



2011 LIFE & HEALTH INSURANCE LEGISLATION IN TEXAS

INTRODUCTION AND OVERVIEW

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The Texas Legislature began the 82nd legislative session in January 2011, but was unable to conclude all of its business at the end of 140 days and the Governor called the legislators back for a special session which concluded on June 29, 2011.

Thompson Coe attorneys, particularly Jay Thompson and Albert Betts, were involved in representing various individual life and health insurance clients and the Texas Association of Life & Health Insurers (TALHI) on a broad spectrum of issues impacting life, annuities and health insurance.

During the 82nd Session and Special Session there were over 5,700 bills filed compared with over 7,000 in 2009. Jay Thompson and Albert Betts were directly involved in reviewing and analyzing and assisting in drafting over 260 bills that were identified to have some impact on the life, annuity and health insurance industry. Fifty-two bills became law, including affirmative legislation that was sponsored by TALHI.

This newsletter will summarize some of the new laws and provide insight into future rules and regulations necessary to implement the changes.

The dominant issue facing the 82nd Texas Legislature was how to fund state government for the next two years in light of a \$27 billion anticipated budget shortfall. This shortfall had ramifications for education, regulation and business. The Legislature was also confronted with the need to pass legislation to continue certain major state agencies because of the Sunset review process. These agencies included the Texas Department of Insurance, the Texas Department of Transportation and the Texas Railroad Commission.

Finally, an issue that is personal to both elected officials and future politicians, is the subject of redistricting. The Legislature passed bills drawing new districts for both the House and Senate. This could have a major impact on the composition of future legislatures.

Because of the significant changes as a result of elections in 2010, the House was comprised of 101 Republicans and 49 Democrats compared with 77 Republicans and 73 Democrats in 2009. The composition in the Senate

was not materially changed, and the key committee in the Senate for life and health issues was the Senate State Affairs Committee. This session, the Senate State Affairs Committee was chaired by Senator Robert Duncan from Lubbock. The House Insurance Committee was comprised of six Republicans and three Democrats and was chaired by Representative John Smithee. The result of the 2010 elections is that there were significantly fewer issues that would have been detrimental to the life and health insurance business and other issues that created a more favorable business climate for the business of insurance.

During the regular session, there were numerous life, annuity and health insurance bills that did not pass but generated some debate and will likely be continuing issues. Most importantly there were bills that would have implemented various provisions of the federal health care reform law. Because of the predominant influence of Republicans in the House, there was little appetite on the part of the Governor or Republicans in the Texas Legislature to implement the federal health care reform bill. This included legislation that would have implemented exchanges or provided for more regulation on health insurance companies. Instead, the Legislature shifted its focus on ways that the State of Texas could opt-out of the federal Medicaid system and receive only block grants and administer a Medicaid-type program on its own in conjunction with compacts with other states. There was also little discussion, as in previous sessions of the Legislature, on onerous legislation dealing with rescissions and cancellation or medical loss ratios.

This report includes those bills considered to have a direct impact on the insurance industry. This report provides a brief summary of the bills that did pass along with the effective date for each bill. Many bills may have different effective dates for various sections of the bill. Where possible, the summary references any due dates for operational changes applicable under a new law. This report is not intended to give legal advice nor should it be relied upon as a complete representation of the law. Any decision to act or not act should be made only after thorough review of the legislation passed and after consulting with legal counsel. Also, although the Legislature has passed a bill, the state agency responsible for administering the law may still be required to adopt administrative rules to implement a bill that has been passed. We urge close attention to the rulemaking process that will occur over the next several months at the Texas Department of Insurance.

TCCI SUMMARIES OF 2011 LIFE & HEALTH LEGISLATION NEWSLETTER

AGENTS

HB 2154 CE REQUIREMENTS FOR AGENTS WHO SELL ANNUITIES. In 2009, the Legislature passed a law to require agents selling annuities to complete four hours each year of continuing education that specifically relates to annuities. HB 2154 amends Texas law to require the completion of 8 hours during the agent's 2-year licensing period. This bill is effective September 1, 2011.

HB 2503 INSURANCE AGENT LICENSES FOR FOREIGN CORPORATIONS/PARTNERSHIPS. Under current law, foreign corporations cannot be licensed under the Texas Insurance Code as agents unless they also register with the Secretary of State. Numerous foreign corporations may need to be licensed to split commissions but do not need to be registered with the Secretary of State because they are not otherwise doing business in Texas. HB 2503 amends the Insurance Code to remove the requirement that certain foreign corporations and partnerships seeking to be



licensed as agents in Texas also register with the Secretary of State. This bill is effective September 1, 2011.

SB 867 LICENSING EXAM ACCOMMODATIONS. Amends the Occupations Code and requires state agency licensing exams to provide reasonable accommodations for examinees diagnosed with dyslexia. State agencies must adopt rules no later than December 1, 2011. This bill applies to licensing exams offered on or after January 1, 2012. This bill is effective September 1, 2011.

LIFE AND ANNUITIES

HB 1032 RESCISSION PERIOD FOR ANNUITY CONTRACTS. This bill amends Chapter 1116 of the Insurance Code to define “annuity” as a fixed, variable or modified guaranteed annuity that is individually solicited, whether classified as an individual annuity or group annuity. The bill provides that an annuity purchaser may rescind the contract within 20 days after the contract is delivered and receive an unconditional refund of premiums paid for the contract, including any contract fees or charges. A separate provision applies to variable annuities where the refund must be equal to the cash surrender value in the contract plus any fees deducted from premiums. The 20 day free look period does not apply to an annuity contract if the prospective owner is an accredited investor. This bill is effective September 1, 2011.



HB 2172 GROUP LIFE INSURANCE. Under current law, group life insurance coverage can be extended to spouses and children in an eligible group. The age limitation for children is the age of 25 and can also be extended, if the child is unmarried. HB 2172 amends §1138.802 of the Insurance Code to delete the “unmarried” requirement for children. It also permits coverage for children over the age of 25. Grandchildren can be covered over the age of 25, and the dependency requirement for grandchildren is also eliminated. This bill will permit insurers providing group life coverage to various employer groups to use age limits that are similar to those laws passed under federal health care law changes. This bill is effective for policies issued, delivered or renewed on or after January 1, 2012.

HB 2277 SUITABILITY OF ANNUITIES. Two years ago, Texas passed laws relating to the suitability of annuity transactions and established standards for agents in making recommendations to consumers for purchasing annuity products. In 2009, Congress enacted the Dodd-Frank Financial Reform Act that exempted certain equity indexed annuity contracts from federal regulation, provided that a state has laws regulating suitability based on NAIC suitability requirements. HB 2277 conformed Texas law to the most recently adopted NAIC suitability requirements for annuity transactions. In addition to providing stronger protections for consumers, the changes to Texas law impose additional duties on both insurers and agents to obtain suitability information from consumers before recommending the purchase of a particular annuity. Insurers must establish a supervision system designed to achieve compliance with the suitability requirements. Insurers that comply with the national standards adopted by the Financial Insurance Regulatory Authority (FINRA) relating to supervision satisfy the requirements of Chapter 1115 of the Insurance Code as well as the requirements under the Federal Securities Act of 1933. The bill also makes changes to agent training requirements to require insurers to establish standards for product training. The training requirements for suitability can also meet the CE requirements in other provisions of Texas law for training relating to annuities. Texas law was amended to require the commissioner to reduce or eliminate sanctions if an insurer takes corrective action for the consumer promptly after a violation is discovered or if the violation is not part of a pattern of practice.

The changes to the suitability requirements apply only to the recommendations to purchases made on or after June 1, 2012. Recommendations made before June 1, 2012 are governed by the law in effect before that date.

HB 2277 REBATES AND WAIVER OF SURRENDER CHARGES. Under current Texas law, it is not a rebate for an insurance company to waive surrender charges when there is an exchange of a life or annuity contract for another life or annuity contract issued by the same insurer. HB 2277 amends §541.058 to permit waiver of surrender charges not only where there is an exchange with the same insurer, but also where there is an exchange with an affiliate in the same holding company group. The contract holder must be given credit for the time that the previous contract was held when determining surrender charges under the new contract. The amendments to §541.058 of the Insurance Code apply only to exchanges of life or annuity contracts on or after September 1, 2011.

SB 1810 EXEMPTION OF CERTAIN RETIREMENT ACCOUNTS FROM ACCESS BY CREDITORS. This bill amends §42.0021, Texas Property Code, to exempt from attachment, execution or seizure, certain rights to assets, including under an annuity, deferred compensation, or simplified employee pension plan, an individual retirement account or individual retirement annuity, an inherited individual retirement account or individual retirement annuity, or a health savings account. The exemption is to the extent the plan, contract, annuity, or account is exempt from federal income tax, or to the extent federal income tax on the person's interest is deferred until actual payment of benefits to the person under §§223, 401(a), 403(a), 403(b), 408(a), 408A, 457(b), or 501(a), Internal Revenue Code of 1986, including a government plan or church plan described by §414(d) or (e). This bill is effective June 17, 2011.



HEALTH CARE

HB 438 ORALLY ADMINISTERED ANTI-CANCER MEDICATIONS. This bill was one of the few mandates that passed this session and requires most large group and individual major medical health benefits plans to provide coverage for orally administered anti-cancer medications on a basis no less favorable than intravenously administered or injected anti-cancer medication. The mandate only applies if the health benefit plan provides coverage for cancer treatment. If orally administered, the medication is authorized and the cost to the covered individual may not exceed the co-insurance or co-payment amount that would be applied to a chemotherapy or other cancer treatment. There are restrictions on the health plans to prohibit them from re-classifying certain anti-cancer medications, so as to increase the co-insurance, co-payment or out-of-pocket expense. This legislation does not apply to self-funded, private employers or public employer plans. This applies only to certain health benefit plans that issue or renew after January 1, 2012.

HB 1772 EXCLUSIVE PROVIDER PLANS. This bill allows exclusive provider plans, similar to health maintenance organizations that provide services only from network providers. The bill amends §1301.001 of the Insurance Code relating to health insurance to define an exclusive provider plan as a plan in which the insurer excludes benefits for some or all services, other than emergency services, provided by a health care physician or a health care provider who is not a contracted preferred provider. Exclusive provider plans may not provide dental care benefits. Generally, exclusive provider plans would be subject to the same prompt pay requirements as other preferred providers. Insurers must also establish procedures to ensure availability, accessibility, quality and continuity of care. Current Texas law does not allow for an exclusive provider organization or plan.

This bill is effective September 1, 2011, but only applies to exclusive provider benefit plans that are delivered, issued or renewed on or after January 1, 2012.

HB 2102 MAMMOGRAPHY REPORTS. This bill amends the Health and Safety Code to provide that if a mammography report demonstrates a patient has dense breast tissue, notice of benefits of supplemental breast cancer screening must be provided. A screening facility is required to comply beginning January 1, 2012. This bill is effective September 1, 2011.

HB 2903 ALL-INCLUSIVE CARE FOR THE ELDERLY. This bill amends the Human Resources Code regarding the program of all-inclusive care for the elderly (PACE). The bill requires the Health and Human Services Commission (HHSC) to ensure that PACE participation is available as an alternative to enrollment in a Medicaid managed care plan; HHSC must ensure that managed care organizations (MCOs) with which HHSC contracts consider the PACE program when referring a recipient to a nursing home or other long-term care facility. HHSC must establish protocols for the referral of eligible persons for PACE; ensure that person is not required to hold a certificate of authority as an HMO to provide services under the PACE program. HHSC must adopt a standard reimbursement methodology for provider payments under the PACE program. The Department of Aging and Disability Services shall consider the PACE program as a community-based service option under any "Money Follows the Person" demonstration project or any other initiative that is designed to eliminate barriers to prevent flexible use of funds. This bill is effective September 1, 2011.



SB 554 CONTRACTS BETWEEN DENTISTS AND HMOS OR INSURERS. This bill amends the Insurance Code to prohibit a contract between a health maintenance organization (HMO) and a dentist from limiting the fee the dentist may charge for a service that is not a covered service. This bill is effective September 1, 2011.

SB 822 EXPEDITED CREDENTIALING OF PHYSICIANS BY MANAGED CARE PLANS. This bill amends the Insurance Code, Section 1452.101, to revise the definition of medical group to include faculty practice plans. This bill is effective September 1, 2011.

SB 859 HEALTH INSURANCE COOPERATIVES. The Texas Legislature has previously enacted bills that allow the formation of private cooperatives to permit employers to purchase employer health benefit plans. SB 859 adds provisions that allow an eligible single-employee business to join a cooperative. Cooperatives must file elections on whether to permit an eligible single-employee business to join the cooperative and enroll in the plan coverage. Cooperatives are also permitted to file an election to treat each participating employer within a cooperative as a separate employer for purposes of rating small and large employer health benefit plans. The commissioner is required to adopt rules on eligible single employee businesses including rules that the business has a business purpose and was not formed solely to obtain health benefit plan coverage. This bill is effective June 17, 2011.

LIFE SETTLEMENTS

HB 2277 LIFE SETTLEMENTS. HB 2277 became an omnibus bill for a variety of different issues. One of the most important issues related to the regulation of life settlement transactions. Current Texas law regulates viatical and life settlement transactions under Chapter 1111 of the Insurance Code. HB 2277 repealed

Chapter 1111 and codified a new Chapter 1111A regulating life settlement transactions. Chapter 1111A is based on the NCOIL Model Act which includes numerous updates and protections in the regulation of life settlement transactions. It also provides some additional tools to permit insurers to detect stranger originated life insurance policies (STOLI). The complete STOLI protections in the NCOIL Model could not be adopted because of the broad definition of "insurable interest" in Texas law compared to other states. HB 2277 includes new definitions of life settlement; requires that life settlement providers and brokers be licensed and regulated; contains updated provisions relating to advertising for life settlements; and disclosures to owners of policies prior to the time they enter into a life settlement contract. Disclosures must be made by the broker and life settlement provider (purchaser of the policy). In addition, the new law requires certain disclosures to insurers that will assist insurers in determining possible STOLI type transactions such as whether the proposed owner intends to pay premiums with his assistance of financing from a lender. Finally, the list of prohibited practices for person engaged in the business of life settlement transactions includes the updated NAIC model provisions on prohibited practices.

This bill is effective September 1, 2011. There is transition language in HB 2277 which allows a person licensed before the effective date to continue to act under the license until the provisions of this Act are fully implemented by the Texas Department of Insurance.

PHARMACY BENEFITS

HB 1405 MODIFICATIONS TO DRUG FORMULARIES. Under current law, Chapter 1369 of the Insurance Code regulates health benefit plans which cover prescription drugs and use a drug formulary. Amendments to the law were made to apply the subchapter to both small and larger employer groups and individual plans. The formulary provisions would not apply to a child health plan program or a Medicaid program. Modifications to a drug plan can only be made at the time of coverage renewal and must be effective uniformly for all group sponsors. In addition, changes or modifications to a formulary require notice to the commissioner, each affected sponsor, enrollee, and each individual plan holder. Modifications include removing a drug from a formulary; adding a requirement that an enrollee receive prior authorization; imposing quantity limits; imposing step-therapy restrictions; or moving a drug to a higher cost sharing tier, unless a generic drug is available. This bill applies to health policies issued or renewed on or after January 1, 2012.



HB 2292 PAYMENT OF CLAIMS TO PHARMACIES/PHARMACISTS. This bill amends the Insurance Code to require an HMO, preferred provider benefit plan, or insurer, or a pharmacy benefit manager (PBM) that administers pharmacy claims for the HMO, preferred provider benefit plan, or insurer, that affirmatively adjudicates a pharmacy claim that is electronically submitted to pay the total amount of the claim through electronic funds within 18 days, and within 21 days for a pharmacy claim that is not electronically submitted. The bill prohibits the use of extrapolation to complete the audit of a pharmacy or pharmacist. The bill also prohibits an insurer from requiring extrapolation in audits as a condition of participation in the insurer's contract, network, or program for a preferred provider that is a pharmacist or pharmacy. This bill is effective September 1, 2011.

HEALTH PROVIDER-RELATED LEGISLATION

HB 680 COMPLAINTS FILED WITH THE TEXAS MEDICAL BOARD. This bill amends the Occupations Code by increasing the time from 30 days to 45 days to allow the Texas Medical Board (TMB) to inform a physician

of the complaint and complete a preliminary investigation; increases the license holder's rebuttal time from five business days to 15 business days; and provides a remedial plan. The Occupations Code is amended to prohibit the TMB from considering or acting on a complaint involving care provided more than seven years before the date on which the complaint is received by TMB unless the care was provided to a minor. The bill prohibits TMB from accepting anonymous complaints. This bill amends the Occupations Code to require the TMB, after receiving the administrative law judge's findings of fact and conclusions of law in a contested case under the Administrative Procedure Act, to dispose of the contested case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law, rather than the Board determining the charges on the merits. The bill prohibits TMB from changing a finding of fact or conclusion of law or vacating or modifying an order of the administrative law judge. The bill establishes that for each case, TMB has the sole authority and discretion to determine the appropriate action or sanction and prohibits an administrative law judge from making any recommendation regarding the appropriate action or sanction. Rules to be adopted by January 1, 2012. This bill is effective September 1, 2011.

HB 2098 PHYSICIANS/PHYSICIANS ASSISTANTS CORPORATIONS. This bill amends the Business Organizations Code to allow physicians and physicians assistants (PAs) to form corporations, partnerships, professional associations or professional limited liability companies, with the PAs being limited to a minority ownership interest. This bill is effective June 17, 2011.

SB 227 NON-DISCIPLINARY RESOLUTION OF COMPLAINTS AGAINST PHYSICIANS. This bill amends the Occupations Code to authorize the Texas Medical Board, in addition to its existing disciplinary authority and authority to dispose of certain complaints in contested cases, to issue and establish the terms of a remedial plan to resolve the investigation of a complaint against a physician. The bill prohibits a remedial plan from being imposed to resolve a complaint concerning a patient, the commission of a felony, or a matter in which the physician engaged in inappropriate sexual behavior, or in which the appropriate resolution may involve a restriction on the manner in which a license holder practices medicine. The bill requires the Board to adopt rules not later than January 1, 2012. This bill is effective September 1, 2011.

SB 78 ADVERSE LICENSING, LISTING, OR REGISTRATION DECISIONS. This bill amends the Government Code relating to adverse licensing, listing, or registration decisions by certain health and human services (HHS) agencies. The bill provides that HHS agencies may deny applications based on an adverse action from another agency. The bill requires each HHS agency that regulates persons in certain facilities to maintain a record for ten years and share monthly reports with other HHS agencies of each license application that is denied, revoked, suspended or terminated by the agency. The bill also provides that rules necessary to implement the provisions of the bill be adopted not later than March 1, 2012. This bill is effective September 1, 2011.



SB 192 PATIENT ADVOCACY PROTECTIONS BY NURSES. This bill amends the Occupations Code to expand the immunities from liability extended to a person who, in good faith, makes a report required or authorized under provisions of the Nursing Practice Act relating to reporting violations and patient care concerns to include immunity from criminal liability and specifies that the civil and criminal liability is the liability that, in the absence of the immunity, might result from making the report. The bill extends the same immunities to a person who advised a nurse of the nurses' right or obligation to report under those same provisions. This bill is effective September 1, 2011.

SB 193 REGULATION OF THE PRACTICE OF NURSING. This bill amends provisions of the Occupations Code relating to the Texas Board of Nursing's regulation of nurses relating to confidentiality, licensing, retaliation, physical and psychological evaluation, and standardized error classification system by a nursing peer review committee. The bill also repeals Section 301.355 of the Occupations Code relating to applicable policies to nurses employed by medical and dental units. This bill is effective September 1, 2011.

SB 894 EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS. Texas law has long provided that hospitals or other entities could not employ physicians and retain all or part of their professional income for medical services. SB 894 creates an exception to this rule by adding subchapter E to Chapter 311 of the Health and Safety Code. It permits certain critical access hospitals, sole community hospitals, or hospitals in a county with a population of less than 50,000 to employ physicians and retain all or part of the professional income. The bill has express provisions that provide that the hospital and its governing board may not supervise or control the practice of medicine. The bill contains various provisions concerning the hospital's duties and policies, including provisions relating to providing an independent defense if a physician pays for that independent defense under a professional liability claim and requiring covenants not to compete to comply with the provisions of §15.50 of the Business & Commerce Code. This bill is effective September 1, 2011.

PRE-PAID FUNERAL

HB 2277 INSURANCE USED FOR PRE-PAID FUNERAL CONTRACTS AND REPLACEMENT ACT REQUIREMENTS. Under Chapter 1114 of the Insurance Code, there are various disclosures and standards for the replacement of a life insurance contract or annuity contract. The replacement provisions in Chapter 1114 contained various exceptions including an exception for group life insurance or annuities used to fund pre-paid funeral benefit contracts. HB 2277 eliminated the word "group" so that the replacement provisions would not apply to any life insurance or annuity used to fund a pre-paid funeral benefit contract. This provision is effective September 1, 2011.



HB 3004 PRE-PAID FUNERAL BENEFITS CONTRACTS. This bill extends coverage of the pre-paid funeral benefits guaranty fund to include defaulting funeral homes and cemeteries. The bill further provides that the guaranty fund would cover increased costs to insurers resulting from inflation and a change in the funeral home/cemetery. The bill also clarifies where guaranty funds can be deposited, and eliminates the Attorney General as a member of the Guaranty Fund Advisory Council. This bill is effective June 17, 2011.

SB 579 PRE-PAID FUNERAL CONTRACT TOTAL BENEFIT AMOUNT. This bill amends the Insurance Code to change the limit on the total benefit amount from \$15,000 on any life to the total cost of the pre-paid funeral benefits purchased under a pre-paid funeral contract unless provided otherwise in Section 154.2021, Finance Code. This bill is effective September 1, 2011.

PRIVACY

HB 300 PRIVACY OF PROTECTED HEALTH INFORMATION. This bill amends the Health and Safety Code to direct all covered entities to comply with the Health Insurance Portability and Accountability Act and Privacy Standards (HIPPA) and rules regarding access to and use of protected health information. The bill requires employees at covered entities to receive training regarding protected health information and also

requires a health care provider to provide a person's electronic health record within 15 business days of receiving a request for the information. The bill prohibits a covered entity from disclosing protected health information to any person in exchange for direct, or indirect, remuneration, with the exception of disclosures for the purpose of treatment, payment, health care operations, performing an insurance or HMO function, or as otherwise authorized or required by state or federal law. The bill provides breach of security and penalty provisions which changes civil penalties from \$3,000 to \$5,000 for each violation committed negligently; \$25,000 in one year for a violation committed knowingly or intentionally; or \$250,000 for each violation where the covered entity knowingly or intentionally used protected health information for financial gain. Audits of covered entities are permitted by the Attorney General, Texas Health Services Authority, Texas Department of Insurance and Health and Human Services Commission. This bill is effective September 1, 2011.

FRAUD/SOLICITATION

SB 918 REPORTING OF INSURANCE FRAUD. Under current Texas law, insurers are required to report suspected insurance fraud to the Fraud Division of the Texas Department of Insurance. Insurers can meet that reporting requirement by reporting information to organizations such as the National Insurance Crime Bureau (NICB). The NICB often reports such information on behalf of the insurer. SB 918 adds a specific provision that provides immunity for organizations such as NICB for information it reports to a crime bureau. This bill also clarifies current law by extending the immunity provisions not only to insurers, but to organizations primarily dedicated to the detection, investigation and prosecution of insurance fraud. This bill is effective September 1, 2011.

SUNSET LEGISLATION

HB 1951 TDI SUNSET. The Legislature finally passed the TDI Sunset bill after two regular sessions and one special session. The next sunset review of TDI will be in 2023. Unlike 2009, there were few contentious or contested amendments on the sunset bill this session. There were a few issues in the final Sunset that will impact life and health insurance. Amendments relating to rescission of health insurance and study for a medical reinsurance facility to allow the state to take over all medical reinsurance did not make the final bill. Most of the important changes impacted property and casualty insurance. The changes in HB 1951 that will impact life and health insurance included:

1. **TDI Duties.** Now include the duty to protect and ensure the fair treatment of consumers and ensure fair competition in the insurance industry in order to foster a competitive market.
2. **Negotiated Rulemaking and Alternative Dispute Resolution Policies.** The TDI is required to implement procedures for negotiated rulemaking and developing ADR policies for both internal and external disputes.
3. **Advisory Board Rules.** The TDI is required to adopt rules on the purpose, size, qualifications, terms and training of advisory boards and to periodically evaluate advisory committees to ensure their continued necessity.
4. **Notice of Premium Increases on Certain Health Insurance Policies.** HMO's and insurers must provide 60 days notice before the date a premium increase takes effect on a small employer plan.

5. **Managed Care: Ophthalmologists and Optometrists/ Vision Panels.** HB 1951 included an amendment to Section 1451.153 that prohibits managed care plans from requiring an ophthalmologist or optometrist to participate in a particular vision panel as a condition for being included in one or more of the plan's medical panels.
6. **Electronic Transactions.** New Chapter 35 is added to the Insurance Code to permit insurers and others to operate electronically to the same extent as otherwise allowed by law if each party agrees to conduct the business electronically.
7. **Individual Health Coverage for Children.** The commissioner is given authority to adopt rules to increase the availability of coverage to children younger than 19 including establishing open enrollment periods.



SB 647 OFFICE OF PUBLIC INSURANCE COUNSEL SUNSET. This bill extends the Office of Public Insurance Counsel (OPIC) until 2023. Additionally, OPIC is required to develop and implement alternative dispute resolution procedures.

REGULATORY

HB 3017 DISCRETIONARY CLAUSES IN LIFE AND HEALTH POLICIES. In 2010, the Texas Department of Insurance adopted a rule that prohibited the use of discretionary clauses in certain life, health and annuity contracts. HB 3017 codified the prohibition in a new §1701.062. The primary impact of the prohibition on discretionary clauses will be the review standards in judicial review of disability insurance policies. The new statute applies only to policies issued, delivered or renewed on or after January 1, 2012.

HB 3161 LIMITED-PURPOSE SUBSIDIARY LIFE INSURANCE COMPANIES. HB 3161 authorizes the establishment of a domestic limited-purpose subsidiary life insurance company that would allow the limited-purpose life company to be able to reinsure excess reserves of life insurance policies of other companies in the same insurance holding company system. A limited-purpose life insurance company could not write business directly or provide reinsurance for any insurance company that is not part of its holding company system. The purpose of this bill is to allow Texas domiciled life companies to compete with companies domiciled in other states because of excessive reserve requirements required under current law. The NAIC has been slow to develop principle-based reserving; and, thus, many Texas life companies may be over reserved. This creates problems in a Texas-based company's inability to compete with non-Texas companies. This legislation would allow Texas domiciled life companies to reinsure excess reserves to a limited-purpose subsidiary and could lead to greater availability and cost of life insurance for Texas consumers. The legislation is patterned after legislation passed in Iowa and adds a new subchapter P to Chapter 841 authorizing the creation and regulation of limited-purpose life insurance companies. The bill is effective September 1, 2011.

SB 1 PREMIUM TAX CREDITS FOR EXAMINATION FEES. The final version of a fiscal matters bill includes a provision that insurers may not take premium tax credits for examination fees paid in 2012 or 2013. This provision will sunset on January 1, 2014 and premium tax credits for examinations fees paid in 2014 and thereafter should continue as it exists in current law.

SB 567 TEXAS LIFE, ACCIDENT, HEALTH, AND HOSPITAL SERVICE INSURANCE GUARANTY ASSOCIATION. This bill makes various changes to the Texas Life, Accident, Health and Hospital Service Insurance Guaranty

Association Act originally created in 1973. This Act is currently codified in Chapter 463 of the Insurance Code and provides coverage to Texas residents in the event of an insolvency of a member insurance company. The bill provides various updates to the Texas Guaranty Act to match the most current National Association of Insurance Commissioners' Model Act used in most other states. One of the most important changes is the coverage limit for annuity contracts that is increased from \$100,000 to \$250,000. The name of the association is also changed to the Texas Life and Health Insurance Guaranty Association. In addition, changes were made to the total amount of the assessments that can be made against a member insurer to make it clear that the assessments may not exceed, in any one calendar year, 2% of the insurer's average annual premium in the preceding three calendar years. The association is also given the right to succeed to the rights of an insolvent insurer under a contract of reinsurance under certain conditions.



SB 1229 REGISTRATION OF CONTRACT EXAMINERS WITH THE TEXAS DEPARTMENT OF INSURANCE. This bill amends §§401.107, 751.052 and 4053.107 of the Insurance Code to provide for the registration of out-of-state independent contract examiners to report to the chief examiner of the Insurance Department and require that they provide additional information, including an estimate of the examination costs, a copy of the contract engaging their services with the public agency, and a list of previous and similar examinations of the same insurer within the last three years. The bill provides a process for the Insurance Department to acknowledge receipt of the registration by written confirmation. This bill is effective May 28, 2011.

SB 1291 TDI FINANCIAL PROGRAM BUDGET. This was a TDI legislative recommendation. This bill amends Chapter 401 of the Insurance Code and provides the Texas Department of Insurance with a self-directed budget for the purpose of funding salary, travel, and related personnel expenses incurred by TDI's Financial Examinations and Actuarial Divisions while administering the statutorily required examination function. Fees and assessments associated with examinations and actuarial functions would be used to fund the programs. There is a one year transition period during which the TDI Financial and Actuarial programs would continue to be funded by appropriated funds. This bill is effective September 1, 2011.

SB 1431 INSURANCE HOLDING COMPANY SYSTEM ACT. The Texas Department of Insurance sought various changes to the Holding Company Act in order to make changes in Texas law similar to the recently modified NAIC Model Holding Company Act. The most important change was the reporting of enterprise risks. An enterprise risk is any activity involving affiliates of an insurer that could have a material adverse effect on the financial condition or liquidity of an insurer. The ultimate controlling person in an insurance holding company system must file an annual enterprise risk report. Specific provisions are included in the new law to make sure that information included in an enterprise risk report will be deemed confidential and maintained in a confidential manner even when it is reported to the NAIC. The final bill includes a phase-in for the enterprise risk report requirement beginning in January 2014 for insurers that write \$5 billion or more in annual premiums in the preceding twelve-month period of time. Afterwards, there are additional phase-in periods depending on the premium volume in the preceding year. Insurers writing less than \$300 million would not be required to file the enterprise risk report. Insurers writing between \$300 and \$500 million in annual premium can seek a hardship exemption from filing the enterprise risk report. In addition, SB 1431 also adds language relating to supervisory colleges that permits the commissioner to participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations.

The bill sets forth new deemer provisions for disclaimers of control and clarifies that a Form A may be required if a person divests control of a domestic insurer.

The bill is effective September 1, 2011. The provisions for the enterprise risk reporting may not be implemented until 180 days after the commissioner determines the NAIC has completed an enterprise risk form and has a master confidentiality agreement in place. The reporting requirements for enterprise risk reporting will not begin until January 1, 2014.



SB 1433 EMERGENCY APPOINTMENT OF RECEIVERS. This bill was a TDI legislative recommendation. The bill amends various sections of Chapter 443 of the Insurance Code and allows the TDI to appoint special deputy receivers without soliciting competitive bids in the event of an emergency. An emergency exists if the federal government has initiated rehabilitation or liquidation action against a parent financial organization, under the federal Dodd-Frank Wall Street Reform Act, or upon the TDI determination that the competitive bid process would delay appointment of a receiver. This bill is effective September 1, 2011.

CERTIFICATES OF INSURANCE

SB 425 CERTIFICATES OF INSURANCE. This bill adds Chapter 1811 to the Insurance Code to outline requirements for certificates of insurance for certain property and casualty insurance policies. Insurance agents have long been required to furnish certificates of insurance to owners, general contractors and others, and often are asked to sign voluminous manuscript certificates that contain representations concerning coverage to third parties. A certificate of insurance is a document executed by an insurer or agent to a third person as a statement or summary of property coverage, but does not change or modify the terms of the insurance policy.

Many life and health insurers are lenders in transactions that are secured by mortgages or deeds of trust on real estate. As such, they often are additional insureds in property insurance that the borrower must obtain as part of the loan transaction. An important exemption from the filing requirements in this bill was added that provides that Chapter 1811 does not apply to a statement, summary, or evidence of property insurance required by a lender in a lending transaction involving real property as security for a loan. Exemptions also exist for group certificates issued for life, credit or accident and health insurance.

This bill sets forth certain prohibited acts and practices relating to the issuance of certificates of insurance, including prohibiting requiring certificates of insurance to alter, amend, or extend coverage provided in an insurance policy. Certificate of insurance forms must be filed with the Department of Insurance for approval. Certain national forms, such as an ACORD or ISO form, shall be deemed approved and can be used. SB 425 makes it clear that a certificate of insurance is not a policy of insurance and does not amend, extend or alter the coverage afforded by a policy referenced in a certificate of insurance.

Further, the legislation clarifies that a certificate does not confer to a certificate holder new or additional rights beyond what the reference policy or any executed endorsement of insurance provides.

This new law provides that persons would be entitled to notice of cancellation, non-renewal or material change in a policy of insurance only if the person is named within the policy or endorsement and the

policy or endorsement requires notice to be provided. A certificate of insurance would not be sufficient to mandate this requirement.

In addition to the prohibited acts, the new legislation would prohibit altering or modification of approved certificate forms; issuing false or misleading certificates; or requiring an insurer or an agent to issue other documentation that has not previously been filed, approved or has been disapproved.

The new law would not apply to certificates issued under group life credit, accident, health insurance, long-term care or annuity contracts and also does not apply to statements or evidence of insurance required by lender in a real estate lending transaction.

The changes in the law made by SB 425 are effective for certificates issued on or after January 1, 2012.

CREDIT LIFE AND HEALTH

HB 2559 COMMERCIAL MOTOR VEHICLE INSTALLMENT SALES. This bill creates a new Chapter 353 in the Finance Code to establish separate provisions relating to commercial motor vehicle installment sales. Current law regulates both commercial and consumer transactions under Chapter 348. The new chapter has provisions relating to credit insurance and debt cancellation agreements. Debt cancellation is not considered insurance. The new Chapter 353 has similar provisions to current law covering general provisions; retail installment contracts; insurance required by retail installment contracts; acquisition of contracts or balances; contract holders' rights, duties, and limitation; and contract holder licensing. This bill is effective September 1, 2011.

TORT REFORM

HB 274 LOSER PAY LEGISLATION. EARLY DISMISSAL, EXPEDITED TRIALS AND OTHER REFORMS. HB 274 was dubbed the "Loser Pay" tort reform effort by Governor Perry. After numerous hearings, changes and negotiations, the final version of the bill made the following changes to Texas law:

First, the Texas Supreme Court is required to adopt rules for dismissal of a cause of action that has no basis in law or fact. This is similar to a motion to dismiss procedure that has been used by federal courts for years for the early dismissal of cases that have no basis in law or fact without evidence. The court can award attorneys fees to the prevailing party on a motion to dismiss.



Second, the Supreme Court is required to adopt rules to expedite civil trials. This should help to lower the discovery costs in certain civil cases. These rules would not apply to medical professional liability cases under Chapter 74, TEX. CIV. PRAC. & REM. CODE; or to cases filed under the Family Code, Property Code, or Tax Code.

Third, the bill permits appeals of orders that are otherwise not appealable if the order involves a controlling question of law and may materially advance the ultimate termination of the litigation. Appeals will not stay proceedings unless agreed by the parties or the proceeding is stayed by the appellate court pending appeal.

Fourth, the final bill made changes to Ch. 42, TEX. CIV. PRAC. & REM. CODE, dealing with offers of settlement. Under the current law, an offer of settlement could result in loss of the ability of the plaintiff to recover attorneys fees or costs based on a formula of the offer compared to the final award. The formula in Sec. 42.004 is repealed. It should also be easier for defendants to obtain awards of litigation costs if a qualifying offer is rejected and the final award is less than a qualifying offer.

Finally, HB 274 amends §33.004, TEX. CIV. PRAC. & REM. CODE. The designation of responsible third parties was changed to prohibit a designation of a responsible third party by a defendant after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has failed to timely disclose that person as a responsible third party. The provision in Texas as law, § 33,004(e), TEX. CIV. PRAC. & REM. CODE, that permits a Plaintiff to sue responsible third parties 60 days after designation is repealed. This new law is effective on September 1, 2011, and applies only to civil actions commenced on or after the effective date.

LEGISLATION VETOED BY THE GOVERNOR

HB 335 IMPLEMENTATION OF FEDERAL HEALTH CARE REFORM LAWS. HB 335 was vetoed by Governor Perry. The bill as passed would have prohibited a state agency from implementing federal health care reform law unless it reports the cost of implementation of the law. The Governor's veto message said that HB 335 is not necessary, because information about costs would be available upon request of leadership. Governor Perry indicated that he is working with leaders to direct state agencies to provide information necessary to assess the impact of overreaching federal health care legislation on Texas.

SB 191 TEXAS MEDICAL BOARD CONTESTED CASES. SB 191 was vetoed by Governor Perry. This bill would have amended the Occupations Code to require the Texas Medical Board, after receiving the administrative law judge's (ALJ) findings of fact and conclusions of law in a contested case under the Administrative Procedure Act, to dispose of the contested case by issuing a final order based on the ALJ's findings of fact and conclusions of law, rather than the Board determining the charges on the merits. The bill would have prohibited the Board from changing a finding of fact or conclusion of law or vacating or modifying an order of the ALJ. The bill would have established that for each case, the

Board has the sole authority and discretion to determine the appropriate action or sanction and prohibits an ALJ from making any recommendation regarding the appropriate action or sanction



The Governor's veto message states the bill was vetoed because he has serious concerns regarding overreliance on the State Office of Administrative Hearings in the disposition of contested case hearings at the Texas Medical Board. (This provision is also included in HB 680, which was not vetoed). The Governor further states that the provision weakens the Board's authority to oversee physicians, and vests that authority instead in the ALJ, and that deciding whether a physician has violated a standard of conduct should belong to the multimember Board, not a single ALJ. The Governor further stated that this bill treats the Texas Medical Board differently from every other occupational licensing agency by mandating that the board accept the ALJ's findings.

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