



**TENNESSEE
BAR ASSOCIATION**

LEGISLATIVE UPDATE

JULY 11, 2022



TBA Public Policy

- Supreme Court Rule proposed change
- TBA Committee or Section legislative proposal
- Legislation introduced during the legislative session
- Officer/Board/Staff/Organization drafts/refers

One of the most important responsibilities of the Tennessee Bar Association is to advocate for the legal profession and our system of justice.

TBA Contract Lobbyists



Brad Lampley



Ashley Harbin

ADAMS AND REESE, LLP

TBA Director of Public Policy and Government Affairs



Tennessee Bar Association

TBA Initiatives

- We get our best ideas from members, especially from the Sections, Committees and Divisions.
- Legislative proposals are usually due in September each year.
- If a large amount of legislative proposals are submitted, the TBA Governmental Affairs team, along with advice from the Governmental Affairs Committee and the TBA Executive Committee, considers many factors and decides which legislative proposals will be included in the TBA legislative agenda for the upcoming legislative session.

All TBA sponsored legislation is vetted through the following TBA review process.



First

Proposed TBA legislation is circulated to the executive councils of all affected TBA sections in order to get their feedback.



Second

The TBA House of Delegates considers the legislative initiative and votes on whether to support it.



Third

The TBA Board of Governors considers the legislative initiative and votes on whether to support it.



TBA Initiative: Review Process

After a legislative proposal is recommended by the TBA House of Delegates and approved by the Board of Governors, it becomes a TBA legislative initiative.



TBA Executive Committee

At the direction of the Board, the Executive Committee may be asked to weigh in on time sensitive matters related to policy decisions for the TBA.

Supreme Court Rule Changes

- The Supreme Court regularly solicits Comments on proposed changes to Supreme Court Rules.
- The TBA forwards the proposed rule changes to the Executive Councils (EC) of the affected Sections, asks for their feedback on the rule change, and whether the TBA should file a Comment.

Supreme Court Rules

The TBA has reviewed the following Supreme Court Orders of Proposed Rule Amendments over the last three years:

Rule 6	Rule 21
Rule 7	Rule 22
Rule 8	Rule 25
Rule 9	Rule 26
Rule 10	Rule 31 & 31A Rule 33
Rule 10B & 11	Rule 43
Rule 10C	Rule 44
Rule 12	Rule 46A
Rule 13	Rule 53, Section 16
Rule 17	Collaborative Family Law
Rule 19	2021 Rules Package

Feedback on Legislation Introduced During the Legislative Session

- When the Tennessee General Assembly is in session (January – May), the TBA regularly gives feedback on legislation.
- The TBA gets its informal feedback on legislation from the TBA Section’s Executive Counsels, since they are made up of attorneys who have first-hand knowledge and experience on the practice areas affected by the legislation.

Feedback During the Legislative Session

- 75% of the TBA Governmental Affairs team's time is spent playing defense and working to improve or kill non-TBA sponsored bills (“other people's bills”).

Lawyers in the Legislature

House of Representatives: 8 attorney representatives

- Andy Farmer
- William Lamberth
- Bill Beck
- John Ray Clemmons
- Mike Stewart (not running for re-election)
- John Mark Windle
- Bruce Griffey (running for Circuit Judge)
- Johnny Garrett

Senate: 6 attorneys Senators

- Brian Kelsey (not running for re-election)
- John Stevens
- Sara Kyle
- Ken Yager
- Jeff Yarbrow
- Raumes Akbari

House Members Not Seeking Re-election in 2022

District 18: Eddie Mannis (R-Knoxville);

District 24: Mark Hall (R-Cleveland). Running for the state Senate.

District 32: Kent Calfee (R-Kingston).

District 35: Jerry Sexton (R-Bean Station).

District 52: Mike Stewart (D-Nashville).

District 59: Jason Potts (D-Nashville).

District 61: Brandon Ogles (R-Franklin).

District 63: Glen Casada (R-Franklin). Former Speaker; running for Williamson County Clerk.

District 67: Jason Hodges (D-Clarksville).

District 69: Michael Curcio (R-Dickson); Chairman, House Criminal Justice Committee.

District 71: David Byrd (R-Waynesboro).

District 75: Bruce Griffey (R-Paris). Running for circuit judge.

District 79: Curtis Halford (R-Dyer); Chairman, House Agriculture and Natural Resources Committee.

District 91: London Lamar (D-Memphis). Appointed to Senate vacancy and running for the upper chamber.

Senators Not Seeking Re-election in 2022

District 9: Mike Bell (R-Riceville); Chairman, Senate Judiciary Committee.

District 19: Brenda Gilmore (D-Nashville).

District 31: Brian Kelsey (R-Germantown); Former Chairman, Senate Education Committee.

2022 Legislative Session



BUDGET



Budget

- The Tennessee General Assembly concluded the 2022 regular legislative session on April 28, 2022.
- Before adjourning, lawmakers approved a \$52.8 billion budget.
- Everyone involved with the session – lawmakers, staff, and lobbyists alike – was ready to be done after a marathon legislative stretch with three different sessions over an eight-month span.

Professional Privilege Tax

- Eliminating the professional privilege tax has been one of the TBA's top legislative priorities over the past three legislative sessions.
- In 2020, Governor Lee proposed a \$200 reduction to the Professional Privilege Tax. That proposal was wiped out by the budgetary cuts made necessary by the pandemic.
- In 2021 the Governor again proposed a reduction of \$100. However, at the very end of session, House and Senate leadership decided not to include the reduction in the budget and promised a more robust reduction would be in the works in 2022.

Professional Privilege Tax

During the 2022 General Assembly, the TBA Government Affairs team met with and educated legislators, the Governor, and their staff through the entire legislative session on the need to reduce or repeal the professional privilege tax.

The TBA worked with a coalition of groups to eliminate the professional privilege tax in Tennessee:

- National Federation of Independent Businesses (NFIB),
- Tennessee Medical Association,
- Tennessee Bankers Association,
- National Association of Insurance and Financial Advisors – TN,
- Securities Industry and Financial Markets Association
- Tennessee Lobbyists' Association
- Beacon Center
- Americans for Tax Reform
- Americans for Prosperity – TN

Professional Privilege Tax

- Throughout all of our meetings, we consistently heard from leadership and legislators that repealing the tax was a priority.
- Our bill to reduce the tax received over 90 cosponsors in the legislature.
- Once again Governor Lee proposed to reduce the tax by \$100 in his April 2022 budget amendment.

Professional Privilege Tax

- Ultimately, House and Senate leadership decided not to reduce or eliminate the professional privilege tax for attorneys, financial advisors, or lobbyists and instead exempted doctors from paying the tax.
- We were told that the rationale for removing the doctors is that the legislature wanted to reward them for being on the front lines of the pandemic for the last two years.

Professional Privilege Tax

- We can assure you the TBA will not give up, and we see this as more of a Call to Action than ever.
- We encourage all attorneys to bring up the need to eliminate the professional privilege tax any time you encounter members of the legislature.

Professional Privilege Tax

- There are nearly 23,000 attorneys licensed to practice law in Tennessee; all of whom must pay the \$400 professional privilege tax regardless of their income, employment status or whether practicing law is their main profession.
- 82% of the lawyers who pay this tax are Tennessee residents.
- In Governor Lee's 2020 State of the State address, the governor called this tax "arbitrary and unfair." We couldn't agree more and will not back down from pushing legislators to eliminate this discriminatory tax.

Indigent Representation Funding

Indigent Representation
received an extra \$3 million
in recurring funding.

2022 TBA Legislative Initiatives



Family Law Legislation

- HB2357/SB2385, Public Chapter 762, Sponsored by Rep. Johnny Garrett and Sen. Todd Gardenhire, was signed into law and went into effect on April 4, 2022.
- Codifies existing law that the court may charge all or a portion of the attorney fees and expenses paid out of the marital estate against that party who used the marital property to pay the litigation expenses, which is important because it would give the Court the ability to credit the party who did not use marital property to pay attorney fees and expenses an amount the court deems appropriate.
- Defines what is marital debt versus separate debt and incorporates the factors set forth in *Alford v. Alford*.
- Clarifies the award of attorneys' fees and suit expenses as *alimony in solido* and provides for the enforcement of reasonable attorneys' fees and suit expenses under Tennessee Supreme Court Rule 8, Rules of Professional Conduct 1.5.

Probate Study Group Legislation

- HB2359/SB1799, Public Chapter 945, Sponsored by Rep. Johnny Garrett and Sen. John Stevens, was signed into law and went into effect on April 29, 2022.
- Ensures that confidential medical information must not be disclosed in the accounting statement of a fiduciary when the fiduciary advises the court whether or not the condition of the respondent continues to require the fiduciary's services.

Probate Study Group Legislation

- HB2358/SB1800, Sponsored by Rep. Johnny Garrett and Sen. John Stevens, was taken off notice at our request because of an ongoing lawsuit addressing this exact issue.
- Dealt with a surviving spouse and the elective share.

Adoption Law Section Legislation

- HB2070/SB2056, Public Chapter 937, Sponsored by Sen. Ferrell Haile and Rep. Tom Leatherwood, was signed into law and will go into effect on July 1, 2022.
- Adds the crime aggravated sexual exploitation of a minor to the definition of severe child abuse.
- Clarifies that once a final order of adoption is entered, no other orders may be entered requiring visitation or other contact between the adopted person and biological parent or family except under TCA §36-1-145 (PACA).

Adoption Law Section Legislation (Continued)

- Clarifies the definition and procedure for parental consent for adoption by an unrelated prospective adoptive parent (which is a different procedure than parental consent to related prospective adoptive parents).
- Clarifies that once the termination of parental rights/adoption petition has been filed, the alleged father (putative) cannot resume or start visits or paying child support to rectify the legal ground alleged seeking termination of his rights.
- Provides that all adoption records, sealed or unsealed, will be public records after 100 years after the adoption is finalized.
- Makes many other technical changes.

Dispute Resolution Section Legislation

- HB2438/SB2257, Sponsored by Sen. John Stevens and Rep. Andy Farmer, would update current arbitration law by repealing the present Uniform Arbitration Act (UAA) and replacing it with the Revised Uniform Arbitration Act (RUAA), which has been adopted by 19 states.
- This bill was taken off notice because several business groups expressed concern about a few of the provisions, including the ability for the arbitrator to grant punitive damages, if already allowed under the law.
- We will meet with these groups and educate them on current arbitration caselaw and practice and plan to reintroduce the bill next session.

Legislative Priorities for the TBA



Caps on Attorneys' Fees

- HB1386/SB282, Public Chapter 1079, sponsored by Sen. Paul Rose and Rep. Chris Todd, would have capped attorneys' fees for attorneys representing both counties and county officials in lawsuits, provided for in T.C.A. 8-20-102, brought by county officials, including sheriffs, clerks, register of deeds, etc, if the County refuses to provide the resources required to perform their duties.
- This bill would have kept county officials from engaging good attorneys to represent them since they wouldn't have been able to conduct adequate discovery or be reasonably compensated for their time to try the case.

Caps on Attorneys Fees

- In 2021, the TBA was forced to oppose the bill, so the House sponsor sent it back to the clerk's desk.
- This year, the TBA worked with House sponsor, Rep. Chris Todd to draft an amendment limiting discovery and expediting the trial to keep costs down instead of including caps.
- This legislation was signed into law and goes into effect on July 1, 2022.

Legislation Affecting Judges



New Qualifications for Judgeship

- HB2358/SB2478, Public Chapter 1120, Sponsored by Sen. Mike Bell and Rep. Michael Curcio goes into effect on October 1, 2022.
- Adds additional requirements to qualify to run for a judgeship including:
 - Must be in good standing with the Board of Professional Responsibility (BPR)
 - Must not have been publicly censured, suspended or disbarred from the practice of law by BPR within the 10 years preceding the judge's term of office for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation

Board of Judicial Conduct (BJC)

- HB2401/SB2284, Public Chapter 976, Sponsored by Sen. Mike Bell and Rep. Michael Curcio goes into effect on July 1, 2022.

Makes various changes to BJC:

- Requires that a complaint must be filed with the BJC within one (1) year of the time that the party filing the complaint knew or reasonably should have known of the alleged misconduct.
- Allows BJC to pay for mental/physical evaluation if a judge's mental or physical abilities are called into question and he/she has been referred to TLAP.
- Allows for earlier dismissal of complaints that are repetitive or outside of BJC's jurisdiction.
- If a term ends without an appointment, the current appointee is allowed to continue to serve until an appointment is made.

Judicial candidates - Personal Solicitation

- HB1708/SB2010, Public Chapter 668, Sponsored by Sen. Mike Bell and Rep. William Lamberth went into effect on March 18, 2022.
- Authorizes a judicial candidate to personally solicit and accept campaign contributions.

Judicial candidates - Personal Solicitation

The Judicial Ethics Committee weighed in on the new statute in Advisory Opinion 22-01, in which they stated that a judge or judicial candidate may personally solicit and accept campaign contributions; however, they recommend that judges and judicial candidates “be mindful of the Code as a whole when deciding whether or how he or she should personally solicit and accept contributions.”

The Judicial Ethics Committee reiterated that a judge must act at all times to instill trust and confidence in the independence, integrity and impartiality of the judiciary and shall avoid the appearance of impropriety.

Judicial Redistricting Task Force

- HB1832/SB2011, Public Chapter 1098 sponsored by Sen. Mike Bell and Rep. William Lamberth, authorizes the creation of an Advisory Task Force to recommend a proposed statewide judicial redistricting plan by January 1, 2027.
- The legislature then has until December 31, 2027, to
 1. Reapportion the judicial districts, and
 2. Promote the efficient utilization of publicly funded resources allocated for the courts.
- If the General Assembly fails to pass the task force's proposed judicial redistricting plan, then the funding for each judicial district that has a disproportionately high number of judges, as determined by the Comptroller, must be reduced by 10% during the subsequent fiscal year.

Family Law Legislation



New Child Custody Factor

- HB1866/SB1806, Public Chapter 671, Sponsored by Sen. Dawn White and Rep Glen Casada, went into effect on March 18, 2022.
- Added an additional factor to consider in determining the best interest of the child:
 - Whether a parent has failed to pay court-ordered child support for a period of three years or more.

Challenge of Voluntary Acknowledgment of Paternity

- HB2699/SB1779, Public Chapter 863, sponsored by Rep. Antonio Parkinson and Sen. Jon Lundberg, goes into effect on July 1, 2022.
- Removes the five-year statute of limitations for challenging voluntary acknowledgement of paternity.

Baby Safe Haven Boxes

- HB1301/SB1146, Public Chapter 1008, sponsored by Rep. Jason Zachary and Sen. Richard Briggs, went into effect on May 9, 2022.
- Provides for installation of Safe Haven baby boxes at facilities open for 24 hours to allow mothers to surrender newborn babies up to 14 days old.
- Requires a facility that accepts a surrendered newborn infant to first take the infant to the nearest hospital emergency room and for the hospital to immediately notify the Department of Children's Services (DCS).
- Requires the Office of Vital Records to issue a new birth certificate for the infant, which supersedes and invalidates any previously issued birth certificate.

Probate, Wills and Estate Legislation



Holographic Will – Suicide Note

- SB22841/SB2242, public chapter 941, sponsored by Rep. Bill Beck and Sen. Jon Lundberg, goes into effect on July 1, 2022.
- Applies to Holographic wills written within 30 days prior to a testator's suicide.
- Creates a presumption of suspicious circumstances.
- Places the burden of presenting evidence demonstrating capacity on the Proponent of the will.

Small Estate Limited Letter of Authority Act

- HB1362/SB888, Public Chapter 665, sponsored by Rep. Johnny Garrett and Sen. John Stevens, goes into effect on July 1, 2022.
- Brought by Clerks' Association
- Creates simplified form to access personal property of deceased but the value of the personal property is under \$50,000.
- Requires Death certificate upon filing of the affidavit
- Adds the requirement that the affiant not have any prior felony convictions
- Requires affiant to notify all heirs
- Requires mandatory bond
- Only covers personal property, and that the decedent did not have any interest in any real property
- Provides an additional avenue for conversion to full probate if additional assets exceed \$50,000
- Adds TennCare liability for those applicable decedents

Criminal Law Legislation



Truth-in-Sentencing

- HB2656/HB2248, Public Chapter 988, Sponsored by Rep. Cameron Sexton and Sen. Randy McNally, goes into effect on July 1, 2022.
- Prohibits release eligibility, or credit reduction (only for privileges or classification purposes), for a person committing:
 - Attempted first degree murder; Second degree murder; Vehicular homicide by intoxication; Aggravated vehicular homicide; Especially aggravated kidnapping; Especially aggravated robbery; Carjacking; and Especially aggravated burglary

Truth-in-Sentencing (Continued)

Prohibits release eligibility, or credit reduction beyond 15%, for a person committing:

Aggravated assault (with a deadly weapon, SBJ or death, or against a first responder);

Voluntary manslaughter;

Vehicular homicide;

Reckless homicide;

Aggravated kidnapping;

Involuntary labor servitude;

Aggravated robbery;

Aggravated burglary;

Aggravated arson;

Possessing or using a firearm during the commission or attempt to commit a dangerous felony;

Manufacture, delivery or sale of a controlled substance;
and classified as a Class A, B, or C felony;

and has two (2) or more prior felonies for the same;

or

Criminally negligent homicide

Transparency in Sentencing for Victims Act

- HB2657, SB2183, Public Chapter 952, Sponsored by Rep. Cameron Sexton and Sen. John Stevens, goes into effect on July 1, 2022.
- Provides that at a true sentencing hearing, the court shall estimate the sentence before defendant is eligible for release.
- Requires the Tennessee Department of Corrections to provide a form to assist the court in determining the estimate.
- Prohibits estimation from being the basis for post-conviction relief or for a direct appeal of the sentence.

Legislation that Didn't Pass this Year

- Constitutional Amendment - Selection of Attorney General
- Complete Truth-in-Sentencing
- Bail overhaul
- New, unlimited post-conviction relief process
- Abusive pro-se litigant database
- Aunt/Uncle visitation
- Criminal Forfeiture Process Act
- GPS required for domestic assault
- Special hearings to determine justification of use-of-force
- Appellate Court Improvement Act

LAWPAC

- LAWPAC is TBA's non-profit, non-partisan statewide political action program (PAC) that is committed to helping strengthen the legal profession in Tennessee.
- Contributions to LAWPAC will be combined with those from other lawyers across the state who believe it is vital to support candidates concerned with the measures that can be detrimental – or helpful – to the preservation of the legal profession. Contributions may be made on our website:
- <https://www.tba.org/?pg=contributions&cpAction=showDetail&pid=71&cid=99>
- All lawyers are allowed to contribute.



LEGISLATIVE UPDATE PODCAST & FACEBOOK VIDEOS

- On Thursdays during the legislative session, we publish a weekly Legislative Update which may be viewed on the TBA Facebook page or may be listened to as a podcast on the TBA podcast station.

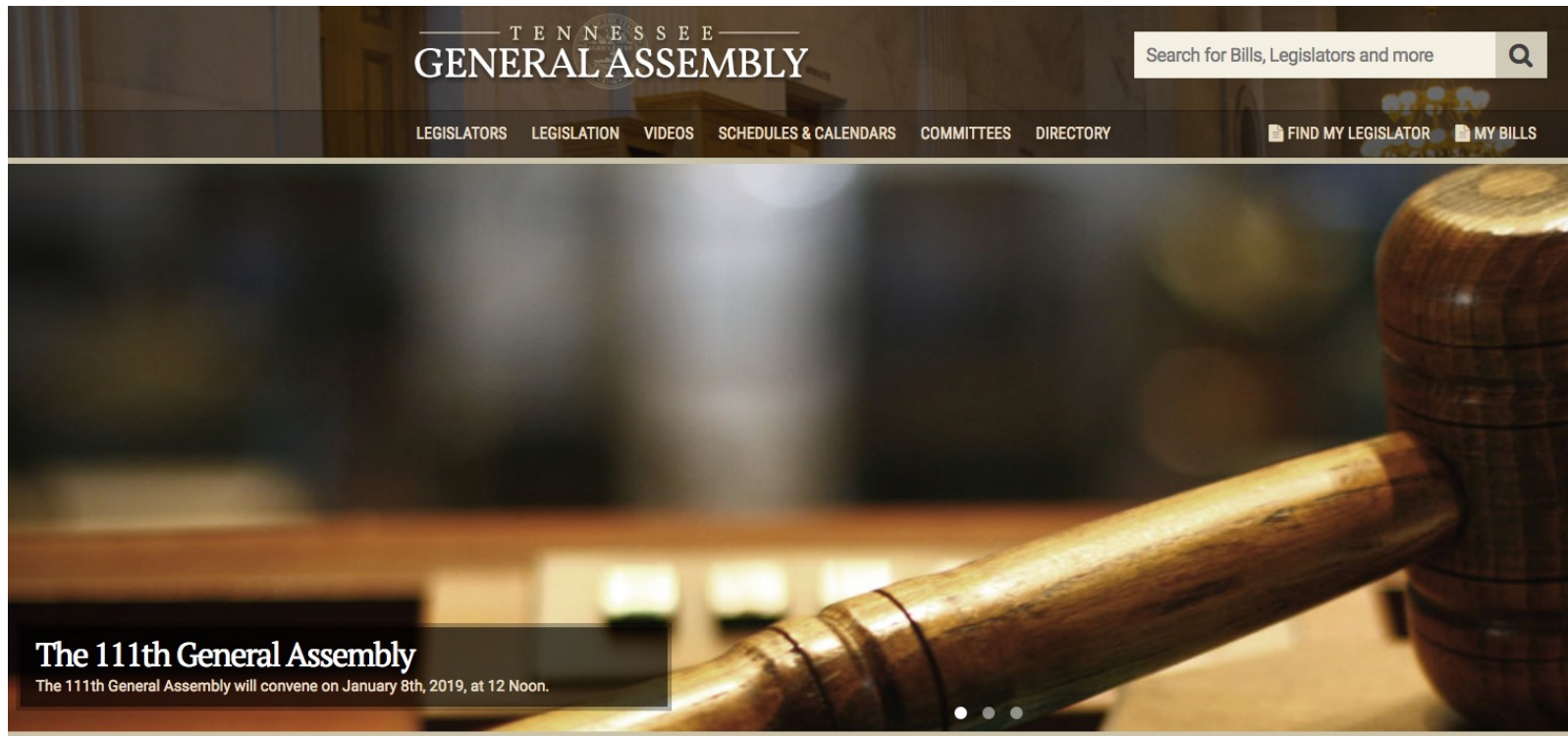


Tennessee Blue Book



- The Tennessee Blue Book is a great resource to find information on the Legislative, Judicial and Executive branches.
- It is published by the Tennessee Secretary of State but can be accessed through this website:
<https://sos.tn.gov/content/tennessee-blue-book>

Tennessee General Assembly



www.capitol.tn.gov

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Thank You!



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