



# LEGISLATIVE UPDATE

*March 15, 2013*

**FROM: Dan K. Worthington, TADC President**

While we are still reviewing the more than 1,700 new bills filed at the end of last week, in advance of the March 8 filing deadline, it does not appear as if many of the more troubling issues of issues we successfully confronted last session have reappeared. However, we are continuing our review and will provide an update to this review shortly. We have set out below a partial listing of the bills TADC is working on currently. To view these bills or any bill filed in the Texas Legislature, visit the [Texas Legislature Online](#) and enter the bill number:

## **Filing of Medical Bills/Paid or Incurred Related:**

HB 1465 by Rep. Bryan Hughes (R-Mineola)--relieves obligation to file medical records with clerk until time of trial and requires objections to admissibility be made prior to trial or waived.

HB 3457 by Rep. Craig Eiland (D-Galveston)--relieves obligation to file medical records with a court before trial commences so long as the business record affidavit is filed and the records and affidavit are provided to the other parties at least 30 days prior to the case being set for trial.

SB 679 by Sen. Robert Duncan (R-Lubbock)--relieves obligation to file medical records with clerk until time of trial; amends §§18.001 and 18.002 to permit "paid" or "actually incurred" amounts to be added to affidavit.

## **Litigation Financing:**

HB 1595 by Rep. Doug Miller (R-New Braunfels)--requires disclosure of agreements where a plaintiff has borrowed money using his or her lawsuit as the asset securing the loan, subjects litigation loans to the interest rate cap applicable to consumer loans generally, and subjects litigation lenders to regulation by the Finance Commission.

HB 1855 by Rep. Doug Miller (R-New Braunfels)--requires disclosure of litigation financing agreements.

HB 1254 by Rep. Senfronia Thompson (D-Houston)/SB 1283 by Sen. Kevin Eltife (R-Tyler)--permits litigation financing, codifies industry best practices, and requires lenders to be registered with the Texas Department of Licensing and Regulation.

NOTE: These bills are scheduled for hearing in House Judiciary & Civil Jurisprudence on Monday, March 18 at 2 p.m.

### **Substituted Service/Social Media:**

HB 1989 by Rep. Jeff Leach (R-Plano)--establishes a procedure to permit substitute service through service on social media. Has been referred to House Judiciary & Civil Jurisprudence.

### **Made Whole Doctrine:**

HB 1869 by Rep. Fore Price (R-Amarillo)/SB 1339 by Sen. Duncan--partial restoration of "made whole" doctrine as it relates to contractual liens in health insurance contracts through the establishment of a "quasi-proportionate" recovery scheme.

### **Statute of Limitations--Insurance:**

HB 1651 by Rep. John Smithee (R-Amarillo)/SB 851 by Sen. Larry Taylor (R-Friendswood)--allows an insurer in a homeowner or residential property insurance contract to limit the statute of limitations on first party claims to 2 years from the date of denial or 3 years from the date of loss. (Note: SB 851 has been heard in Senate Business & Commerce and is pending in committee.)

HB 2086 by Rep. Ruth Jones McClendon (D-San Antonio)--establishes a 4-year statute of limitations for claims brought under Chapter 542 of the Texas Insurance Code.

HB 2956 by Rep. Smithee--prohibits insurers from using a form that requires pre-dispute arbitration arising from most insurance contracts (excludes TWIA).

### **Worker's Compensation:**

SB 1049 by Sen. Leticia Van de Putte (D-San Antonio)--reverses *Tex. Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430 (Tex. 2012) by allowing a claim to be brought against a worker's compensation carrier for unfair settlement practices under Chapter 541, Insurance Code (referred to Senate State Affairs).

HB 1468 by Rep. Kenneth Sheets (R-Dallas)/SB 926 by Sen. Joan Huffman (R-Houston)--reverses *In re XL Specialty Ins. Co.*, 373 S.W.3d 46 (2012) by establishing that communications between an attorney representing a worker's compensation carrier and the employer (insured) in the administrative proceedings are protected by the attorney-client privilege (HB 1468 has been referred to House Insurance; SB 926 to Senate State Affairs).

### **Limits on Claims Against Insurers:**

HB 1407 by Rep. Smithee--mandates automobile insurance policies permit an insured to invoke arbitration (referred to House Insurance).

HB 1408 by Rep. Smithee--creates an administrative dispute resolution process for claims brought under a policy issued by the Fair Plan (referred to House Insurance).

HB 2125 by Rep. Van Taylor (R-Plano)--for insurance policies governing property damage (excluding TWIA, Fair Plan, and Tex. Automobile Plan Association), requires an appraisal process (the cost of which is divided between the insurer and insured) as a condition to filing suit (referred to House Judiciary & Civil Jurisprudence).

### **Asbestos Inactive Docket:**

HB 1325 by Rep. Miller--permits dismissal of cases pending in the MDL asbestos/silica dockets in which the claimant has not served a complying report unless good cause is demonstrated for retention; extends limitations for re-filing when report can be obtained and retroactive application of law in effect at the time the case was initially filed (referred to House Judiciary & Civil Jurisprudence).

### **Uninsured/Underinsured Motorist Actions:**

HB 1558 by Rep. Stephanie Klick (R-Fort Worth)--allows an insurer to recovery attorney's fees against an insurer if the insured prevails in an UM/UIM action (referred to House Insurance).

HB 1774 by Rep. Ed Thompson (R-Pearland)--bars an uninsured claimant from recovering non-economic or punitive damages in an action arising from an automobile accident; does not apply if tortfeasor driver was intoxicated, flees the accident, or accident was willful or if the vehicle was being operated in furtherance of a felony (referred to House Judiciary & Civil Jurisprudence).

### **Barratry:**

HB 1711 by Rep. Allen Fletcher (R-Tomball)--permits recovery of statutory barratry damages even if the attorney voluntarily voids the contract and adds a recoverable \$10,000 penalty (referred to House Judiciary & Civil Jurisprudence).

### **Judicial Compensation:**

HB 1710 by Rep. Richard Raymond (D-Laredo)--permits a county to give a state district judge a cost of living pay raise if there has been no pay increase during the preceding 3 years; decreases the time required for longevity pay from 16 years to 10 years (referred to House Judiciary & Civil Jurisprudence).

### **Judicial Selection:**

SB 103 by Sen. Dan Patrick (R-Houston)--eliminates straight ticket voting in judicial races (referred to Senate State Affairs).

SB 577 by Sen. Duncan--establishes a non-partisan elect-appoint-retain system for judicial selection (referred to Senate State Affairs).

**Technology Funding:**

SB 1147 by Sen. Royce West (D-Dallas)--establishes a statewide electronic filing system under rule adopted by the Texas Supreme Court; authorizes an additional filing fee.

SB 1146 by Sen. West--establishes a statewide electronic filing system fund financed by an increase in certain fees and court costs.

NOTE: SB 1147 and SB 1146 will be heard in Senate Jurisprudence on Tuesday, March 19th.

**Exemplary Damages:**

HB 3098 by Rep. Tryon Lewis (R-Odessa)—would prohibit both the discovery and admissibility of a party's net worth as a component of exemplary damages.

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