

A silver scale of justice is positioned on a polished wooden table. The scale has two pans hanging from a central beam, which is supported by a decorative base. The background is a blurred courtroom with wooden paneling and rows of seats.

# Texas Tort Reform Legislation

By: Judge Mike Engelhart

151<sup>st</sup> District Court



## Net Worth Discovery (S.B. 735)

- Protects private financial information from disclosure in litigation by allowing pretrial discovery of a defendant's net worth to support a claim for punitive damages only if the plaintiff convinces the trial court that she has a substantial likelihood of succeeding on her claim for punitive damages. Discovery of financial information is no longer permitted based on the mere pleading of a claim for punitive damages.
- When discovery of financial information is allowed, the plaintiff must use the least intrusive means available to obtain that information.


CPRC § 41.011

A pair of ornate brass scales of justice, symbolizing law and equity, resting on a wooden surface. The scales are balanced, with both pans hanging at the same level. The background is a blurred wooden interior, possibly a courtroom or library.

## Subrogation (H.B. 1869)

- Changes the way healthcare plans are reimbursed following liability suits from funds recovered by the injured party. Under prior law, a person could be injured, sue for damages, receive a settlement, and then be required to pay the entire settlement to their health insurer as reimbursement for medical expenses paid for by the insurer, thus reducing the incentive for an injured person to settle for a reasonable sum. This legislation allocates the recovered funds between the plaintiff, his or her attorney, and the insurer.

CPRC § 140

A pair of ornate metal scales of justice, likely made of brass or copper, resting on a polished wooden surface. The scales are balanced, with both pans hanging at the same level. The background is a blurred courtroom setting with wooden paneling and bookshelves.

## Appeals of Controlling Questions of Law (H.B. 274)

- Refines existing statute allowing for the mid-case appeal of a controlling question of law to eliminate the requirement that the parties agree to the appeal. Instead, the question to allow an appeal is within the hands of the trial judge and appellate court.

CPRC § 51.014

A pair of ornate brass scales of justice, symbolizing law and equity, resting on a wooden surface. The scales are balanced, with both pans hanging at the same level. The background is a blurred courtroom setting with wooden paneling and bookshelves.

## Offer of Settlement (H.B. 274)

- Attorney fees that may be assessed against a plaintiff who rejects a settlement offer that is better than the ultimate judgment may be the full amount of any judgment recovered by the plaintiff.
- Prior law limited the amount of attorney fees that could be awarded to the party who made the settlement offer.

CPRC § 42.004(d)



## Class Actions (H.B. 4)

- Class action contingency fees abolished in favor of hourly rates based on hours worked, with possible 4x multiplier to reflect value of work done and amount of risk taken.
- When class actions are settled using coupons, the lawyers also must be paid in coupons in the same proportion as the class.
- Class actions within the jurisdiction of a state agency must be addressed by that agency before proceeding in court.
- Texas Supreme Court given jurisdiction in appeals from trial court class certification orders, and trial court proceedings are stayed pending appeal.

CPRC § 26.003

## Actual Damages (H.B. 4)

- Limits recovery of damages for healthcare expenses to expenses actually incurred by the plaintiff; correcting a prior deficiency in the law that allowed a plaintiff to recover as “actual damages” amounts that were never paid for the plaintiff’s healthcare by the plaintiff or anyone else on the plaintiff's behalf.
- Allows the fact finder to consider a plaintiff’s income taxes when awarding lost future income.
- Allows fact finder to consider that personal injury awards are not taxable.

CPRC §§ 41.0105 and 18.091





## Healthcare Providers' Liability (H.B. 4)

- Plaintiff in healthcare liability case still must file an affidavit by a qualified physician detailing the specific acts or omissions alleged to have caused injury. Court's decision on whether affidavit is sufficient is immediately appealable.
- Caps on noneconomic damages, such as pain and suffering, imposed in all medical cases. \$250,000 per-claimant cap applies to doctors and nurses; a separate \$250,000 cap applies to each healthcare institution on a per-defendant basis, subject to a \$500,000 aggregate noneconomic damages cap in favor of all health care institutions in the case; resulting in a total cap of \$750,000 in a single healthcare liability case.

CPRC § 74.301




## Healthcare Providers' Liability (H.B. 4)

- Limitation on personal liability of government employees extended to other healthcare professionals in government hospitals as well as nonprofit operators of city or hospital district hospitals.
- Provides additional limits under defined circumstances to nonprofit hospitals or systems that provide charity care and community benefits in an amount equal to at least eight percent of the net patient revenue of the hospital or system, and that provides at least 40 percent of the charity care provided in the county in which the hospital or system is located.

CPRC § 74 and § 31.0456,  
Health and Safety Code





## Limits on Attorney General Contingent Fee Contracting (S.B. 178)

- Awards of contingent legal fees for representing the State of Texas based on a percentage of the recovery are prohibited. Only hourly “lodestar” fees are permitted, which, if made contingent on success, may include a 4x premium to account for results obtained and risk taken.
- Attorney General may not award even an hourly based contingency fee contract without concurrence of either the Legislature or a special committee that includes the lieutenant governor and the speaker of the house when the Legislature is not in session.


Tex. Gov’t Code § 2254.101



## Interstate Forum Shopping (S.B. 220)

- Forum non conveniens statute applies to individual claims, not entire actions.
- Multiple elements that previously had to be satisfied before a claim could be dismissed under the forum non conveniens statute were reduced to a narrower six-element test.
- Defendants do not have to consent to personal jurisdiction in the forum to which the case might be transferred.
- Exceptions prohibiting the transfer of cases brought under the Federal Employers Liability Act, arising from an airplane crash, or arising from exposure to asbestos (with many conditions) are eliminated.


CPRC § 71.051

A pair of ornate brass scales of justice, symbolizing law and equity, resting on a polished wooden surface. The scales are positioned on the left side of the frame, with the pans hanging from a central pillar. The background is a blurred wooden interior, possibly a courtroom or library.

## Volunteer Healthcare Provider Immunity (S.B. 215)

- “Good Samaritan” statute expanded to extend liability protection to doctors and other healthcare providers who donate time and skill to treat persons unable to afford medical care.

CPRC § 84.001

A pair of ornate brass scales of justice is positioned on the left side of the image. The scales are highly detailed, with a central column and two pans hanging from a curved beam. The background is a blurred wooden surface, likely a desk or table, with warm lighting. The text is overlaid on the right side of the image.

## Lawsuits Against Firearms Manufacturers (S.B. 717)

- Bans lawsuits by government entities against firearm manufacturers and sellers for damages resulting from, or for injunctive relief or abatement of a nuisance relating to, the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public.

CPRC § 128.001



## Insurance—Unfair Settlement Practices Act (H.B. 668)

- Party to an action for unfair settlement practices can force mediation of a claim brought under the statute.
- A defendant can make an offer of settlement in response to a demand made by a plaintiff under the statute. If the offer is rejected but the final judgment is substantially the same as the offer, the plaintiff's damages are limited to the amount of the offer.

CPRC § 17.5052

A pair of ornate brass scales of justice, symbolizing law and equity, resting on a wooden surface. The scales are positioned on the left side of the image, with the pans hanging from a central pillar. The background is a blurred courtroom setting with wooden paneling and rows of seats.

## Judicial Campaign Finance Limitations (S.B. 94)

- Imposes disclosure requirements on the process of judicial fundraising.
- Imposes limits on the amount of funds that any individual or law firm can make to a judicial candidate, to offset the appearance of impropriety associated with unlimited campaign contributions by lawyers to judges.

Tex. Elec. Code § 253.157

A pair of ornate brass scales of justice, symbolizing law and equity. The scales are positioned on the left side of the image, resting on a polished wooden surface. The background is a blurred, warm-toned interior, possibly a courtroom or library, with bookshelves visible.

## Property Owner Liability for Independent Contractor Acts (S.B. 28)

- Property owner is not liable for personal injury, death, or property damage to a contractor, subcontractor, or an employee of a contractor or subcontractor who constructs, repairs, renovates, or modifies an improvement to real property, including damage arising from the failure to provide a safe workplace, unless property owner exercises control over the manner in which the work is performed and had actual knowledge of the danger or condition that caused harm and failed to warn.

CPRC § 95.003



## Punitive Damages (S.B. 25)

- Entitlement to punitive damages must be established by clear and convincing evidence, not merely a preponderance of the evidence.
- Punitive damages no longer imposed “as an example to others” but only if appropriate as punishment for wrongful conduct.
- Nominal actual damages cannot support an award of punitive damages unless the defendant acted with malice toward the plaintiff.
- Punitive damages capped at the greater of:  
(i) \$200,000 or (ii) two times economic damages plus an amount not to exceed \$750,000 for non-economic damages.
- No liability for punitive damages resulting from the criminal act of a third party except in unusual circumstances.

CPRC §§ 41.003-005 and 41.008



## Proportionate Responsibility (H.B. 4)

- Fact finder must assign percentages of fault to all potentially responsible persons, whether actually before the court as a party or not. (Prior law may have required that the “responsible third parties” be joined in the lawsuit as a party.) Fault assignments are not limited by the status of the person. Therefore, percentages of fault may be assigned to persons who are not parties to the case but, in actuality, share the blame, such as those who have settled, bankrupts, fugitive criminals, private and governmental entities entitled to immunity, employers covered by workers’ compensation, and persons beyond the court’s jurisdiction. Fugitive “John Doe” criminals can be named even if they cannot be identified by name.
- Fault assignments determine what percentage of a judgment the named parties must pay, but fault assignments as to nonparties have no legal effect on them.

CPRC § 33.001

## Product Liability (H.B. 4)

- In pharmaceutical cases, a rebuttable presumption is established in favor of manufacturers, distributors, or prescribers of pharmaceutical products in cases alleging failure to provide adequate warning about the product's risk, if the defendant provided the government-approved warnings with the product.
- In other product cases, a rebuttable presumption is established in favor of manufacturers who comply with federal standards or regulatory requirements applicable to a product, provided the government standard was: (1) mandatory, (2) applicable to the aspect of the product that allegedly caused the harm, and (3) adequate to protect the public from risk.

CPRC §§ 82.007 and 82.008.



## Product Liability (H.B. 4)

- Sellers of products are not liable for a product defect if the seller does nothing more than acquire the product from the manufacturer and sell it to the customer, in cases where the manufacturer is subject to a Texas court's jurisdiction.
- Fifteen-year statute of repose for most product liability claims.

CPRC §§ 16.012(B) and 82.003.

## Appeal Bonds (H.B. 4)

- The bond a party must post to prevent collection of a judgment while that party pursues an appeal cannot exceed the lesser of \$25 million, one-half of defendant's net worth, or the total compensatory (not punitive) damages awarded to the plaintiff.
- Savings provision for circumstances where 50 percent of net worth or the total compensatory damages would still produce a bond that the defendant reasonably could not be post.

TRAP § 24.2(a)(1)



## Texas Windstorm Insurance Association (H.B. 3, 1st C.S.)

- Implements procedural steps that must be taken, and an appraisal process that must be used, by a Texas Windstorm Insurance Association (TWIA) policyholder to pursue a claim against TWIA for failure to pay, or timely pay, a claim.
- A policyholder must file a claim under the policy not later than the first anniversary date on which the damage to the property was done, which may be extended for a period not exceeding 180 days by the commissioner of the Texas Department of Insurance (TDI) for a claimant showing good cause. Prior law had no deadline for filing a claim.

Section 2210.002(b), Insurance Code.



## Texas Windstorm Insurance Association (H.B. 3, 1st C.S.)

- Not later than the 60th day after the date TWIA receives the necessary information to make a determination on the claim, it must provide the claimant with notice that the association has: (i) accepted coverage for the claim in full, (ii) accepted coverage in part and rejected it in part, or (iii) denied coverage in full.
- If a policyholder disputes the amount of loss that TWIA will pay for a covered claim, the policyholder may demand an appraisal not later than the 60th day after the claimant has received notice from TWIA stating the amount the association will pay. The claimant may get a 30 day extension to demand appraisal upon showing good cause.
- In most instances, the appraisal process should resolve the dispute. Only after the appraisal process is complete may a TWIA policyholder pursue other legal remedies.

Section 2210.002(b), Insurance Code

A pair of ornate brass scales of justice, symbolizing law and equity, resting on a wooden surface. The scales are positioned on the left side of the image, with the pans hanging from a central pillar. The background is a blurred wooden interior, likely a courtroom.

## Frivolous Litigation (H.B. 274)

- Texas Supreme Court must “adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence,” thus allowing courts to evaluate and rule on legal issues that do not require discovery or factual development.
- Losing party must pay the prevailing party’s litigation costs.

Tex. Gov’t Code § 22.004(g)



A pair of ornate brass scales of justice is positioned on a polished wooden surface. The scales are highly detailed, with a central column and two pans hanging from a decorative beam. The background is a blurred view of a courtroom with wooden paneling and rows of seats.

## Seat Belt Evidence (H.B. 4)

- Allows the fact finder to know whether a plaintiff was wearing a seat belt at the time of an accident for the purpose of determining the cause of damages and allocating fault, if relevant and otherwise admissible.
- Repealed Transportation Code §§ 545.412(d) and 545.413(g).

A pair of ornate brass scales of justice is positioned on a polished wooden table. The scales are slightly tilted, with the right pan hanging lower than the left. The background is a blurred view of a courtroom with wooden paneling and rows of seats.

## Barratry (H.B. 1716)

- A lawyer who procures representation of a person through barratry (“ambulance chasing”) may be required to disgorge to the represented person the entire fee paid to the lawyer.

Tex. Gov’t Code §§ 82.065 and 82.061

A pair of ornate brass scales of justice, commonly known as the scales of justice, are positioned on a polished wooden surface. The scales are made of a dark, polished metal, likely brass, and feature intricate scrollwork and a central column. Two pans are suspended from the top by chains, and the entire structure is supported by a decorative base. The background is a blurred, warm-toned interior, possibly a courtroom or a library, with wooden paneling and bookshelves.

## Barratry (H.B. 1711)

- 2011 barratry statute amended to allow civil barratry action against ambulance chasing attorney even if attorney voluntarily forfeits the attorney fee contract.

Tex. Gov't Code § 82.0651(a) and (b)

A silver scale of justice is positioned on a wooden surface. The scale has two pans hanging from a central beam, which is supported by a decorative base. The background is a blurred image of a courtroom with wooden benches and a high ceiling.

## Expediting Small Civil Cases (H.B. 274)

- Requires the Supreme Court to provide rules to expedite civil cases having less than \$100,000 in dispute.
- Supreme Court rules limit pretrial discovery, require a trial setting within six months, and limit the amount of time that may be used to try the case.

TRCP §§ 169 and 190.2



**THE END**