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If you would like more information about the issues discussed in this newsletter, or you have a suggestion for a future article, please contact Newsletters@thompsoncoe.com. **Property & Casualty Insurance Legislation in Texas** may also be found online at www.thompsoncoe.com.

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INTRODUCTION AND OVERVIEW

In January 2013, the Texas Legislature began the 83rd legislative session in an unusual situation. The state budget report was better than anticipated, and the legislature was not faced with the prospect of a \$10-20 billion plus budget deficit. Into this renewed period of budgetary abundance stepped a record number of new members in the Texas House and one unfilled seat in the Texas Senate. These freshmen members had campaigned and been elected with the expectation of keeping Texas government “lean,” preventing any new regulations, and fighting against anything remotely related to the federal government. The influx of Tea Party-inspired freshmen also meant that, despite a significant majority of Republican House members, there were disagreements within the Republican ranks. This made for some interesting political maneuvering during the session and sometimes unusual coalitions on issues.

There were no emergency items declared



for this session, and the “big issue” items were infrastructure concerns — funding for roads, water, and restoration of cuts to education funding from the 2011 session. The Sunset Review for the Texas Department of Insurance was concluded in 2011, and insurance was not a major topic of discussion for this session. The property and casualty insurance issue that garnered the most discussion heading into the session was questions about

funding for the Texas Windstorm Insurance Association (TWIA) and resolution of thousands of pending lawsuits against the TWIA resulting from Hurricane Ike in 2008. In addition, the insurance commissioner’s Senate confirmation was the subject of much discussion and attention.

The House session moved at a slower pace than usual as freshmen members adjusted to life as a House member and the House focused on the critical infrastructure matters. Most insurance bills did not even have a hearing until late March. In the end, only a portion of the bills introduced were even passed from committee, and an even smaller number made it out of the House.

The dominant issue facing the 83rd Texas Legislature was how to deal with a budget surplus for the first time since 2007 while not going on a “spending spree,” as many members and groups cautioned against any extra spending. Very early in the session legislative leaders were clear in their intention to address issues related to the state’s infrastructure, funding for transportation projects across the state, and funding for water resources to ensure Texans had access to water. The state’s continued growth makes both issues important to ensure the state’s future infrastructure is adequate to meet the needs of its rapidly increasing population.

Guns, always popular in Texas politics, were a topic of discussion and debate during the session. The House spent time debating whether guns should be allowed on college campuses and in grade schools, while legalized gambling in Texas was discussed extensively in the Senate. The role and activities of the Regents of the University of Texas system became a topic of discussion, hearings, and speeches in both the House and Senate.

INTRODUCTION AND OVERVIEW, CONT'D

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 Railroad Commission, Texas Education Agency, and Department of Criminal Justice.

Because of the changes in 2012 elections, the House was comprised of 95 Republicans and 55 Democrats compared with 101 Republicans and 49 Democrats in 2011. The composition in the Senate was not materially changed, even with the new members, as the Senate remained 19 Republicans and 12 Democrats.



The Senate Business & Commerce Committee, which heard property and casualty insurance bills, was again chaired by Senator John Carona (R-Dallas). The House Insurance Committee was again chaired by Representative John Smithee (R-Amarillo). As was the case in 2011, there continued to be fewer issues detrimental to a property and casualty insurer and numerous other issues that created a more favorable business climate for both property and casualty insurers and their customers. As noted, Texas windstorm reform remained a hot topic; and many bills were introduced which would have changed the mechanism for funding to repay losses incurred by the windstorm program. These suggestions included creating an assigned risk plan for TWIA, depopulation plans for TWIA with specific percentage reductions in TWIA liability exposure every two years, single adjuster plans, and increased assessments against insurers. However, despite many bills addressing this issue, only a few received a hearing; and none were considered on the House or Senate floor. The more interesting developments on TWIA occurred outside the legislature, as TDI suggested that TWIA be placed in receivership. Discussions about receivership created considerable concerns about

long-term financing options. These concerns were exacerbated by the continued administrative oversight of TWIA by the TDI, questions about the cost of an ongoing consultant contract, and Hurricane Ike litigation that seemed to be endless in duration. Ultimately, in May 2013, there was an announcement that many of the outstanding Hurricane Ike-related lawsuits had been settled.

Issues that usually dominated the property and casualty insurance discussion, such as prior approval for automobile and homeowners insurance rates, standard policy forms for auto and homeowners' insurance, and bills to ban the use of credit scoring in underwriting and rating, received little consideration in the 83rd Legislature. The increasing concerns about rising roofing repair costs and stories of fraudulent actors after hail and wind storms across Texas resulted in proposed legislation to monitor and regulate roofing contractors through registration and other requirements. Unfortunately, this bill did not pass. There was also a bill introduced that would have made the state's largest workers' compensation insurance carrier, Texas Mutual Insurance Company, a private carrier instead of the state's insurer of last resort for workers' compensation. The bill failed to pass.

Insurance Commissioner Eleanor Kitzman, who was appointed by Governor Perry in August 2011, was not confirmed by the Texas Senate during the session. Various news articles speculated on the reasons why the commissioner was not confirmed; but, in the end, on May 27, 2013, the commissioner's tenure ended as required by law. On the same day, the Governor's office announced the appointment of Julia Rathgeber as Commissioner of Insurance for a term to end in February 2015. Commissioner Rathgeber previously served as deputy chief of staff for Lieutenant Governor Dewhurst. She was confirmed by the Texas Senate on June 14, 2013.

INTRODUCTION AND OVERVIEW, CONT'D

Overall, during the 83rd Session and Special Sessions there were over 6,000 bills that were filed compared with over 5,700 in 2011. Jay Thompson and Albert Betts were directly involved in reviewing and analyzing over 400 bills that were identified to have some impact on the property and casualty insurance industry. Eighty-one of those bills became law.

Thompson Coe attorneys were involved in representing various individual insurance clients, including the Association of Fire & Casualty Companies in Texas (AFACT) on a broad spectrum of issues impacting property and casualty insurance.

The Legislature was called back to Austin for a special session after the conclusion of the Regular Session. The 1st Called Special Session did not include any insurance-related issues, although there were rumors and many who suggested that the special session include TWIA funding among the called issues.

On the night of June 25, the 1st Called Special Session ended in the Senate, under the glare of TV cameras and national news reports, after a 13-hour filibuster, a loud Senate gallery, and confusion over whether a vote on SB 5, relating to regulation of abortion facilities, occurred before or after the midnight deadline. As time ran out, a transportation funding bill and juvenile justice bill died without Senate consideration, as House amendments to these bills were not voted on before the 1st called Special Session ended. The Governor called for a 2nd Called Special Session to begin on July 1, 2013. As of the date this paper was written, TWIA funding has not been added to the list of called issues for this 2nd special session.

On July 8, 2013, Texas Governor Rick Perry announced that he was not seeking re-election

in 2014. On July 14, Attorney General Greg Abbott announced he is running for the Republican nomination for Governor. Tom Pauken, former chair of the Texas Republican Party, had previously announced his candidacy. There are already multiple candidates announced to replace the Attorney General. The current Lt. Governor, David Dewhurst, has announced he will seek re-election in 2014 and will be opposed by Sen. Dan Patrick (R-Houston), Land Commissioner Jerry Patterson, and Agriculture Commissioner Todd Staples in the Republican primary for Lt. Governor. There are various other candidates for Comptroller, Agriculture Commissioner, Railroad Commissioner, and Land Commissioner. It promises to be another interesting election in 2014.



This report provides a brief summary of the bills that passed 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 you to pay close attention to the rulemaking process that will occur over the next several months at the Texas Department of Insurance and the Division of Workers' Compensation Insurance.

BILL SUMMARIES

AUTO

HB 949 COVERAGE FOR NEWLY ACQUIRED VEHICLES. This bill amends the Insurance Code chapter 1952 to require an insurer to cover certain motor vehicles that are acquired during the term of an insured's policy and to provide the same or similar coverage for the replaced or newly acquired vehicle for a minimum of 20 days. The insured has to notify the insurer within 20 days of becoming the owner of the vehicle if they want to add damage coverage or continue coverage after the 20 day period. Applies to policies delivered, issued for delivery, or renewed on or after January 1, 2014. Effective September 1, 2013.

SB 181 USE OF WIRELESS DEVICE FOR PROOF OF AUTO COVERAGE. This bill amends the Transportation Code to allow proof of automobile insurance coverage through an image displayed on a wireless communication device. It further provides that, if a peace officer has access to a verification program, a citation may not be issued unless the officer attempts to verify coverage through the verification program and is unable to do so. Display of an image on a wireless communication device does not constitute consent to access the contents of a wireless device except to view financial responsibility information. A court or commissioner of insurance may require a paper copy at a hearing. A telecommunications provider is not liable to the operator for failure of a wireless communication device to display financial responsibility. The Governor has signed the bill, and it is effective May 24, 2013.



SB 487 ALL-TERRAIN VEHICLES. This bill amends the Transportation Code to redefine "all-terrain vehicle" to mean a motor vehicle that, in addition to meeting other specified criteria, is not more than 50 inches wide and that is equipped with a seat or seats, rather than a saddle, for specified uses. The bill redefines "recreational off-highway vehicle" to mean a motor vehicle that, in addition to meeting other specified criteria, is equipped with a seat or seats, rather than a non-straddle seat, for the rider and, if the vehicle is designed for passenger transport, for one or more passengers. Effective September 1, 2013.

SB 1567 NAMED DRIVER POLICIES. This bill amends subchapter B, chapter 1952 of the Insurance Code to prohibit an agent or insurer, including a county mutual insurance company, from delivering or issuing for delivery in Texas a personal automobile insurance policy, unless the policy provides at least the minimum coverage required by law for personal automobile coverage.

The bill also requires certain disclosures on a named driver policy. The bill requires the agent or insurer to receive a copy of the disclosure that is signed by the applicant or insured before accepting the premium or fee and requires the agent or insurer to require the applicant or insured to confirm contemporaneously in writing the provision of the required oral disclosure. The disclosure also must be included in the policy and on the front of the proof of coverage document. Effective September 1, 2013.

CAPTIVE INSURERS

SB 734 LICENSING CAPTIVE INSURERS. This was a TDI biennial recommendation on licensing of captive insurers. The bill adds chapter 964 to the Insurance Code and defines a captive insurance company as one that insures the operational risks of the company's affiliates. A captive is not subject to chapter 823, the Holding Company Act, unless the company is affiliated with another insurer that is subject to chapter 823, and is subject to for-profit corporations laws in the Business Organizations Code. The bill describes the formation of a captive insurer, including certain requirements for the articles of incorporation. Captives can be incorporated as stock insurers. Captive insurers must obtain a certificate of authority subject to certain limitations related to doing business in Texas. The commissioner by rule can determine capital and surplus requirements. Capital requirement is not less than \$250,000 or greater than \$5 million. The application for a charter and certificate of authority are subject to a fee and the requirements outlined in section 964.008. TDI has to examine the applicant after the application is filed and the application fee is paid. If TDI denies the application, it must be in writing. The applicant may request a hearing, and the commissioner has to set a hearing.

Captives can write any type of insurance except life, annuities, title, accident and health, mortgage guaranty,

BILL SUMMARIES, CONT'D

residential property, personal automobile, or workers' compensation. Captive insurers may reinsure, subject to the conditions in section 964.004.

A captive insurer may not join or contribute to any pool, plan, association, or guaranty fund.

The bill establishes a tax rate of $\frac{1}{2}$ of 1% on a captive's taxable premium receipts and other forms of revenue from written insurance policies in a calendar year. A captive's taxable receipts will not be deducted for premiums paid for reinsurance. The annual minimum tax for a captive will be \$7,500, and the annual maximum will be \$200,000 payable by March 1 after the end of the year for which the taxes are due.

Any information filed by an applicant or captive insurance company under chapter 964 is confidential and privileged for all purposes, including for purposes of chapter 552, Government Code, a response to a subpoena, or evidence in a civil action.

TDI can suspend or revoke the captive insurer's license after notice and opportunity for a hearing. Effective June 14, 2013.

FRAUD/SOLICITATION

HB 38 CRIMINAL LIABILITY FOR AIRBAG OFFENSES. This bill amends the Transportation Code to make it a state jail felony for failing to install an airbag, installing a counterfeit air bag, selling a counterfeit airbag, or altering an airbag. If the offense results in the death of a person, it is a first degree felony. Effective September 1, 2013.



HB 1711 CIVIL LIABILITY FOR BARRATRY. This bill amends the Government Code to allow a client to recover for barratry in a civil action in addition to voiding the contract. In addition to damages, the client can recover a penalty of \$10,000. Effective September 1, 2013.

GOVERNMENTAL ENTITIES

SB 531 GOVERNMENTAL UNIT'S SELF-INSURANCE FUND. This bill amends the Government

Code to permit a governmental unit, that establishes a self-insurance fund, to purchase reinsurance for a risk covered through the fund. The bill authorizes any law, including a regulation requiring insurance, to be satisfied by coverage provided through the fund. The bill authorizes any law, including a regulation requiring a certificate of insurance or an insurance agent's signature, countersignature, or approval, to be satisfied by a certificate of coverage issued on behalf of the governmental unit demonstrating that coverage is provided through the fund. Effective September 1, 2013.

SB 1125 RISK PURCHASING GROUPS FOR POLITICAL SUBDIVISIONS. This bill amends section 2201.251 of the Insurance Code regarding risk purchasing groups for employees of a political subdivision. The bill allows purchase of first-party indemnity coverage on a group basis. The aggregate coverage limit per group member for the risk cannot exceed 3% of the per member coverage limit for liability. The bill requires the group to notify the commissioner of insurance of their intent to purchase no later than 60 days prior to the policy being issued. The commissioner can issue orders after notice and hearing. This bill excludes groups that were providing this coverage on January 1, 2013 and who have continued to provide the coverage. Effective September 1, 2013.

LICENSING

SB 162 EXPEDITED LICENSING FOR MILITARY SERVICE MEMBERS. This bill amends the Occupations Code to require state agencies issuing licenses to expedite the license application for a military service member, recent veteran (military service member within 12 months prior to license application), or military spouse. The bill adds a requirement for a state agency to notify military applicants of the renewal requirement as soon as practical after issuing the license. It also adds provisions for expedited licensing of special forces members under chapter 1701, Occupations Code. The effective date is March 1, 2014, for driver's licenses and licenses filed with Commission on Law Enforcement Officers Standards and Education. Effective May 18, 2013.

SB 569 INSURANCE ADJUSTER LICENSING. This bill amends section 4101.056 of the Insurance

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Code to require an applicant for an insurance adjuster license, wishing to claim an exemption from the examination, to schedule the examination and take the required examination in a specified testing environment proctored by a disinterested third party approved by the commissioner to administer the examination. Effective June 14, 2013.

REGULATION**HB 1047 REPORTING OF BAIL PREMIUM.**

This bill amends the Insurance Code to establish that a surety company is not required to maintain an unearned premium reserve for a bail bond executed or delivered by the company. The bill authorizes direct written premium, reported by a surety company in a financial statement filed with TDI, to be calculated excluding any premiums or service fees retained by a licensed bail bond surety or by a property and casualty agent in connection with the execution or delivery of a bail bond and excludes premiums or service fees retained by a licensed bail bond surety or by a property and casualty agent in connection with the execution or delivery of a bail bond from the premium receipts used to determine the taxable premium receipts of the bail bond surety or agent. The bill requires a surety company that executes or delivers a bail bond in Texas to disclose in the company's financial statement filed with TDI the aggregate amount of gross premium for bail bond business reported in the company's surety line of business, premium, or service fees retained by the bail bond surety or agent, and premium for bail bond business received by the company, net of amounts retained by the bail bond surety or agent. Effective September 1, 2013.

HB 1183 ROOFING CONTRACTORS PROHIBITED FROM ADJUSTING CLAIMS. This bill amends chapters 4101 and 4102 of the Insurance Code to make it clear that a roofing contractor cannot adjust or advertise to adjust claims for properties which the contractor is the contractor of record, regardless of whether the contractor is licensed as a public or private adjuster. Effective September 1, 2013.

HB 1305 PROHIBITED ACTS BY AGENTS. This bill amends the Insurance Code to make it a third-degree felony to act as an agent after suspension or revocation of a license. Effective September 1, 2013.

HB 2163 FINANCIAL EXAM ASSESSMENTS. This bill amends chapter 401 of the Insurance Code to include foreign insurers in the cost of examination for the overhead assessments imposed by the TDI to all insurers licensed in Texas – both domestic and foreign. Tax credits will be available again for these assessments after January 1, 2014. An amendment in this bill, however, requires the assessments amounts deposited by the TDI also be used to reimburse premium tax credits for examination costs and examination overhead assessments. This provision may result in a slight increase in maintenance taxes to reflect these reimbursements. Effective September 1, 2013.

HB 3460 HOLDING COMPANY TRANSACTIONS. This bill amends the confidentiality provisions of chapter 823, Insurance Code, relating to holding company system transactions and reporting and includes provisions that certain information can be shared with other state, federal, and international regulatory organizations if they agree to keep the information confidential. The bill amends section 823.103 regarding the notice for approval of holding company transactions to add loan transactions with a non-affiliate if the proceeds are to be used to make loans or extensions of credit to an affiliate. Also raises the standard for prior notice for certain transactions from the lesser of 1/2 of 1% of admitted assets or 5% of surplus to 3% or 25%, respectively, for non-life insurers and 3% of admitted assets for life insurers. Effective June 14, 2013.

SB 112 HOMEOWNERS DEDUCTIBLES. This bill amends chapter 2301 of the Insurance Code to include requirements that homeowners policies include a declarations page that lists and explains deductibles under the policy and includes a dollar amount of each deductible. The bill applies to policies delivered, issued for delivery, or renewed on or after January 1, 2014. Effective September 1, 2013.

SB 183 RESPONDING TO A TDI REQUEST FOR INFORMATION. This bill amends section 38.001 of the Insurance Code to increase the time to respond



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to a request for information from TDI from 10 days to 15 days. The bill specifies that TDI, if it receives written notice from the person that additional time is required to respond to the inquiry, must grant a 10-day extension of the time to respond. The bill requires TDI to maintain a record of all such inquiries made by the department. Effective September 1, 2013.

SB 411 RESPONDING TO A TDI FRAUD INVESTIGATION REQUEST. This bill amends section 701.108 of the Insurance Code to require an insurer to respond to a request from the TDI for relevant information or material relating to a matter under investigation for insurance fraud within 15 days after the date the request is received. The bill requires TDI to extend the period 10 days upon written request of the insurer. Effective September 1, 2013.

SB 631 WITHDRAWAL OF SPECIAL DEPOSITS. This bill amends section 406.006 of the Insurance Code to allow the commissioner to issue a letter approving, or an order denying, rather than an order approving or denying, an application from an insurer requesting withdrawal of all or part of a special deposit. Effective June 14, 2013.

SB 698 UNEARNED PREMIUM REFUND. This bill amends section 558.002 of the Insurance Code to require refunds of unearned premium to be paid by the 15th business day after cancellation or termination of a policy for personal auto or homeowners. The bill applies only to an insurance policy delivered, issued for delivery, or renewed on or after September 1, 2013. Effective May 18, 2013.

SB 736 USE OF CONSUMER INQUIRIES IN UNDERWRITING. This bill amends the Insurance Code to prohibit an insurer that writes a standard fire, homeowners, or farm and ranch owners insurance policy from using an underwriting guideline based solely on whether a consumer inquiry has been made by or on behalf of the applicant or insured; and from charging a rate that is different from the rate charged to other individuals for the same coverage or increasing a rate charged to an insured based solely on whether a consumer inquiry has been made by or on behalf of the applicant or insured or from considering a customer inquiry as a basis for nonrenewal or cancellation of an insurance policy. Effective September 1, 2013.

SB 801 STATUTORY DEPOSITS FOR GENERAL CASUALTY COMPANIES. This bill amends the Insurance Code to remove the requirement for a \$50,000 statutory deposit for general casualty companies. Effective June 14, 2013.

SB 839 PORTABLE ELECTRONICS INSURANCE. This bill amends chapter 551 of the Insurance Code to clarify Texas law on cancellation and termination of portable electronics insurance, sets standards for required consumer notices, authorizes vendors of portable electronics licensed under Texas law to sell portable electronics insurance and to bill consumers for the insurance coverage, and requires consumer disclosures with respect to premiums charged for the insurance. Effective June 14, 2013.



SB 840 EXCEPTIONS TO REBATING PROHIBITIONS. This bill amends various provisions of the Insurance Code defining rebates. It allows insurance agents and carriers to provide promotional advertising items and educational items, if valued at \$25 or less, to potential customers in connection with the sale or solicitation of an insurance contract. The bill provides similar language to allow such practices for property and casualty in chapter 1806 and life and health in chapter 541. Effective September 1, 2013.

SB 841 INSURER INVESTMENTS. This bill amends provisions in chapters 424 and 425 of the Insurance Code to exempt insurers with \$10 billion or more in admitted assets from the prohibition against an insurer owning, developing, or holding an equity interest in any residential property or subdivision, single or multiunit family dwelling property, or undeveloped real property to subdivide for or develop residential, single or multiunit family dwellings. The bill amends section 424.068 to clarify the ability of an insurance company to invest in securities of a company domiciled in a foreign jurisdiction and makes other changes to the investment provisions. Effective September 1, 2013.

SB 852 INSURER POSTING OF SPECIMEN POLICY. This bill adds chapter 1812 to the Insurance Code to allow an insurer to make available certain policy forms to insureds by posting a specimen policy on its website. The bill applies only to an insurer writing personal

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automobile, commercial automobile, and inland marine.



Specimen forms cannot contain any personal identifiable information. Disclosure that the specimen policy is available on the website must be disclosed on the declaration page. Each specimen policy posted must be clearly identifiable and requires an insurer to explain how an insured can access the form or obtain a copy at no cost. Upon request, an insurer must provide a printed or electronic copy to the insured at no cost. Forms must be easily accessible and provided in a widely available and free computer application or program. Specimen forms must be available for at least five years after the latest date a policy is in force. Effective September 1, 2013.

SB 1006 SHAREHOLDER AND POLICYHOLDER DIVIDEND APPROVAL. This bill amends various provisions in the Insurance Code relating to requirements regarding certain shareholder and policyholder dividends. The bill will allow a Texas-domiciled insurer to pay shareholder dividends from surplus profits arising from the insurer's business. The bill will require an insurer to notify the commissioner of insurance of each distribution of a policyholder dividend amount that is not greater than 10% of the surplus. The bill will also require an insurer to file an application for approval of any policyholder dividend payments that exceed 10% of the surplus. If the commissioner does not act on the application on or before the fifth business day after the application is received, the application is considered approved. Effective June 14, 2013.

SB 1074 ELECTRONIC TRANSACTIONS. This bill amends chapter 35 of the Insurance Code to authorize the delivery, storage, and presentment by electronic means of a required notice or other written communication with a party in an insurance transaction or that is to serve as evidence of insurance coverage, only if such delivery, storage, or presentment complies with the state Uniform Electronic Transactions Act. The bill includes consent of a party to receive electronic communication as well as the right



to withdraw consent. If verification or acknowledgment is required, the electronic method used must provide for verification or acknowledgment. It provides that delivery of written communication by electronic means complying with chapter 322, Business & Commerce Code, is equivalent to any delivery method, including mailing. Effective September 1, 2013.

SURPLUS LINES INSURANCE

HB 1405 SURPLUS LINES TAXES. This bill amends surplus lines agent provisions to require the managing underwriter to collect, report, and pay taxes and also provides that the surplus lines agent and the managing underwriter may enter into a written agreement for the agent to do so. Effective January 1, 2014.

SURPLUS LINES INSURANCE

SB 697 SURPLUS AGENT LICENSING. This bill amends section 981.203 of the Insurance Code to allow certain individuals to hold a surplus lines agent license and not be required to obtain a general property and casualty or MGA license. A person is not required to obtain the P&C or MGA license if the home state of insured is Texas, the individual is a nonresident, the person is licensed as a surplus lines agent in the individual's state of residence, and the person is not required by their home state to hold a general P&C license to become a licensed surplus lines agent, among other requirements. Effective January 1, 2014.

SB 951 SURPLUS LINES INSURANCE. This bill makes various changes to the surplus lines provisions of the Insurance Code so that it will conform to the Nonadmitted and Reinsurance Reform Act (NRRA) of 2010.

The bill amends the Insurance Code to apply statutory provisions regulating surplus lines insurance to insurance provided to an insured whose home state is Texas and removes prior requirements of section 981.003, which was repealed.

The bill defines "home state," with respect to an insured, as the state in which the insured maintains the insured's principal residence, if the insured is an individual; the state in which the insured maintains the insured's principal place of business, if the insured is not an individual; the state to which the greatest percentage

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of the insured's taxable premium for an insurance contract that covers risk is allocated, if 100% of the insured risk is located outside of the state in which the insured maintains the insured's principal residence or principal place of business, as applicable; or, for an affiliated group, the home state of the member that has the largest percentage of premium attributed to it under the insurance contract. The bill redefines "surplus lines insurance" to remove the condition that the insurance coverage be for a subject that is resident, located, or to be performed in Texas

The bill adds section 981.0031 to define an exempt "commercial purchaser" as a person who employs a qualified risk manager to negotiate coverage, paid aggregate nationwide commercial property and casualty premiums of more than \$100,000 in the preceding 12 months, and has net worth of more than \$20 million or generates annual revenue of more than \$50 million or employs more than 500 full-time employees per individual insured or a member of an affiliated group employing more than 1,000 employees, or is a non-profit or public entity with annual budgeted expenditures of at least \$30 million or is a municipality with a population of more than 50,000. The bill adds section 981.0032 to define a qualified risk manager and qualifications. The bill requires the commissioner of insurance by order, effective on January 1, 2015, and on every fifth January 1 thereafter, to adjust the net worth, annual revenue, and annual budgeted expenditures used to define an exempt commercial purchaser to reflect the percentage change in the federal Consumer Price Index for All Urban Consumers for the five-year period immediately preceding January 1 of the year of the adjustment.

The bill amends section 981.004 to exclude an exempt commercial purchaser from the restrictions on the purchase of surplus lines insurance. The agent has to disclose to the exempt commercial purchaser that comparable insurance may be available from the admitted market, and a policy purchased in the admitted market may provide greater protection than the surplus lines policy. The exempt commercial purchaser can then request in writing that the agent procure through the non-admitted insurer. The bill also requires a surplus lines agent, if a diligent effort to obtain insurance in the admitted market was not made with respect to a surplus lines contract obtained by the agent, to include evidence

establishing that the insured qualified as an exempt commercial purchaser and that the agent complied with the exemption criteria in the record maintained by the agent for the contract. The bill also makes it unauthorized insurance to issue a surplus lines policy if the agent has failed to pay a statutory penalty for violation of the Insurance Code. Similar provisions were added for failure to pay premium tax.

The bill amends section 981.057 to exempt an alien surplus lines insurer listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department, National Association of Insurance Commissioners, from the requirement for an eligible surplus lines insurer to maintain capital and surplus in an amount of at least \$15 million and removes provisions relating to minimum capital and surplus requirements for an eligible surplus lines insurer that is an insurance exchange created by the laws of another state. The bill also amends section 981.058 to require an alien surplus lines insurer to be listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department, National Association of Insurance Commissioners.

Insurance Code sections 981.052, 981.053, 981.055, 981.056, 981.059-062 are repealed. Effective June 14, 2013.

TAXES

HB 7 RURAL FIRE DEPARTMENT ASSESSMENTS. The bill requires the Comptroller to limit the



assessment against certain insurers for rural fire protection to the total amount that the General Appropriations Act appropriates from the Volunteer Fire Department Assistant Account 5064 for that fiscal year. Current collections from certain insurers for rural fire protection are \$30 million per fiscal year. The bill provides that the \$30 million cap remains in the law. Effective September 1, 2013.

HB 500 FRANCHISE TAX EXEMPTION. The bill makes various amendments to the franchise tax provisions of the Tax Code to exclude certain activities

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from taxation. The bill attempts to clarify the law to protect Texas-based insurance companies from retaliatory taxes that other states may levy in response to a Texas policy that denies insurance companies domiciled in those states the benefit of the franchise tax exemption and to eliminate potential constitutional challenges arising from a policy that imposes the franchise tax on out-of-state taxpayers only. Of interest to insurers, the bill amends section 171.052 of the Tax Code to provide that a nonadmitted insurance organization subject to an occupation tax or any other tax that is imposed for the privilege of doing business in another state or a foreign jurisdiction, including a tax on gross premium receipts, is exempted from the franchise tax. Effective January 1, 2014.

TORT REFORM

HB 487 LIABILITY FOR ASSISTING LOCAL OFFICIALS. The bill amends Local Government Code section 370.006 to clarify existing law with regard to a local official's authority to request or accept assistance in a hazardous or dangerous situation and with regard to a person's immunity from liability in providing such assistance. The Governor has signed the bill, and it is effective May 24, 2013.

HB 658 MEDICARE SUBROGATION. This bill amends the Civil Practice and Remedies Code section 41.014 to prevent the accrual of postjudgment interest on an unpaid balance of damages subject to Medicare subrogation until the defendant receives a recover demand letter from CMS. Postjudgment interest will not accrue until 31 days after the defendant received the recovery demand letter. Effective September 1, 2013.

HB 1869 HEALTHCARE SUBROGATION. The bill primarily impacts the contractual subrogation and recovery rights of health insurers. However, this legislation will impact property and casualty insurers, because it may impact the settlement of liability claims.

The bill creates a new chapter 140 in the Civil Practice & Remedies Code and applies to all types of health insurance payors with certain exceptions. It applies to the state of Texas, cities, counties, and political subdivisions and exempts workers' compensation,

Medicare, Medicaid, CHIP, and self-funded ERISA plans.

HB 1869 repeals section 172.015 of the Local Government Code that had set forth a statutory right of recovery for local government entities. The bill permits a health insurer to recover in subrogation the lesser of 50% or the actual amount the health benefit payor paid. If the injured covered individual is represented by a lawyer, the health payor can recover the lesser of 50% or the actual amount paid but will also have to pay its share of the lawyer and litigation costs in obtaining a recovery. In the absence of an agreement with the injured party's lawyer, the lawyer fee will be $\frac{1}{3}$ of the recovery. This is similar to the law on workers' compensation subrogation. The bill specifically permits contractual subrogation within certain standards as set by law. The common-law doctrine of "made whole" does not apply.

Finally, a health benefit payor cannot recover from first-party coverages available to an injured party with two exceptions — a payor can recover from uninsured/underinsured motorist coverage or medical payments coverage if the premium was not paid by the injured party or the injured party's immediate family. The new law will apply to causes of action that accrue on or after January 1, 2014.

TOWING AND STORAGE

HB 248 SALVAGE YARD LOCATIONS. This bill amends the Transportation Code by increasing the distance that a new automotive wrecking or salvage yard must be from a church, school, or residence from 300 feet to 600 feet in unincorporated areas of Harris County. Effective September 1, 2013.

HB 3085 WRECKING AND SALVAGE PENALTIES. This bill would have amended the Transportation Code by increasing the maximum civil penalty from \$1,000 to \$5,000 for violation of wrecking and salvage yard licensing requirements. This bill only applied to unincorporated portions of Harris County. **Vetoed by the Governor.**



SB 1053 TOWING NOTICES. The bill replaces a reference to the Texas Department of Transportation

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with a reference to the Texas Department of Motor Vehicles in the requirement for a parking facility owner to notify the owner or operator of a vehicle that the parking facility owner is having the vehicle removed and stored at a vehicle storage facility. Requires the parking facility owner to mail the required notice to the last address shown for the vehicle's owner according to the department's vehicle registration records. Effective September 1, 2013.

TRADE SECRETS

SB 953 PROTECTION OF TRADE SECRETS. This bill adds a new chapter 134A to the Civil Practice & Remedies Code to create a Uniform Trade Secrets Act. The new law permits injunctive relief and damages for misappropriation of trade secrets. Damages can include actual loss and unjust enrichment caused by misappropriation. In lieu of damages, a reasonable royalty is authorized. Exemplary damages are permitted for willful and malicious misappropriation of a trade secret. Effective September 1, 2013.

TRAFFIC SAFETY

HB 347 PROHIBITING USE OF A WIRELESS DEVICE IN A SCHOOL ZONE. The bill adds new section 545.425 to the Transportation Code to prohibit the use of a wireless communication device while operating a motor vehicle in a school zone during the time of a reduced speed limit. The prohibition does not apply if the vehicle is stopped or the wireless communication device is used with a hands-free device. The bill creates an affirmative defense for using a device to make an emergency call to an emergency response service, hospital, fire department, health clinic, doctor's office, first aid, or the police. This law preempts all local ordinances, rules, and regulations. This bill is effective September 1, 2013.

HB 1174 PENALTIES FOR PASSING A SCHOOL BUS. This bill amends the Transportation Code to increase the penalty for passing a stopped school bus to not less



than \$500 or more than \$1,250. Second offenses are subject to a fine of not less than \$1,000 or more than \$2,000. Effective September 1, 2013.

HB 3483 NEWLY-LICENSED DRIVERS. The bill increases the number of required hours of behind-the-wheel instruction required for driver's license training from 20 to 30 hours, prohibits a person under 18 from driving after midnight and before 5:00 a.m. unless for work or school, and prohibits the presence of more than one passenger under the age of 21 who is not a family member. Effective September 1, 2013.

HB 3668 DUTIES AFTER AN ACCIDENT. This bill amends section 550.021(a), Transportation Code, to require the operator of a vehicle involved in an accident that results or is reasonably likely to result in injury to or death of a person to perform certain duties, including immediately determining whether a person is involved in the accident and, if a person is involved in the accident, whether that person requires aid. Effective September 1, 2013.

HB 3676 HARDSHIP LICENSE REQUIREMENTS. This bill amends section 545.424(c), Transportation Code, to remove the holder of a hardship license from the list of persons to whom this section (Operation of Vehicle by Person under 18 Years of Age) does not apply. Effective September 1, 2013.

SB 275 INCREASED PENALTIES FOR LEAVING THE SCENE OF AN ACCIDENT. This bill amends section 550.021 of the Transportation Code to make it a second-degree felony to leave the scene after an accident resulting in the death of a person. Effective May 18, 2013.

SB 1757 LICENSE PLATE FLIPPERS. This bill amends the Transportation Code to make it a Class B misdemeanor offense to possess a license plate flipper. The bill makes it a Class A misdemeanor offense to manufacture, sell, offer to sell, or otherwise distribute, with criminal negligence, a license plate flipper. Effective June 14, 2013.

TAIPA

SB 733 TAIPA RATE FILINGS. This bill amends various provisions of chapter 2151 of the Insurance

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Code to allow the TAIPA governing board to meet by telephone conference call, videoconference, or other telecommunication method with appropriate open meetings notice requirements. It requires the plan of operation to include other incentive programs to encourage authorized insurers to write on a voluntary basis and eliminates the requirement for annual rate filings. The rate filings will be made on a file-and-use basis with a 30-day deemer on filed rates. The commissioner can extend approval periods up to 30 days. If a rate filing exceeds 105% of the current rate, the commissioner shall conduct a hearing on the rate filing. Effective May 18, 2013.

WINDSTORM INSURANCE

SB 1702 INSURING NONCOMPLIANT STRUCTURES. This bill removes the grandfather clause for structures insured as of September 1, 2009, in the Texas Windstorm Insurance Association (TWIA). It allows TWIA to insure a residential structure constructed, remodeled, altered, enlarged, repaired, or added on to on or after June 19, 2009, that was not in compliance with applicable building code standards.

The bill also eliminates the alternative eligibility certification program under TWIA. A surcharge of 15% will apply, regardless of whether the non-complaint structure was insured as of September 1, 2009. The bill adds a provision that on or after December 31, 2015, TWIA cannot issue or renew coverage for a structure that does not comply with the applicable building code standard in effect when the structure was built, remodeled, altered, or repaired. Effective June 14, 2013.

WORKERS' COMPENSATION

HB 1376 ADVERTISING BY FREESTANDING EMERGENCY CLINICS. This bill prohibits a free-standing emergency facility from advertising or holding itself out as a medical office, facility, or provider other than an emergency room if it charges the usual and

customary rate as charged by a hospital emergency room. Effective September 1, 2013.

HB 1762 COVERAGE FOR TEMPORARY EMPLOYMENT SERVICES. This bill clarifies workers' compensation coverage for temporary employment services and client employers. The bill amends chapter 93 of the Texas Labor Code to clarify that a certificate of insurance coverage showing a temporary employment service maintains workers' compensation coverage is proof of coverage for the temporary employment service and the client employer with respect to all the employees of the temp service assigned to the client employer. This new law also applies to the state or political subdivisions using temp services. If the temporary employment service elects to have workers' compensation coverage, the client employer and temporary employment service are subject to the employee election and exclusive remedy provisions of the Texas Workers' Compensation Act. Effective September 1, 2013.

HB 2645 INDEPENDENT REVIEW ORGANIZATION REGULATION. This bill amends chapter 4202 of the Insurance Code relating to the certification and operation of independent review organizations (IROs). The bill requires TDI to adopt rules to prohibit an officer and director of an IRO from serving as the same for another IRO. The bill also prohibits an IRO from transmitting information protected under HIPAA from being publicly disclosed. IROs must maintain a Texas address and be incorporated in Texas. IROs also will be required to notify TDI of a sale of the IRO or a sale of shares in the IRO. The new law also requires TDI to adopt certification for IRO services in both workers' compensation and healthcare.

TDI also must establish an advisory committee to advise the agency and make recommendations on the efficiency of IROs. Effective September 1, 2013.

HB 3152 NETWORK CONTRACTS. This bill amends the Insurance Code section 1305.153 to allow that if, for the purposes of credentialing and contracting with health care providers on behalf of a certified workers' compensation health care network, a person is serving as both a management contractor or a third

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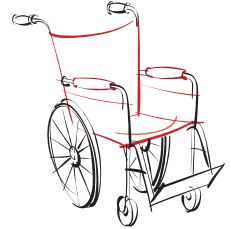
party to which the network delegates a function and as an agent of a health care provider, the contract between the management contractor or third party and the health care provider is required to specify the certified network's contract rate for health care services and the amount of reimbursement the health care provider will be paid after the health care provider agent's fee for providing the administrative services is applied. Effective September 1, 2013.

SB 316 CONTINUING EDUCATION ON OPIOID USE. This bill amends the Occupations Code to require the Texas State Board of Pharmacy to develop a continuing education program regarding opioid drug abuse and the delivery, dispensing, and provision of tamper-resistant opioid drugs after considering input from interested persons. The bill authorizes the board by rule to require licensed pharmacists to attend the opioid continuing education program as part of their required continued education and also requires the standing committee of the Senate on health and human services to conduct an interim study regarding opioid abuse and the provision of tamper-resistant opioids. The committee has to present findings to the Lt. Governor for consideration during the 2015 legislative session. Effective June 14, 2013.

SB 381 MISUSE OF THE DIVISION'S NAME. This bill amends section 419.001, Labor Code, to clarify actions constituting misuse of the Division of Workers' Compensation name or symbols. Effective September 1, 2013.

SB 1286 PROFESSIONAL EMPLOYER ORGANIZATIONS. This bill amends the Labor Code and Tax Code to replace statutory provisions governing staff leasing services with provisions governing professional employer organizations that provide professional employer services and describes co-employment relationships between professional employer organizations and client employers. The bill authorizes a client, in addition to the licensed organization, to elect to obtain workers' compensation insurance coverage for covered employees through an insurance company under the Texas Workers' Compensation Act or through self-insurance. Effective September 1, 2013.

SB 1322 VOLUNTARY AND INFORMAL NETWORKS FOR DURABLE MEDICAL EQUIPMENT AND HOME HEALTH SERVICES. This bill amends chapter 408 of the Labor Code to allow the establishment of voluntary and informal networks for durable medical equipment and home health services. This is similar to 2011 legislation allowing voluntary and informal networks for pharmacy benefits. Effective September 1, 2013.



SB 1643 PRESCRIPTION DRUG MONITORING. This bill amends the Health & Safety Code provisions regarding the prescription drug monitoring database. The bill allows a pharmacist and pharmacist technician, at the direction of the pharmacist, to access the health information exchange for prescription drug information. As part of the changes, the bill requires a pharmacist who dispenses a schedule II medication to include the method of payment for the prescription on the official prescription form or electronic prescription. Finally, the bill creates an interagency prescription monitoring work group composed of representatives of the Department of Public Safety, State Board of Pharmacy and Texas Medical Board, among others, that will report recommendations to the Legislature by December 1 of each year prior to legislative session. Effective September 1, 2013.

OTHER ISSUES

SB 702 MINIMUM INSURANCE REQUIREMENTS FOR PRESCRIBED BURN MANAGERS. This bill amends the Natural Resources Code requiring the Prescribed Burning Board to establish minimum insurance requirements for certified and insured prescribed burn managers, to require the board, not later than November 1, 2013, to establish insurance requirements for the managers in amounts not less than those required by statutory provisions relating to limitations on liability for prescribed burning — \$1 million for each single occurrence and \$2 million in the aggregate. Effective September 1, 2013.