



LEGISLATIVE UPDATE

MARCH 22, 2013

FROM: Dan K. Worthington, TADC President

The filing deadline for new bills has passed and committee hearings are now in full swing. The following is a current status of the bills TADC is actively engaged with or closely monitoring this session. Changes in status from last week's report are highlighted in **BOLD** type. 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. **Referred to House Judiciary & Civil Jurisprudence.**

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. **Referred to House Judiciary & Civil Jurisprudence. TADC has suggested to Rep. Eiland a slight revision of the bill to refer to the "clerk of the court" to conform with the TRE.**

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. **Scheduled for public hearing Monday, March 25, in Senate State Affairs. After several conversations with Sen. Duncan's office relating to SB 679, TADC has agreed with and support the following to be included in the substitute:**

"The affidavit is intended to comport with Section 41.0105 of the Civil Practice and Remedies Code, which allows evidence of only those medical expenses that have been paid or will be paid, after any required credits or adjustments. The records attached to the affidavit must only contain evidence of recoverable medical expenses admissible at trial."

The main points of this bill were to eliminate the need to file medical records before trial

(the affidavit is still filed) and to add a way to get in the paid or incurred amounts. We were concerned that as originally written, the rule could inadvertently repeal *Escabedo*. This addition clarifies that there is no repeal.

Along with a minor tweak to Section 18.002 and changing 18.001(d) to include "clerk of the court."

TADC's goal is to eliminate confusion (and appellate fights) over whether the affidavit purported to effectuate a change to existing law. TADC will offer testimony in support of the changes on Monday.

Health Care Claims:

HB 2843 by Rep. Kenneth Sheets (R-Dallas)—requires a claimant to file the expert report on each defendant not later 120 days of that defendant's answer (rather than the date of the original petition) and allows a defendant to object to the report not later than 21 days of the defendant's answer or of service of the report, whichever is later. **HB 2843 will be heard in House Judiciary & Civil Jurisprudence on Monday, March 25.** TADC will register support for the bill at the hearing.

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 1595 was heard in House Judiciary & Civil Jurisprudence Committee on Monday, March 18.** The committee heard testimony from the U.S. Chamber of Commerce (for the bill) and the litigation finance industry (against the bill), and **HB 1595 was left pending before the committee.**

HB 1855 by Rep. Doug Miller (R-New Braunfels)--requires disclosure of litigation financing agreements. **Referred to House Judiciary & Civil Jurisprudence.**

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. **HB 1254 was heard in House Judiciary & Civil Jurisprudence Committee on Monday, March 18.** The committee heard testimony from the litigation finance industry (for the bill), and **HB 1254 was left pending before the committee.**

Substituted Service/Social Media:

HB 1989 by Rep. Jeff Leach (R-Plano)--establishes a procedure to permit substitute service through service on social media. 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. **HB 1869 referred to House Judiciary & Civil Jurisprudence; SB 1339 referred to Senate State Affairs. TADC supports this bill in its current form.**

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. SB 851 has been heard in Senate Business & Commerce and is pending in committee. **HB 1651 has been referred to House Insurance.**

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. **Referred to House Insurance.**

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 Business and Industry; 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 **Rereferred to House Insurance** (originally 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. **Negotiations are ongoing between TLR, TCJL, and TTLA. Bill may be heard in House committee on Monday, April 1.**

Uninsured/Underinsured Motorist Actions:

HB 1558 by Rep. Stephanie Klick (R-Fort Worth)--allows an insured 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. **Heard in House Judiciary & Civil Jurisprudence on March 11 and left pending.**

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. **Heard in Senate Jurisprudence on March 18 and left pending. TADC registered in support of SB 1146 at the hearing.**

SB 1146 by Sen. West/HB 2302 by Rep. Todd Hunter (R-Corpus Christi)--establishes a statewide electronic filing system fund financed by an increase in certain fees and court costs. **Heard in Senate Jurisprudence on March 18 and left pending. TADC registered in support of SB 1147 at the hearing.**

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. **Referred to House Judiciary & Civil Jurisprudence.**

Appeals:

HB 3032 by Rep. Ana Hernandez Luna (D-Houston)—requires the SCOT to adopt rules mandating the final disposition of appeals not later than one year after perfection and expedited resolution of interlocutory appeals within three months. **Referred to House Judiciary & Civil Jurisprudence.**

Recusal:

HB 3380 by Rep. Todd Hunter (R-Corpus Christi)—repeals §74.053(c)-(f), which govern objections to the assignment of a trial judge, and provides that a trial judge may only be recused or disqualified if timely motion is made and granted under Rule 18(a) or 18(b), TRCP. **Referred to House Judiciary & Civil Jurisprudence.**

Attorney’s Fees:

HB 3034 by Richard Raymond (D-Laredo)—limits actions by a claimant with a contingent fee or litigation expense agreement on claims arising out of settlement agreements to grounds of coercion, force, corruption, or forgery. **Referred to House Judiciary & Civil Jurisprudence.**

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