



80th Legislature, Regular Session - Sine Die Report

by Zoe Taylor

THE 80TH REGULAR SESSION BEGAN ON JANUARY 9, 2007 and ended 140 days later on Memorial Day, May 28, 2007. Unlike last session, the Legislature faced no major crisis in education funding or property tax reform. Nor was there a budget crunch as there has been in past sessions. What this session lacked in substance, however, it made up for in drama.

This session was characterized by challenges to the leadership in both chambers and the executive office. The Governor faced opposition from his political base on issues ranging from his executive order on the HPV vaccine to his support for toll roads and other transportation issues. The Lieutenant Governor faced challenges in shepherding major pieces of his legislative agenda to the Senate floor. Jessica's Law, targeting sexual offenders of children, was a well publicized legislative priority for him that proved difficult to get to the Senate floor. The controversial Voter I.D. bill became an insurmountable hurdle even though it was a Republican party priority in a Republican majority Senate.

Finally, the real drama and obvious challenge to leadership came in the final days of the session in the House, where members of both parties rose up against House Speaker Tom Craddick. Their challenges ultimately proved futile, as the Speaker used the House rules against them and refused to recognize members on any motions to remove him from his post. Several challengers have already filed against him for next session, making for a very interesting and important election cycle.

This session, legislators filed almost 6200 bills, passing roughly 1600 of them. The following list is a summary of the major issues from this session.

Arbitration

HB 3091 by Frost **DID NOT PASS**

Added certain requirements and disclosures to consumer arbitration agreements.

HB 3885 by Gattis **DID NOT PASS**

Added certain requirements for arbitrators and standards for appeal of arbitration awards.

Courts & Juries

"Court Reorganization"

SB 1204 by Duncan **DID NOT PASS**

SB 1204 was originally heard in Senate committee on 3/26/2007. The bill as filed expanded Supreme Court jurisdiction, "reorganized" county courts across the state into district courts, and created a Supreme Court appointed panel to transfer complex cases to appropriate judges. The laundry list for determining a complex case included such factors as: whether the case will benefit from assignment to a judge who is knowledgeable in a specific area of law; whether there will be a large number of witnesses or a substantial amount of documentary evidence; whether there is a large amount in controversy; and whether it is likely that there will be scientific, technical, medical, or other evidence that requires specialized knowledge (i.e., whether there will be an expert witness testifying). Confronted with significant opposition from judges and other lawyers' organizations, including ABOTA, TADC, and TTLA, Senator Duncan and his office met for several weeks with interested parties to work on compromise language.

SB 1204 was significantly reworked to change the complex case provision to a "needy courts" provision that would direct resources to courts with complex cases. The bill passed the Senate and the House committee but was ultimately killed on a technical error on the House floor.

Jury System

SB 1300 by Wentworth **DID NOT PASS**

SB 1300 would have codified several recommendations from the Supreme Court's Jury Task Force committee. The bill never made it out of the Senate.

Judicial Selection

SB 806 & SJR 32 by Duncan

HB 1908 & HJR 78 by Crownover **DID NOT PASS**

Non-partisan retention elections for judges - district & appellate. Conforming constitutional amendments. The bills and resolutions were never heard.

Asbestos MDL

SB 749 by Janek **PASSED**

Allows the asbestos MDL judge to coordinate with or

mandamus a trial court to set an asbestos or silica case for hearing. Raises the salary for an MDL judge on these cases and allows the judge to employ a briefing attorney and additional clerks. The bill was sent to the Governor 5/22/07.

Location for Court Proceedings in an Emergency

HB 2766 by Eiland PASSED

Allows the presiding administrative judge to designate an alternate location for judicial proceedings during and after a disaster in certain coastal counties. Sent to the Governor 5/26/07 and effective immediately.

Insurance

Raising Auto Minimum Limits

SB 502 by Averitt PASSED

SB 502 sets new automobile liability insurance limits at 25/50/25, increasing to 30/60/25 in 2011. It received no opposition and was sent to the Governor 5/22/07. Related bills filed were HB 1197 by Homer; HB 1589 by Smithee.

Attorney's fees in UM/UIM cases

HB 2013 by Smithee DID NOT PASS

Would have allowed the recovery of attorney's fees in a UM/UIM claim without a final judgment being rendered in the underlying action; addressed the Brainard decision. The bill was left pending in House Calendars and never received floor consideration.

Direct Action

SB 1272 by Van de Putte DID NOT PASS

Allowed an insurance company as a proper party to a third party lawsuit. The bill never received a hearing.

Mandatory Liability Insurance for Alcoholic Beverage Providers

HB 3026 by Frost DID NOT PASS

Required the holder of an alcoholic beverage permits to have minimum limits of liability insurance. The bill never received a hearing.

"No pay, No Play"

HB 26 by Corte DID NOT PASS

Prohibited recovery of punitive and non-economic damages for claimants who do not have auto liability insurance. The bill was heard in the House Civil Practices committee, but was never voted out of committee.

Advertising by Insurers

HB 2251 by Taylor PASSED

Adds specific requirements for internet advertising to the Insurance Code. Sent to the Governor 5/22/07 and effective on 9/1/07 if signed.

Subrogation Rights of Certain Insurers

SB 561 by Carona PASSED

Sets out the specific subrogation rights of political subdivisions who provide health insurance for their employees in third party actions. Codified attorney's fees and pro rata share, but abolishes the made whole doctrine for these subrogation actions. Allows declaratory actions by plaintiffs to justify a smaller pro rata recovery by the insurer. Sent to the Governor 5/22/07; effective immediately.

Venue for Prosecution of Insurance Fraud

SB 1715 by Seliger; HB 1245 by Taylor DID NOT PASS

Would have allowed several different venue options for the prosecution of insurance fraud.

Creating an Offense for Fraudulent Claims

SB 1345 by Seliger DID NOT PASS

Would have added a new offense to the Penal Code for the making of fraudulent claims for payment for bodily injury or property damage.

Lower Insurance Requirements for Kiddie Train Rides

HB 1070 by Laubenberg PASSED

Sets out special liability insurance requirements for certain amusement rides that operate in a manner similar to a train. The bill was sent to the Governor 5/22/07.

Limited Liability or Immunity

For Professionals for services provided during an emergency:

HB 823 PASSED

As a result of the hurricanes last year, several professional groups claimed to be hindered from the amount of volunteer work they could perform because of the onerous risk of liability. The architects and professional engineers sought special protections under this bill for professional aid rendered after a hurricane. HB 823 passed both chambers, was signed by the Governor 5/18/2007, and is effective immediately.

For Liquefied Petroleum Gas distributors:

HB 1170 by Flynn PASSED

Provides immunity for installers of LP Gas for modifications to a gas system. The bill passed both chambers and was sent to the Governor 5/23/07.

For Landowners who allow radio controlled aircraft to fly over their land

HB 1183 by Otto PASSED

Amends Chapter 75 of the Civil Practice and Remedies Code, the recreational use statute to add radio controlled airplanes to the list of activities for which liability is limited under the chapter. TTLA worked with the author to exclude injuries which occur outside the boundaries of the property from the liability limits. HB 1183 was sent to the Governor 5/26/07.

For Premises owned, operated or maintained by a governmental unit and paintball activities

HB 1560 by Callegari PASSED

Also amends Chapter 75 of the Civil Practice and Remedies Code to add paintball activities to the list of activities for which the liability of a governmental unit is limited. It was signed by the Governor 5/25/07 and is effective immediately.

Constables

SB 1269 by West PASSED

This legislation was the result of several large judgments levied against constables and counties for failure to collect judgments against untraceable or bankrupt defendants. The bill as passed sets out specific duties for constables in collecting these judgments and limits the damages recoverable under the statute to actual damages. Sent to the Governor 5/22/07.

Peace Officers & High Speed Chases

SB 1348 by Patrick DID NOT PASS

As filed, the bill would have immunized peace officers from any liability for actions taken while in pursuit of a motor vehicle. After the bill failed to pass by the deadlines, it was attached as amendment to another bill that also failed to pass.

Seat Belts on School Buses

HB 323 by Hamilton PASSED (without immunity language)

An amendment to this bill, which requires school districts to install seat belts on school buses if funds are available, was added to immunize school districts from liability if the buses did not have seat belts. This amendment was ultimately stripped and the bill passed and was sent to the Governor 5/25/07.

For Directors of Soil and Water Conservation Districts

SB 1613 by Duncan PASSED

Clarifies the definitions under the Texas Tort Claims Act to include soil and water conservation districts and their directors. Sent to the Governor 5/27/07.

Defibrillators

SB 7 by Hinojosa PASSED

Relates to the instruction and availability of automatic external defibrillators at schools and school district events. Bill provides that it does not create or waive any liability. Sent to the Governor 5/26/07.

Volunteer First Responders

HB 2117 by Parker PASSED

Includes volunteer first responders under the emergency care section of Chapter 74 of the Civil Practice and Remedies Code. Sent to the Governor 5/26/07.

Med Mal

SB 468 by Ellis DID NOT PASS

Returned ER cases to an ordinary standard of negligence rather than willful or wanton. SB 468 was voted out of State Affairs but never considered by the full Senate.

SB 829 by Ellis DID NOT PASS

Clarified 202 deposition procedures in med mal cases; never heard in committee.

SB 1560 by Hinojosa DID NOT PASS

Redefined claimant in wrongful death cases; never heard in committee.

HB 414 by Eissler DID NOT PASS

Allowed certain “administrative” violations to be removed from a physician’s medical board records after 5 years; the bill was never heard in committee.

Paid Or Incurred

HB 3281 by King PASSED

As filed, HB 3281 repealed Sec. 41.0105 of the CPRC, eliminating the “Paid or Incurred” provision. HB 3281 was amended in the House committee so that the statute would apply only to medical malpractice cases. The bill passed the Senate and was sent to the Governor 5/22/07.

Pharmaceuticals

SB 39 by Nelson DID NOT PASS

Established a cancer drug donation program and provided immunity from liability for donated drugs; never heard in committee.

Premises

HB 416 by Strama PASSED

Requires retail establishment to allow people with certain medical conditions access to private employee restrooms. Provides that the person with the medical condition has licensee status under Texas law. Sent to the Governor 5/22/07.

Products Liability

HB 1927 by Chisum DID NOT PASS

Created a government standards defense for manufacturers and sellers of fuel additives, such as MTBE. HB 1927 was voted postponed on the House calendar eight times and ultimately never considered on the House floor.

HB 3354 by Haggerty DID NOT PASS

Created a government standards defense for “non-consumer safety products.” The bill never received a hearing.

SB 791 by Williams PASSED

Added oysters to the list of inherently unsafe products under Section 82.004 of the Civil Practice and Remedies Code. The bill was sent to the Governor 5/30/07 and is effective 9/1/07.

Almost **6200** bills were introduced. Roughly **1600** passed.

Proportionate Responsibility

HB 3029 by Frost **DID NOT PASS**

Changed the proportionate responsibility scheme in dram shop cases to address the Supreme Court's opinion in Duenez. The bill received a good hearing in committee and was voted out but was never considered on the House floor.

Qui Tam

HBs 2690 and 3550 by Haggerty, HB 2925 by Keffer, SB 1309 by Wentworth **DID NOT PASS**

Each bill added a new statute which provided for state qui tam actions. SB 1309 made it over to the House and out of House committee, but ultimately never passed.

Residential Construction

HB 1038 by Ritter **PASSED**

Proposed reforms to the Texas Residential Construction Commission. This bill was criticized for not going far enough in its reforms, but was ultimately passed by both chambers and sent to the Governor 5/28/07.

Solicitation by Chiropractors

HB 1519 by Smith **PASSED**

This bill expands the definition of barratry in the Penal Code to prohibit contact by a chiropractor with accident victims by telephone or in person within 31 days of an accident. HB 1519 passed both chambers.

Related Bills (DID NOT PASS): HB 2868 and SB 1208 amend the transportation code sections regarding motor vehicle accident reports to prohibit release for a specified time period.

Tort Claims & Governmental Immunity

HB 811 & 813 by Dutton **DID NOT PASS**

Clarified the waiver of sovereign immunity for activities involving a motor vehicle and discovery procedures in a tort claims suit. HB 811 was substituted to remove the "condition or use" of property prerequisite under the Texas Tort Claims Act. The substituted bill was never voted out.

SB 1652 by Ellis **DID NOT PASS**

Removed the condition or use of property prerequisite under the Texas Tort Claims Act. The bill was heard in the Senate State Affairs committee, but was never voted on.

Venue

Dredge Company Forum Shopping

HB 1602 by Van Arsdale **PASSED**

HB 360 by Straus was the first bill filed on this issue and would have eliminated mandatory venue in the plaintiff's county of residence for both Jones Act and FELA cases. After significant opposition from the railroad workers and industry, HB 1602 was filed and eliminated mandatory venue only in Jones Act cases.

HB 1602 was passed out of the House at the end of April with different venue options for cases which occur on inland waters in Texas, on inland waters in a Gulf Coast state and cases which occur offshore. It underwent further modifications in the Senate, with the barge companies playing a bigger negotiating role. The bill that passed the Senate included the same distinctions between locations where the injury occurred and also included rivers such as the Mississippi River in the definition of inland waters. The bill was signed by the Governor 5/24/07 and is effective as of that day.

Related Bills (DID NOT PASS): In response to the proposed changes to venue for Jones Act cases, Rep. Craig Eiland, D-Galveston, filed several pieces of legislation relating to venue:

- 1 **HB 2192 by Eiland** - added proper venue in any coastal county to the mandatory venue statute for Jones Act/FELA cases.
- 2 **HB 2758 & HB 3267 by Eiland** - allowed plaintiff's county of residence as proper venue in all civil actions.

Probate Court & PI Cases

HB 660 by Hartnett & SB 392 by Duncan **DID NOT PASS**

Codified and expanded the Texas Supreme Court ruling in Gonzales v. Entergy, and eliminated probate court as a proper venue for personal injury cases. HB 660 passed the House and was referred to Senate Jurisprudence. It was never voted out of this committee.

Workers' Compensation

HB 34 by Solomons **PASSED**

Prohibits certain payments or other inducements regarding a workers' compensation claim. Signed by the Governor 5/24/07; effective 9/1/07.

HB 472 by Solomons **PASSED**

Relating to the regulation of third-party administrators, including those with delegated duties in the workers' compensation system of this state. Sent to the Governor 5/30/07.

HB 473 by Solomons PASSED

Relating to the application of certain fee guidelines to health care provided under the workers' compensation systems. Sent to the Governor 5/28/07.

HB 724 by Solomons PASSED

Relating to resolution of certain disputes regarding workers' compensation claims for medical benefits. Sent to the Governor 5/28/07.

HB 886 by Giddings PASSED

Relating to an optional preauthorization plan for the workers' compensation return-to-work pilot program for small employers. Signed by the Governor 5/17/07; immediate effect.

HB 888 by Giddings PASSED

Relating to the cost of obtaining copies of an injured employee's medical records for use by an ombudsman under the office of injured employee counsel's ombudsman program. Sent to the Governor 5/26/07.

HB 1003 by Giddings PASSED

Relating to professional licensing requirements for independent review of certain medical decisions regarding workers' compensation claims. Signed by the Governor 5/18/07; effective date 9/1/07.

HB 1005 by Giddings PASSED

Relating to the timely submission of a claim for payment by a workers' compensation health care provider. Sent to the Governor 5/25/07.

HB 1006 by Giddings PASSED

Relating to physician licensing requirements for utilization review of medical decisions regarding workers' compensation claims. Signed by the Governor 5/18/07; effective 9/1/07.

HB 2004 by Giddings PASSED

Relating to requiring that a doctor who reviews a workers' compensation case be certified in a professional specialty appropriate to the care received by the injured employee. Sent to the Governor 5/28/07.

SB 192 by Brimer PASSED

Relating to the Texas Mutual Insurance Company and the application of certain statutes to the Texas Mutual Insurance Company. Signed by Governor and effective on 5/4/07.

SB 458 by Watson PASSED

Relating to workers' compensation medical benefits for certain prosthetic or orthotic devices. Signed by the Governor 5/21/07; effective 9/1/07.

SB 471 by Brimer PASSED

Relating to certain information reporting requirements regarding workers' compensation claims. Signed by the Governor 5/11/07; effective on 9/1/07.

SB 908 by Brimer PASSED

Relating to the continuation and functions of the State Office of Risk Management. Sent to the Governor 5/22/07.

SB 1169 by Janek PASSED

Relating to the reimbursement of an insurance carrier for the overpayment of certain workers' compensation benefits. Sent to the Governor 5/26/07.

Miscellaneous

Concealed handguns:

HBs 220, 511, 992, & 1037; SB 534 DID NOT PASS

Several versions of a bill relating to concealed weapons and immunity of employers were introduced. The bills would prohibit an employer from banning handguns in employees' vehicles and also give immunity to that employer from any civil damages resulting from an occurrence involving the handgun. HB 992 and SB 534 were left pending in the House Calendars Committee - the bills received significant opposition from employer and business groups.

Castle Doctrine or "Make My Day" bill:

SB 378 PASSED

This bill changed the presumption in the Penal Code and the Civil Practice and Remedies Code so that the use of force is justified against unlawful intruders into homes, vehicles, or places of business or employment and there is no longer any "duty" to retreat. Of particular concern to TTLA, the bills as filed contained a "loser pays" provision into Texas Law, allowing the prevailing party in a resulting civil action to recover fees and costs from the losing plaintiff. The "loser pays" provision was removed and SB 378 passed both chambers. Signed by the Governor 3/27/2007 and is effective on 9/1/07.

Law Enforcement Privilege & Civil Discovery

HB 1572 by Woolley PASSED

The bill as filed would have required the Supreme Court to adopt rules regarding the law enforcement privilege and abate civil cases while the criminal investigation or case is proceeding. TTLA worked with the Houston P.D. to codify an exception for law enforcement documents where a law enforcement agency is a non-party, providing for an "in camera" review by a court and creating exceptions for accident reports and certain accident investigation records. Sent to the Governor 5/25/07.

Anti-Immigrant & Punitive Damages:

HB 1053 by Van Arsdale DID NOT PASS

Adding to the wave of anti-immigration bills being filed this session is a new twist on an old tort-reformers favorite - limiting exemplary damages. This bill would claim any award of punitive damages to a noncitizen for deposit into the state general revenue fund. The bill was set for hearing but ultimately never heard in House Civil Practices.

