



# LEGISLATIVE UPDATE

*May 10, 2013*

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

So far, this has been the least active session on the Civil Justice front as we have experienced in many years. As the legislative deadlines have kicked in, the possibilities for this to change are narrowing. Yesterday (May 9) was the last day that a non-local House bill or joint resolution could be considered on second reading, and May 18 is the last day for House committees to report Senate bills and resolutions. The last House calendar with Senate bills must be distributed by 10 p.m. on May 19. The last House calendar with Senate bills must be distributed on May 19, with the final day for consideration of 2nd reading Senate bills on May 21. The following is a current status of the bills TADC is actively engaged with or closely monitoring this session. You will notice that a number of bills from prior reports have been removed. These bills are now dead, though some ideas may be attached to other bills moving through the system. We will keep you apprised if that occurs. Changes in status are highlighted in **bold** type.

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

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.

The objective of the bill is 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 We were concerned that as originally written, the rule might have inadvertently repealed *Escabedo*. We worked to have this concern addressed and it was clarified that there is no repeal. TADC's goal is to eliminate confusion (and appellate fights) over whether the affidavit purported to effectuate a change to existing law.

**SB 679 has passed the Senate and was voted favorably from House Judiciary & Civil Jurisprudence on May 1. The bill has been recommended for the House Local & Consent Calendar. It supersedes the above-mentioned HB 1465 and HB 3457.**

### **Health Care Claims:**

HB 2843 by Rep. Kenneth Sheets (R-Dallas)—requires a claimant to file the expert report on each defendant not later than 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 was set on the House calendar on May 9 but not reached and is dead for the session.**

### **Made Whole Doctrine:**

HB 1869 by Rep. Four 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 limited recovery scheme for the subrogor when the injured party does not recover all of his or her damages. **HB 1869 passed the House on May 6 and was voted favorably from Senate State Affairs on May 9.** TADC supports this bill in its current form.

### **Medicare Subrogation:**

HB 658 by Rep. Kenneth Sheets (R-Dallas)—tolls postjudgment interest on an unpaid balance of an award of damages subject to a CMS lien, provided that the defendant pays in response to a demand letter before the 31<sup>st</sup> day after receipt of the demand. **HB 658 passed the House on May 3 and was referred to Senate State Affairs on May 7.**

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

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 was heard in House Insurance on April 2. Representatives of the workers' compensation insurance industry testified in favor. Representatives of TTLA, the AFL-CIO, Texas Workers Advocates testified against the bill. TADC supports the concept of the legislation but has concerns with the draft as filed. **HB 1468 passed to third reading in the House on May 9.** The Senate companion, SB 927 by Sen. Joan Huffman (R-Houston) has not been heard in Senate State Affairs.

### **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. The bill has been agreed to by the plaintiffs' and defense asbestos bars. **The bill passed the Senate on May 8 and is on its way to the Governor.**

**Uninsured/Underinsured Motorist Actions:**

HB 1773 by Rep. Ed Thompson (R-Pearland)—prohibits an insurer from delivering, issuing for delivery, or renewing a named driver policy. The bill allows an insurer to exclude individually named drivers, but not a class of drivers. **HB 1773 passed the House on May 9.**

**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. Passed the House on April 11. **Voted favorably from Senate State Affairs on May 6 and has been recommended for the Senate Local and Consent Calendar.**

**Technology Funding:**

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. Reported favorably from Senate Jurisprudence on April 3. **The House companion, HB 2302 by Rep. Todd Hunter (R-Corpus Christi) has passed the House and was voted favorably from Senate Jurisprudence on May 7.** TADC supports these bills.

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