

**2017 Legislative Session**  
**85<sup>th</sup> Regular Session**  
**24<sup>th</sup> Annual Insurance Symposium**  
**April 7, 2017**  
**Dallas, Texas**

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# 2017 Legislative Session

## 85<sup>th</sup> Regular Session

- Texas Legislature
  - 31 Senators
  - 150 House Representatives
- January 10th = Legislature convened
- March 10<sup>th</sup> = Last day to file bills
- May 29<sup>th</sup> = Regular session (140 days) ends

# Legislative Action

- Bill
- Joint Resolution – constitutional amendments
- Concurrent Resolution – procedures, directions, designation of state symbols
- Simple Resolution – to honor

# Insurance

# Dual Claims Under Insurance Code and DTPA

- SB 10/HB 1774
- Prohibits a person from bringing certain claims under both the Insurance Code and the Texas Deceptive Trade Practices Act (DTPA)
  - prohibits dual actions for violations of Section 541.060 (Unfair Settlement Practices) or 541.061 (Misrepresentation of Insurance Policy) and action under DTPA Chapter 17 that is related to the same claim

# Late Payment of Claims

- SB 10/HB 1774
- Amends Insurance Code § 542.060, regarding liability for late payment of claims in violation of § 542.058
  - § 542.058: generally, if an insurer, after receiving all items, statements, and forms reasonably requested delays payment of the claim for more than 60 days, the insurer shall pay damages and other items as provided by Section 542.060.

# Late Payment of Claims

- SB 10/HB 1774
- Amends Insurance Code § 542.060, regarding liability for late payment of claims in violation of § 542.058
  - Interest on the amount of the claim as damages is reduced from 18% to the current judgment interest rate under the Finance Code plus 3%
  - Current judgment interest rate is 5%, so new interest rate for late payment would be 8%

# Procedures in Suits Related to Property Damage Claims

- SB 10/HB 1774
- Adds Chapter 542A to Insurance Code
- Implements pre-suit notice requirement: requires claimant to provide notice of claim no later than 61<sup>st</sup> day before filing suit
  - Notice must include: acts or omissions giving rise to the claim; agent's identity; amount alleged to be owed on the claim; amount of reasonable and necessary attorney's fees



# Procedures in Suits Related to Property Damage Claims

- Abatement provision:
  - If no pre-suit notice received, defendant may file a plea in abatement not later than the 30th day after the date the person files an original answer
  - If court finds that no notice was received, it must abate suit until the 60th day after the date a compliant notice is given
- Inspection provision:
  - Insurer may send a written request to the claimant to inspect, photograph, sample, or test the property that is the subject of the claim.

# Procedures in Suits Related to Property Damage Claims

- Election of Legal Responsibility:
  - Insurer may accept whatever liability the agent might have for the agent's acts or omissions related to the claim by providing written notice to claimant
  - Insurer's election must be unconditional, unqualified
  - Insurer may not revoke election, nor may court nullify. Election is not made known to jury

# Procedures in Suits Related to Property Damage Claims

- Attorney's Fees Calculations:
  - Fees calculated by ratio of amount awarded in judgment to amount alleged to be owed in pre-suit notice, multiplied by amount of attorney's fees found by trier of fact
  - If ratio  $>.8$ , full attorney's fees awarded
  - If ratio  $<.2$ , no attorney's fees
  - No attorney's fees if defendant pleads and proves attorney engaged in barratry

# Credit Scores in Underwriting

- HB 127
  - Insurer may not use credit scoring in the underwriting or rating of a personal insurance policy issued after January 1, 2018
- HB 1490
  - Insurer may not underwrite, refuse to underwrite, cancel, non-renew a policy, or charge higher premium based on credit information

# Insurance Coverage for Abortions

- SB 20
- Prohibits coverage for abortions offered through the federally mandated exchange, except for medical emergencies
  - ACA allows states to prohibit abortion coverage in health plans offered through exchanges

# Insurance Coverage for Abortions

- Separate supplemental coverage must be purchased for elective abortions under state-issued, private, or employer-based health plans
  - Exception for medical emergencies
- Plan may provide elective abortion coverage if: (1) separate from other plan coverage, (2) enrollee pays separate, additional premium, (3) separate signature for coverage

# Directing Policyholders to Certain Entities

- HB 2257
- Amends Chapter 541 of Insurance Code
  - Prohibits insurers from directing policyholders to an entity/physician/health care provider in which the insurer has an ownership interest or with which the insurer is affiliated in order to provide to the policyholder medical or health care services or supplies

# Additional Damages Against Insurers

- HB 2394
- Adds Chapter 761 to Insurance Code
  - In addition to any other damages, court shall award to a prevailing claimant exemplary damages in an amount equal to the total amount of premiums, contributions, or other consideration paid by the claimant under the policy, contract, or plan in the five years preceding the date of judgment.



# Notice to Policyholders – Property and Casualty

- SB 417/ HB 647
- Amends Insurance Code Chapters 551, 2002
  - Chapter 2002 requires insurers to provide written notice to a policyholder at least 30 days before an endorsement that reduces his/her auto or homeowners insurance coverage goes into effect
  - Chapter 551 dictates that reducing or restricting certain types of policies qualifies as a policy cancellation and triggers cancellation notice requirements

# Notice to Policyholders – Property and Casualty

- SB 417: if an insurer complies with certain notice requirements, then renewal with reduced coverage does not qualify as a policy cancellation
  - Notice must be conspicuous, clearly indicate changes being made to the policy being renewed, written in plain language, and provided 30+ days before renewal date
  - Similar requirements for any endorsement that reduces coverage. Must be provided 30+ days before policy expires

# Assignment of Health Insurance Benefits

- SB 1613/HB 2249
- Amends Insurance Code Chapter 1204
  - Section 1204.053 prohibits insurance policies that bar or restrict covered persons from making a written assignment of benefits to a physician/health care provider who provides health care services to the person
  - Bill would authorize physician/health care provider to take any action insured is authorized to take to recover benefits including Chs. 541, 542, 1467 of Ins. Code or Ch. 17 of DTPA

# Named Driver Policies

- HB 915
- Amends Insurance Code Chapter 1952
- Prohibits insurer from delivering, issuing, or renewing a named driver policy unless the named driver policy is an operator 's policy
  - Insurer may use a named driver exclusion if the exclusion specifically names each excluded driver and does not exclude a class of drivers and the named insured accepts the exclusion in writing

# Health Care

# Liability Limits – Health Care Liability Claims

- HB 719
- Amends CPRC § 74.301
  - Current limits for non-economic damages (mental anguish, etc.) against each physician, health care provider, or health care institution are \$250k/claimant, and \$500k/claimant if >1 health care institution found liable
- Bill ties limits to increase/decrease in CPI-W since 9/1/2003
  - New caps would be \$327,150, and \$654,300, respectively

# Recovery of Medical Expenses as Economic Damages

- HB 2300
- Amends CPRC 41.0105, which limits recovery of medical or health care expenses to the amount actually paid or incurred
  - Bill limits recovery to the amount the treating physician normally would be paid for similar services in a nonlitigation context
  - Limited to the amount the payor of benefits (insurance/Medicare/etc.) would pay for the services plus any amount for which the claimant is responsible

# Medical Authorizations – Health Care Liability Claims

- SB 1872/HB 2891
- Amends CPRC § 74.052
  - Section governs the medical authorization required to release protected health information in a health care liability claim
- Billing records would be subject to release
  - Patient may exclude records regarding HIV/AIDS testing, drug/alcohol/substance abuse treatment, mental health records, genetic information



# Construction

# Statute of Repose – Construction Claims

- HB 1053
- Amends CPRC §§ 16.008, 16.009
  - Statutes of repose for claims against architects/engineers/interior designers/etc. who design/plan/inspect the construction of an improvement to real property, and those who construct or repair an improvement to real property
- Lowers statute of repose from 10 to 5 years

# General Litigation

# Attorney's Fees – Recovery from Legal Entities

- HB 744
- Amends CPRC § 38.001
  - Section currently allows recovery of attorney's fees from an "individual" or "corporation," in certain types of claims (breach of contract, sworn accounts, performed labor, etc.)
- Bill broadens recovery from other legal entities

# Affidavits – Cost & Necessity of Services

- HB 2301
- Amends CPRC § 18.001
  - Section currently allows use of uncontroverted affidavit as sufficient evidence to support finding that charge was reasonable or service necessary
- Bill states that affidavit “may be admitted as evidence,” but removes language that such affidavit is sufficient to support a finding of fact.

# Civil Litigation Procedures

- HB 2574
  - Amends Gov't Code § 22.004 (expedited actions)
  - Raises jurisdictional limit from \$100k to \$200k
  - Excludes attorney's fees from calculation
- HB 2594
  - Creates Chancery courts
  - Actions involving business disputes (e.g., shareholder derivative actions)
- SB 985
  - Abolishes Dallas County Courts at Law Nos. 3-5

# Whistleblower Actions

- HB 563
- Amends Gov't Code Chapter 552
  - Section authorizes suits against state/local government employers for retaliating against employees for their good faith reporting of violations of law to an "appropriate law enforcement authority"
  - Bill expands class of those to whom a report may be made, including "employee's supervisor," an individual or office designated by the employer to receive reporting of grievances, a member of the HR staff, and the AG's office

# Miscellaneous Bills



# Miscellaneous

- SB 2 – Caps on property taxes
- SB 19, 543, 1323/HB 112 – attempts to limit tuition increases at public colleges/universities

# Miscellaneous

- HB 95 – to exempt Texas from Daylight Savings Time
- HB 64 – to abolish the death penalty
- HB 166 – prohibits corporal punishment for students
- HB 1418 – regulation of fantasy games
  - professionally conducted fantasy games for cash prizes and who charge entry fees (think Draft Kings, etc.)

# Miscellaneous

- SB 31/HB 62
- Prohibits using a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped
  - Affirmative defenses: if done in conjunction with hands-free device, or to report illegal activity, summon emergency help, or while entering information into GPS unit, or if person reasonably believed text involved emergency

# Designations

- HCR 32
  - Designates Bowie Knife as the official State Knife of Texas



# Designations

- HCR 92
  - Designates the breakfast taco as the official state breakfast item



# Designations

- SCR 8
  - Designates the cannon as the official state gun of Texas



# 85<sup>th</sup> Texas Legislature Helpful Resources

- Texas Legislature Online:
  - <http://www.capitol.state.tx.us/Home.aspx>
- Texas Tribune:
  - <https://apps.texastribune.org/85th-texas-legislature/>
- Dallas Morning News

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**THANK YOU!**