

HB 3009 requires child custody evaluators to be able to communicate with a parent in their primary language or have someone who can assist the parent in their primary language. This requirement applies to child custody evaluations conducted on or after September 1, 2021.

SB 286 requires that *if* an obligee is required to pay spousal maintenance *and* child support, then the court *shall* order both to be paid through the state disbursement unit. This bill further establishes child support guidelines for low-income obligors whose monthly net resources are \$1,000 or less. The court shall presumptively apply different guidelines to obligor's who qualify as low-income. These changes apply to maintenance orders or suits filed on or after September 1, 2021.

SB 1458 calls for the creation and mandatory use of standardized forms for applications of protective orders and ex parte temporary protective orders. The Office of Court Administration is responsible for promulgating the forms. SB 1458 was vetoed on June 18, 2021.

HB 2926 added subchapter D to chapter 161 of the Texas Family Code, which is titled Reinstatement of Parental Rights After Involuntary Termination. This is a new and significant procedure that allows certain persons, including the Department of Family and Protective Services and a previously terminated parent, to move for reinstatement of parental rights. The new statutes set out the basic requirements for filing such a motion and details for the new hearing procedures. The bill is effective September 1, 2021.

HB 1012 amends Texas Property Code § 24A.002. Family lawyers are not typically interested in Property Code changes. However, there were procedures in the property code that allowed for "persons" to enter a "former residence" to obtain "personal belongings." This procedure may be initiated in a court other than a family trial court. To prevent this statute from being abused by family court litigants, it was amended so that an applicant is required to notify the court if they are a party to a pending suit under Title I of the Texas Family Code. This amendment only applies to those applications filed on or after September 1, 2021.

HB 1372 allows the court to order a third-party phone carrier to transfer a phone number to the named petitioner in a protective order under Chapter 85 of the Texas Family Code. While the bill prevents the phone company from charging a "transferring fee," it does not set limitations on other "customary" administrative fees. These are court orders specifically related to Chapter 85 of the Texas Family Code (protective orders), and at first blush appear to be helpful in protecting spouses and their dependents from abusive family members. It may be a useful tool, so long as the phone company does not make it cost prohibitive. This is an amendment in the Texas Business and Commerce Code, Chapter 608, and applies to petitions filed on or after September 1, 2021.



INSURANCE LAW

By W. Ryan Brannan

Affordability and accessibility continue to be central motifs for insurance-related legislation at the Texas Legislature. This session, significant pieces of legislation were also passed involving modernization and price transparency, particularly as they relate to pharmaceutical costs. Given the number of insurance bills that passed this session, the article below is to be viewed as a summary of the more significant legislation. All bills are effective September 1, 2021, unless otherwise indicated.

Transparency and Affordability

In the 2019 session, legislators passed **HB 2536**, requiring drug manufacturers to report wholesale acquisition costs and significant price increases and to provide justification for those increases on the Texas Health and Human Services Commission, or HHSC, website. This session, **HB 1033** expanded on price transparency measures by requiring manufacturers to disclose research and development costs annually, limiting the scope of the word "drug" to "pharmaceutical drug," and allowing the Texas Department of State Health Services to administer a fee for implementation and fines for failures to disclose price increases.

HB 1763 curtails the ability of pharmacy benefit managers, or PBMs, to assess retroactive fees and payment reductions. The bill prohibits these actions by PBMs, with few exceptions, unless those fees or reductions are made as a result of an audit outcome or the pharmacy agrees. This legislation follows the U.S. Supreme Court decision in *Rutledge v. Pharmaceutical Care Management Association*, holding that an Arkansas PBM reform law is not preempted by the Employment Retirement Income Security Act of 1974.

HB 1919 seeks to prevent pharmacies' concern of PBMs referring patients to their own specialty pharmacies by protecting the right of pharmacy patients to use their pharmacy of choice.

HB 2090 codifies the federal price transparency rules for health plans into Texas statute. It also requires insurers and third-party administrators to disclose information related to health care costs at the request of the enrollee.

HB 18 requires HHSC to develop a prescription drug savings program that partners with a PBM to offer prescription drugs at a discounted rate to uninsured individuals.

HB 1935 gives pharmacists the authority to dispense a 30-day emergency supply of insulin and insulin-related equipment and supplies if specific criteria are met. Previously, they could only fill a three-day emergency refill. **SB 827** caps the out-of-pocket costs in a health plan's cost-sharing requirements for insulin at \$25 for a 30-day supply.

SB 1296 gives the Texas Department of Insurance, or TDI, commissioner authority to review and disapprove rates of health benefit plans and to draft rules on a process for doing so. It also includes rules establishing geographic rating areas. This role was ceded to the federal government in 2013 as a result of the Affordable Care Act, or ACA. Now that the feds have ended reimbursements, having TDI review rates ensures Texans are getting allowed subsidies and that rates remain affordable.

Transparency and Modernization

The changing landscape of how we do business due to COVID-19 affected all lines of insurance, creating a push for more electronic means of health care delivery as well as flexibility in how insurers do business.

Effective June 15, 2021, **HB 4** made permanent most of the Medicaid/Children's Health Insurance Program waivers put in place as part of the state's COVID-19 response while still upholding the standard of care. It also addressed gaps related to the use of technology in delivering services and information to clients identified by stakeholders during the COVID-19 pandemic. Dentists also are included in telehealth expansion as a result of **HB 2056**.

SB 2124 seeks to give employers the authority to "opt in" all employees to electronic delivery by default, while providing employees the ability to "opt out" of this paperless option should they so choose.

SB 1367 exempts a list of insurance products for large commercial risks and 17 specialty commercial insurance lines—from rate filing and review requirements—consistent with the existing exemption from form filing requirements for those same risks. A TDI recommendation, these changes will help employers gain specialty products in an evolving market.

SB 918 provides flexibility for when meetings can be held, allowing smaller insurance companies to operate with smaller boards and eliminating unnecessary regulations on boards, similar to other companies governed by the Texas Business Organizations Code.

Health Insurance Substitutes

In attempts to address accessibility to health products, several bills were offered this session allowing for certain insurers to offer products outside of the requirements of traditional health plans. Opponents argued these products are not pervasive coverage and could hinder the market. Time will tell as two of these bills passed. **HB 3924** allows the Texas Farm Bureau to offer health products to its members. The bill exempts these plans from the definition of insurance.

HB 3752 allows Texas Mutual Insurance Company, or TMIC, to offer health products to its members, individuals, and employers with fewer than 250 employees, beginning September 1, 2023. By September 1, 2022, TMIC must submit a report to the Legislature on the feasibility in the market for this new product, taking into account a laundry list of requirements, including preexisting conditions.

Health Mandates and Rising Costs

HB 317 prohibits insurers from discriminating against living organ donors by denying coverage, increasing premiums, or taking other adverse actions against them.

HB 428 expands the mandate for ovarian cancer testing and screening by including any test or screening approved by the U.S. Food and Drug Administration for the detection of ovarian cancer during annual well woman examinations.

SB 1065 requires that a health benefit plan that covers a screening mammogram must provide coverage that is no less favorable for diagnostic imaging. **SB 1028** lowers the mandate for colorectal cancer detection from age 50 to age 45 and requires a colonoscopy if the screening comes back with positive cancer indicators.

SB 2016—effective immediately with the governor's signature on June 16, 2021—exempts health plans from compliance with any state-mandated benefits determined to exceed the federally mandated essential health benefits and for which the state must defray the cost.

Additional Health Insurance Related Bills of Significance

As a result of concerns raised by health providers, **HB 3459** requires physicians involved in utilization review to be in the same field as those they are reviewing. It also exempts certain physicians and providers from preauthorization requirements if they had at least 90% of their preauthorization requests approved by the insurer in the preceding calendar year.

Effective June 7, 2021, **SB 874** allows for TDI to access federal funds for high-risk individuals should funds become available during the interim. Texas dissolved its high-risk pool after the ACA was passed because insurers could no longer prohibit offering coverage to individuals with serious and/or preexisting health conditions.

HB 2595, the result of recommendations from the Mental Health Condition and Substance Use Disorder Parity Workgroup created by legislation last session, creates a parity complaint portal, provides training related to parity, creates

educational materials to raise public awareness, and designates October as Mental Health Condition and Substance Use Disorder Parity Awareness Month.

Motor Vehicle Coverage

HB 19 gives commercial vehicles added tort protections. Specifically, HB 19 requires evidence directly relevant to causation and injuries arising from a commercial vehicle accident to be presented to jurors without prejudice. HB 19 also sets forth specific procedures by which the facts of a case are presented by both the plaintiff and defendant to determine negligence of a defendant and compensation.

SB 1602 requires nonrenewal of private passenger automobile policies if an insured fails to cooperate in the investigation, settlement, or defense of a claim, or if an insurer is unable to contact the insured after making reasonable efforts.

SB 965, in order to add a consumer safeguard against potential excessive or discriminatory rates, repeals the exemption for low market share auto insurers and subjects otherwise exempt residential property insurers to rate filing and approval if they increase their rates above 8% on average for three consecutive years.

Windstorm Insurance

SB 1448 requires the Texas Windstorm Insurance Association Board of Directors to have a super-majority vote to increase rates on its policyholders, going from a 5-4 vote to requiring a 6-3 vote. SB 1448 also extends interim committee studies passed in the previous legislative session that studies the funding structure of TWIA and looks at combining TWIA and the Texas Fair Access to Insurance Requirements Plan.

HB 769 prevents TWIA from using the same vendor that does its hurricane modeling to determine how much reinsurance to purchase to also be the vendor that sells TWIA its reinsurance. HB 769 prevents the TWIA Board of Directors from voting on a rate increase if there has been a coastal board member vacancy that has been unfilled for 60 days.

Additional Property and Casualty Bills of Significance

SB 1809 allows the TDI commissioner to issue an emergency cease and desist order if TDI finds that someone is unlawfully selling insurance in Texas.

HB 3769 clarifies which non-workers' compensation policies that provide coverage to employees must disclose that a policy is not a workers' compensation policy. HB 3769 does not create any changes to occupational injury benefit plan law and regulation.

Effective June 16, 2021, **SB 713** updates the Texas Sunset Commission agency review calendar. SB 713 postponed the Sunset review of all insurance-related agencies from the current interim to after the 2023 session. These agencies include the TDI, the Division of Workers' Compensation, the Office of Public Insurance Counsel, and the Office of Injured Employee Counsel.

LEGISLATIVE AND CAMPAIGN LAW

By Ross Peavey

During the 87th session, the Texas Legislature filed and passed a multitude of new regulations on legislative and campaign law. This session saw updates to the law regarding operation of legislative institutions and government agencies, public integrity, state appropriations and procurement, campaign finance, and election administration. Each chamber of the Texas Legislature adopted rules to limit the spread of COVID-19 while they were in Austin for their deliberations. These new rules affected legislators, lobbyists, and those who visited the state capitol from around the world. Additionally, the 87th session saw an uptick in elections bills when compared with prior sessions. A survey of some significant changes in Texas legislative and campaign law in 2021 include the following legislation. All bills are effective September 1, 2021, unless otherwise indicated.

HB 3920

- Requires new certification for disabled voters to vote by mail.
- Expressly limits pregnant and expectant mothers' qualification to vote by mail to those "expecting to give birth within three weeks before or after election day."
- Under the new law, a voter's lack of transportation, a voter's sickness that does not prevent the voter from appearing without assistance or injuring themselves, or a voter's requirement to be at a place of employment, may not be used to request mail-in ballots.

HB 2283

- Prohibits elections officials and commissioner's courts from accepting donations of \$1,000 or more to perform any function of administering elections.
- The secretary of state may make an exception with unanimous consent of the governor, the lieutenant governor, and the speaker of the House with written consent from the relevant political subdivision.

HB 1382

- Requires the secretary of state to provide an online tool to each early voting clerk that enables a voter who applies for a ballot by mail to track the location and status of the person's application and ballot on the Texas secretary of state and county websites.

SB 1113

- Authorizes the secretary of state to deny public federal funds from voter registrars who failed to timely perform a duty requiring the approval, change, or cancellation of a voter's registration.

SB 1387

- Provides that for a voting system or voting system equipment to be approved for use in Texas elections, the