

CONTENTS

- 2 Auto
- 3 Fraud/Solicitation
- 3 County Mutuals
- 3 Windstorm Insurance and Funding
- 4 Workers' Compensation
- 5 Regulatory
- 6 Agents
- 7 Safety
- 7 Confidentiality of Records

[www.thompsoncoe.com](http://www.thompsoncoe.com)

The Texas Legislature began the 81st legislative session in January 2009 and concluded the session on June 1, 2009. Thompson Coe attorneys were involved in representing various individual insurance clients and the Association of Fire and Casualty Companies of Texas on a broad spectrum of issues impacting property and casualty insurance. During the 81st session, the legislature considered over seven thousand bills, with approximately twelve hundred being insurance related. Jay Thompson and Albert Betts were directly involved in working over 343 bills that were identified to have some impact on the property and casualty insurance industry. A total of 38 bills were passed into law. This newsletter will summarize the new laws and provide an insight into future rules and regulations necessary to implement the changes.



The legislative session started with a great deal of turmoil because of debates over Voter ID and the election of a new speaker. Insurance was a front burner issue because of the need to

provide funding for the Texas Windstorm Pool and the fact that both the Department of Insurance (TDI) and the Office of Public Insurance Counsel (OPIC) were scheduled for a sunset review. Under the Texas Sunset law, an agency subject to sunset review must be extended by legislation or the agency goes into a one year wind-down period. Sunset legislation offers a lot of opportunities for amendments that could change the law in all lines of insurance.

The Sunset bills for both the TDI and OPIC did not pass due to the delay in the House over the voter ID bill.

In order to continue both agencies beyond 2010, the Governor called a special session beginning July 1, 2009 to address revised Sunset dates for these agencies and others as well as funding issues for the Texas Department of Transportation. In the special session, the legislature passed Senate Bill 2 revising the Sunset review dates for the TDI and OPIC to 2011. The Governor signed the bill on July 10, 2009.

For both TDI and OPIC, the Sunset Advisory Commission's recommendations will continue and will be reviewed by the Sunset Commission prior to the 82nd legislature in 2011.

Important changes to the leadership and composition of the House had an impact the legislative process and debate on insurance related bills. Representative Joe Straus (R-San Antonio) was elected Speaker and he made several changes to the composition of several important committees including chairs and memberships.

The House Insurance Committee was again chaired by Representative John Smithee (R-Amarillo) and heard most of the property and casualty related bills. The House Business and Industry Committee heard workers' compensation bills and had a new chair, Representative Joe Deshotel (D-Beaumont.). Property and casualty bills were heard in the Senate by the Senate Business and Commerce and State Affairs committees, chaired by Sen. Troy Fraser (R-Horseshoe Bay) and Sen. Robert Duncan (R-Lubbock), respectively.

During the regular session numerous property and casualty bills did not pass but generated significant debate and likely will be considered in the next legislative session. This includes legislation to change the standard of proof in mesothelioma cases, asbestos exposure litigation, legislation to reverse the *Entergy* decision by the Texas Supreme Court involving workers' compensation coverage by premises owners; legislation to limit Court decisions on contractual subrogation agreements; and legislation to reverse Court decision making it easier for attorney fee recovery and pre-judgment interest in uninsured/underinsured motorist coverage. In addition, there were multiple bills filed to require prior approval for automobile

and homeowners rates; the use of standard policy forms for auto and homeowners insurance; bills to ban the use of credit scoring in rating and underwriting; and bills that would have required the election of the commissioner on insurance.

In addition, in the aftermath of Hurricane Ike and the cost to the state's windstorm fund, state political leadership faced the issue of how best to fund the windstorm insurance program. Governor Perry declared the issue an emergency item for the legislature's consideration. The result was House Bill 4409 that revised the funding structure for windstorm insurance and eligibility for coverage, and made other operational changes to the Texas Windstorm Insurance Association.



This report includes those bills considered to have a direct impact on the insurance industry. We publish separate newsletters for property and casualty insurance and life, health, and accident insurance bills.

This report provides a brief summary of the bills along with the effective date for each bill. Many bills may have different effective date for various sections of the bill. Where possible, the summary references any dates for operational changes or applicability of 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 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 the passed bill. We urge you to pay close attention to the rulemaking process that will occur over the new few months at the Department of Insurance, including the Division of Workers' Compensation.

## AUTO

**H.B. 586 Financial Responsibility.** The bill amends the Transportation Code to change the evidence of financial responsibility needed to seek a release of an impounded vehicle from two years to six months. Effective September 1, 2009.

**H.B. 3097 Creation of Department of Motor Vehicles.** The bill transfers the management of motor vehicle functions of the Texas Department of Transportation to a new agency the Department of Motor Vehicles. By transferring these functions, presumably TxDOT could focus on managing the state's highway system. The TxDOT continues as an agency but without the functions assigned to the DMV.

The new DMV will be responsible for certificates of title and motor vehicle registration, motor carrier registration, sale and lease of vehicles, and salvage vehicle dealers among other responsibilities. *The transfer of functions is effective November 1, 2009.* The functions of the Automobile Burglary and Theft Prevention Authority are also transferred to the new DMV.

The DMV is governed by a nine member board appointed by the Governor and subject to Senate confirmation. The Governor has to appoint the Board by October 1, 2009, and the board selects the executive director. Board composition is set by statute and includes two public members, three members representing motor vehicle dealers, one law enforcement officer, one motor carrier industry representative, and one county tax assessor-collector.

The bill also amends the Occupations Code to regulate the use and dismantling of used auto parts and disposal or resale of salvaged or non-repairable vehicles. The Department of Licensing and Regulation would be responsible for rulemaking for licensing used auto parts recyclers and would have enforcement authority. The regulation of used auto parts recyclers should help to curb abuse by reducing the likelihood of parts recyclers using stolen and damaged auto parts. Effective September 1, 2009.

**S.B. 702 Towing and Vehicle Storage Licensing.** This bill is a follow-up to legislation enacted in the 80th session which moved the licensing and regulation of towing and vehicle storage industry from the Texas Department of Transportation to the Department of Licensing and Regulation. (DLR). Some towing operators have been required to hold two licenses issued by DLR. The bill requires DLR to issue a dual towing license for someone who is a vehicle storage facility employee and tow operator. Effective September 1, 2009.



**S.B. 1966 Debt Collection Agreements.** This bill amends various sections of the Finance Code to define “debt cancellation” agreements to include situations where the holder agrees to cancel all or part of the debt on occurrence of the total loss or theft of a motor vehicle. Debt cancellation is not considered to be an insurance product. Certain disclosures and other regulation of these agreements are required if made part of a retail installment contract. Effective September 1, 2009.

#### FRAUD/SOLICITATION

**H.B. 148 Accident Solicitation.** This bill closes a loophole that existed in the Penal Code prohibiting solicitation following accidents or disasters by certain professionals, chiropractors, health care providers, surgeons, attorneys. The law prohibited solicitation by written communication but telemarketers for chiropractors and others had continued to make in person or telephone solicitations. The new law now prohibits the in person and telephone solicitation as well. An offense is punishable as a Class A misdemeanor. Effective September 1, 2009.

**H.B. 3515 Failure to Report Barratry.** This bill would have made it an offense (Class C misdemeanor) under the barratry laws for a lawyer, who has knowledge that could reasonable lead him to believe that another lawyer has violated the barratry laws and fails to report it. The Governor vetoed the bill.

#### COUNTY MUTUALS

**H.B. 1476 Minimum Surplus Requirements.** This bill amends Section 822.212 of the Insurance Code to increase the minimum capital requirement from \$1M to \$2.5M and the minimum surplus from \$1M to \$2.5M. This applies to certain property casualty insurance companies other than life, accident and health companies subject to Subchapter E, Chapter 822. This would include only certain county mutuals, mutuals, Lloyds plans, and reciprocals. A Lloyds, mutual, reciprocal, or county mutual doing business only in Texas would have to meet the new surplus requirements only on a change of control. The provisions amended do not include a farm mutual. A 10-year phase in period is allowed for companies to reach the new capital surplus requirements without a change in control. Insurance Code §822.212 establishes the capital requirements during the phase in period through 2019. A separate bill deals with the minimum surplus requirements for certain county mutuals. (See HB 2449). Effective September 1, 2009.

**H.B. 2449 County Mutual Capitalization.** The bill implements TDI’s recommendation of risk-based capital requirements for county mutuals and requires certain county mutuals to maintain a higher level of surplus. County mutuals that are organized and operating as of September 1, 2001, and continuously thereafter, through MGAs, districts, or local Chapters are permitted to continue operation in that form and each MGA, district or Chapter shall be considered a separate insurer for purposes of Chapter 544 dealing with unfair discrimination, and rate and form filings under Chapters 2251-2254 of the Insurance Code. Those county mutuals must cede 85% or more of their direct business to one or more insurers; write private passenger auto; maintain a market share of not greater than 5% or predominantly nonstandard. Those county mutuals that cede 85% to non-affiliated reinsurers must maintain unencumbered surplus of \$2M or 5% of the company’s recoverable for reinsurance after taking credit against the recoverable for premium payable, collateral, or reinsurers that are rated “A” or better by AM Best or other similar organizations. Effective September 1, 2009.

#### WINDSTORM INSURANCE AND FUNDING

**H.B. 4409 Windstorm Funding.** This bill contains the amendments to the Texas Windstorm Insurance Association (TWIA). Several important changes to Chapter 2210 were contained in this bill including the following:

- TWIA is changed from a potential statewide pool to a market of last resort for wind coverage in the Seacoast territory.
- TWIA is required to undergo a Sunset review before 2015.
- The TDI is required to maintain a list of insurers that voluntarily write in the Seacoast territory and maintain a list of incentives to encourage voluntary writings and minimize use of TWIA.
- The funding for payment of losses after a hurricane is changed dramatically. The “unlimited” assessment on insurers with tax credits is eliminated. Funding is required in the following order:
  - o TWIA Funds and the Catastrophe Reserve Trust Fund (CRTF)



- o \$1B in post-event bonds or commercial paper repaid by TWIA. These are referred to as Class 1 Bonds.
  - o \$1B in post-event bonds repaid by assessments on member insurers and surcharges on coastal P & C policies. Thirty percent (30%) is to be repaid by members through assessments without recoupment through surcharges. The surcharge on coastal P & C includes all policies covering property or operations in the catastrophe area except for workers compensation, health, and medical malpractice insurance. These are referred to as Class 2 Bonds.
  - o \$500M in post-event bonds repaid by assessments on member insurers. These are referred to as Class 3 Bonds.
- The method of approving rates for TWIA is changed to permit file and use for rate changes up to 5% and prior approval for higher rate changes.
  - Territory rating is permitted with caps on rate differentials within a county that gradually increase over a period of time.
  - Changes are made to the method of appointment and number of Board of Directors. Directors are appointed by the Commissioner and the Board is composed of: 4 industry representatives, 4 from the catastrophe area, and 1 from outside the catastrophe area. 1 person must be a licensed agent. Industry representatives are appointed from nominations submitted by the TWIA board.
  - Requires a mandatory declination to be eligible for TWIA. Rules are currently pending at the TDI on these rules.
  - Property located in Zone V and built, altered, remodeled or enlarged on or after September 1, 2009, must have flood insurance.
  - Property built, altered, remodeled, or enlarged after the effective date must comply with building codes or pay a mandatory surcharge.
  - A Legislative Oversight Board of TWIA with members appointed by the Speaker of the House and Lieutenant Governor is created.

Effective June 19, 2009.

## WORKERS' COMPENSATION

**H.B. 673 Injured Employee Assistance.** This was part of the Office of Injured Employee Counsel's (OIEC) legislative recommendation package. OIEC is the agency created in 2005 to be the advocate for injured employee's issues in the workers' compensation system. The bill would allow OIEC to refuse to assist injured workers who are abusive or threatening, are attempting to commit a criminal act in pursuing benefits, or who are requesting benefits not provided under the law.

OIEC employs ombudsmen to assist injured workers in the dispute resolution process. The bill expands this authority to allow OIEC to assist injured workers at proceedings before the State Office of Administrative Hearings (SOAH). This was designed to increase OIEC involvement in medical dispute issues as well as fraud cases brought by the TDI-DWC against injured workers. The bill also creates a communication privilege between the injured workers and OIEC staff to avoid OIEC staff from being required to disclose information shared by the injured worker. Effective September 1, 2009.

**H.B. 1058 Death Benefits Eligibility.** During the 2007 session the Legislature expanded the list of eligible beneficiaries for death benefits in the workers' compensation system to include parents. Previously, only dependents qualified. The bill eliminated a requirement that the parents paid burial costs and received burial benefits in order to be eligible and allows the parent beneficiaries to petition the commissioner of workers' compensation for consideration of their claim if they do not file for benefits within the 1-year time frame required by law. Effective September 1, 2009.

**H.B. 2547 Job Descriptions.** Requires employers to submit information regarding injured workers' employment description to health care providers. The TDI-DWC has to develop the form to be used. This is an effort to improve return-to-work evaluations and determinations in the workers' compensation system. Effective September 1, 2009.



**H.B. 3625 Preauthorization.** Changes the time frame for workers' compensation networks to respond to requests for preauthorization of medical care from three calendar days to three business days. Effective September 1, 2009.

**H.B. 4290 Review of Healthcare.** The bill would require workers compensation networks' denial of treatment due to the experimental or investigational nature of the treatment to be subject to independent review under the Texas Insurance Code, Chapter 1305. Requires a utilization review agent who is about to deny health care because of its experimental or investigational nature or who has questions about the medical necessity or appropriateness of care, to offer the requesting provider an opportunity to discuss the patient's treatment and the URA's decision. Amends Insurance Code §4201.035 to require written notice of the retrospective review denial within a reasonable time but no more than 30 days subject to an extension of 15 days if needed. Amends Insurance Code §4201.401 to require, after the independent review, the URA to comply with the decision on the experimental or investigational care.

In addition, an adverse determination for the workers' compensation network a law is now defined the same as for utilization or independent review of medical necessity and appropriateness. For retrospective utilization review, Applies to health benefit plans delivered or renewed on or after January 1, 2010. Effective September 1, 2009.

**H.B. 4545 Workers' Compensation Appeals.** Changes the time frame for filing appeals to district court from decisions of the TDI-DWC. Currently, appeals are due 40 days after the TDI-DWC appeals panel issues its decision. The new law makes the appeal due 45 days after the TDI-DWC appeals panel mails the decision. Effective September 1, 2009.

**S.B. 202 Provisional Licenses.** Allows the Medical Board to grant provisional licenses to applicants for Texas licensure who are licensed in other states and who are willing to practice in underserved areas as designated by federal or state government. May have an impact on workers' compensation if doctors begin serving in underserved areas in Texas. Effective September 1, 2009.

**S.B. 911 Regulation of Pain Management Clinics.** The bill requires pain management clinics in Texas to be certified by the Texas Medical Board (TMB). Previously pain management clinics were unregulated. Now pain management clinics would be required to be owned and operated by a medical director who is a licensed physician in Texas. Also restricts from ownership physicians who have been subject to certain disciplinary acts or who have pled guilty or *nolo contendere* to a felony or misdemeanor involving distribution of illegal prescription drugs. The TMB can adopt rules to take action against the clinic or the doctor for a violation. Pain management clinics have to obtain their certificate no later than September 1, 2010. Effective September 1, 2009.



**S.B. 1814 Return-to-Work Pilot.** The bill changes the return-to-work pilot program for worker's compensation to allow reimbursement of up to \$5000 for employers with less than 50 employees for workplace modifications designed to assist an injured worker in returning to work. The bill allows the TDI-DWC to make advance payment in certain circumstances. Also enhances existing statutory requirements for workers' compensation carriers to provide return to work coordination services to their policyholders. Effective September 1, 2009.

#### REGULATORY

**H.B. 1975 Unearned Premium Refund.** The bill changes the minimum amount for refund of excess unearned premium from \$1 to \$5. Effective June 19, 2009.

**H.B. 2569 Electronic Equipment License.** This bill allows the commissioner to issue a specialty license for vendors of portable electronic equipment as defined by the bill. The license authorizes the vendor to offer insurance coverage for the portable electronic devices to protect against theft, loss, mechanical failure, malfunction, damage, or other perils.

The insurance issued is under a master or group policy of personal or commercial inland marine insurance.

Allows an agent to provide the materials and conduct the training program. The agent still has to submit the training program materials to the commissioner for approval. Effective September 1, 2009.

**H.B. 2877 Closed Claim Reporting.** Liability insurers are required to report closed claim information to the TDI. The bill raises the level of closed claims to be reported to TDI from \$25,000 to \$75,000. This includes closed commercial liability claims involving bodily injury that are submitted on the quarterly closed claim reports for the following lines of insurance: general liability, medical professional liability, other professional liability, commercial automobile liability, and the liability portion of commercial multi-peril insurance. The reporting amount had been in place for over 15 years and this updates the amount to more accurately reflect the costs of claims. Effective September 1, 2009.

**H.B. 4291** Application Denial Process. This is a TDI recommended bill. It permits denial of applications for certificates of authority and requires a hearing to be held after a denial if requested by the entity making application for a certificate of authority or charter. Effective June 19, 2009.



**H.B. 4339** Unauthorized Insurance Guaranty Fund. Creates a guaranty fund for use by a receiver to reimburse consumers who purchase insurance through an unauthorized insurer and are left with unpaid claims. This bill implements a legislative recommendation made by the TDI prior to the 81st session. The funds come from administrative penalties collected by the TDI under Chapters 101 (unauthorized insurance) and §861.702 (regarding penalties against unauthorized general casualty companies); civil penalties under Chapter 101; penalties for authorized insurers who engage in business outside the scope of their authorization or who use unapproved forms, rates, or advertisements; or bonds forfeited by alleged unauthorized insurers in legal actions brought by the TDI.

The commissioner has rulemaking authority and some discretion in determining the amount of penalties collected to be deposited into the fund depending upon the anticipated needs of the fund. The commissioner may also advance funds from the unauthorized fund if the assets of the unauthorized insurer are insufficient to pay administrative costs and policy claims. Effective June 19, 2009.

**H.B. 4358** Administrative Penalties. This bill enacts a TDI legislative recommendation for the 81st session to allow the commissioner to determine by rule which administrative violations would be subject to specific fine amounts. Once adopted the rules would remove any discretion in the penalty amount for those violations identified in the rule. This bill is effective immediately upon the Governor's signature. Effective June 19, 2009.

**S.B. 1** TDI Interim Studies. This is the state's budget appropriation act, which includes the appropriations for all state agencies. The budget for the TDI includes certain studies the agency must conduct and report on prior to the next legislative session. These include a study on the what changes, if any, have happened to levels of coverage for homeowner's insurance since the use of approved national forms; a study on the use of data mining by insurers in all lines of insurance; and a study on accessibility and affordability of health benefit plan premiums for certain families. Effective September 1, 2009.

**H.B. 3221** Notice of Premium Increase. Amends Insurance Code section 550.002 by requiring insurers to provide mail notice of premium increases when premiums are being paid automatically through an account withdrawal, escrow, or other means. The bill sets certain requirements for the notice including the insurer's toll free number and mailing address, among others, to allow the policyholder to object to the increase. The insurer can increase the premium if no objection is received 5 days prior to the increase taking effect. Effective June 19, 2009.

#### AGENTS

**H.B. 1757** License Exam Pass Rates. Requires the TDI or its contracted vendor to review a license exam for a single or limited lines insurance examination if the overall pass rate is less than 70% for first time examinees. This includes Limited Property and Casualty License, Personal Lines Property and Casualty Agent, Property and Casualty Agents, and Limited Life, Accident, and Health License, Life Agent, Life, Accident, and Health Agents. The TDI would also collect demographic information on examinees. The TDI has to issue an annual report based upon its review of the license exam results. Effective June 19, 2009,

**H.B. 2456** Sale of Complex Products. This bill is primarily aimed at life agents selling annuities, however, it contains broad provisions that could also apply to a property casualty agent. The bill amends section 4001 to require an agent to possess a certificate to sell a designated product or line if required by rules adopted under Chapter 4008.

Amends Chapter 4004 to require the TDI to administer CE and pre-certification raining programs subject to rules adopted under Chapter 4008. Allows the TDI to enter into contracts with an independent contractor for CE and training programs.

Adds Chapter 4008 to require supplementary certification and education for certain complex products. Allows the commissioner to adopt rules to require certification before selling a product designated by the commissioner. The commissioner, by rule, designates the products or product lines that cannot be sold without this certification. The training, exams, and experience requirements are in addition to other such requirements. Effective June 19, 2009.

**H.B. 55 Cell Phones.** Prohibits use of a wireless communication device while operating a motor vehicle in a school crossing zone subject to certain exceptions. The bill outlines certain affirmative defenses to prosecution for an offense. Effective September 1, 2009.



#### CONFIDENTIALITY OF RECORDS

**S.B. 375 Accident Database.** The bill protects information maintained by the Texas Department of Transportation as part of its crash records information system (CRIS), that contains information about motor vehicle accidents around the state. The bill was filed in response to a recent Attorney General ruling that the accident information was subject to public disclosure, including the accident victim's name, address, and other personal information. The bill makes the personal information in the CRIS confidential but allows for release of aggregate information about accidents. Effective June 19, 2009.

**S.B. 671 Legislative Request for Information.** The bill amends Chapter 552 of the Government Code (the Public Information Act) by creating a process for a legislator, who has received information from a state agency that agency believes to be confidential, to request an Attorney General opinion as to whether the information is confidential. Agencies sometimes receive requests from members for information the agency believes to be confidential and the agency may require the member to sign a confidentiality agreement. The member now has the ability to obtain a ruling on whether the information must be maintained as confidential. Effective September 1, 2009.

**H.B. 4461 Confidential TDI Investigations.** This was a TDI legislative recommendation. The bill makes TDI investigation files confidential and not a public record under the Public Information Act. The bill specifically excludes the fraud unit investigation information which is confidential under Chapter 701. Effective June 19, 2009.

#### THOMPSON COE INSURANCE LAW GROUP

• Albert Betts, Jr.	(512) 703-5039	abetts@thompsoncoe.com
• Rodney D. Buckner	(214) 871-8255	rbuckner@thompsoncoe.com
• Jack M. Cleaveland, Jr.	(214) 871-8280	jcleveland@thompsoncoe.com
• Richard S. Geiger	(214) 871-8281	rgeiger@thompsoncoe.com
• Michael W. Jones	(512) 703-5055	mwjones@thompsoncoe.com
• David Knoll	(512) 703-5090	dknoll@thompsoncoe.com
• Jay A. Thompson	(512) 703-5060	jthompson@thompsoncoe.com
• Emory L. White, Jr.	(214) 871-8282	ewhite@thompsoncoe.com

700 North Pearl, 25th Floor, Plaza of the Americas, Dallas, TX 75201 Main No.: (214) 871-8200 Fax: (214) 871-8209

[www.thompsoncoe.com](http://www.thompsoncoe.com)

Austin

Dallas

Houston

Saint Paul

If you would like more information about the issues discussed in this newsletter, or you have a suggestion for a future article, please contact Natalie Trevino at [ntrevino@thompsoncoe.com](mailto:ntrevino@thompsoncoe.com) or (214) 880-2608. **Property & Casualty Insurance Legislation in Texas** may also be found online at [www.thompsoncoe.com](http://www.thompsoncoe.com).

This Thompson Coe newsletter is published to inform clients and friends of recent developments in laws and is not intended to provide legal opinion or to substitute for the advice of counsel. Readers should confer with appropriate legal counsel on the application of the law to their own situations. Entire contents copyright © 2009 by Thompson, Coe, Cousins & Irons, LLP. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means without the prior express written permission of Thompson Coe. Inquiries regarding usage rights should be directed to Natalie Trevino, Marketing Coordinator, at [ntrevino@thompsoncoe.com](mailto:ntrevino@thompsoncoe.com). To unsubscribe to this newsletter, from the address receiving the newsletter please e-mail [Newsletters@ThompsonCoe.com](mailto:Newsletters@ThompsonCoe.com) and enter UNSUBSCRIBE in the subject line.