



# THE 2019 LEGISLATIVE SESSION IS OVER, PART 2

*Here is the second part of a synopsis of the new laws affecting the apartment industry.*

*View the first part of this synopsis in the July issue.*

LAST MONTH, WE covered new laws pertaining to deceased residents, parking permits, late fees, family violence and firearms. Below, we have summarized new laws pertaining to other topics connected with the ownership, operation and management of apartment properties. Please note that the entire bills can be viewed on the Texas Legislature website at <https://capitol.texas.gov/>.

## Price Gouging

(HB 1152 amends Section 17.45 and Section 17.46 and adds Section 17.4625 to the Texas Business & Commerce Code) applies to acts or practices that occur on or after Sept. 1.

**Change in the Law:** The new law modifies the Texas Deceptive Practices-Consumer Protection Act (DTPA). The DTPA prohibits certain false, misleading or deceptive acts or practices. Section 17.46(b) of the Texas Business & Commerce Code defines “false, misleading or deceptive acts or practices.”

The current law provides that taking advantage of a disaster declared by the governor by selling or leasing an exorbitant or excessive price or demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine or another necessity is a “false, misleading or deceptive act or practice,” which is prohibited by the DTPA. The new law clarifies that the disaster can be declared by the governor or the president and adds “lodging, building materials or construction tools” as items that cannot be sold or leased in times of a disaster for an exorbitant or excessive price.

The new law also defines a “designated disaster period” as beginning on the earliest of: (i) the date of the disaster; or (ii) the date of the proclamation or declaration of the disaster by the governor or the president; and ending 30 days after the date the disaster

declaration expires or is terminated.

**Effect of Change:** Rental properties were already considered to be covered under the DTPA's protection against price gouging based upon the analysis that rental properties are a “necessity.” However, the law clarifies that the selling or leasing of lodging is subject to the DTPA's prohibition against exorbitant or excessive pricing during a designated disaster period. Additionally, building materials and construction tools are also covered. Consequently, in times of a disaster, exorbitant or excessive pricing of building materials and construction tools would also be prohibited under the DTPA.

The originally filed bill provided that the price of a necessity is considered exorbitant or excessive if the price is 15 percent or more than the price at which the necessity is sold or leased, offered for sale or lease, by the seller or lessor in the usual course of business immediately before the earlier of the date the disaster occurred or the date of the disaster proclamation or declaration.

The definition of exorbitant or excessive pricing of 15 percent is not in the bill that passed. However, in 2012, the attorney general entered into an agreed judgment against a motel owner for charging a price in violation of the DTPA during the week after Hurricane Ike. Pursuant to the agreed judgment, the motel owner was prohibited from taking advantage of any disaster by charging excessive prices in excess of 10 percent of the average price for those goods and services (during times when there is no disaster declaration).

If you take in residents after a declared disaster, caution should be taken to avoid excessive pricing. Large increases in rental rates (more than 10 percent from pre-disaster rates) should be avoided for at least as long as the disaster period lasts.

## Eviction Delays

(HB 2730 amends Chapter 27 of the Texas Civil Practice and Remedies Code) applies to actions filed on or after Sept. 1.

**Change in the Law:** Chapter 27 of the Civil Practice and Remedies Code pertains to “anti-slap” actions. The existing law provides that if a legal action is based on, relates to or is in response to a party's exercise of the right of free speech, right to petition or right of association, that party may file a motion to dismiss the legal action. The motion to dismiss must be filed not later than the 60th day after the date of service of the legal action. The court must rule on the motion not later than the 30th day following the hearing on the motion. If the court grants the motion, the case is dismissed. If the court denies the motion, the movant can appeal the court's order and delay the underlying proceeding.

Section 27.010 of the Civil Practice and Remedies Code provides for exemptions to the anti-slap statute. One of the exemptions added under the new law is with respect to an eviction suit brought under chapter 24 of the Texas Property Code.

**Effect of Change:** The anti-slap statute has been used in eviction actions. This has caused a delay in evictions and has made evictions more expensive. The rules pertaining to evictions require that an eviction trial be held within 21 days after the eviction is filed. The procedure outlined in the anti-slap statute does not coincide with the eviction procedure. The trial for the eviction should be held long before a party has the opportunity to file a motion to dismiss under the anti-slap statute. The new law expressly exempts eviction actions from the anti-slap statute.

## Medical Marijuana

(HB 3703 amends Chapter 169 of the Texas Occupations Code) effective Sept. 1.

**Change in the Law:** The current law allows a physician to prescribe low-THC cannabis to a patient diagnosed with epilepsy. Section 169.003 of the Texas Occupations Code in the new law has been modified to allow a properly authorized physician to also prescribe low-THC cannabis to a patient diagnosed with a seizure disorder, multiple sclerosis, spasticity, amyotrophic lateral sclerosis, autism, terminal cancer or an incurable neurodegenerative disease.

**Effect of Change:** As with the previous law, a physician is able to prescribe low-THC cannabis to a patient only if the physician determines the risk of the medical use of low-THC cannabis by the patient is reasonable in light of the potential benefit for the patient.

The term “medical use” is defined in Section 169.001 as the ingestion by a means of administration other than by smoking of a prescribed amount of low-THC cannabis by a person for whom the low-THC cannabis is prescribed. Consequently, a physician's authorization to prescribe low-THC cannabis to a patient under the old and new law is limited to cannabis that is ingested by a means other than by smoking. If you have a no smoking policy, the law does not

require you to change this policy, even for smoking marijuana.

## Justice and County Court Jurisdictions

(SB 2342 amends Sections 27.031, 25.003(c) and 22.004(h-1) of the Texas Government Code) applies to causes of action filed on or after Sept. 1, 2020.

**Change in the Law:** The existing law provides that justice courts have jurisdiction of cases in which the amount in controversy is not more than \$10,000. Section 27.031(a) of the Texas Government Code is amended to provide that the justice courts have jurisdiction for civil matters in which the amount in controversy is not more than \$20,000. The justice court's exclusive original jurisdiction of eviction cases is unchanged.

Section 25.003(c) of the Texas Government Code is amended to provide that statutory county courts have jurisdiction of civil cases in which the matter in controversy exceeds \$500 but does not exceed \$250,000, excluding interest, statutory punitive damages and penalties and attorney's fees and costs. Under existing law, the jurisdiction of the county courts is \$200,000. Section 22.004(h-1) is added to the Texas Government Code and provides that the supreme court shall adopt

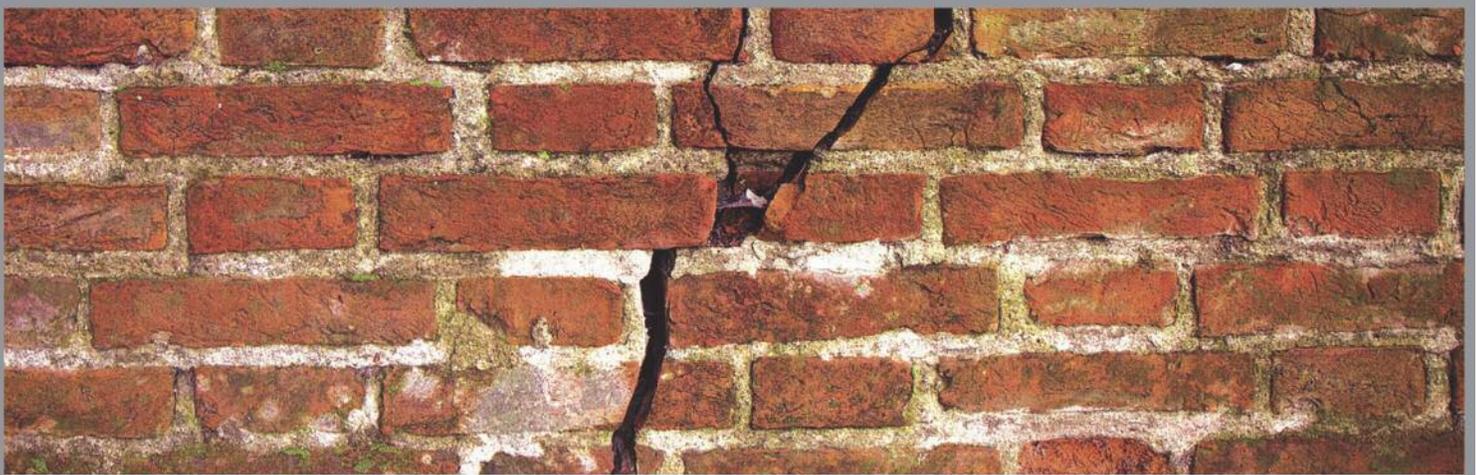
rules to promote the prompt, efficient and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed \$250,000.

**Effect of Change:** The change in the jurisdictional limit of justice courts from \$10,000 to \$20,000 will not affect where an eviction is filed. However, the court has additional jurisdiction for a money judgment for delinquent rent up to \$20,000 (the previous jurisdictional limit was \$10,000). Additionally, claims filed against the owner in justice courts such as security deposit cases, repair and remedy cases or other types of cases requesting the recovery of damages can now go up to \$20,000. This may increase the number of cases filed against you in the justice court.

The increase in the jurisdictional limit of the county court from \$200,000 to \$250,000 will allow more cases to be filed in the county court, but the effect on the apartment industry may be negligible.

If you have not already done so, the policies and procedures should be reviewed to be sure that they are in compliance with the new laws. Many of the laws take effect in September. The time to act is now! 🏠

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