



## ADVISORY NO. 497

### **TOPIC: And Then There Were Seven The 84<sup>th</sup> Legislature's Workers' Comp Legacy**

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The 84<sup>th</sup> Texas Legislature adjourned sine die on June 1, 2015. As expected, the session focused on areas other than workers' compensation legislation. However, seven workers' comp bills did pass, reflecting victories for first responders and increasing benefits for injured workers.

Seven bills have been sent to the Governor out of the 13 bills we began monitoring at the beginning of the session. Governor Abbott has already signed four of those bills. The Division of Workers' Compensation will have to engage in limited rulemaking to implement several of the bills that passed. However, the anticipated rulemaking is far less than has taken place following the last several sessions.

Six bills that we were monitoring died during session. The bills that died along the way included:

- A bill designed to permit defense attorneys to discuss confidential thoughts and impressions to a policyholder without waiving the carrier's attorney-client privilege;
- A bill that would have closed a statutory employment loophole;
- A bill that would have exposed public entities to wrongful discrimination or discharge lawsuits;
- A bill that would have expanded the timeline for filing suit for judicial review; and
- Two bills that would have greatly expanded the presumption of compensability for firefighters and EMTs.

Here is our final tally of workers' comp bills this session.

#### **Signed by the Governor and effective May 29, 2015**

**Firefighter and EMT Presumptions:** [CSHB 1388](#), by [Rep. Dwayne Bohac](#) (R-Houston). The bill amends the Texas Government Code, and relates to the presumption that certain diseases

and illnesses of firefighters and emergency medical technicians are workplace injuries and are covered under benefits and workers' compensation systems. The bill requires a person seeking to rebut the presumption of compensability to offer a statement that describes in detail the evidence that the person reviewed before making the determination that a non-work-related factor caused the heart attack or stroke. The bill also requires a carrier to include language on its PLN-1 that explains why it determined that the presumption does not apply and to describe the evidence that it reviewed in making that determination.

The bill was signed by the Governor and took effect May 29, 2015. The changes in law made by this bill apply to a claim for benefits or compensation brought on or after May 29, 2015. A claim for benefits or compensation brought before that date is covered by the law in effect on the date the claim was made, and that law is continued in effect for that purpose.

### **Signed by the Governor and effective September 1, 2015**

**Increase in Burial Benefits:** [SB 653](#) by [Sen. Kevin Eltife](#) (R-Tyler). The bill increases the amount of burial benefits required to be paid by an insurance carrier under the workers' compensation system from the present maximum payment of \$6,000 to a maximum payment of \$10,000.

The change in law made by this bill apply to a claim for workers' compensation burial benefits based on a compensable injury that occurs on or after September 1, 2015. A claim based on a compensable injury that occurs before that date is governed by the law in effect on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

**TIBs Increase for Low Wage Earners:** [SB 901](#) by [Sen. Kevin Eltife](#) (R-Tyler). Signed by the Governor on May 21, 2015. The bill increases weekly TIBs benefits for injured workers. The bill raises the low-wage-earner threshold for increased TIBs benefits from \$8.50 per hour to \$10.00 per hour. Employees who meet that criteria are entitled to 75% of their AWW for up to the first 26 weeks of their disability.

The increase in benefits takes effect September 1, 2015. It applies to a claim for TIBs based on an injury date that occurs on or after September 1, 2015. A claim based on a compensable injury that occurs before that date is governed by the law in effect on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

**Rate Filing Confidentiality:** [SB 978](#) by [Sen. Brandon Creighton](#) (R-Beaumont). The bill amends current law relating to public information regarding workers' compensation insurance rate filings. More specifically, the bill amends the workers' compensation filings statute, Section 2053.004, Insurance Code, to provide proprietary confidentiality protections through Chapter 552, Government Code. The purpose of the bill, according to Sen. Creighton's

[statement of intent:](#)

Existing laws do not adequately protect workers' compensation filings from competitors that wish to use proprietary information received through disclosure. Filings for property and casualty lines, however, are subject to Chapter 552, Government Code, which protects intellectual property in such filings from public disclosure to those who wish to use the filer's innovations without having to invest in creating such innovations themselves. Similar protections are needed as the Texas Basic Manual of Rules, Classification and Experience Rating for Workers' Compensation now includes a company's modeled rating factor and supportive documents.

One insurer was recently required to file a model used in the pricing of its workers' compensation products. Another insurer requested the filed model, and under Section 2053.004 (Public Inspection of Information), Insurance Code, it had to be disclosed. The model reflected approximately 6,000 hours of work by that company's actuaries, statisticians, and analysts. The disclosure of this information allowed competitors to obtain proprietary innovation without a similar expenditure of time, effort, and money.

The bill was signed by the Governor June 1, 2015 and will take effect September 1, 2015.

**Waiting to be signed by the Governor; will be effective September 1, 2015**

**Death Benefits after Remarriage:** [HB 1094](#) by [Rep. Charlie Geren](#) (R-River Oaks). The bill provides that surviving spouses of first responders will receive benefits for life, regardless of remarriage. One effect of the bill is to preclude redistribution of benefits to eligible children after an eligible spouse has remarried.

If signed by the Governor, the bill will take effect September 1, 2015.

**Safety Reimbursement Plan:** [CSHB 2466](#), by [Rep. Nicole Collier](#) (D – Fort Worth). The bill is designed to help small employers and certain high-risk industries provide a safer workplace for their employees. Supporters say that the bill will give businesses more incentive to make their workplaces safer because they will be able to receive reimbursement for certain costs to implement small but important changes.

Although the bill will take effect September 1, 2015, it will not apply to costs incurred by an eligible employer before January 1, 2016.

**Emergency Responder Travel:** [CSHB 2771](#) by [Rep. Armando Martinez](#) (D-Weslaco). The bill provides that the travel of a firefighter or emergency medical personnel en route to an emergency call is considered to be in the course and scope of the firefighter's or emergency medical personnel's employment. Language that would have placed the return trip home in the course and scope of employment was stripped from the bill in the House. The bill is limited in scope inasmuch as, by its terms, it applies only to firefighters and emergency medical personnel.

If signed by the Governor, the bill will take effect September 1, 2015.

#### **Dead this Session**

**Presumption Statute:** [HB 50](#) by [Rep. Armando Martinez](#) (D-Weslaco). The bill sought to expand the firefighter or EMT presumption of compensability for heart attack and cancer cases. HB 50 never got out of the House Urban Affairs Committee.

**Discriminatory Discharge by Governmental Entities:** [HB 512](#) by [Rep. Joe Moody](#) (D - El Paso) died in the Senate [Business & Commerce Committee](#).

The bill proposed to waive sovereign immunity by and to authorize a first responder employed by a state or local governmental entity who alleges an employer violation of statutory provisions prohibiting the discharge of or other discrimination against an employee in relation to a workers' compensation claim to sue the governmental entity for the relief provided under [Chapter 451](#) of the Texas Labor Code. The bill would have waived sovereign or governmental immunity from suit to the extent of liability created by those statutory provisions but does not affect a person's official or individual immunity from a claim for damages to the extent the person has such immunity. The bill would have limited the liability of a political subdivision in such an action to money damages in a maximum amount of \$100,000 for each person aggrieved by a violation of the applicable statutory provisions. HB 512 was filed in response to the Supreme Court's 2011 decision in [Travis Central Appraisal District v. Norman](#), 342 S.W.3d 54 (Tex. 2011).

**Confidential Communications:** [CSHB 687](#) by [Rep. Kenneth Sheets](#) (R-Dallas). The bill emerged from the House Business & Industry Committee, only to die in the House Calendars Committee.

This bill would have designated communications between the carrier, its defense counsel, and the policyholder to be confidential, and not subject to compelled disclosure to the claimant or

his attorney. The bill was prompted by the Texas Supreme Court's decision in *In re XL Specialty Ins. Co.*, 373 S.W.3d 46 (Tex. 2012).

**Statutory Employer:** [HB 1668](#) by [Rep. Paul Workman](#) (R-Austin) was effectively killed on the House floor when the Chair sustained a point of order that required the bill to be returned to the House Business & Industry Committee late in the session. Although the Committee met to correct the error that undergirded the point of order, the bill never came back up in the House.

This bill provided that a subcontractor who is operating as an independent contractor and who has, pursuant to a written agreement with the general contractor, assumed the responsibilities of an employer for the performance of the work, may nevertheless enter into a written agreement whereby the general contractor provides workers' compensation coverage to the subcontractor and the employees of the subcontractor. HB 1668 was apparently filed in response to the trial court's judgment in [TIC Energy & Chem., Inc. v. Martin, No. 13-14-00278-CV, 2015 WL 127777 \(Tex. App. Jan. 8, 2015\)](#). In that case the 13<sup>th</sup> Court of Appeals held that the Act did not bar the suit of an injured worker who had been employed by a general contractor against a subcontractor.

**Presumption Statute:** [HB 2854](#) by [Rep. Armando Martinez](#) (D-Weslaco). Although the bill got a hearing in the House Urban Affairs Committee, it never emerged from that committee thereafter.

The bill sought to expand the firefighter or EMT presumption of compensability for heart attack and cancer cases.

**Judicial Review Deadline:** [SB 1175](#) by [Sen. Kevin Eltife](#) (R-Tyler). The bill never got a hearing in the Senate Business & Commerce Committee.

SB 1175 provided that the deadline for filing suit for judicial review runs from the date the appeals panel decision is filed, rather than the date it is mailed. The bill would also have changed the deadline from 45 days to 50 days.