



TADC *e-Update*
The Texas Association of Defense Counsel, Inc.

LEGISLATIVE UPDATE

REMINDER - 2009 TADC SPRING MEETING
March 4-8, 2009 ~ Hyatt Regency on Lady Bird Lake ~ Austin

Don't miss this amazing meeting! ([program link below](#))

- Legislative Day and Opening Reception with the Texas Legislature
- Breakfast with current and former Supreme Court Members

A 10.75 hr CLE Program Featuring:

- The Honorable Tom Philips, retired Chief of the Texas Supreme Court
- Justice Nathan Hecht, Texas Supreme Court
- US District Judge Lee Yeakel
- What In-House Counsel Needs/Wants from Litigation Counsel (Panel Discussion)
- John Council, Texas Lawyer "Inside Legal Journalism"

& rounding out the program, a group of the finest litigation attorneys in Texas

[CLICK HERE](#) for registration materials. Space is limited, sign up today!

As you are no doubt aware, the TADC screens every piece of legislation that is filed during a session and flags those that would have an effect on the practice of law and the civil justice system. The TADC will have several hundred bills in its tracking file during the course of the legislative session and your legislative committee will prepare dozens of analyses in order to aid in written and oral testimony before the legislature.

Of the bills currently in TADC's bill track, below are some of the most notable. Be assured that the TADC leadership and legislative committee are closely monitoring all bills that could affect your practice and will be prepared to act in your best interests if any of these bills begin to move.

Do not hesitate to contact any member of the TADC Leadership, Board of Directors or the TADC office if you have questions regarding any specific piece of legislation, or if you become aware of an issue that the TADC should be monitoring.

COMMITTEE ASSIGNMENTS

The Senate Committee assignments and Chairs for the Jurisprudence and State Affairs committees are:

Jurisprudence: Wentworth Chair, Gallegos Vice Chair, Carona, Duncan, Harris, Hinojosa, and Watson.

State Affairs: Duncan Chair, Deuell Vice Chair, Carona, Ellis, Fraser, Harris, Jackson, Lucio, and Van de Putte.

The House Committee assignments and Chairs for the Judiciary & Civil Jurisprudence, Insurance and State Affairs Committees are:

Judiciary & Civil Jurisprudence: Hunter Chair, Hughes Vice Chair, Branch, Hartnett, Leibowitz, Alonzo, Jackson, Lewis, Madden, Martinez and Woolley.

Insurance: Smithee Chair, Martinez Fischer Vice Chair, Deshotel, Eiland, Hunter, Hancock, Isett, Taylor and Thompson

State Affairs: Solomons Chair, Menendez Vice Chair, Craddick, Gallego, Hilderbran, Oliveira, Swinford, Turner, Cook, Farabee, Geren, Harless, Jones, Lucio III and Maldonado

Senate Bills Currently Being Monitored

There are a number of bills which the TADC is closely monitoring. These include:

- **SB 222** A comprehensive arbitration bill filed by Sen. West. Sen. West proposes to amend the Texas Arbitration Act to render void and unenforceable written arbitration agreements between employer and employee, franchisor and franchisee and between parties of unequal bargaining power. The senate bill also provides that: (1) absent knowing waiver, a court order compelling arbitration may not violate constitutionally-protected rights; (2) an arbitrator must satisfy objective qualification standards that consider education, training and experience; (3) an arbitration hearing may not proceed in the absence of notice or waiver of notice; (4) a party is entitled to obtain a stenographic recording of an arbitration hearing; (5) a court shall vacate an arbitration award that clearly violates fundamental public policy or is the result of manifest disregard of the law; and (6) a party may appeal a court judgment or decree granting an application to compel arbitration.
- **SB 555** A bill related to indemnity agreements within certain construction contracts offered by Sen. Duncan. The substance of this bill is a proposal to ban indemnity or insuring agreements in construction contracts if they call for the indemnitor to indemnify the indemnitee for the indemnitee's own negligence.
- **SB 445** A bill codifying the allowance of jury questioning and note-taking in civil trials filed by Sen. Wentworth. While leaving the use of jury questioning and note-taking to the discretion of the Judge, the bill offers a standardized procedure for their use.
- **SB 153** is a proposal by Sen. Ellis which would enlarge the scope of discovery permitted in a medical malpractice case before the claimant's expert report is filed from that currently permitted from non-parties to oral depositions of the parties as well.
- **SB 152** is a bill filed by Sen. Ellis which modifies the current ER standard of care. It makes two key changes. The first is to change the "willful and wanton" negligence standard applicable to such claims to "willful or wanton" negligence. Secondly, it excludes those physicians who regularly practice ER medicine from this proposal. Presumably, they would fall back into the general negligence standard of proof applicable to all other physicians
- **SB 782**, introduced by Senator Duncan, would transform the current partisan election of all appellate judges (including the Supreme Court and Court of Criminal Appeals) into a non-partisan system where vacancies are filled by the Governor and confirmed by the Senate with each such appointee standing for a retention election every 6 years.
- **SB 780** is a bill filed by Senator Kirk Watson which would require the Supreme Court to disclose how each member of the court voted on any order relating to a petition of review.

House Bills Currently

Being Monitored

- **[HB 520](#)** A bill filed by Rep. Giddings which addresses a modification to the workers' compensation statute's a definition of "general contractor." This is a "legislative fix" to the Entergy opinion.
- **[HB 4](#)** A bill filed by Rep. Orr which makes substantial revisions to the law of eminent domain. While numerous each of the proposed changes seem targeted toward expanding the transparency of the process.
- **[HB 42](#)** Is a proposal by Rep. Corte which would preclude a party from recovering noneconomic or punitive damages arising from an automobile accident if they were operating their vehicle without insurance. The only exception are claims in which the defendant is alleged to have been operating his or her vehicle while intoxicated.
- **[HB 123](#)** Is a bill by Rep. Jackson which adds those businesses which use children at sexually oriented businesses to the list of those businesses or activities which constitute a "common nuisance."
- **[HB 217](#)** A bill filed by Rep. Menedez which relates to liability for the use of "unsafe children's products" by a child care facility. The bill sets out a set of presumptions which make a product "unsafe", directs the Texas Department of State Health Services to compile a list of such products, and then sets out a \$1000 per day penalty for each child care facility which has such unsafe products in use.
- **[HB 291](#)** Is a bill offered by Rep. Dutton which directs the Supreme Court to adopt rules allowing a claimant to conduct discovery related to the merits of a plea to the jurisdiction.
- **[HB 514](#)** A bill offered by Rep. Vaught which sets a list of criminal conduct involving injury to a child which will allow a parent to recover loss of consortium.
- **[HB 818](#)** Is a companion bill to SB 555 and was filed by Rep. Eiland. The substance of this bill is a proposal to ban indemnity or insuring agreements in construction contracts if they call for the indemnitor to indemnify the indemnitee for the indemnitee's own negligence.
- **[HB 859](#)** Is a bill filed by Rep. Laubenberg which expands the tort claims act to include liability for property damage caused by a governmental entity's use or access to its easement.
- **[HB 933](#)** Similarly, HB 933 is a bill offered by Rep. Dutton which modifies the current standard for liability under the tort claims act. This bill expands the liability of a governmental entity for personal injury or death from the condition or use of tangible or real property to that of the negligence of the governmental unit.
- **[HB 1288](#)** by Rep. Eiland is an effort to significantly change the liability standard relating to property owners under Chapter 95 of the Civil Practices and Remedies Code. It makes two primary modifications. As a preliminary matter, it limits the scope of the term "improvement to real property" to only those structures "permanently affixed or incorporated into real property." (This could have the impact of removing injuries on oil or gas drilling rigs/sites from the application of Chapter 95.) The second and most significant change, however, is the redefining of a property owner's liability. Under the proposed amendment, the requirement that a property owner have actual knowledge of the defect is expanded to those defects created by an owner of which the owner has actual or constructive knowledge. Coupled with this change is a revision to the second component of liability which currently holds the property owner liable only if he failed to adequately warn to liability for a failure to "correct" or "adequately warn".

This appears to significantly limit the application of Chapter 95 and even when it will apply it makes the new liability standard substantially similar to that already imposed under common law.

