

THE LATEST LEGISLATIVE NEWS FROM TEXAS

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In its 77th session, the Texas Legislature considered 5,712 bills and resolutions, of which over 300, directly or indirectly, related to the insurance business. 1,620 of those bills passed, 82 were vetoed by the Governor and the rest have, or will become, law.¹

The most significant legislation completely revised Texas agent license law. The Legislature also adopted a financial privacy bill similar to the NAIC model² and a health privacy bill which includes the NAIC model and much more.³ A discussion of the privacy bills is beyond the scope of this article. Here we will discuss the agent license reforms in some detail and provide a brief description of other bills we believe are of interest.⁴

Agents' Licensing Reform

In 1997, the Texas Legislature authorized a special task force to examine ways to streamline and make the agents' licensing process more efficient. Four years later, Senate Bill 414 was enacted to overhaul Texas agents' licensing laws. In addition to simplifying agents' licensing, SB 414 also brings Texas' licensing requirements in line with other state and federal guidelines. This legislation impacts every insurance company and agent doing business in Texas.

License Categories. Agent licenses have been reorganized into four basic types: general (all lines), limited life/accident/health, general (all lines), and limited property & casualty. The specialty licenses created in 1999 were left unaffected by SB 414 except that a new specialty license – telecommunications equipment vendor – was added.

Agents writing credit, job protection, ambulance expense, lump sum accidental death or dismemberment coverages or prepaid legal service contracts are eligible for the new limited life license.

Agents writing credit, farm mutual, motor vehicle, manufactured home, certain industrial fire coverages, insurance only on growing crops, or prepaid legal service contracts are eligible for the limited P&C licenses.

SB 414 also authorized "special" limited licenses for funeral pre-arrangement life insurance agents, agents selling life insurance policies that do not exceed \$15,000 on any one life, and county mutual agents. Emergency and temporary agents' licenses available under specified circumstances were also authorized.

Corporations/Partnerships. The most dramatic effect of licensing reform to most agents will be the various changes to the corporate and partnership licensing requirements. As of September 1, 2001, *only one (1)* corporate officer or active partner of a corporate agent (as opposed to the previous requirement of all) must be individually licensed. Individuals performing the "acts of an agent," however, must continue to have an individual license. Unlicensed employees of a corporate surplus lines agent may no longer act under the scope of a corporate license.

SB 414 requires that a change of control, defined as 10% or more ownership interest of any agency, necessitates the pre-approval of the Texas Department of Insurance ("TDI"). If TDI does not object to the proposed change of control within 60 days, such change is deemed approved.

Examination/Continuing Education. SB 414 revised the written examination and continuing education requirements for agents. Except for certain agents of a farm mutual, county mutual or stipulated premium insurance company, all individuals must pass a written examination as a condition for a new license. Agents, however, have several years (depending on tenure) to satisfy this requirement.

The general agent licenses require 15 hours of continuing education annually, of which at least 2 hours must address ethics. Both limited licenses require 5 hours of continuing education annually, of which at least 2 hours must address ethics. Agents licensed continuously for at least 20 years, however, are exempt from these continuing education requirements. The new continuing education requirements are not effective except as to licenses renewed on or after January 1, 2003.

Financial Responsibility. SB 414 increased the minimum errors & omissions coverage to satisfy an agent’s financial responsibility to \$250,000 (maximum deductible 10%). A \$25,000 surety bond remains an acceptable alternative to E&O coverage. Under the SB 414, the surety bond amount for managing general agents was decreased from \$100,000 to \$25,000.

Miscellaneous. SB 414 permits an agent to act on behalf of an insurer upon the appointment by the insurer even before TDI receives the necessary notice filing.

In an effort to clarify an emerging issue, SB 414 authorized the payment of referral fees to unlicensed persons (where such person does not discuss insurance terms) provided such fees are not based on the *actual* purchase of insurance.

Finally, the Texas Commissioner of Insurance is authorized to adopt rules necessary to implement state law, as well as “to meet the minimum requirements of federal law and regulations.” Thus, future changes at the federal level may be implemented in this state without specific state legislative action. The significance of this authority, however, will only become evident with the passage of time.

Life, Health and Employee Benefits

By far the most important thing to happen in this area was the veto of HB 1862, the bill to revise the “clean claim” rule. This bill was lobbied hard by both sides with the providers winning most of the battles. Employers and insurers lobbied Governor Perry for a veto and won at least the one vote that really counted.

Mandated Benefits and Coverages. The most important bill in this category, HB 1610, is not really a mandate, but instead, requires data collection by insurers on the cost of mandates. Employers and the industry have asserted for years that mandates increase costs, but have never been able to produce supporting data. This bill requires insurers to collect data on specific mandates and report it to the Commissioner. This data will likely be critical to legislative discussions of future mandates as well as to hopefully review the cost associated with existing ones.

The table below organizes the mandates by the type of plan to which each applies.

Bill Number	Subject	Individual	Small Group	Large Group	HMO	MEWA
HB 803	Nurse First Assistant	Yes	Yes	Yes	Yes	No
HB 1183	Surgical Assistant	Yes	Yes	Yes	Yes	No
HB 1610	Data Collection	Yes	Yes	Yes	Yes	Yes
HB 1676	Brain Injury	Yes	Yes	Yes	Yes	Yes
HB 2382	Contraceptive Drugs & Devices	Yes	Yes	Yes	Yes	Yes
SB 8	Female Reproductive & Oncology Services	Yes	Yes	Yes	Yes	Yes
SB 789	Telemedicine & Telehealth	Yes	No	Yes	Yes	Yes
SB 990	Minimum Hospital Stay & Post Delivery Care for Maternity	Yes	Yes	Yes	Yes	Yes
SB 1467	Colorectal Cancer	Yes	No	Yes	Yes	Yes

Managed Care. In this legislative session, managed care, particularly the managed care/network provider relationship, received heightened attention. Irrespective of the demise of HB 1862, a number of bills impacting managed care were enacted.

HMO/PPO

HB 606 prohibits an insurer or HMO from requiring, in its contract with the physician, that the physician use a hospitalist for a hospitalized patient.

HB 2831 requires that upon written request, managed care entities provide out-of-network providers written explanation of the factors used in determining reimbursement rates.

SB 544 requires basic HMO health care services to include periodic health evaluations for each adult enrollee. It requires the verification of the validity of a physician's license as of the date of initial credentialing and on the date of each recredentialing.

HMO Only

HB 2828 adds definitions for delegated network, delegated third party and limited provider network, and regulates the relationship of these entities with HMOs.

Small Employer/HIPAA

HB 471 prohibits a small employer insurer from, directly or indirectly, paying commissions that penalize agents for writing smaller groups or otherwise reducing access to small employer health benefit plans.

HB 949 generally prohibits a small employer insurer from using, as a criterion for establishing a separate class of business, the number of employees and dependents of a small employer, or the trade or occupation of the employees or the industry or type of business of the small employer. It also requires insurers to develop premium rates for each small employer group in a two step process.

SB 990 amends the small/large employer health insurance statutes for HIPAA compliance.

Texas Health Insurance Risk Pool

HB 2191 addresses the qualifications for participation in the Pool, clarifies the prohibition against "dumping" insureds in the Pool, and restores the insurer's right to appeal assessments.

HB 3630 removes MEWAs from the entities subject to assessment by the Pool.

Health Insurance Coverage for Dependents

HB 591 provides that a parent, who is ordered to provide health insurance, but fails to do so, is liable for the cost of health insurance premiums or contributions, if any, paid on behalf of the child.

HB 1066 mandates coverage for grandchildren of an employee or member and raises the age limit of a dependent child from age 21 to age 25.

HB 1440 also requires coverage for grandchildren as dependents and amends the broader definition of dependent. The amendments regarding grandchildren do not appear to be consistent with the HB 1066 revisions. The net result of these changes is that an unmarried child of the employee/policyholder must be covered as a dependent until age 25, regardless of whether the child resides with the employee/member or is a full-time student. A child who loses full-time student status must still be covered until age 25, the same limiting age as coverage for a full-time student dependent.

SB 236 requires the parties to a child custody/support proceeding to disclose the existence of private health insurance for the child, or to demonstrate their efforts to provide coverage through private insurance or a government program.

HB 3038 requires the issuer of a group plan to enroll persons who are eligible for enrollment in the plan who are either recipients of medical assistance under the state Medicaid program and participants in the health insurance premium payment reimbursement program for medical assistance recipients or children who are enrolled in the state child health plan and who are participants in the health insurance premium payment reimbursement program.

Health Insurance Fraud

HB 1562 provides that the TDI fraud unit will review and investigate anti-fraud reports from insurers and report annually to the Commissioner. A new provision exempts from public disclosure the information provided by an insurer to the fraud unit or other governmental agency. A health insurer is required to

include a fraud notice on its claim forms. An insurer must adopt an anti-fraud plan and annually file that plan with the TDI fraud unit.

Other Bills of Interest. There are several health insurance bills that do not fit under any obvious category, some of which are important.

HB 2127 prohibits the issuer of a health benefit plan from refusing to enroll a person in the plan solely because the person is enrolled in another plan at the time the person applies for coverage.

SB 1181 requires a health benefit plan, upon an oral or written request by an insured/enrollee, to provide to that person the name of the plan employee who is available to respond to communications and questions from the insured/enrollee relating to coverage and benefits.

HB 2498 requires the appointment of an interim committee to study the provision of binational health benefit plan coverage.

SB 496 requires TDI and the Texas Department of Health to jointly study the provision of health benefit plan coverage to individuals who are not residents of this state or of the U.S.

HB 1408 requires life and health insurers, including the Guaranty Association, which book and reserve for unearned premium, to make refunds of unearned premium like their property and casualty counterparts.

HB 1495 allows an insurer, which is a member of the Texas Life, Health, Accident and Hospital Services Insurance Guaranty Association, to assign premium tax credits to another member insurer in the event of an acquisition, merger, or total assumption reinsurance, or if the Commissioner otherwise approves such a transfer.

HB 2482 requires the Commissioner to adopt rules to stabilize long-term care insurance premium rates.

Property & Casualty

Auto

HB 45 creates a pilot program allowing (subject to prior regulatory approval) insurers to create mile based rating plans based on miles driven rather than the traditional term.

HB 2230 increases the amount of damage required in order to trigger the reporting of a motor vehicle accident to \$1,000 of property damage.

HB 3393 requires the Commissioner to develop an informational sheet in Spanish to provide an explanation of the common terms in the Texas personal automobile policy.

SB 577 restricts the driving privileges of minors.

SB 693 authorizes a program for the sale of short term (1-7 days) liability policies to motorists from Mexico.

Property

HB 186 provides that law enforcement officials may, during a criminal investigation, request information in an insurer's possession relating to a claim. An insurer must release the information if it believes that the claim is false or fraudulent. The insurer which releases information is not liable for damages relating to the information released.

HB 1162 authorizes the Commissioner to set residential insurance rates for the Texas Windstorm Insurance Association⁵ annually.

HB 1891 prohibits an insurer from endorsing fire and allied lines coverage to reduce the amount of coverage unless the insurer provides the policyholder with a written explanation of the change prior to its effectiveness (unless the change was requested by the policyholder).

Workers' Compensation

HB 2600 is a major reform of the Texas workers' compensation system imposing new controls on worker's compensation medical costs and other changes regarding medical benefits as well as prohibiting the use of pre-injury waivers by non-subscribing employers.

HB 3458 converts the Texas Workers' Compensation Insurance Fund to a mutual insurance company, named "The Texas Mutual Insurance Company." Four of the nine members of the board of directors will be elected by the policyholders, but current oversight of the Legislature is retained.

Credit Insurance

SB 707 applies collateral protection insurance provisions to all types of collateral and loans under the Finance Code. It specifies the nature and type of notice, the length of coverage, and establishes other rules for creditors securing collateral protection insurance. However, creditors who comply are granted "a safe harbor" from suit for providing or failing to provide coverage.

HB 1684 amends the Finance Code to allow policy or agent fees to be charged in connection with credit life, disability, and involuntary unemployment insurance policies financed in motor vehicle installment purchase agreements.

HB 2159 amends article 3.28(3) to set the minimum reserve standard for credit insurance at 100% of the 1980 Commissioner's Standard Ordinary Mortality Table and creates a flex band (+/-30%, the rate set by the Commissioner) system for credit insurance rates.

SB 1581 provides that the lender who offers credit insurance on a single premium basis must provide a written disclosure that the coverage is not required and may be canceled at any time in the future.

Taxes

HB 2604 establishes a procedure for assessing insurers writing insurance (homeowners, fire, farm and ranch owners, and private passenger and commercial auto physical damage in the non-liability portion of commercial multi-peril policies) for funds to support volunteer fire departments. Assessments are based on each insurer's net direct premiums and can be recovered from policyholders through surcharge or increased rates.

SB 1689 exempts organizations providing management or accounting services on behalf of non-admitted captive insurers from franchise taxes for any year in which they pay premium tax.

SB 1690 addresses several issues regarding the general exemption insurance companies enjoy from taxes other than the premium tax. The most important provision of the bill is the clarification that insurers are subject to all state taxes, including sales tax, other than the franchise tax.

Regulatory

HB 1408 requires an insurer which maintains an unearned premium reserve to promptly refund to the policyholder the appropriate portion of the unearned premium upon cancellation or termination of the policy. This bill does not alter the obligation of an insurer to pay unearned premium to a premium finance company.

HB 1703 amends the unauthorized insurance law to allow management and accounting activities for captive insurers which are not admitted to do business in Texas.

HB 2102 allows the Commissioner to exercise rulemaking authority in setting benchmark rates and Texas Automobile Insurance Plan Association ("TAIPA") rates instead of the current requirement of a hearing.

HB 2830 purports to give TDI jurisdiction over unauthorized insurers operating in Texas but writing only in other states.

SB 601 creates a tax-advantaged vehicle for venture capital investment by insurers in Texas companies – “certified capital company.” A 100% premium tax credit for such investment is available.

SB 944 allows property and casualty insurers to defer filing loss control plans until they intend to write coverage which necessitate such plans.

Financial Modernization

HB 2155 authorizes the sharing of information by agreement between the functional regulators and protects disclosure of information subject to privilege or confidentiality in such exchanges.

SB 605 requires the Commissioner to approve mergers, acquisitions and other combinations within 60 days of filing unless that period is waived by the applicant.

Endnotes

1. The bills are generally effective on September 1, 2001 although some were effective when signed or have delayed effective dates. If you need specific information we recommend the Texas Legislature online website, www.capitol.state.tx.us.
2. Senate Bill 712.
3. Senate Bill 11 et al.
4. This article represents summaries of comprehensive and complicated legislation, subject to interpretation and the adoption of rules by TDI. Our comments are not intended to replace the advice of counsel with respect to the effect of the outlined herein. All statutory references made herein are to the Texas Insurance Code unless otherwise noted.
5. The Texas Windstorm Insurance Association is comprised of all property insurers authorized to transact property insurance in Texas. Under current law, the association is required to issue property insurance covering insurable property in the 14 Texas counties contiguous with the Gulf of Mexico.