



LEGISLATIVE UPDATE

May 3, 2013

FROM: Dan K. Worthington, TADC President

The end-of-session crunch is in full swing. The House and Senate are working furiously to clear the calendars as legislative deadlines near. Monday, May 6 is the last day for House committees to report House bills and constitutional amendments. The following day, May 7, is the last day for a House bill or resolution to be scheduled for floor debate on a daily calendar. May 9 is the last day that a non-local House bill or joint resolution may 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 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. Changes in status from the last 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. Heard in House Judiciary & Civil Jurisprudence on April 15 and left pending.

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. This bill has not been heard in House Judiciary & Civil Jurisprudence.

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. After several conversations with Sen. Duncan's office relating to SB 679, the following language was inserted into the Senate committee substitute at the

behest of TADC:

“If a medical bill or other itemized statement attached to an affidavit under Subsection (b-1) reflects a charge that is not recoverable, the reference to that charge is not admissible.”

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*. This addition clarifies 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. 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 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 reported from House Judiciary & Civil Jurisprudence on April 8 and awaits scheduling on the House calendar.

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). **A committee substitute for HB 1595 was reported from House Judiciary & Civil Jurisprudence on April 29.**

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). HB 1254 remains 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 is scheduled for House floor debate on May 4.** SB 1339 was heard in Senate State Affairs on April 15 and left pending. 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 was heard in House Insurance on April 9. Representatives of TTLA, Texas Watch, and the insurance industry testified against the bill. TADC opposes this bill. No one testified in support.

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 2086 was heard in House Insurance on April 16 and left pending.

HB 2956 by Rep. Smithee--prohibits insurers from using a form that requires pre-dispute arbitration arising from most insurance contracts (excludes TWIA). HB 2956 was heard in House Insurance on April 9. The Texas insurance commissioner and Texas Watch testified in support of the bill. There was no opposition testimony. TADC supports this bill.

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. Heard in Senate State Affairs on April 22 and left pending.

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 was voted favorably as substituted from House Business & Industry on April 30.** The Senate companion, SB 927 by Sen. Joan Huffman (R-Houston) has not been heard in Senate State Affairs.

Limits on Claims Against Insurers:

HB 1407 by Rep. Smithee--mandates automobile insurance policies permit an insured to invoke arbitration. Heard in House Insurance on April 16 and left pending.

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. Heard in House Insurance on April 16 and left pending. Representatives of TAB and Myron Steves Insurance testified in favor of the bill, with the TILA and Texas Watch in opposition. **HB 2125 was voted favorably as substituted from House Insurance on April 30.**

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 plaintiff's and defense asbestos bars. **The bill was voted favorably from Senate State Affairs on April 29 and recommended for the Senate Local and Consent Calendar.**

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. Passed the House on April 11. Referred to Senate State Affairs.

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. **Reported favorably from House Judiciary & Civil Jurisprudence on May 1.**

Judicial Selection:

SB 103 by Sen. Dan Patrick (R-Houston)--eliminates straight ticket voting in judicial races Heard in Senate State Affairs on April 1 and left pending.

SB 577 by Sen. Duncan--establishes a non-partisan elect-appoint-retain system for judicial selection. Heard in Senate State Affairs on April 1 and left pending.

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. Reported from Senate Jurisprudence on April 2. TADC supports this bill.

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 has been scheduled for hearing in Senate Jurisprudence on May 7.** TADC supports these bills.

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