

**"*MUCH ADO*¹ ABOUT THE *BE ALL AND END ALLS*² OF THE
83RD TEXAS LEGISLATURE."**

**ICT/AFACT MID-YEAR PROPERTY/CASUALTY SYMPOSIUM
JULY 18, 2013**

PRESENTED BY

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¹My word play from Shakespeare's *Much Ado About Nothing*.

²My word play from Shakespeare's *Macbeth*, Act 1, Scene 7, 1-7.

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I. INTRODUCTION AND OVERVIEW

Many academic scholars have described Shakespeare as an author of political theatre based on their observations that his history plays examine the machinations of personal drives and passions determining political activity; many of the tragedies, such as *King Lear* and *Macbeth*, dramatize political leadership and the complex subterfuges of human beings driven by the lust for power; and his comedies highlight the merry banter between the sexes and those with money and those without. The title of this year's presentation is based on my own word play from Shakespeare's play, *Much Ado About Nothing*, and *Macbeth*'s statement that a certain drastic action on his part will be the "Be All and End All" to the problems that beset him at the moment. All of the sounds and fury of the various political voices over TWIA resulted in much ado about nothing and no one had the solution that would be the be all and end all for TWIA.

There should be little doubt that there were many other examples of high drama during the 83rd Texas Legislature. The political stages of the Texas House and Texas Senate provided a forum for competing ideas and the struggle for future power and higher positions. Politics is the drama of real life. The convening of the Texas Legislature every two years produces hope, terror, suspense, and frantic activity that sizzles the imagination away from an otherwise mundane political landscape. Many of the politicians that had starring roles on the Texas political stage were driven by the usual passions and ambitions that compel them to be part of the process. Insurance, especially the politics of confirmation of the Insurance Commissioner, was a big part of the drama in 2013.

Nowhere was it more apparent that the Texas Legislature was the focus of intense political drama than the debate over abortion that resulted in a second special session. National organizations even referred to this debate as "political drama" when the NPR stated:

*"An irony of the recent Texas political theater: Democratic state Sen. Wendy Davis' filibuster aimed at stopping anti-abortion legislation raised not only her profile but that of Republican Gov. Rick Perry."*³

The Texas Legislature began the 83rd regular legislative session in January 2013 with the political leaders promising no new taxes; funding for education; transportation and water infrastructure to support a growing state and economy; and creating an atmosphere that protected jobs and job growth for this state against the growing intrusion and threat from Washington. The session ended on May 27, 2013 with a new budget and better funding for education. The Governor immediately called a special session to complete funding for water and transportation infrastructure and also added the volatile issue of abortion.

Fewer bills were filed in 2013 than in previous sessions. House members filed 3,950 House Bills and passed 710 into law. Senators filed 1,918 Senate Bills and 684 became law. The Governor vetoed 26 bills. Thompson Coe represented AFACT and was actively involved in reviewing and working on 399 bills that impacted property/casualty insurance. Eighty-two (82) tracked bills were passed into law and most are summarized in this paper.

³ www.npr.org/blogs/itsallpolitics/2013/196309985/rickperry-costars-in-texas-political-drama

This presentation will summarize important bills impacting property/casualty insurance that passed and focus on the important insurance legislation that "could have been", especially important changes considered for the Texas Windstorm Insurance Association (TWIA) statute. A brief discussion of issues that will be important over the next two years before the Legislature meets again is also part of this presentation.

Since the close of the session, it is clear that the political stage will be occupied by many new faces. Texas has a new Commissioner of Insurance, Julia Rathgeber, who was promptly confirmed by the Senate in the first special session and will be an important part of the future of insurance regulation and the business of insurance in Texas. The workers' compensation commissioner, injured employee counsel, and public insurance counsel were all confirmed during the regular session for two year terms ending in 2015.

Governor Perry and Comptroller Combs will not be seeking re-election. At least four candidates, including Lt. Governor Dewhurst, are expected to run for Lt. Governor in the Republican primary. Attorney General Abbott is expected to run for Governor. Several members of the Legislature, including Rep. Craig Eiland on the House Insurance Committee, and Rep. Harvey Hildebrand, Chairman of the House Ways & Means Committee, will not be running for office again.

II. TWIA ISSUES & OPTIONS CONSIDERED

A. BEHIND THE SCENES. Numerous bills were filed and there were several hearings concerning TWIA and issues surrounding TWIA. The political message was that TWIA was "unsustainable" and had to be eliminated or replaced. Adding to the concern was the fact that TWIA filed annual statements in March 2013 showing a deficit of over \$187 Million and there were still thousands of lawsuits pending and being filed on Hurricane Ike claims.

Behind the curtain on this theme, though, lurked a variety of actors with different motives. Trial lawyers wanted to replace TWIA with anything that would restore their ability to sue for extra damages and penalty interest under Chapters 541 and 542 of the Insurance Code; some of the politicians from the coast wanted no rate increases and a funding source that relied on statewide surcharges or assessments, while others wanted to clarify Class 1 funding and increase insurer assessments or post event liability from \$800 Million to at least \$1 Billion. Also, most of the coastal legislators wanted to make sure money would be available if a major storm hit the Texas coast in 2013. Inland legislators wanted to make sure inland policyholders would not have to subsidize coastal risks. Agents wanted markets and some assurance that TWIA could pay claims. Insurers wanted relief from additional assessments, lawsuits claiming extra damages, penalty interest and attorney fees and did not want increased exposure through assigned risk plans or other mandatory exposure reductions. Individuals appointed by the Governor to a TWIA task force embarked on their own plan, while several key leaders wanted to do away with TWIA and start with something new or different.

Industry groups offered a number of proposals to address problems with TWIA including surcharges to replace Class 1 bonds, that currently could not be issued, increased participation in assessments, solutions for rate adequacy, single adjuster ideas, loss mitigation ideas, and prefunding a mutual company to replace TWIA and the FAIR plan. These proposals were generally met with the political catch phrase: "We have asked for proposals and you have submitted nothing."

Adding to the drama were hearings held in late March by the TWIA board to consider whether to agree to the TDI recommended course of action – a court ordered rehabilitation under the receivership statutes in the Insurance Code. This issue drew national attention and caused considerable anxiety among bankers, realtors, agents, coastal residents and legislators, trial lawyers and insurers. At the end of the meeting, the TWIA board announced that one of the leading trial lawyers prosecuting Hurricane Ike cases offered to begin negotiations to settle his remaining Hurricane Ike cases. The department began those negotiations and ultimately settled thousands of cases for an estimated \$150 Million. The reserves on those cases was estimated to be in excess of \$300 Million. While this brought some relief, it did not save confirmation for the commissioner. The drama continued after the settlement when, on the last day of the session, a request to approve a bond anticipation note in the amount of \$500 Million for TWIA was rejected by the commissioner. Thus, the issue of funding was left dangling and is still an ongoing part of the political theatre involving TWIA to this day.

TWIA rehabilitation, lawsuit settlements, and bond anticipation note discussions all occurred while the Legislature continued its work to find a "solution" to TWIA. Towards the end of the session in May, a Committee Substitute for SB 1700 emerged. This bill was negotiated behind the curtains between only a few legislators and coastal advocates. Most of the stakeholders were excluded from these negotiations including insurers, agents, and trial lawyers. Even though CSSB 1700 advanced out of committee, it never reached the Senate floor for debate. Opposition to CSSB 1700 came from at least two very strange bedfellows: insurance companies and trial lawyers. Insurers opposed CSSB 1700 because it would have implemented a de facto type of assigned risk plan, created an onerous exposure reduction plan, did not address rate adequacy issues, and afforded no relief to insurers from future lawsuits. Trial lawyers opposed the bill because it could potentially result in more "tort reform" if the bill ever reached the House.

At the end of the session, two bill passed that impacted TWIA. The first was SB 1702. The second was a provision in HB 1675 that extended the Sunset review date for TWIA from 2015 to 2019.

The following is a more detailed description of the issues that were considered for TWIA in the 83rd Legislature.

B. ISSUES IN THE VARIOUS TWIA LEGISLATION THAT DID NOT PASS

1. Funding Changes:

The current funding structure for TWIA is as follows:

1. TWIA funds
2. Catastrophe Reserve Trust Funds
3. Class 1 Bonds up to \$1 Billion paid by TWIA
4. Class 2 Bonds up to \$1 Billion. \$300 Million paid by insurers, \$700 Million recouped through surcharges on property casualty policies in the first tier.
5. Class 3 Bonds up to \$500 Million. These were to be paid by insurers.

Last year, the Public Finance Authority and others determined that it would not be advisable to issue Class 1 bonds because they would likely be considered to be "junk bonds" and not readily marketable. These bonds were up to \$1 Billion and were required to be paid by TWIA policyholders. The inability to issue these bonds was driven in part by the uncertainty of TWIA's financial ability to pay; the fact that numerous Hurricane Ike lawsuits were still being filed nearly five years after Hurricane Ike; and the fact that TWIA was in administrative oversight. The department testified that TWIA was unsustainable and suggested that none of the bonds, including Class 2 and Class 3, could be issued. This script seemed to play with a number of legislators who advocated using only industry assessments, surcharges, or shifting future liability to insurers through assigned risks. Several coastal legislators urged an assessment with tax credits to pay for Hurricane Ike arguing that the industry dominated TWIA board did not assess enough to pay for Hurricane Ike losses.

The issue of making additional assessments under the old 2008 law to pay for Hurricane Ike claims is still being considered.

Proposed solutions to the funding issues included:

- Increasing assessments of insurers up to \$1 Billion. One version of a bill would have increased assessments to \$2 Billion.
- Changing the bonding repayment to include only surcharges and provide for assessments on insurers for their portion of a particular layer.
- Statewide surcharges on all property/casualty policies
- Moving insurers up for assessments
- Increasing assessments on insurers with partial tax credits

2. Claims Handling:

Insurers sought either some relief from the 18% penalty interest and attorney fees in Chapter 542 or protection similar to that granted for TWIA in 2011. There were no bills that addressed either issue.

3. Loss Mitigation:

SB 19 was a far reaching bill designed to improve loss mitigation through building codes and raising money through grants and other means to assist homeowners to restore older homes to current building standards. The bill never passed out of the Senate committee.

4. Single Adjuster:

Several bills contained provisions that required insurers that wrote the underlying fire coverage on a risk to adjust and handle claims. These bills also included provisions that insurers acting as adjusters would be agents for TWIA and thus would have received protection against Chapter 541 and 542 claims. While generally this was not opposed, there were several details that needed further clarification.

5. Assigned Risks & Exposure Reduction Plans

Various versions of SB 18 would have created a new assigned risk plan for TWIA and Fair Plan risks. Chapter 2210 would have been maintained as a transition for certain risks until the assigned risk plan was fully implemented. The theory behind the assigned risk plan was that rate adequacy would be achieved over an eight (8) year period of time and the voluntary market would not be hurt by an assigned risk plan with adequate rates. The details behind this theory were never fully developed. Interestingly, agent and company groups vigorously opposed this idea. It seemed fairly clear when the smoke cleared from the stage floor that the only beneficiary of such an approach would have been trial lawyers who could have sued private insurers without the limitations enacted in Chapter 2210 applicable to TWIA.

Late in the session, SB 1700 contained language that created a mandatory exposure reduction plan where insurers were required to reduce TWIA's exposure by 65% over a 10 year period of time. If exposure was not reduced as arbitrarily mandated in the bill, insurers would have been required to pay their proportionate share of a \$200 Million assessment to TWIA. The thresholds were set every two years so the total potential "penalty" assessment could have been as much as \$1 Billion. Needless to say, this provision was strongly opposed by all industry groups and did not become law.

6. Board of Directors Composition

CSSB 1700 would have changed the composition of the board. Insurer members would have been reduced to three (3). The remaining board would have been three (3) public members from three (3) coastal areas; one (1) agent, one (1) engineer that resides in the second tier, and one (1) financial industry person who resides in the second tier.

7. Administrative Oversight v. Court Ordered Rehabilitation

In 2011, as part of HB 3, the Legislature made it clear in section 2210.053(c), that TWIA may not be considered a debtor authorized to file a petition or seek relief in bankruptcy under Title 11, United States Code. HB 3 also added section 2210.0081 that references action by the commissioner against the association under Chapter 441, Insurance Code authorizing supervision and conservatorship by the commissioner. Thus, even though the administrative oversight for TWIA started before HB 3 became law, HB 3 seemed to clarify that TDI had authority to put TWIA in some type of supervision or oversight. The term "administrative oversight" does not appear anywhere in the law.

TWIA continues in administrative oversight at the present time. During the session, the department felt that it had the further authority to place TWIA in receivership under Chapter 443. Chapter 443 authorizes a receivership for rehabilitation. If an insurer cannot be rehabilitated, it could be liquidated. There are serious legal questions on whether the department would have the authority to liquidate or dissolve TWIA because that would be tantamount to authorizing the department to repeal the law that created TWIA. The thinking by the department was that a court ordered rehabilitation receivership would require all pending lawsuits be stayed until the receivership court in Austin, Travis County, Texas could approve a scheduling order and procedure for the handling of all claims and lawsuits. There were certainly more questions than answers on whether this would work and whether an action for receivership would increase rather than decrease litigation. Fortunately, the TWIA board postponed any decision pending negotiations with the plaintiffs on Hurricane Ike claims.

8. Hurricane Ike Lawsuits

After the hearing on whether TWIA should agree to a receivership, the TDI embarked on settlement negotiations with the largest group of plaintiffs on Hurricane Ike claims. A substantial number of cases (over 1,100 cases) were settled even though the details of the settlement agreements were not immediately made available to the TWIA board, staff or members of the public. It is estimated that there are still approximately 200 cases that have not been resolved from Hurricanes Ike and Dolly.

C. SB 1702-CONTINUING TO INSURE NONCOMPLIANT STRUCTURES

SB 1702 was the only bill impacting TWIA that passed. SB 1702 removes the grandfather clause for structures insured as of September 1, 2009 in TWIA that was part of the TWIA reform in HB 4409 that was enacted in 2009. This provision was intended to give non-compliant structures four (4) years to become compliant with TWIA building codes. SB 1702 allows TWIA to continue to insure a residential structure constructed, remodeled, altered, enlarged, repaired, or added on to on or after June 19, 2009, that was not in compliance with applicable building code standards.

SB 1702 also eliminates the alternative eligibility certification program under TWIA.

A surcharge of 15% would apply regardless of whether a non-complaint structure was insured as of September 1, 2009.

Finally, SB 1702 adds a section to Chapter 2210 that provides that on or after December 31, 2015, TWIA cannot issue or renew coverage for a structure that does not comply with the applicable building code standard in effect when the structure was built, remodeled, altered, or repaired. This bill was signed by the Governor to be effective June 14, 2013.

III. TORT REFORM ISSUES

A. Subrogation-HB 1869 & HB 658

HB 1869 primarily impacts the contractual subrogation and recovery rights of health insurers. However, this legislation will impact property and casualty insurers especially because it may help in the settlement of liability claims. At least that was the script as presented by various trial lawyers, TADC, defense lawyers, and even representatives from Texans for Lawsuit Reform. This was an interesting bill because it was carried by two conservative Republicans, Sen. Duncan and Rep. Price from Amarillo. The drama presented in testimony by trial lawyers was from accident victims whose total recovery from a third party tortfeasor was being taken by the health insurer that paid all of the medical bills. The irony of this example though was that the payor of health benefits was not a health insurer but instead a self-funded employed ERISA plan that cannot and will not be subjected to this new law. The drama surrounding HB 1869 was also another interesting case of watching strange bedfellows sleep together: TTLA and TLR worked together to pass this bill.

The bill creates new chapter 140 in the Civil Practice & Remedies Code and applies to all types of health insurance payors with certain exceptions. It applies to the state of Texas, cities, counties and political subdivisions and exempts workers' compensation, Medicare, Medicaid, CHIP and self-funded ERISA plans.

HB 1869 repeals Sec. 172.015 of the Local Government Code that had set forth a statutory right of recovery for local government entities. Section 172.015 was the model for HB 1869 as filed but after extensive hearings and debate was exposed as being somewhat unworkable because of the provision that permitted plaintiffs lawyers to file declaratory judgment actions to reduce recoveries to as little as 5% if there was a "manifest injustice" in permitting a higher subrogation recovery in a particular case. The final bill eliminates these possible ambiguities. The final bill permits a health insurer to recover in subrogation the lesser of 50% or the actual amount the health benefit payor paid. If the injured covered individual is represented by a lawyer, the health payor can recover the lesser of 50% or the actual amount paid but will also have to pay its share of the lawyer and litigation costs in obtaining a recovery. In the absence of an agreement with the injured party's lawyer, the lawyer fee would $\frac{1}{3}$ of the recovery. This is similar to the law on workers' compensation subrogation. HB 1869 did not have the old language in the Local Government Code such as what is a "complete and adequate recovery" and declaratory judgment lawsuits to reduce recoveries to 5% are not in the final bill. The final bill specifically permits contractual subrogation within certain standards as set by law. The common-law doctrine of "made whole" does not apply. Finally, a health benefit payor cannot recover from first party coverages available to an injured party with two exceptions — a payor can recover from uninsured/underinsured motorist coverage or medical payments coverage if the premium was not paid by the injured party or the injured party's immediate family. The new law will apply to causes of action that accrue on or after January 1, 2014.

HB 658 amends the Civil Practice and Remedies Code section 41.014 to prevent the accrual of post judgment interest on an unpaid balance of damages subject to Medicare subrogation until the defendant received a recovery demand letter from CMS. Post judgment

interest would not accrue until 31 days after the defendant received the recovery demand letter. This bill is effective September 1, 2013.

B. Civil Liability for Prohibited Barratry-HB 1711

HB 1711 amends the Government Code to allow a client to recover for barratry in a civil action in addition to voiding the contract. In addition to damages, the client can recover a penalty of \$10,000. This bill is effective September 1, 2013.

C. Uniform Trade Secrets-SB 953

SB 953 adds new chapter 134A to the Civil Practice & Remedies Code that is titled The Uniform Trade Secrets Act. The bill contains a definition of a trade secret that is similar to the definitions that have been adopted by Texas courts. The bill specifically permits injunctive relief and damages for misappropriation of trade secrets. Damages can include actual loss and unjust enrichment caused by misappropriation. In lieu of damages, the new law authorizes a reasonable royalty. Exemplary damages are permitted for willful and malicious misappropriation of a trade secret. This bill is effective September 1, 2013.

D. Other Issues

HB 487 amends Local Government Code section 370.006 to clarify existing law with regard to a local official's authority to request or accept assistance in a hazardous or dangerous situation and with regard to a person's immunity from liability in providing such assistance. The Governor has signed the bill and it is effective May 24, 2013.

IV. KEY LEGISLATION IMPACTING AUTOMOBILE INSURANCE

A. Newly Acquired Vehicles-HB 949

HB 949 amends the Insurance Code chapter 1952 to require an insurer to cover certain motor vehicles that are acquired during the term of an insured's policy and to provide the same or similar coverage for the replaced or newly acquired vehicle for a minimum of 20 days. The insured has to notify the insurer within 20 days of becoming the owner of the vehicle if they want to add damage coverage or continue coverage after the 20 day period. Applies to policies delivered, issued for delivery, or renewed on or after January 1, 2014. This bill is effective September 1, 2013.

B. Named Driver Policy Issues-SB 1567 & HB 1773

SB 1567 amends subchapter B, chapter 1952 of the Insurance Code to prohibit an agent or insurer, including a county mutual insurance company, from delivering or issuing for delivery in Texas a personal automobile insurance policy unless the policy provides at least the minimum coverage required by law for personal automobile coverage.

Also, SB 1567 requires certain disclosures on a named driver policy. The bill requires the agent or insurer to receive a copy of the disclosure that is signed by the applicant or insured before accepting the premium or fee and requires the agent or insurer to require the applicant or insured to confirm contemporaneously in writing the provision of the required oral disclosure. The disclosure also must be included in the policy and on the front of the proof of coverage document. This bill is effective September 1, 2013.

HB 1773 would have prohibited all named driver only policies. HB 1773 passed the House but did not receive a hearing in the Senate and died.

C. Using Wireless Communications for Proof of Insurance-SB 181

SB 181 amends the Transportation Code to allow proof of automobile insurance coverage through an image displayed on a wireless communication device. It further provides that if a peace officer has access to a verification program a citation may not be issued unless the officer attempts to verify coverage through the verification program and is unable to do so. Display of an image on a wireless communication device does not constitute consent to access the contents of a wireless device except to view financial responsibility information. A court or commissioner of insurance may require a paper copy at a hearing. A telecommunications provider is not liable to the operator for failure of a wireless communication device to display financial responsibility. The Governor has signed the bill and it is effective May 24, 2013.

D. Using Wireless Devices in School Zones-HB 347

HB 347 adds new section 545.425 to the Transportation Code to prohibit the use of a wireless communication device while operating a motor vehicle in a school zone during the time of a reduced speed limit. The prohibition does not apply if the vehicle is stopped or the wireless communication device is used with a hands-free device. The bill creates an affirmative defense for using a device to make an emergency call to an emergency response service, hospital, fire department, health clinic, doctor's office, first aid, or the police. This law preempts all local ordinances, rules and regulations. This bill is effective September 1, 2013.

E. TAIPA Changes-SB 733

SB 733 amends various provisions of chapter 2151 of the Insurance Code to allow the TAIPA governing board to meet by telephone conference call, videoconference, or other telecommunication method with appropriate open meetings notice requirements. It requires the plan of operation to include other incentive programs to encourage authorized insurers to write on a voluntary basis, and eliminates the requirement for annual rate filings. The rate filings will be file and use with a 30 day deemer on filed rates. The commissioner can extend approval periods up to 30 days. If a rate filing exceeds 105% of the current rate, the commissioner shall conduct a hearing on the rate filing. This bill is effective May 18, 2013.

F. Refunds of Unearned Premium-SB 698

SB 698 amends section 558.002 of the Insurance Code to require refunds of unearned premium to be paid by the 15th business day after the effective date of cancellation or

termination of a policy for personal auto or homeowners. Some issues may arise on backdated cancellations requested by an insured. The Property Casualty Guaranty Fund would have thirty (30) days after receipt of all financial information necessary to determine the appropriate unearned premium. The bill applies only to an insurance policy delivered, issued for delivery, or renewed on or after September 1, 2013. The bill is effective May 18, 2013.

G. Legislation That Did Not Pass

1. Third-Party Liability Property Claims-HB 1407 would have amended chapter 542 of Insurance Code to create a prompt payment standard for third-party auto property damage claims. The commissioner has to adopt rules for settlement of a third-party claim when the insured's liability is reasonably clear and the amount of the claim is within the policy limits. The rule would have to provide for minimum standards for a reasonable deadline for an insurer to acknowledge and pay the claim; required notices and information the insurer has to provide to the third-party claimant; and the standards for the items, statements, and forms the insurer is allowed to require.

The third-party claimant could have required the insurer to submit to binding arbitration that would have waived the right to bring suit. The commissioner would adopt an arbitration program by rule.

The insurer's policies must include a provision requiring the insurer to participate in binding arbitration.

2. Texting and Driving-HB 63 would have prohibited use of a wireless device to read or send text messages, including emails, while driving. It is not an offense to make a call or use GPS. The bill would have preempted all local ordinances which have inconsistent provisions but political subdivisions can adopt more stringent rules or ordinances.

3. Enhanced UM Reporting Systems-HB 3029 would have amended the Transportation Code to require TDI to evaluate and implement programs to reduce the number of uninsured vehicles. TDI could have selected an agent to develop and operate the programs.

H. Other Issues

1. All Terrain Vehicles - SB 487 amends the Transportation Code, to redefine "all-terrain vehicle" to mean a motor vehicle that, in addition to meeting other specified criteria, is not more than 50 inches wide and that is equipped with a seat or seats, rather than a saddle, for specified uses. The bill redefines "recreational off-highway vehicle" to mean a motor vehicle that, in addition to meeting other specified criteria, is equipped with a seat or seats, rather than a non-straddle seat, for the rider and, if the vehicle is designed for passenger transport, for one or more passengers. This bill is effective September 1, 2013.

2. Traffic Safety Legislation. There were several bills relating generally to the subject of traffic safety. These included the following:

HB 1174 amends the Transportation Code to increase the penalty for passing a stopped school bus to not less than \$500 or more than \$1,250. Second offenses are subject to a fine of not less than \$1,000 or more than \$2,000. This bill is effective September 1, 2013.

HB 3483 increases the number of required hours of behind-the-wheel instruction required for driver's license training from 20 to 30 hours, prohibits a person under 18 from driving after midnight and before 5:00 a.m. unless for work or school, and prohibits the presence of more than one passenger under the age of 21 who is not a family member. This bill is effective September 1, 2013.

HB 3668 amends section 550.021(a), Transportation Code, to require the operator of a vehicle involved in an accident that results or is reasonably likely to result in injury to or death of a person to perform certain duties, including immediately determining whether a person is involved in the accident, and if a person is involved in the accident, whether that person requires aid. This bill is effective September 1, 2013.

HB 3676 amends section 545.424(c), Transportation Code, to remove the holder of a hardship license from the list of persons to whom this section (Operation of Vehicle by Person Under 18 Years Of Age) does not apply. This bill is effective September 1, 2013.

SB 275 amends section 550.021 of the Transportation Code to make it a second degree felony to leave the scene after an accident resulting in the death of a person. This bill is effective May 18, 2013.

SB 1757 amends the Transportation Code to make it a Class B misdemeanor offense to possess a license plate flipper. The bill makes it a Class A misdemeanor offense to manufacture, sell, offer to sell, or otherwise distribute, with criminal negligence, a license plate flipper. This bill is effective June 14, 2013.

V. KEY LEGISLATION IMPACTING PROPERTY INSURANCE

A. Regulation of Roofers-HB 1183-Passed & HB 2693/SB 801-Did Not Pass

HB 1183, the only bill passed on roofer regulation, amends chapters 4101 and 4102 of the Insurance Code to make it clear that a roofing contractor cannot adjust or advertise to adjust claims for properties which the contractor is the contractor of record, regardless of whether the contractor is licensed as a public or private adjuster. This bill is effective September 1, 2013.

HB 2693/SB 801 would have created a license or registration for roofers. The House bill was voted favorably out of committee but never reached the House floor. The Senate bill was heard but was not voted out of committee.

B. Regulation of Foundation Repair-HB 613 Did Not Pass

HB 613 would have regulated foundation repair contractors. The bill was reported favorably from committee and made the House calendar but could not receive enough votes to

pass. The author pulled the bill from the calendar. Part of the objection to this legislation and the roofing legislation was the objection from TEA party conservatives that it was more government regulation.

C. Use of Consumer Inquiries for Underwriting-SB 736

SB 736 amends the Insurance Code to prohibit an insurer that writes a standard fire, homeowners, or farm and ranch owners insurance policy from using an underwriting guideline based **solely** on whether a consumer inquiry has been made by or on behalf of the applicant or insured, from charging a rate that is different from the rate charged to other individuals for the same coverage or increasing a rate charged to an insured based solely on whether a consumer inquiry has been made by or on behalf of the applicant or insured, or from considering a customer inquiry as a basis for nonrenewal or cancellation of an insurance policy. This bill is effective September 1, 2013.

D. Declarations Page Information-SB 112

SB 112 amends chapter 2301, subchapter B, of the Insurance Code by adding new section 2301.056 to include requirements that residential property insurance policies include a declarations page that lists and identifies each deductible under the policy and includes a dollar amount of each deductible. The bill as passed the Senate required an "explanation" of deductibles on the declarations page. AFACT worked with House and Senate sponsors to delete the word "explain" to prevent possible confusion and lengthy explanations on a declarations page that may conflict with the actual policy language. Residential property insurance is defined in subchapter B to include homeowners, condo owners, or residential fire and allied lines. This bill applies to residential policies delivered, issued for delivery, or renewed on or after January 1, 2014. This bill is effective September 1, 2013.

E. Contractual Limitations-SB 851/HB 1651

SB 851 and HB 1651 were similar to legislation passed in 2011 that permits insurers to use a statute of limitations period in their policies that runs from the date of loss instead of when a cause of action accrues. Under current law, such provisions can be approved if a company is writing or will continue to write property business in the first tier. Current law is intended to be an incentive for voluntary writings in the first tier.

Both bills would have enacted similar provisions in the law regardless of whether a company was writing in the first tier. Neither bill passed.

F. Refunds of Unearned Premium-SB 698

SB 698 amends section 558.002 of the Insurance Code to require refunds of unearned premium to be paid by the 15th business day after cancellation or termination of a policy for personal auto or homeowners. The bill applies only to an insurance policy delivered, issued for delivery, or renewed on or after September 1, 2013. This bill is effective May 18, 2013.

G. Other Issues

There were several bills filed that would have required insurers to use standard promulgated forms for residential property insurance and would have eliminated the ability of insurers to use credit scoring. None of these bills passed or were even voted out of committee.

VI. KEY LEGISLATION IMPACTING WORKERS' COMPENSATION

A. Temporary Employment-HB 1762

HB 1762 amends chapter 93 of the Labor Code to require the state to accept a certificate of insurance coverage showing that a temporary employment service maintains a policy of workers' compensation insurance constituting proof of workers' compensation insurance coverage for the temporary employment service and the client of the temporary employment service with respect to all employees of the temporary employment service assigned to the client. If the temporary employment service elects to have workers' compensation coverage, the client employer and temporary employment service are subject to the employee election and exclusive remedy provisions of the Texas Workers' Compensation Act. This bill is effective September 1, 2013.

B. Certified Workers' Compensation Networks-HB 3152

HB 3152 amends the Insurance Code section 1305.153 to allow that if, for the purposes of credentialing and contracting with health care providers on behalf of a certified workers' compensation health care network, a person is serving as both a management contractor or a third party to which the network delegates a function and as an agent of a health care provider, the contract between the management contractor or third party and the health care provider is required to specify the certified network's contract rate for health care services and the amount of reimbursement the health care provider will be paid after the health care provider agent's fee for providing the administrative services is applied. This bill is effective September 1, 2013.

C. Misuse of Name of the Division of Workers' Compensation-SB 351

SB 381 amends section 419.001, Labor Code, to clarify actions constituting misuse of the Division of Workers' Compensation name or symbols. This bill is effective September 1, 2013.

D. Professional Employer Organization (PEO) Regulation-SB 1286

SB 1286 amends the Labor Code and Tax Code to replace statutory provisions governing staff leasing services with provisions governing professional employer organizations that provide professional employer services and describes co-employment relationships between professional employer organizations and client employers. The bill authorizes a client, in addition to the licensed organization, to elect to obtain workers' compensation insurance coverage for covered employees through an insurance company under the Texas Workers' Compensation Act or through self-insurance. This bill is effective September 1, 2013.

E. Limited Service Networks for Durable Medical Equipment-SB 1322

SB 1322 amends chapter 408 of the Labor Code to allow the establishment of voluntary and informal networks for durable medical equipment and home health services. This bill is effective September 1, 2013.

F. Other Issues

HB 1376 prohibits a freestanding emergency facility from advertising or holding itself out as a medical office, facility or provider other than an emergency room if it charges the usual and customary rate as charged by a hospital emergency room. This bill is effective September 1, 2013.

SB 316 amends the Occupations Code to require the Texas State Board of Pharmacy to develop a continuing education program regarding opioid drug abuse and the delivery, dispensing, and provision of tamper-resistant opioid drugs after considering input from interested persons. The bill authorizes the board by rule to require a holder of a license to practice pharmacy to satisfy a number of the required continuing education hours for such a license holder through attendance of a program developed under the bill's provisions. The bill also contains a temporary provision set to expire September 1, 2015, requiring the standing committee of the Senate that has primary jurisdiction over health and human services to conduct an interim study regarding opioid abuse and the provision of tamper-resistant opioids that includes an examination of matters relating to prescription opioid abuse and the use and effectiveness of tamper-resistant opioids, and present findings to the Lt. Governor for consideration during the 2015 legislative session. This bill is effective June 14, 2013.

SB 1643 amends the Health & Safety Code provisions regarding prescription drug monitoring database. The bill also creates an interagency prescription monitoring work group composed of representatives of certain state agencies, State Board of Pharmacy, Texas Medical Board among others that will report recommendations to the Legislature by December 1 of each year prior to legislative session. This bill is effective September 1, 2013.

G. Key Legislation That Did Not Pass

1. **Privileged Communications-HB 1468.** In response to the XL Specialty decision that communications between the carrier's attorney and the employer are not privileged as attorney-client communications for workers' compensation cases, this bill would have made these communications confidential and privileged under the Labor Code.

2. **Texas Mutual-HB 1833/SB 850.** This bill would have made Texas Mutual Insurance a private carrier, and also required the commissioner by rule to establish an assigned risk plan for the workers' compensation residual market including approval of a plan of operation for the assigned risk program.

Under the bill TDI would have been able contract with a licensed statistical agent for workers' compensation to administer the plan. Each insurer would have been required to participate in the assigned risk program in proportion to its voluntary market share. Insurers

could have met their obligation through direct policy assignment, reinsurance, pooling, or otherwise.

The statistical agent would have to file rates for review. Rates would have to have been actuarially sufficient to cover incurred losses and administrative expenses of the program.

VII. REGULATORY LEGISLATION

A. Captive Insurers-SB 734

SB 734 was a TDI biennial recommendation on licensing of captive insurers. The bill adds chapter 964 to the Insurance Code and defines a captive insurance company as one that insures the operational risks of the company's affiliates, is not subject to chapter 823, the Holding Company Act, unless the company is affiliated with another insurer that is subject to chapter 823, and is subject to for profit corporations laws in the Business Organizations Code. The bill describes the formation of a captive insurer, including certain requirements for the articles of incorporation. Captives can be incorporated as stock insurers. Captive insurers must obtain a certificate of authority subject to certain limitations related to doing business in Texas. The commissioner by rule can determine capital and surplus requirements. Capital requirement is not less than \$250,000 or greater than \$5 million. The application for a charter and certificate of authority are subject to a fee and the requirements outlined in section 964.008. TDI has to examine the applicant after the application is filed and the application fee is paid. If TDI denies the application, it must be in writing. The applicant may request a hearing and the commissioner has to set a hearing.

A captive insurer must file a verified report on financial condition by March 1 of each year, and on June 1 must file a report on its financial condition as of last year-end with an independent CPA's opinion, and is provided the option to request an alternative filing date on fiscal year end.

Captives can write any type of insurance except life, annuities, title A&H, mortgage guaranty, residential property, personal automobile, or workers' compensation. Captive insurers may reinsure subject to the conditions in section 964.004.

A captive insurer may not join or contribute to any pool, plan, association or guaranty fund.

The bill establishes a tax rate of $\frac{1}{2}$ of 1% on a captive's taxable premium receipts and other forms of revenue from written insurance policies in a calendar year. A captive's taxable receipts would not be deducted for premiums paid for reinsurance. The annual minimum tax for a captive would be \$7,500 and the annual maximum would be \$200,000 payable by March 1 after the end of the year for which the taxes are due.

Any information filed by an applicant or captive insurance company under chapter 964 is confidential and privileged for all purposes, including for purposes of chapter 552, Government Code, a response to a subpoena, or evidence in a civil action.

TDI can suspend or revoke the captive insurer's license after notice and opportunity for a hearing. This bill is effective June 14, 2013.

B. Electronic Transactions-SB 1074

SB 1074 amends chapter 35 of the Insurance Code to authorize the delivery, storage, and presentment by electronic means of a required notice or other written communication with a party in an insurance transaction, or that is to serve as evidence of insurance coverage, only if such delivery, storage, or presentment complies with the state Uniform Electronic Transactions Act. The bill includes consent of a party to receive electronic communication as well as the right to withdraw consent. If verification or acknowledgment is required, the electronic method used must provide for verification or acknowledgment. It provides that delivery of written communication by electronic means that complies with chapter 322, Business & Commerce Code, is equivalent to any delivery method including mailing. This bill is effective September 1, 2013.

C. Posting of Standard Forms on an Insurer's Website-SB 852

SB 852 adds chapter 1812 to the Insurance Code to allow an insurer to make available certain policy forms to insureds by posting a specimen policy on its website. The bill applies only to an insurer writing personal automobile, commercial automobile, and inland marine. Specimen forms cannot contain any personal identifiable information. Disclosure that the specimen policy is available on the website must be on the declaration page. Each specimen policy posted must be clearly identifiable. Requires an insurer to explain how an insured can access the form or obtain a copy at no cost. Upon request, an insurer must provide a printed or electronic copy to the insured at no cost. Forms must be easily accessible and provided in a widely available and free computer application or program. Specimen forms must be available for at least five years after the latest date a policy is in force. This bill is effective September 1, 2013.

D. Statutory Deposit for General Casualty Companies-SB 801

SB 801 amends the Insurance Code to remove the requirement for a \$50,000 statutory deposit for general casualty companies. This bill is effective June 14, 2013.

E. Attorney General Payment of Certain Civil Penalties & Restitution to the Indigent Civil Legal Services-HB 1445

HB 1445 permits the payment of certain civil penalties and restitution to be credited to the judicial fund for programs providing civil legal services to the indigent. Civil restitution recovered by the Attorney General can be paid to this fund if a court determines that it is impossible or impracticable to identify injured parties, to determine the degree to which a claimant was injured or entitled to recovery, the cost of administering claims would disproportionately reduce restitution, claims of persons have been paid without exhausting the funds available for restitution. This bill is effective May 28, 2013.

F. Shareholder & Policyholder Dividend Approvals-SB 1006

SB 1006 amends various provisions in the Insurance Code relating to requirements regarding certain shareholder and policyholder dividends. The bill would allow a Texas domiciled insurer to pay shareholder dividends from surplus profits arising from the insurer's business. With regard to policyholder dividends, the bill would require an insurer to notify the commissioner of insurance of each distribution of a policyholder dividend amount that is not greater than 10% of the surplus. The bill would also require an insurer to file an application for approval of any policyholder dividend payments that exceed 10% of the surplus. If the commissioner does not act on the application on or before the fifth business day after the application is received, the application is considered approved. This bill is effective June 14, 2013.

G. Time Deadlines to Provide Requests for Information-SB 183; SB 411

SB 183 amends section 38.001 of the Insurance Code to increase the time to respond to a request for information from TDI from 10 days to 15 days. The bill also specifies that TDI must grant a 10-day extension of the time to respond if it receives written notice from the person that additional time is required to respond to the inquiry. The bill requires TDI to maintain a record of all such inquiries made by the department. This bill is effective September 1, 2013.

SB 411 amends section 701.108 of the Insurance Code to require an insurer to respond to a request from TDI for relevant information or material relating to a matter under investigation for insurance fraud within 15 days after the date the request is received. The bill requires TDI to extend the period 10 days on written request of the insurer. This bill is effective September 1, 2013.

H. Rebating Exceptions-SB 840

SB 840 amends various provisions of the Insurance Code defining rebates. The bill allows promotional advertising, or educational items if valued at \$25 or less. The bill provides similar language to allow such practices for property and casualty insurance in chapter 1806 and life and health insurance in chapter 541. This bill is effective September 1, 2013.

I. Holding Company Act Changes-HB 3460

HB 3460 amends the confidentiality provisions of section 823.011, Insurance Code, relating to certain holding company system transactions reported or provided to the TDI. The amendments permit TDI to receive confidential information from other states and maintain it as confidential information. The bill includes that certain information can be shared with other state, federal, and international regulatory organizations if they agree to keep the information confidential. The bill amends section 823.103 on the notice for approval of holding company transactions to add loan transactions with a non-affiliate if the proceeds are to be used to make loans or extensions of credit to an affiliate. HB 3460 also raises the standard for prior notice for certain transactions from the lesser of ½ of 1% of admitted assets or 5% of surplus to 3% or

25%, respectively, for non-life insurers and 3% of admitted assets for life insurers. The bill is effective June 14, 2013.

J. Own Risk Solvency Assessment (ORSA)-SB 1007 - Did Not Pass

SB 1007 was one of the TDI biennial recommendations. It followed the NAIC model law. It exempts insurers with direct premium less than \$500 Million and if part of a group, the group's premium is less than \$1 Billion. If the insurer does not qualify but the group qualifies, the insurer has to submit a report for itself.

An insurer would have had to annually assess its own risk. An insurer can also assess if there are significant changes to the risk profile of the insurer or the group. Assessment is confidential.

TDI could have requested a summary report of the insurer's assessment. For a group, the insurer submits its report to the commissioner of the lead state of the group.

Insurers could apply for a waiver if they do not qualify for an exemption. The commissioner can require that an insurer maintain a risk management framework despite the exemption under certain circumstances described in section 803.006(f).

The summary report has to be prepared in accordance with the NAIC guidance manual.

The report disclosed to the commissioner is confidential, including information in possession of the NAIC or third party consultant. The commissioner can use the information for any regulatory or legal action. The commissioner or any in possession of ORSA information cannot be compelled to testify about the information.

Information can be shared with other state, federal, and international regulatory agencies, NAIC, members of a supervisory college, third party consultants designated by the commissioner. The bill requires written agreement to maintain confidentiality. The bill requires an agreement between the commissioner and NAIC or third party consultant to maintain confidentiality and sets out requirements for the agreement.

The bill passed the Senate and was reported out of committee in the House. It died in House calendars largely due to concerns on the confidentiality provisions in the bill that permitted the department to share highly confidential information with international regulatory agencies.

Even though this bill did not pass, TDI staff has stated that they are considering implementing ORSA through rulemaking.

K. Surplus Lines-SB 697 & SB 951

SB 697 amends section 981.203 of the Insurance Code to allow certain individuals to hold a surplus lines agent license and not be required to obtain a general property and casualty or MGA license. A person is not required to obtain the P&C or MGA license if the home state of insured is Texas, the individual is a nonresident, the person is licensed as a surplus lines agent in

the individual's state of residence, and the person is not required by their home state to hold a general P&C license to become a licensed surplus lines agent, among other requirements. This bill is effective January 1, 2014.

SB 951 makes various changes to the surplus lines provisions of the Insurance Code so that it will conform to the Nonadmitted and Reinsurance Reform Act (NRRA) of 2010.

The bill amends the Insurance Code to apply statutory provisions regulating surplus lines insurance to insurance provided to an insured whose home state is Texas and removes provisions that restrict such application to the insurance of a subject that is resident, located, or to be performed in Texas and to insurance that is obtained, continued, or renewed through negotiations or an application wholly or partly occurring or made within or from within Texas or through premiums wholly or partly remitted directly or indirectly from within Texas.

The bill defines "home state", with respect to an insured, as the state in which the insured maintains the insured's principal residence if the insured is an individual; the state in which the insured maintains the insured's principal place of business if the insured is not an individual; the state to which the greatest percentage of the insured's taxable premium for an insurance contract that covers risk is allocated if 100 % of the insured risk is located outside of the state in which the insured maintains the insured's principal residence or principal place of business, as applicable; or, for an affiliated group, the home state of the member that has the largest percentage of premium attributed to it under the insurance contract. The bill redefines "surplus lines insurance" to remove the condition that the insurance coverage be for a subject that is resident, located, or to be performed in Texas.

The bill adds section 981.0031 to define an exempt commercial purchaser and who employs a qualified risk manager to negotiate coverage, paid aggregate nationwide commercial property and casualty premiums of more than \$100,000 in the preceding 12 months, and has net worth of more than \$20 Million or generates annual revenue of more than \$50 Million or employs more than 500 full time employees per individual insured or a member of an affiliated group employing more than 1,000 employees or is a non-profit or public entity with annual budgeted expenditures of at least \$30 million or is a municipality with a population of more than 50,000. The bill adds section 981.0032 to define a qualified risk manager and outlines qualifications. The bill also requires the commissioner of insurance by order, effective on January 1, 2015, and on every fifth January 1 thereafter, to adjust the net worth, annual revenue, and annual budgeted expenditures used to define an exempt commercial purchaser to reflect the percentage change in the federal Consumer Price Index for All Urban Consumers for the five-year period immediately preceding January 1 of the year of the adjustment.

The bill amends section 981.004 to exclude an exempt commercial purchaser from the restrictions on the purchase of surplus lines insurance. The agent has to disclose to the exempt commercial purchaser that comparable coverage may be available from the admitted market and policy purchased in the admitted market may provide greater protection than the surplus lines policy. The exempt commercial purchaser can then request in writing that the agent procure through the nonadmitted insurer. The bill also requires a surplus lines agent, if a diligent effort

to obtain insurance in the admitted market was not made with respect to a surplus lines contract obtained by the agent, to include evidence establishing that the insured qualified as an exempt commercial purchaser and that the agent complied with the exemption criteria in the record maintained by the agent for the contract. Also makes it unauthorized insurance to issue a surplus lines policy and the agent has failed to pay a statutory penalty for violation of the Insurance Code. The bill has a similar provision for failure to pay premium tax.

The bill amends section 981.057 to exempt an alien surplus lines insurer listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department, National Association of Insurance Commissioners, from the requirement for an eligible surplus lines insurer to maintain capital and surplus in an amount of at least \$15 million and removes provisions relating to minimum capital and surplus requirements for an eligible surplus lines insurer that is an insurance exchange created by the laws of another state. Also amends section 981.058 to require an alien surplus lines insurer to be listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department, National Association of Insurance Commissioners.

The bill repeals Insurance Code sections 981.052, 981.053, 981.055, 981.056, 981.059-062. The bill is effective June 14, 2013.

L. Authorized Investments-SB 841

SB 841 amends provisions in chapters 424 and 425 of the Insurance Code to exempt insurers with \$10 Billion or more in admitted assets from the prohibition against an insurer owning, developing, or holding an equity interest in any residential property or subdivision, single or multiunit family dwelling property, or undeveloped real property to subdivide for or develop residential, single or multiunit family dwellings. The bill also amends section 424.068 to clarify the ability of an insurance company to invest in securities of a company domiciled in a foreign jurisdiction and makes other changes to the investment provisions. The bill is effective September 1, 2013.

M. Substitution of Deposits-SB 631

SB 631 amends section 406.006 of the Insurance Code to allow the commissioner to issue a letter approving, or an order denying, rather than an order approving or denying, an application from an insurer requesting withdrawal of all or part of a special deposit under chapter 406. The bill is effective June 14, 2013.

N. Adjuster License Exams-SB 569

SB 569 amends section 4101.056 of the Insurance Code to require an applicant for an insurance adjuster license wishing to claim an exemption from the examination to schedule the examination and take the required examination in a specified testing environment proctored by a disinterested third party approved by the commissioner to administer the examination. The bill is effective June 14, 2013.

O. Acting as an Agent after Suspension-HB 1305

HB 1305 amends the Insurance Code to make it a third degree felony to act as an agent after suspension or revocation of a license. This bill is effective September 1, 2013.

P. Legislation That Did Not Pass

1. Credits for Reinsurance by Certain Accredited Assuming Insurers-HB 837/SB 1622

This legislation would have amended Insurance Code chapter 492 regarding ceding insurers' credit for reinsurance ceded and added section 492.1033 to outline when credit is to be allowed for certain certified reinsurers. Credit would be allowed if the assuming insurer is certified by the commissioner as a reinsurer in Texas and secures its obligations as provided by new provisions described below.

The assuming insurer must be licensed and domiciled in the jurisdictions listed by the commissioner; maintain minimum capital and surplus as required by TDI rule; appropriate financial strength rating; appoints commissioner as agent for service; submits to jurisdiction of any court in the US; provide security for 100% of its liabilities for reinsurance ceded by US ceding insurers if the assuming insurer resists enforcement of a US court judgment.

This bill also would have permitted certain underwriting associations to be a certified reinsurer. The UW association must satisfy minimum capital and surplus requirements. Members of the association cannot be engaged in any other business other than underwriting. The association has to provide certain financial information to TDI.

This legislation was opposed by some Texas domestic and some large national insurers. It was supported by the Reinsurance Association of America. This is the second session that this legislation has been considered. The bill did not pass but is likely to be an issue in the future.

2. Farm Mutuals-HB 2789

HB 2789 would have amended premium tax exception provisions in chapter 221 of the Insurance Code and required a farm mutual operating under chapter 911 to be subject to premium taxes in chapter 221 if it insures property in more than five counties, has gross annual premiums greater than \$1 Million, or is a member of a group that writes other lines among the companies.

Even though farm mutuals pay maintenance taxes, this bill would also have amended the maintenance tax provisions in chapter 252 for larger companies that met the criteria above.

This legislation did not pass but is likely to be an issue in the future particularly if smaller farm mutuals become controlled by larger national or international insurance groups as a means of avoiding regulation, taxes, and TWIA assessments.

Q. Other Issues

Prior to the session, the TDI was looking at ways that it could attract more companies to domestic or redomesticate to Texas and bring more jobs to the state. It is anticipated that this process will continue.

Confidentiality of information was an important issue this session. The TDI had recommended that confidentiality provisions in the insurance code should be consolidated into a single chapter, however, the TDI never drafted legislation or caused legislation to be filed. Confidentiality will continue to be an important issue that may result in changes both at the NAIC level and various state levels.

VIII. KEY LEGISLATION IMPACTING TAXES & FEES

A. Surplus Lines-HB 1405

HB 1405 amends surplus lines agent provisions to require the managing underwriter to collect, report and pay taxes. This clarification in the law was necessary after legislation in 2011 designed to clarify who was responsible for payment of surplus lines taxes where managing underwriters were involved and the managing underwriter may be different than the local surplus lines agent. This bill also provides that the surplus lines agent and the managing underwriter may enter into a written agreement for the agent to do be responsible for payment of surplus lines taxes on risks located in Texas. This bill is effective January 1, 2014.

B. Rural Fire Department Assessment-HB 7

HB 7 contained an amendment that required the Comptroller to limit the assessment against certain insurers for rural fire protection to the total amount that the General Appropriations Act appropriates from the Volunteer Fire Department Assistant Account 5064 for that fiscal year. Current collections from certain insurers for rural fire protection are \$30 Million per fiscal year. Assuming an appropriation of \$18.5 Million per fiscal year from General Revenue-Dedicated Volunteer Fire Department Assistant Account 5065, limiting the assessment to the total amount appropriated from Account 5064 would reduce the assessment by \$11.5 Million per fiscal year. The final bill contained an amendment intended to make it clear that the \$30 Million cap would remain in the law.

C. Franchise Tax Exemption-HB 500

During the session Rep. Eiland filed HB 3454 that would have cleaned up the law to make it clear insurers were exempt from franchise taxes. HB 3454 did not pass but the language in HB 3454 survived as an amendment in HB 500.

State law has long exempted insurance companies that are required to pay the premium tax from the franchise tax. Previously, the franchise tax was paid at the same time as the premium tax on a separate entity basis, and it was clear that an insurance company that was domiciled in another state and wrote no policies in Texas was not subject to the franchise tax, but since the franchise tax is now reported on a unitary combined-group basis, it is unclear whether

an out-of-state insurance company qualifies for the exemption. The comptroller of public accounts has indicated that out-of-state insurance companies should be included in the combined group of their noninsurance affiliates because the exemption applies only to insurance companies that paid premium taxes to the state of Texas. The bill attempts to clarify the law to protect Texas-based insurance companies from retaliatory taxes that other states may levy in response to a Texas policy that denies insurance companies domiciled in those states the benefit of the franchise tax exemption and to eliminate potential constitutional challenges arising from a policy that imposes the franchise tax on out-of-state taxpayers only. This bill is effective on January 1, 2014.

D. Overhead Assessments-HB 2163

HB 2163 amends chapter 401 of the Insurance Code to include foreign insurers in the cost of examination for the overhead assessments imposed by the TDI to all insurers licensed in Texas – both domestic and foreign. Tax credits will be available again for these assessments after January 1, 2014. An amendment in this bill, however, requires that amounts deposited shall also reimburse for tax credits for examination costs and examination overhead assessments. This provision may result in a slight increase in maintenance taxes to reflect these reimbursements. The bill is effective September 1, 2013.

IX. MISCELLANEOUS LEGISLATION

A. Coverage for Portable Electronic Devices-SB 839

SB 839 amends chapter 551 of the Insurance Code to clarify Texas law on cancellation and termination of portable electronics insurance; set standards for required consumer notices; authorizes vendors of portable electronics licensed under Texas law to sell portable electronics insurance and to bill consumers for the insurance coverage; and requires consumer disclosures with respect to premiums charged for the insurance. This bill is effective June 14, 2013.

B. Portable Fire Extinguishers-HB 2447

HB 2447 amends current law to tighten standards for portable fire extinguishers by applying licensing provisions for fire extinguishers to any firm engaged in the retail or wholesale sale of portable fire extinguishers that contain an approval label. Late in the session, one company that manufactures a variety of fire extinguishers and fire safety devices opposed the bill on the basis that the standards created a monopoly for certain firms to approve labels and that certain previously approved portable fire extinguishers met established and recognized safety standards. A two year extension was included in the final bill for previously approved devices. This bill is effective September 1, 2013.

C. Legislation That Did Not Pass

- Elimination of Credit Scoring
- Standardized Residential Property Policy Forms
- Data Mining
- Federal Health Care Reform Mandates

X. CONCLUSIONS

The 83rd Legislature made several changes in laws impacting property/casualty insurance. The process of managing risks is a concept well known to the insurance industry including risks that a Legislature or regulator can make sudden and drastic changes in the law that impacts both insurers and consumers. One of the best ways to manage risks is to be informed. I hope this presentation will help you to be better informed of the changes that were made and changes that may be made in the future. Even though the legislative process can produce high drama and moments of excitement, the hard, and less dramatic, work comes in being involved, reading the bills, and educating the players in this theatre about the importance of the business of insurance for this state.

This tireless behind the scenes work is done by many. This presentation is the result of the work of many including my partner, Albert Betts and other lawyers with Thompson Coe. The success we enjoyed during the 83rd Legislature was the result of hard work by many players for the insurance industry including the members of AFACT; ICT staff; the national trade associations, PCI and AIA; TCAIS; the Independent Agents of Texas; and numerous individual lobbyists and company representatives.