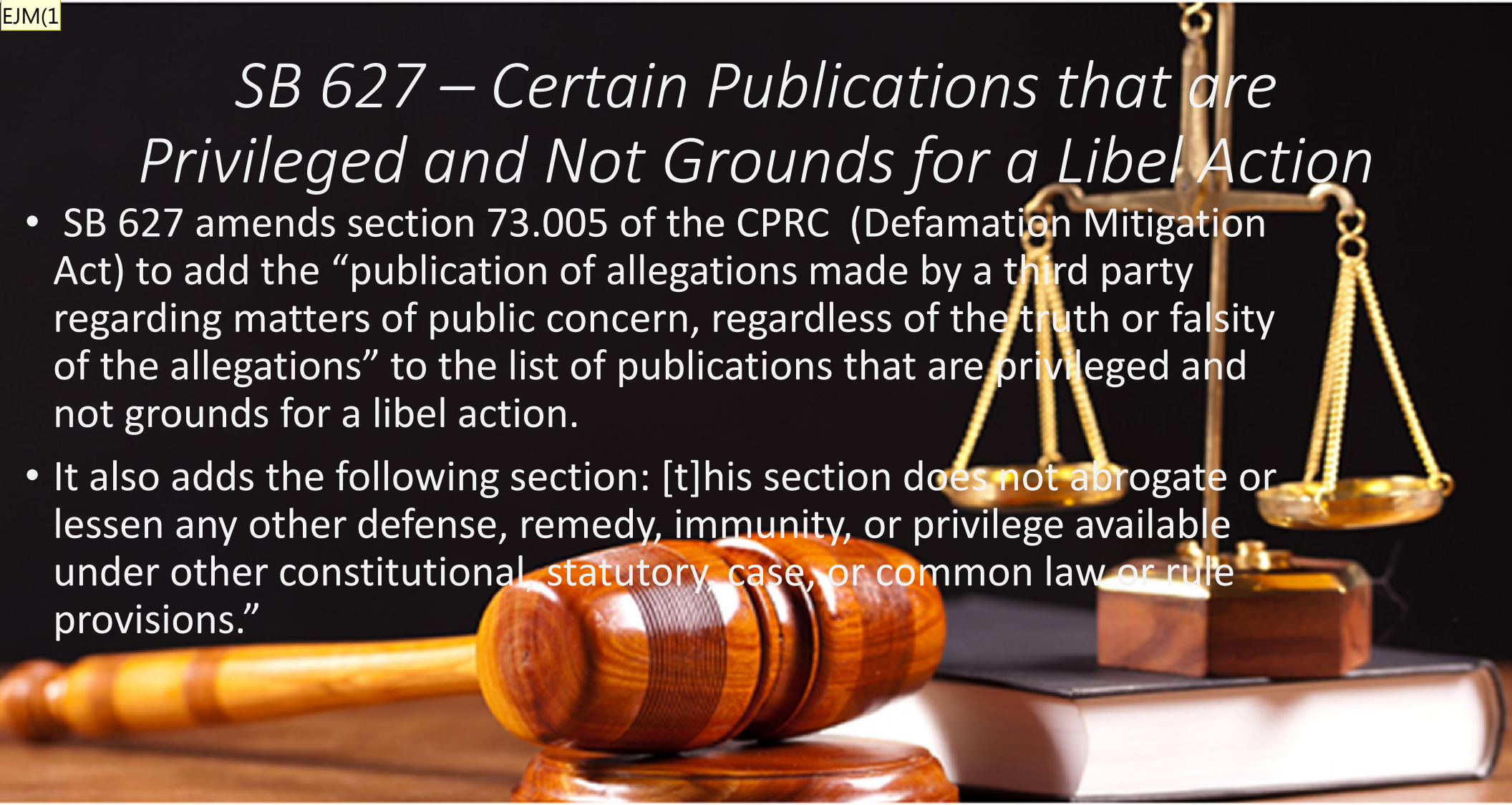


*Sec. 41.0115 – Discovery of Evidence of Net Worth For Exemplary Damages Claim (Cont.)*

- (B) If a trial court authorizes discovery under Subsection (a), the court's order may only authorize use of the least burdensome method available to obtain the net worth.
- (C) When reviewing an order authorizing or denying discovery of net worth evidence under this section, the reviewing court may consider only the evidence submitted by the parties to the trial court in support or opposition to the motion described in Subsection (a).
- *Effective Date:* September 1, 2015. The changes in law made by SB 735 apply only to an action filed on or after the effective date.

## *SB 627 – Certain Publications that are Privileged and Not Grounds for a Libel Action*

- SB 627 amends section 73.005 of the CPRC (Defamation Mitigation Act) to add the “publication of allegations made by a third party regarding matters of public concern, regardless of the truth or falsity of the allegations” to the list of publications that are privileged and not grounds for a libel action.
- It also adds the following section: [t]his section does not abrogate or lessen any other defense, remedy, immunity, or privilege available under other constitutional, statutory, case, or common law or rule provisions.”



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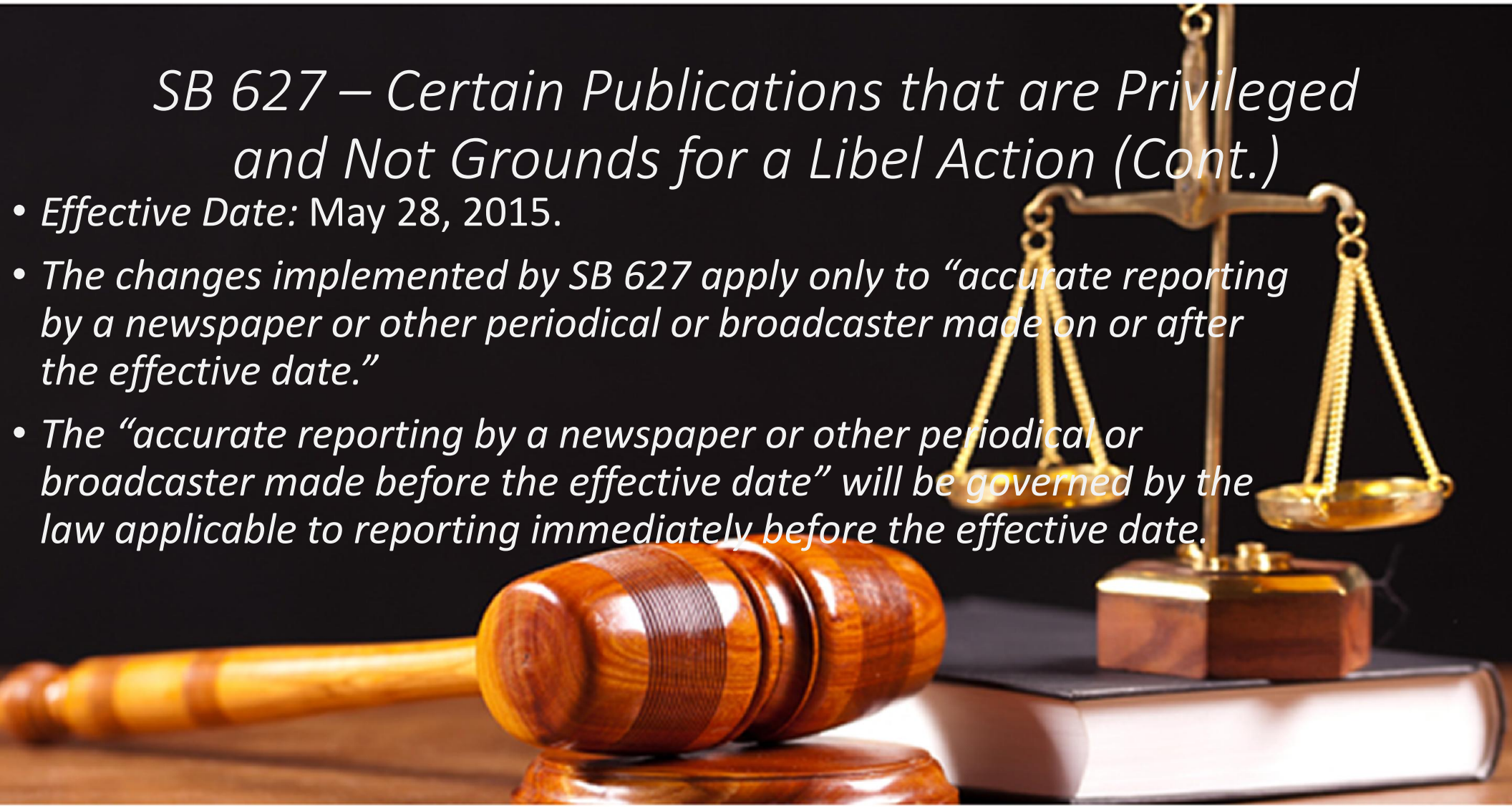
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**EJM(1)** CPRC 73.005 merely makes truth an defense to the libel action.  
Engelhart, Judge Mike (DCA), 10/30/2015



## *SB 627 – Certain Publications that are Privileged and Not Grounds for a Libel Action (Cont.)*

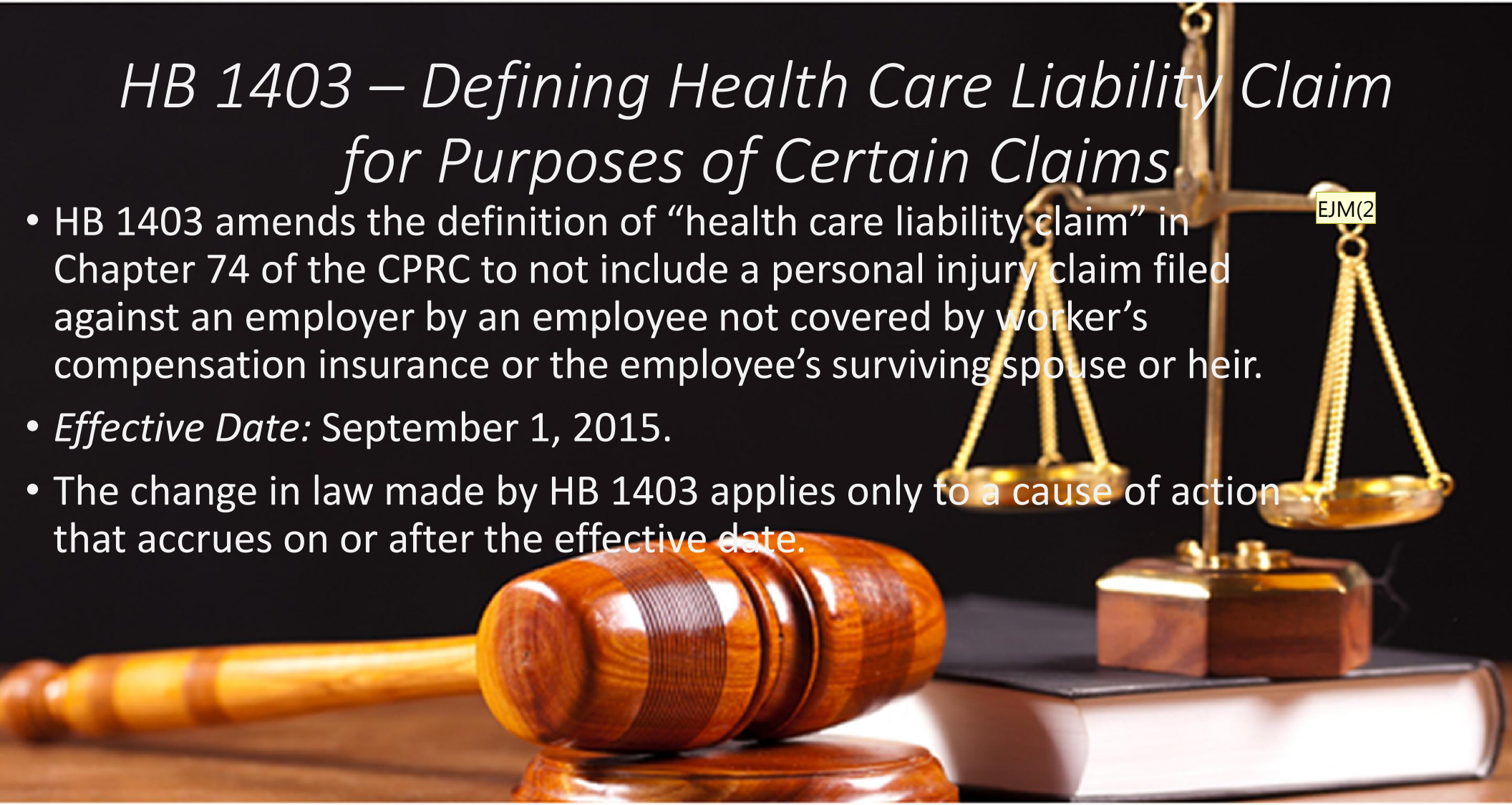
- Effective Date: May 28, 2015.*
- The changes implemented by SB 627 apply only to “accurate reporting by a newspaper or other periodical or broadcaster made on or after the effective date.”*
- The “accurate reporting by a newspaper or other periodical or broadcaster made before the effective date” will be governed by the law applicable to reporting immediately before the effective date.*



## *HB 1403 – Defining Health Care Liability Claim for Purposes of Certain Claims*

- HB 1403 amends the definition of “health care liability claim” in Chapter 74 of the CPRC to not include a personal injury claim filed against an employer by an employee not covered by worker’s compensation insurance or the employee’s surviving spouse or heir.
- *Effective Date:* September 1, 2015.
- The change in law made by HB 1403 applies only to a cause of action that accrues on or after the effective date.

EJM(2)



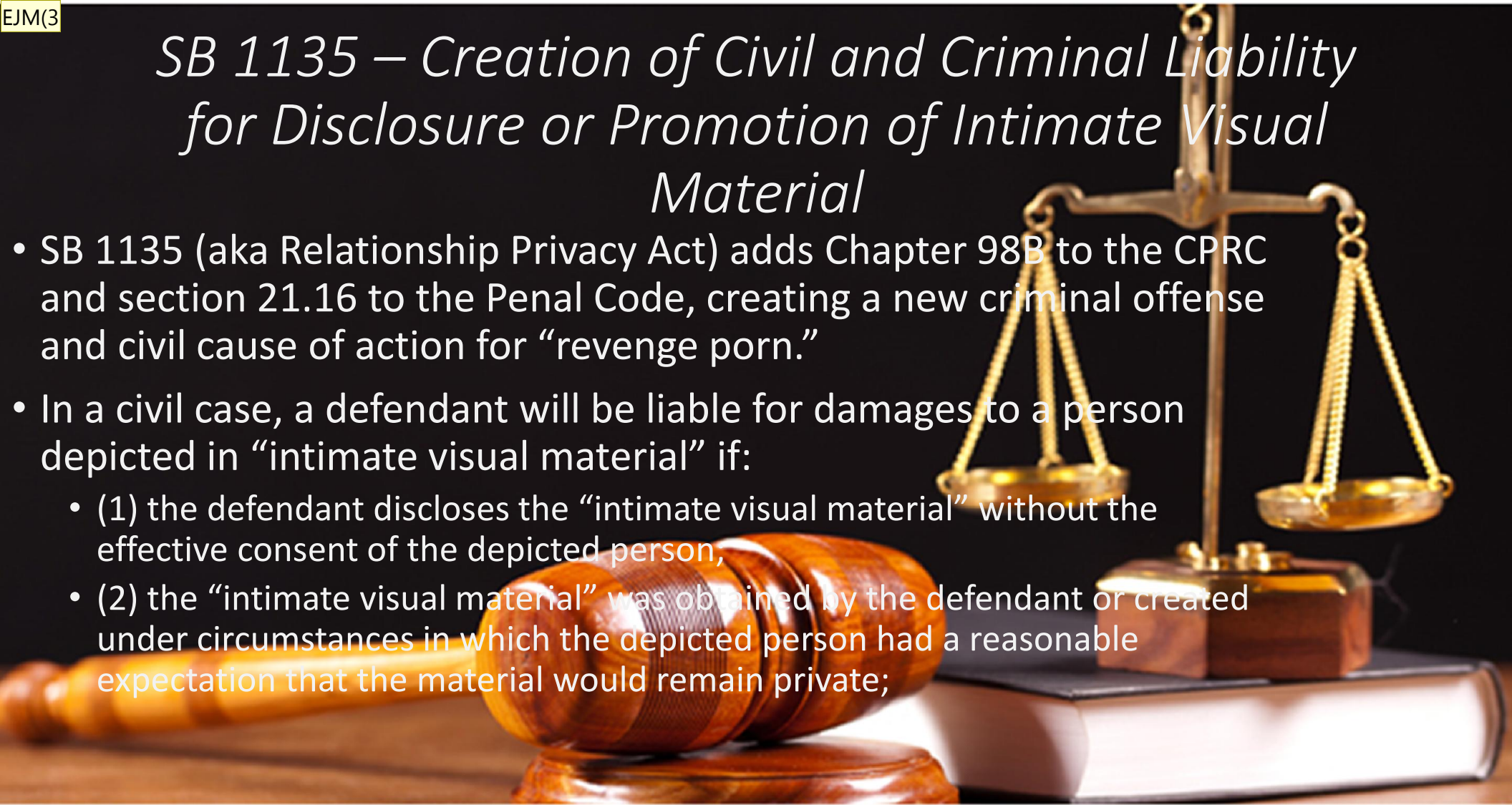
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**EJM(2)** This was in response to cases holding that employee slip and fall in waiting area was health care liability claim.  
Engelhart, Judge Mike (DCA), 10/30/2015

## *SB 1135 – Creation of Civil and Criminal Liability for Disclosure or Promotion of Intimate Visual Material*

- SB 1135 (aka Relationship Privacy Act) adds Chapter 98B to the CPRC and section 21.16 to the Penal Code, creating a new criminal offense and civil cause of action for “revenge porn.”
- In a civil case, a defendant will be liable for damages to a person depicted in “intimate visual material” if:
  - (1) the defendant discloses the “intimate visual material” without the effective consent of the depicted person,
  - (2) the “intimate visual material” was obtained by the defendant or created under circumstances in which the depicted person had a reasonable expectation that the material would remain private;



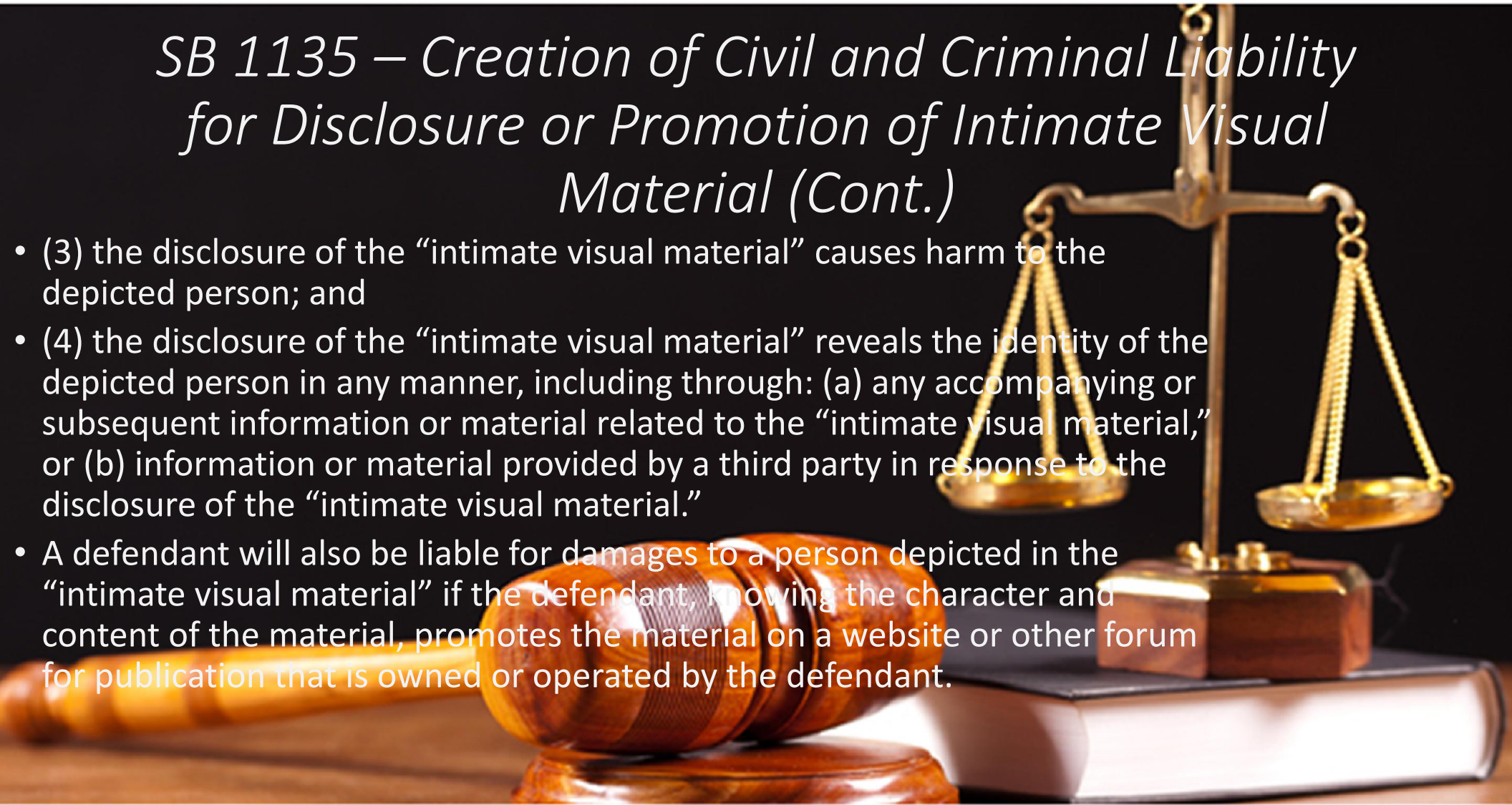
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**EJM(3** apparently the only new private cause of action created.  
Engelhart, Judge Mike (DCA), 10/30/2015

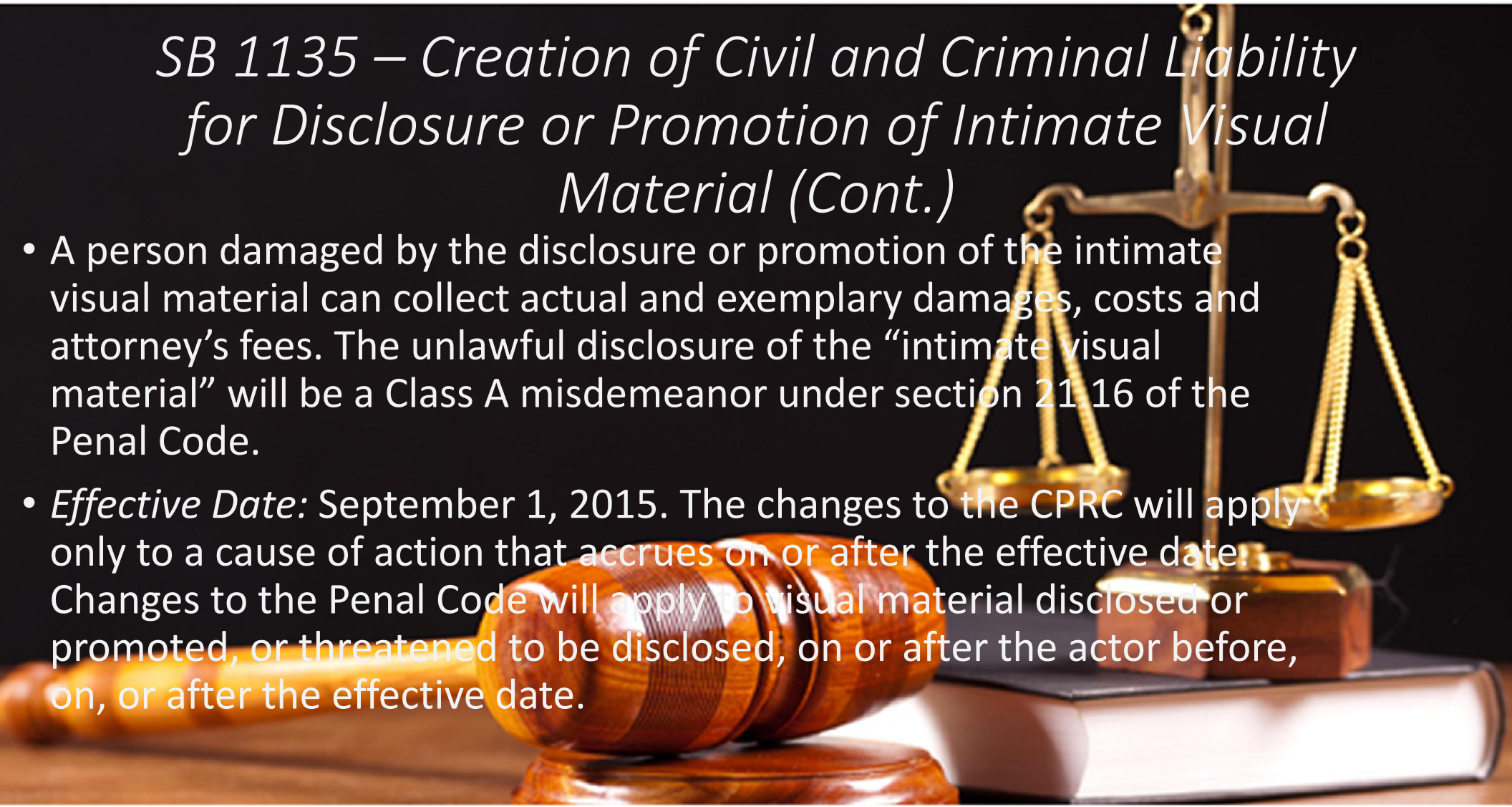
## *SB 1135 – Creation of Civil and Criminal Liability for Disclosure or Promotion of Intimate Visual Material (Cont.)*

- (3) the disclosure of the “intimate visual material” causes harm to the depicted person; and
- (4) the disclosure of the “intimate visual material” reveals the identity of the depicted person in any manner, including through: (a) any accompanying or subsequent information or material related to the “intimate visual material,” or (b) information or material provided by a third party in response to the disclosure of the “intimate visual material.”
- A defendant will also be liable for damages to a person depicted in the “intimate visual material” if the defendant, knowing the character and content of the material, promotes the material on a website or other forum for publication that is owned or operated by the defendant.



## *SB 1135 – Creation of Civil and Criminal Liability for Disclosure or Promotion of Intimate Visual Material (Cont.)*

- A person damaged by the disclosure or promotion of the intimate visual material can collect actual and exemplary damages, costs and attorney's fees. The unlawful disclosure of the "intimate visual material" will be a Class A misdemeanor under section 21.16 of the Penal Code.
- *Effective Date:* September 1, 2015. The changes to the CPRC will apply only to a cause of action that accrues on or after the effective date. Changes to the Penal Code will apply to visual material disclosed or promoted, or threatened to be disclosed, on or after the actor before, on, or after the effective date.



## *SB 455 – Creation of a Special Three-Judge District Court*

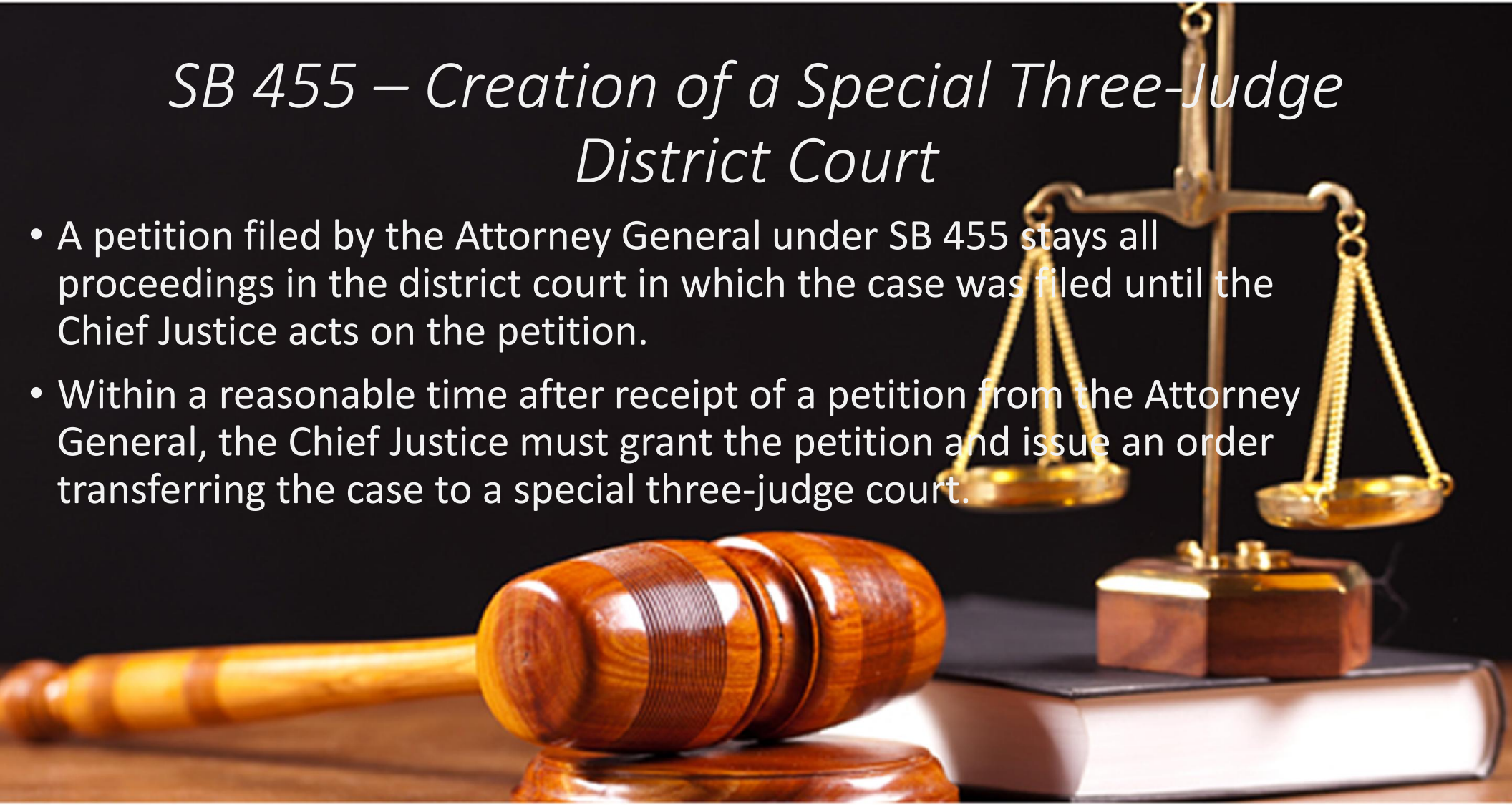
- SB 455 amends the Government Code to create a procedural mechanism that allows the Attorney General to petition the Chief Justice of the Supreme Court for the formation of a special three-judge panel to hear certain cases in which the State of Texas or an officer or agency of the State is a defendant.
- Proceedings in front of the three-judge panel will be mandatory in cases involving a claim that either (1) challenges the finances or operations of the public school system, or (2) involves the apportionment of districts for the Texas House, Texas Senate, U.S. Congress, State Board of Education, or state judicial districts.





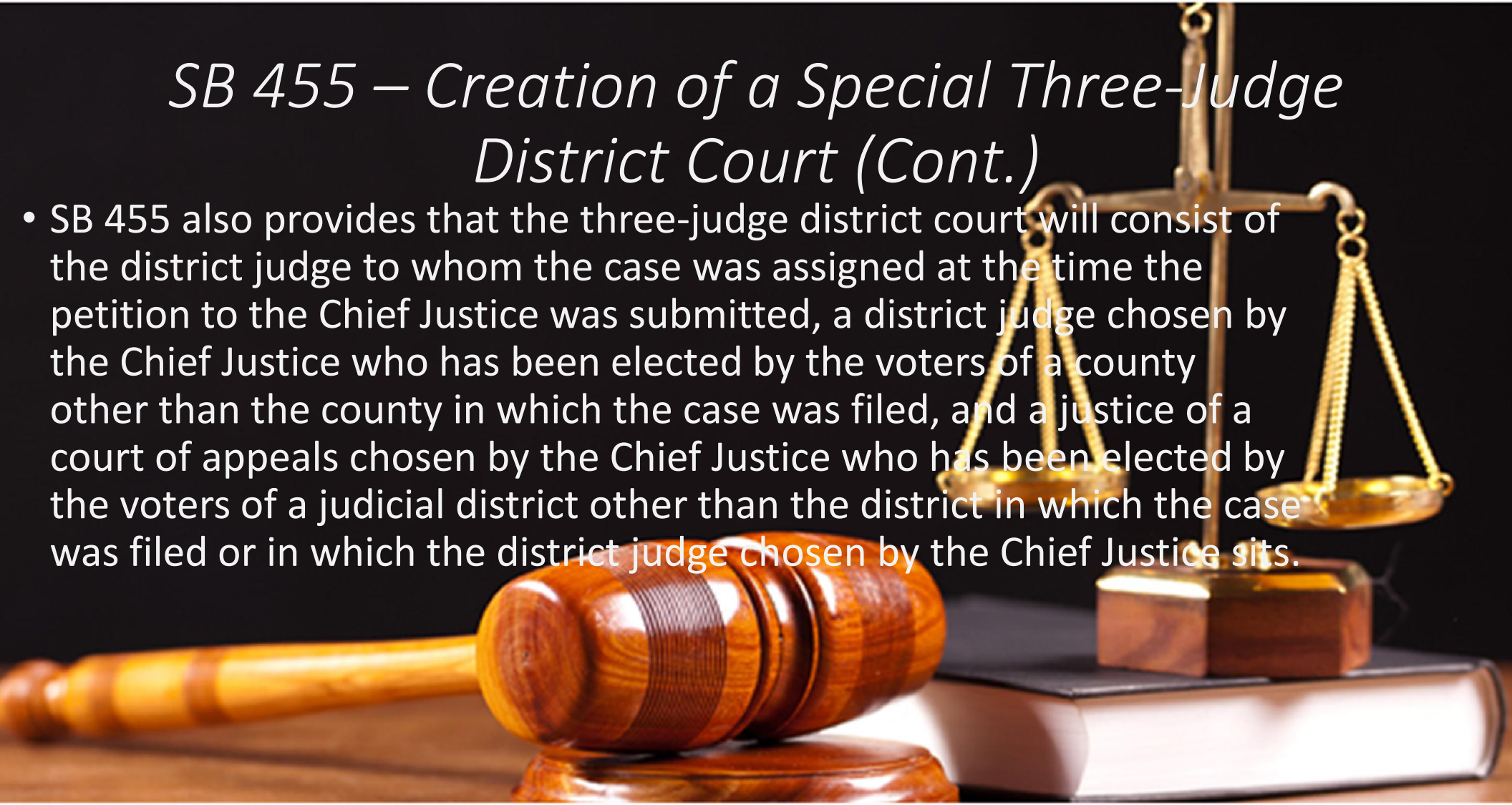
## *SB 455 – Creation of a Special Three-Judge District Court*

- A petition filed by the Attorney General under SB 455 stays all proceedings in the district court in which the case was filed until the Chief Justice acts on the petition.
- Within a reasonable time after receipt of a petition from the Attorney General, the Chief Justice must grant the petition and issue an order transferring the case to a special three-judge court.



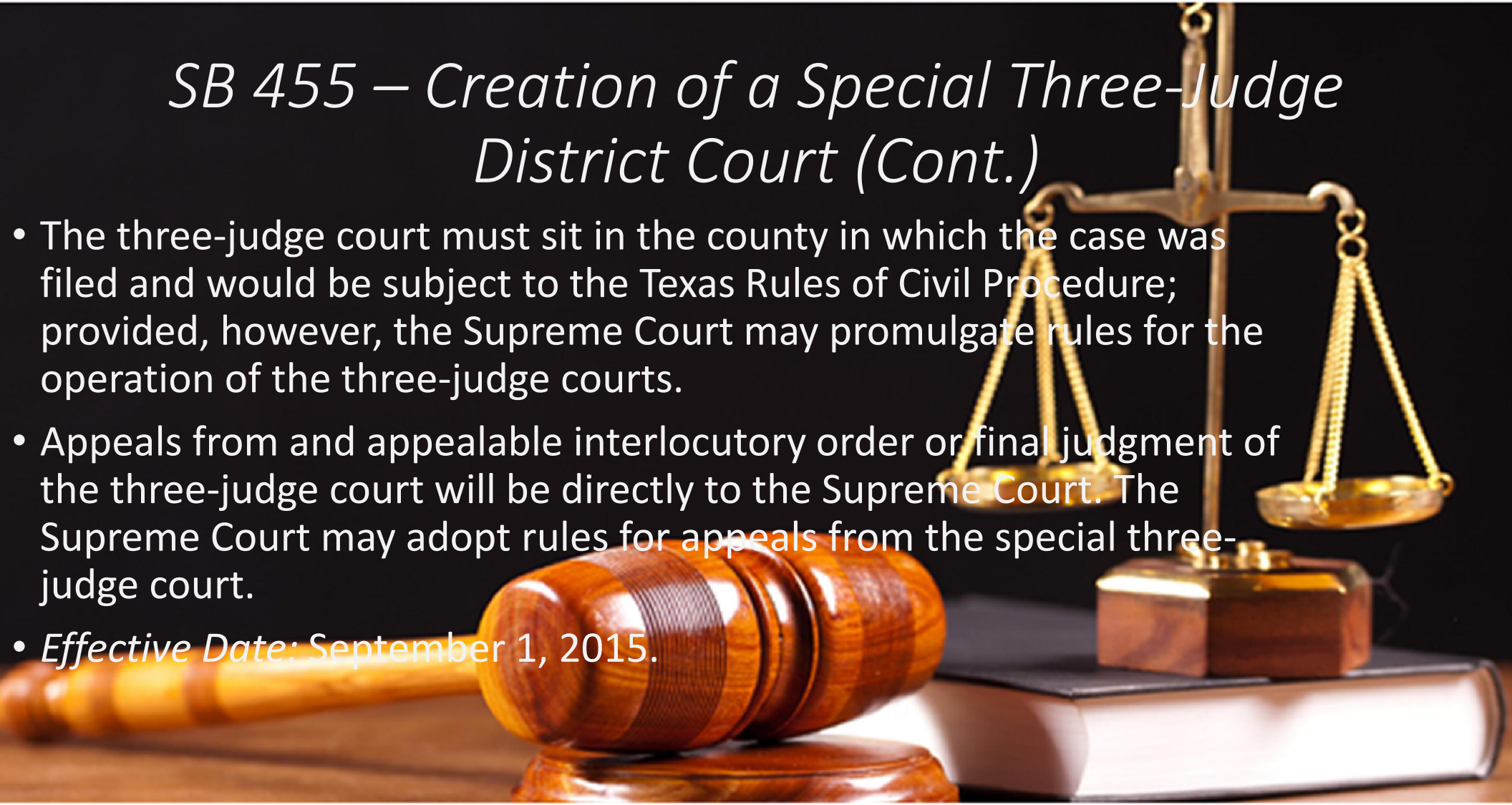
## *SB 455 – Creation of a Special Three-Judge District Court (Cont.)*

- SB 455 also provides that the three-judge district court will consist of the district judge to whom the case was assigned at the time the petition to the Chief Justice was submitted, a district judge chosen by the Chief Justice who has been elected by the voters of a county other than the county in which the case was filed, and a justice of a court of appeals chosen by the Chief Justice who has been elected by the voters of a judicial district other than the district in which the case was filed or in which the district judge chosen by the Chief Justice sits.



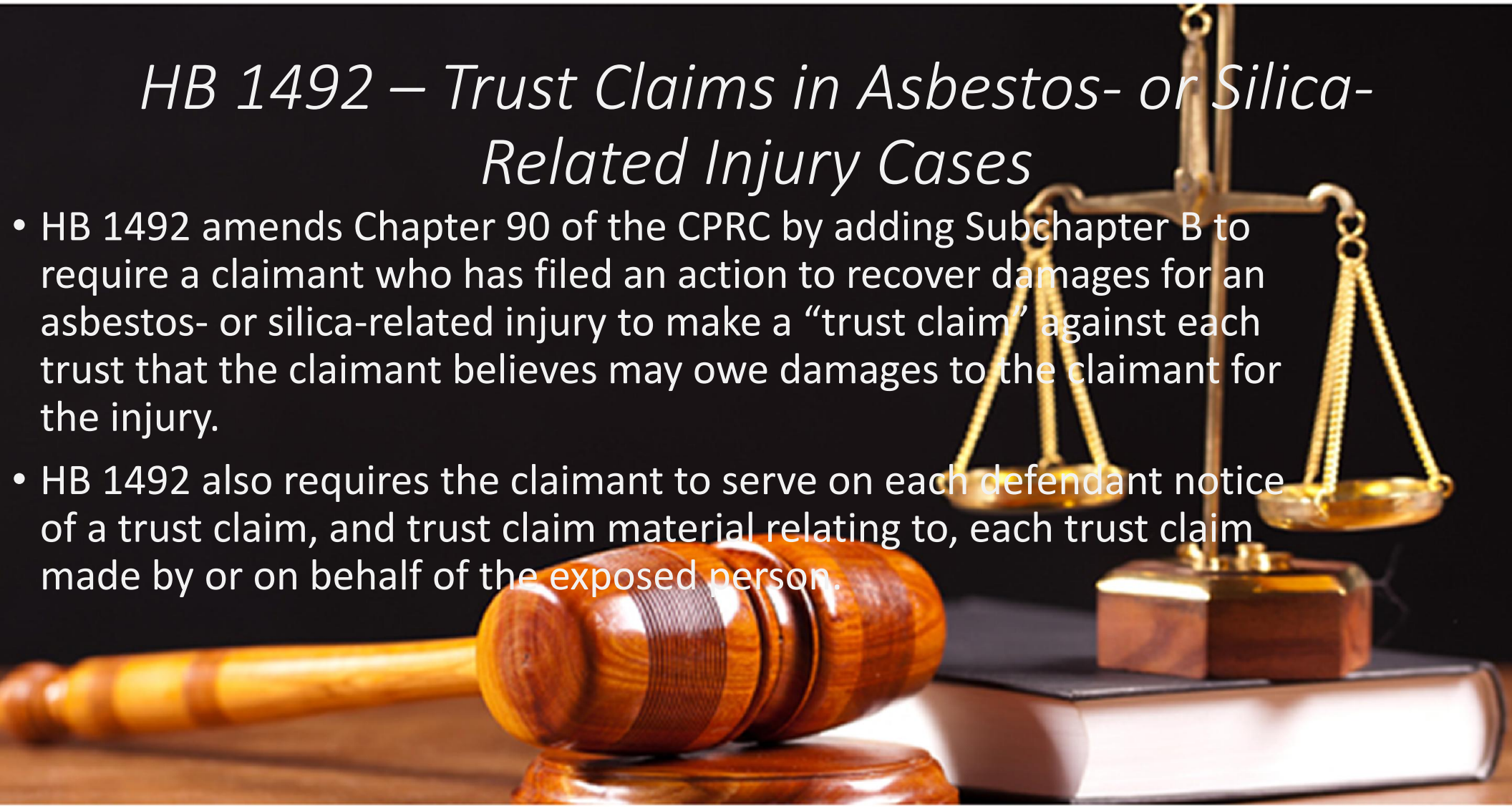
## *SB 455 – Creation of a Special Three-Judge District Court (Cont.)*

- The three-judge court must sit in the county in which the case was filed and would be subject to the Texas Rules of Civil Procedure; provided, however, the Supreme Court may promulgate rules for the operation of the three-judge courts.
- Appeals from and appealable interlocutory order or final judgment of the three-judge court will be directly to the Supreme Court. The Supreme Court may adopt rules for appeals from the special three-judge court.
- *Effective Date:* September 1, 2015.



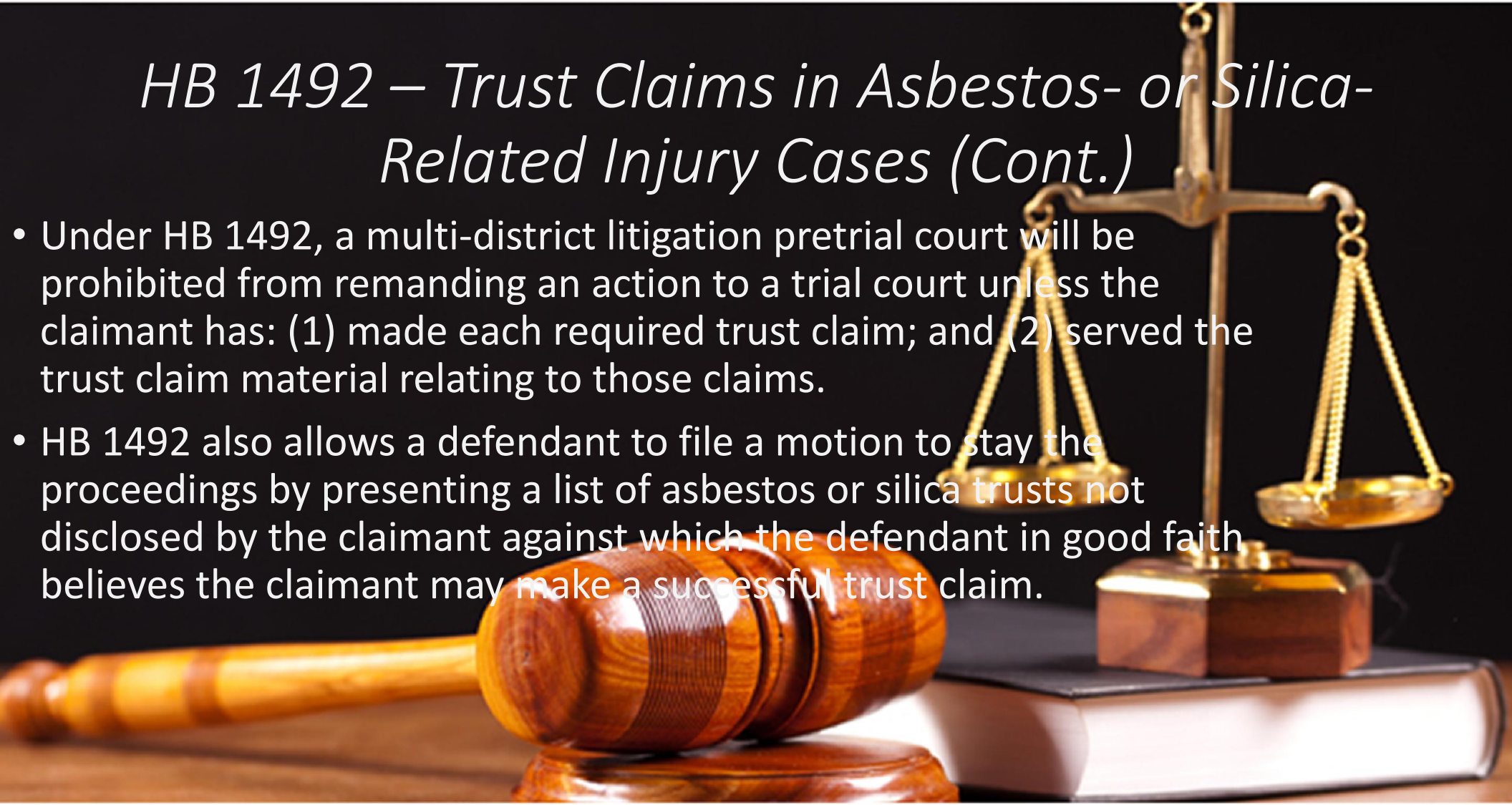
## *HB 1492 – Trust Claims in Asbestos- or Silica-Related Injury Cases*

- HB 1492 amends Chapter 90 of the CPRC by adding Subchapter B to require a claimant who has filed an action to recover damages for an asbestos- or silica-related injury to make a “trust claim” against each trust that the claimant believes may owe damages to the claimant for the injury.
- HB 1492 also requires the claimant to serve on each defendant notice of a trust claim, and trust claim material relating to, each trust claim made by or on behalf of the exposed person.



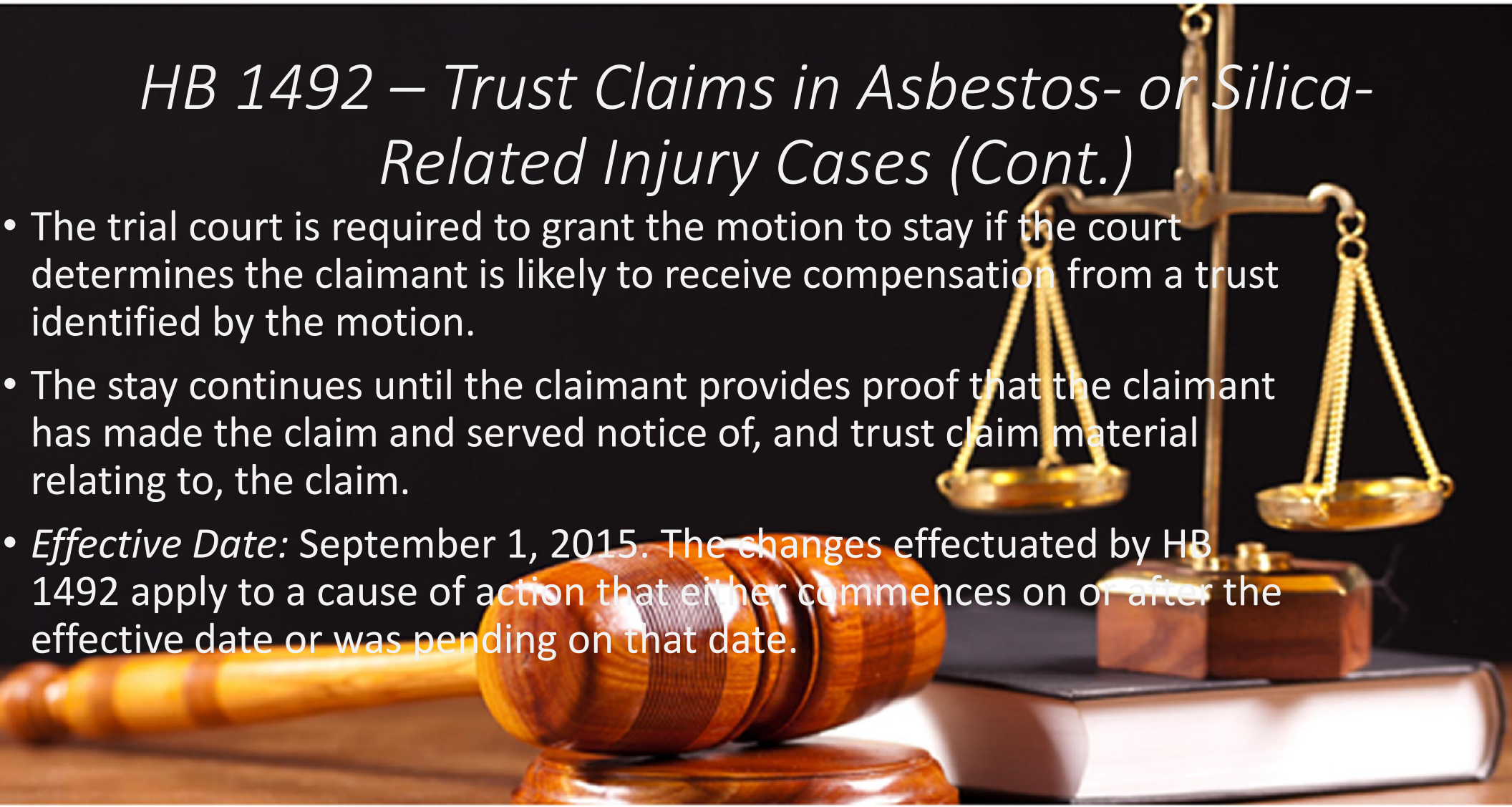
## *HB 1492 – Trust Claims in Asbestos- or Silica-Related Injury Cases (Cont.)*

- Under HB 1492, a multi-district litigation pretrial court will be prohibited from remanding an action to a trial court unless the claimant has: (1) made each required trust claim; and (2) served the trust claim material relating to those claims.
- HB 1492 also allows a defendant to file a motion to stay the proceedings by presenting a list of asbestos or silica trusts not disclosed by the claimant against which the defendant in good faith believes the claimant may make a successful trust claim.



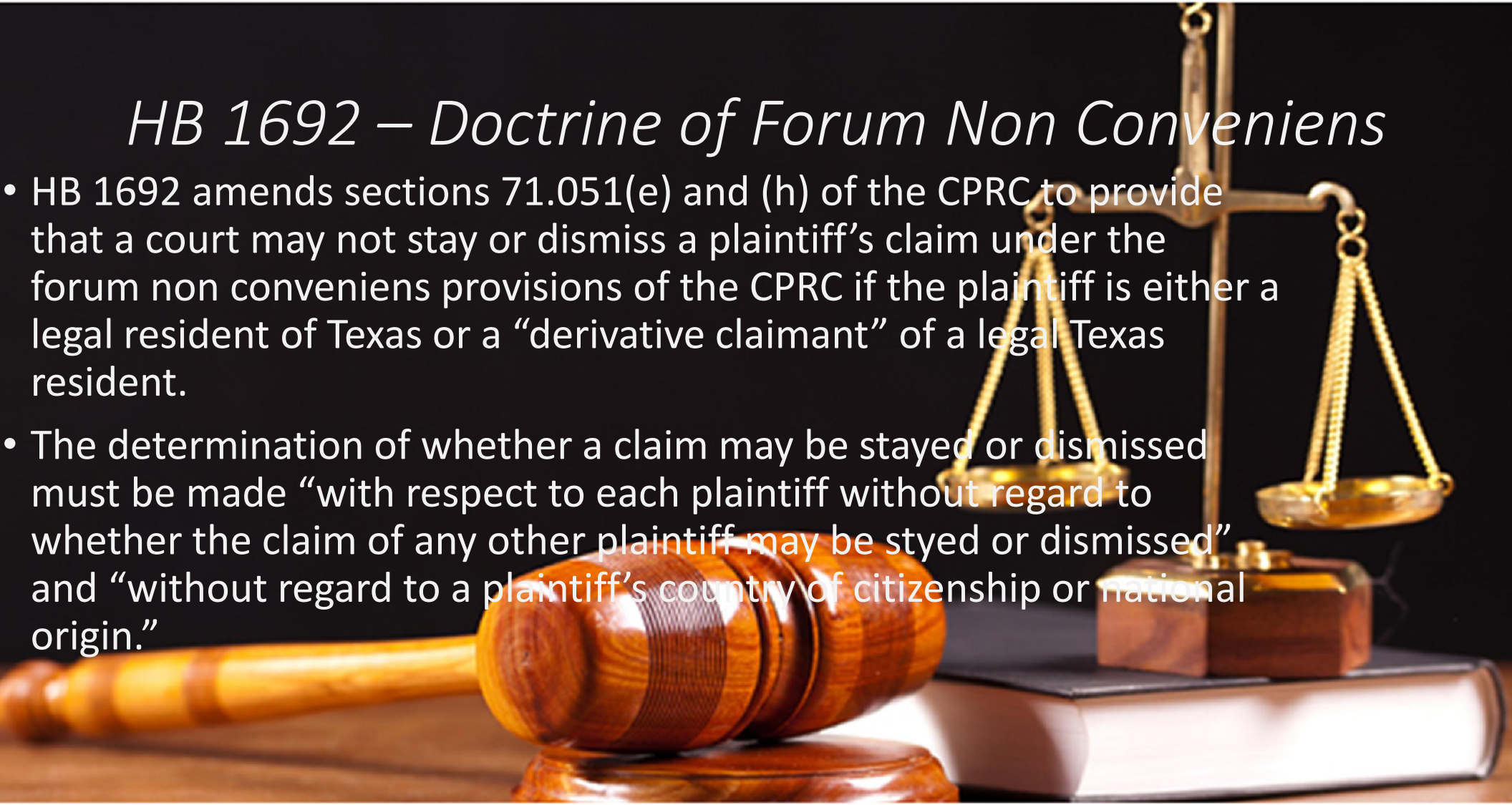
## *HB 1492 – Trust Claims in Asbestos- or Silica-Related Injury Cases (Cont.)*

- The trial court is required to grant the motion to stay if the court determines the claimant is likely to receive compensation from a trust identified by the motion.
- The stay continues until the claimant provides proof that the claimant has made the claim and served notice of, and trust claim material relating to, the claim.
- *Effective Date:* September 1, 2015. The changes effectuated by HB 1492 apply to a cause of action that either commences on or after the effective date or was pending on that date.



## *HB 1692 – Doctrine of Forum Non Conveniens*

- HB 1692 amends sections 71.051(e) and (h) of the CPRC to provide that a court may not stay or dismiss a plaintiff's claim under the forum non conveniens provisions of the CPRC if the plaintiff is either a legal resident of Texas or a "derivative claimant" of a legal Texas resident.
- The determination of whether a claim may be stayed or dismissed must be made "with respect to each plaintiff without regard to whether the claim of any other plaintiff may be stayed or dismissed" and "without regard to a plaintiff's country of citizenship or national origin."



## *HB 1692 – Doctrine of Forum Non Conveniens (Cont.)*

- If the case involves both plaintiffs who are legal Texas residents and plaintiffs who are not, the trial court must consider the factors provided by the forum non conveniens provisions of the CPRC and determine whether to deny the motion or to stay or dismiss the claim of any plaintiff who is not a legal Texas resident.
- HB 1692 eliminates the “legal resident” definition from the CPRC and adds a definition for “derivative claimant,” which means “a person whose damages were caused by personal injury to or the wrongful death of another.”





## *HB 1692 – Doctrine of Forum Non Conveniens (Cont.)*

- The bill also adds an exclusion to the definition of “plaintiff” to state that the term does not include “a representative, administrator, guardian, or next friend who is not otherwise a derivative claimant of a legal resident of this state.”
- *Effective Date:* June 16, 2015.
- The changes in the law implemented by HB 1692 apply only to an action commenced on or after the effective date.

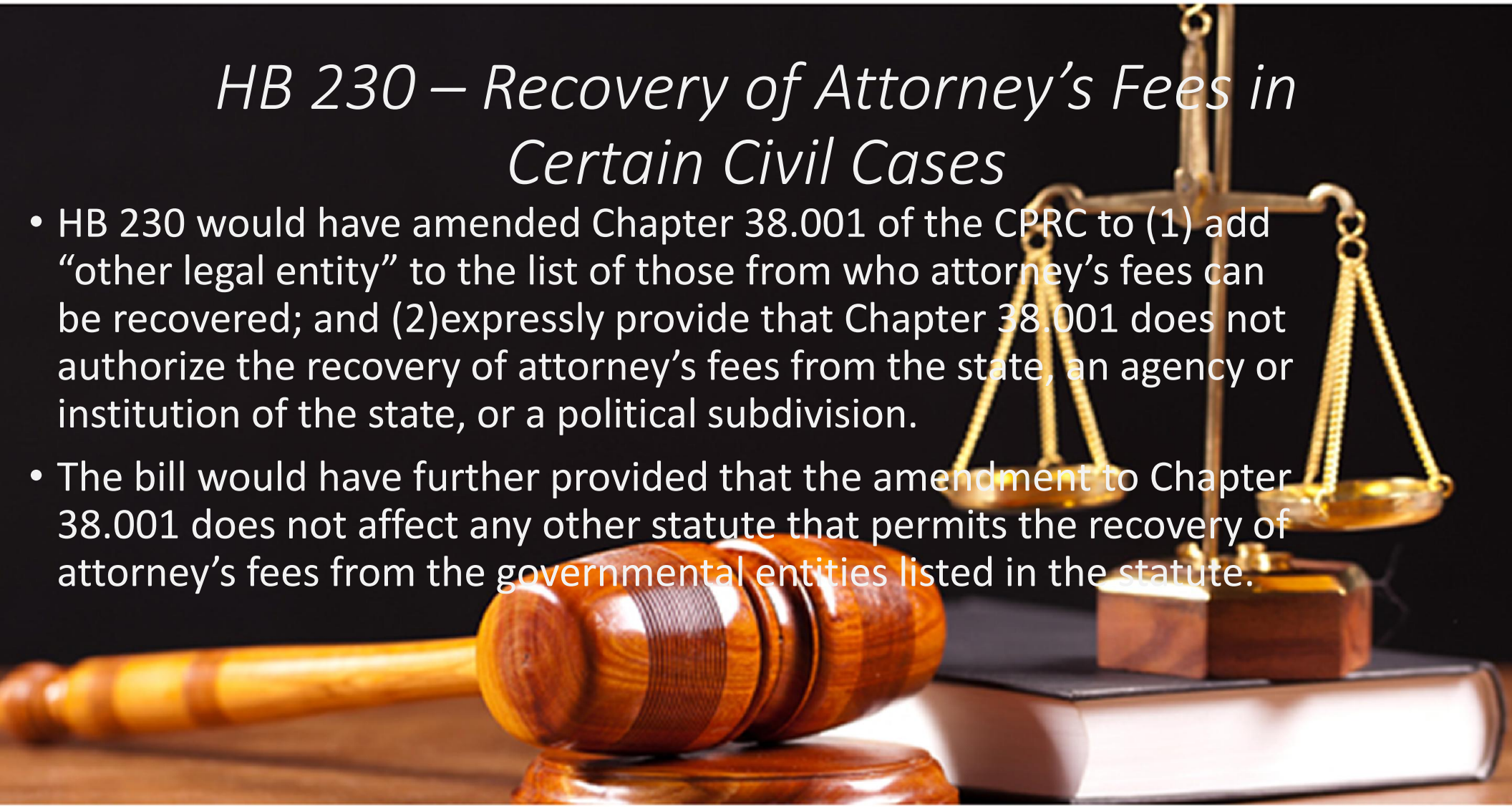


# LEGISLATION THAT FAILED



## *HB 230 – Recovery of Attorney’s Fees in Certain Civil Cases*

- HB 230 would have amended Chapter 38.001 of the CPRC to (1) add “other legal entity” to the list of those from who attorney’s fees can be recovered; and (2) expressly provide that Chapter 38.001 does not authorize the recovery of attorney’s fees from the state, an agency or institution of the state, or a political subdivision.
- The bill would have further provided that the amendment to Chapter 38.001 does not affect any other statute that permits the recovery of attorney’s fees from the governmental entities listed in the statute.



## *HB 247- Limitations on Certain Actions Arising Out of Attorney's Fee Agreements*

- HB 247 sought to place limitations on claims that could be brought under contingent fee agreements that comply with the statute. The limitations in HB 247 would have applied to contingency fee agreements in which an attorney represented two or more clients and entered into an aggregate settlement agreement of the clients' claims if the agreement expressly disclosed:
  - (1) the existence and nature of all claims or pleas involved;
  - (2) the nature and extent of the participation of each client in the settlement; and
  - (3) the amount of remittance to each client and the method by which the remittance will be determined.



## *HB 247- Limitations on Certain Actions Arising Out of Attorney's Fee Agreements (Cont.)*

- HB 247 would have permitted a party to bring a claim arising out of an agreement subject to the statute only on the grounds that the agreement was obtained by corruption, coercion, force, fraud, or other undue means, or that the agreement was forged.
- Further, in a claim arising out of the settlement of matters involving multiple clients that is brought on grounds other than those permitted by HB 247, the settlement would be “irrebuttably presumed” to be:



## *HB 247- Limitations on Certain Actions Arising Out of Attorney's Fee Agreements (Cont.)*

- 1) fully disclosed, read, understood, and voluntarily entered into by all parties to the agreement; 2) fair, accepted, reasonable, and made in the best interests of the parties by the parties or through their attorneys; and 3) final and not subject to subsequent litigation.
- On the motion of a party, a court would have been required to dismiss with prejudice any action involving claims arising out of an agreement that was subject to HB 247 if the action was brought on grounds other than those permitted by HB 247.



# Q&A

- Feedback?
- Questions?
- Ideas?
- Next Steps?



THANK YOU

