



TEXAS BUSINESS REPORT

A Publication of the Texas Association of Business
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The Good, The Bad & The Ugly *A Look At Legislation Impacting Business*

As the sun begins to set on the 82nd Regular Session of the Texas Legislature, the Texas Association of Business continues to advocate and defend Texas jobs at the State Capitol.

The wrangling continues at the Capitol before Sine Die on May 30, and TAB's team of lobbyists will continue to negotiate the legislative process to deliver the kind of pro-business results our members need to further thrive, prosper and create more jobs for more Texans.

TAB's success – and by extension our members' success – rests in our unyielding and relentless pursuit of good public policy.

Without fail, every Texas Legislature offers its own version of The Good, The Bad and The Ugly with a full range of House bills (HB) and Senate bills (SB) that our lobby team monitors and actively works to support or oppose.

This month's *Texas Business Report* features a round up of some of the best bills and others we have worked tirelessly to defeat. It's not a comprehensive list, but a compilation of some of the best and worst bills that TAB is are working on behalf of Texas business.

To read a more complete explanation of the bills on our The Good, The Bad and The Ugly list and for links to their current status, log on to <http://www.txbiz.org/goodbadugly>.

The Good

HB 400 will provide much needed flexibility for schools in managing personnel and employee contracting; it will also afford local districts greater flexibility in determining class size.

SB 22 will make structural changes in the foundation school program that will deliver significant savings while also ensuring high standards and accountability for the more than 200,000 Texas children served by the state's Pre-K programs.



WORKFORCE Q&A

How do the new Genetic Information Nondiscrimination Act regulations affect my company?

(see page 2)

UPCOMING EVENTS

June 9th

"How I Built It"
Interactive Panel and Q&A
Austin, Texas

July 13th-15th

TAB/SHRM Employment
Relations Symposium
San Antonio, Texas

For more information about these upcoming events, see page 5 or visit the Events page at www.txbiz.org.

TAB MISSION

To make the Texas business climate the best in the world.

WORKFORCE Q&A



*Bruce A. Griggs
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.*

How do the new Genetic Information Nondiscrimination Act regulations affect my company?

The Equal Employment Opportunity Commission published its final regulations implementing Title II of the Genetic Information Nondiscrimination Act (“GINA”) in October 2010. The regulations become effective on January 10, 2011. GINA’s Title II generally prohibits employers from requesting, requiring or purchasing the genetic information of any individual or an individual’s family member.

“Genetic information” includes information about an individual’s family medical history. Recognizing that there are situations in which an employer may acquire genetic information in a lawful way, the GINA regulations outline six exceptions to this general prohibition.

Most likely to affect employers on a regular basis is the regulations’ exception, which provides that employers are not liable under GINA for inadvertent acquisition of genetic information. The “water cooler” exception applies when a supervisor or manager inadvertently overhears a conversation about an employee’s genetic information, or the supervisor or manager learns of such information in casual conversation with an employee or a third party. The regulations warn, however, that if the manager probes further and asks the individual more questions eliciting genetic information, this exception will no longer apply.

The regulations also protect employers from liability where a manager inadvertently learns of an employee’s genetic information or history from social networking sites. For example, where a manager and employee are “friends” on Facebook and the manager learns genetic information on the employee’s profile, the regulations provide that the employer does not violate GINA.

Employers may also lawfully receive genetic information from a health care provider pursuant to a lawful request for medical information regarding an employee. The regulations offer specific “safe harbor” language for an employer to include in any medical information request. An employer who does not use this safe harbor language but nevertheless tailors its medical information requests not to include genetic information will be protected.

The regulations are designed to enforce and implement GINA’s strict prohibition against the use of any genetic information in making employment decisions. An overview of the statute and a complete copy of the regulations appears on the EEOC’s website: www.eeoc.gov.

Employment Relations questions?

***Don't forget to call TAB's Employment Relations Hotline
for your next HR Question
1.800.856.6721, ext. 164 or E-mail smcgee@txbiz.org***

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The Good, The Bad & The Ugly

continued from page one

SB 28 will establish a priority model for TEXAS Grants: The net effect of SB 28 will be to double the post-secondary graduation rate of TEXAS Grants participants.

HB 1700 / SB 894 will positively impact access to health care for rural citizens by allowing some hospitals to hire physicians directly.

HB 2333 will improve access and quality of care for Texans by allowing the use of telecommunications technology.

HB 1772 / SB 1430 will allow insurers to offer exclusive provider organization products in Texas in order to ensure that small and mid-size employers have access to the same flexibility that large self-insured employers have today.

HB 1809 will add positive benefits to patients and payers by providing them with basic protections that will improve the quality of medical care through diagnostic imaging.

HB 274 will curb frivolous lawsuits that potentially could put a business owner out of business. The bill, among a wide range of actions, will provide for the “early dismissal” of meritless lawsuits.

HB 3037 will update the contested hearing process at the Texas Commission on Environmental Quality to streamline contested case hearings and ensure that the environmental permit process does not cripple the state’s ability to create jobs.

SB 875 will reduce frivolous lawsuits initiated against companies that are otherwise in compliance with environmental permitting but, are under attack from organizations looking for “nuisance violations,” questionable legal challenges.

The Bad & The Ugly

There never seems to be a shortage of bad ideas, and this Session certainly delivers its fair share of anti-business policy proposals, including these bills:

SB 554 / HB 1776 will negatively impact the quality of the health insurance benefit product that employers are able to offer by prohibiting insurers from contracting for non-covered services with dentists.

SB 546 will increase the cost of pharmaceutical drugs by allowing physician dispensing statewide. Research has consistently found that when physicians have a financial interest in a particular auxiliary service, the incentive tends to drive utilization.



HB 500 will roll back the strong accountability standards that were implemented in 2009 through House Bill 3. The bill will remove nearly all academic rigor required of students to meet before they graduate from high school. This will derail the goal that the business community has set for students to graduate college or career ready.

HB 1192 will greatly increase health insurance premiums for employers by requiring health insurance carriers to cover an additional mandate, in this case the serious emotional disturbance of a child, in their benefit plans.

HB 3495 will create a bad precedent for death benefits in the workers’ compensation system.

HB 1987 will require building contractors and subcontractors to

provide or certify that they provide workers’ compensation insurance to their employees. Texas law allows private employers to “nonsubscribe” from the state workers’ compensation system and many choose to provide medical and wage replacement benefits to their injured workers through alternative occupational injury plans.

HB 223, also known as the UI Modernization Act, will change current laws that dictate the way in which unemployed workers receive Unemployment Insurance benefits. This bill is an effort to expand benefits to be eligible to receive federal funds. Unfortunately, the money received from the federal government would only pay for the expansion for approximately two years and then employers would then be picking up the tab.

SB 506 will allow the Health and Human Service Commission to issue consumption advisories if fish or other animals the public consumes are found to contain mercury levels in excess of a certain standard. Unfortunately in this case, the standard will be set below what any federal or global public health organization recommends.

HB 3067 will create a surcharge for certain fuel “inefficient” vehicles but will provide no allowances for the specific use or need of the vehicle.

HB 3236 will impose costly, extreme requirements on retailers who offer plastic bags, including a proposed criminal penalty on stores whose employees fail to ask a customer if they would like to purchase a reusable bag before providing them with a plastic one.

*For more of TAB’s
The Good, The Bad and The Ugly,
including additional bills, current status
and a more thorough explanation of
why they made our list, log on to
<http://www.txbiz.org/goodbadugly>.*

MEMBER PROFILE

B-5 Construction

Construction And The Entrepreneurial Spirit Run Deep In The Bell Family

Dating back to 1976, Cecil Bell, Sr. embarked on what would be the start of a highly successful construction business when he joined forces with two of his brothers and three other partners starting Bell Constructors, Inc.

In May 1983, Cecil Bell, Jr. followed in his dad's entrepreneurial footsteps starting B-5 Construction Co., Inc., which remains a family-owned business specializing in the construction of water and wastewater treatment plant facilities, pump stations, underground utilities and other related services with a satellite office in Oakwood, Texas and with corporate headquarters located in Magnolia, Texas.

The dad and son combined their business ventures in 1985 when the elder Bell sold his interest in Bell Constructors and joined his namesake in the effort to grow the family business—in a run that would last 26 years before the elder Bell passed away.

B-5 Construction President Cecil Bell, Jr. says that construction is in his blood and credits his late father with teaching him “everything he knows” about the industry. With a legacy of completed projects that are located all over the State it is easy to see how that is true.

Bell literally grew up in the industry, earning his first paycheck at the age of 12 while working with his dad at the Boswell Company.

“I've done it all, working in all aspects of the business from the field to the office, estimating project costs and managing projects, and handling the more complex sides of the business, including surety, insurance and finance needs,” said Bell.

“I built my first wastewater treatment plant as a superintendent while working for Dad back during the Bell Constructors days,” he added. “Thirty-five years of repeat customers and the recommendations of engineers and customers combine to serve as strong testimony to the culture and character of the company.”

The Bell family believes it is their people that provide the strength and foundation of the company.

“Most of our crews have been with us at least ten years, and the average tenure for one of our project superintendents exceeds fifteen years,” said Bell.

A strong history of working with the design firms that specialize in water and wastewater projects here in Texas and lasting, well established relationships with B-5's customers have always paid dividends when times are tough and the economy turns down.

A family culture combined with quality work, professionalism and an insured and dividend bonded firm make B-5 Construction a shining star in the industry and with customers across the State.

“My family has been in Texas for more than 150 years and one constant has transcended that time-line,” said Bell. “Our economy mirrors the condition of Texas businesses. It is essential that we as business owners become active participants in the process of insuring that our legislature passes laws which are conducive to a favorable business climate and rejects laws which compromise business.”

Bell noted the power of TAB in helping businesses grow and prosper saying, “As a fellow Texan and current Director in TAB, my charge to every business owner is to use their local influence to increase membership in the Texas Association of Business so that the voice of Texas business is loudly heard in Austin.”



*Cecil Bell, Jr.
President, B-5 Construction*

More Doctors For More Texas

TAB Leads The Charge on Improving Health Care

As a part of a TAB led effort, the Texas Legislature recently passed legislation that will increase access to health care for Texans by allowing certain hospitals to directly employ doctors.

By partially lifting the corporate practice of medicine prohibition, certain hospitals, including hospitals that are designated as a critical access hospitals; hospitals that are the sole community hospitals; or hospitals that are located in counties with a population of 50,000 or less, will now be able to directly employ physicians.

House Bill 1700 by Representative Garnet Coleman (D-Houston) and Senate Bill 894 by Senator Robert Duncan (R-Lubbock) both passed with majority support.

A similar measure was passed by both Chambers during the last Legislative Session, but was vetoed by Governor Perry due to a concern over a portion

of the bill that included some tort language.

The quality, cost and accessibility of health care services provided to Texans has, for many years, been among the most important public policy issues for TAB.

For better or worse, most Texans under age 65, whether employers, employees or employee dependents, obtain health care

services through employer-sponsored health insurance plans. Thus, Texas employers have a major stake in how efficiently and effectively the supply of health care services in Texas meets the demand.

TAB knows that these bills carry with them reforms that will improve integration and coordination of services among physicians, hospitals and other health care providers and will increase access to quality health care for Texans.



Be A Part Of A Compelling Panel Discussion with BUSINESS INNOVATORS

On Thursday, June 9 in Austin, Texas, TAB is proud to join *The Wall Street Journal* and the U.S. Chamber of Commerce in hosting the “How I Built It” interactive panel and Q&A.

The panel discussion will highlight ways in which you can turn your idea into a leading business. WSJ’s Small Business Editor Colleen DeBaise will moderate the panel of leading business entrepreneurs, including:

- ★ **Peter Kim**, Founder, President & CEO, Hudson Jeans
- ★ **Tim O’Shaughnessy**, Co-founder & CEO, Livingsocial
- ★ **Tom Ryan**, Founder & Chief Concept Officer, Smashburger
- ★ **Mark Rampolla**, Founder & CEO, Zico Coconut Water

Register at visit.howibuiltit.wsj.com. Complimentary admission code, USCC

TAB/SHRM Employment Relations Symposium

Don’t forget to mark your calendars for July 13-15 for the TAB & SHRM’s Annual Employment Relations Symposium at the Westin La Cantera in San Antonio, Texas.

Participants can expect to receive cutting-edge, timely information on labor law changes and trends that are critical to every human resource manager and business owner. Not only will you receive legal counseling from some of the top attorneys in the State, you will get practical guidance from human resource management professionals who apply the rules and regulations in their business environment every day.

The program has been approved for 9.5 hours of general recertification credit hours toward PHR, SPHR and GPHR through the HR Certification Institute, 2.5 of those hours being strategic. Also, approved are 9.75 credit hours of continuing education for attorneys, and 10 hours of CPE are available for CPA’s, with no prerequisite required.

Sponsorship opportunities are available. Contact Rachael Small at TAB, (512) 477-6721, extension 113 or rsmall@txbiz.org for more information.

Visit www.txbiz.org to secure your spot for the conference.



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Talk **About** Business



Bill Hammond, TAB President

Jobs Or Lizards?

How do you like them gas prices at the pump? Want to see them jump even higher?

Apparently, the Obama Administration does. The President must be wholly unsatisfied with a doubling in the price of gas since he took office; so now he aims to triple it.

How you ask?

By putting the oil and gas industry in the Permian Basin on the Endangered Species List.

What's that you say? It's not the domestic energy industry whose head is on the chopping block again. I beg to differ.

In yet another example of job-killing, federal government overreach, the U.S. Fish and Wildlife Service is moving forward with its proposal to list the Dunes Sagebrush lizard as an endangered species.

This precious, three-inch lizard, thanks to the Obama Administration, could shut down oil and gas operations in West Texas for a minimum of two years if it finds its way onto the Endangered Species List.

A recent study by the Perryman Group found that oil and gas

operations in Ector County generated \$22 billion in annual spending and more than 61,000 permanent jobs. In Midland County, the industry is responsible for \$29.5 billion in annual spending and more than 77,000 permanent jobs.

In both Midland and Odessa, Perryman found that the oil and gas industry was responsible for more than 75 percent of all economic activity.

Carve out the tombstone. May West Texas "Rest in Peace." The above statistics make the Dunes Sagebrush lizard not only an energy industry killer, but a city killer, too.

And, let's not be naïve, we're all going to pay a price for this ill-advised move – in higher gas prices and higher prices at the grocery store (since the agriculture industry in West Texas also stands at risk of shut down if the lizard makes the list).

Time and again, President Obama chooses to beat up on U.S. and Texas oil companies for higher profits while the federal government collects more in fuel taxes per gallon than the industry makes in profit.

The onslaught of federal regulations we've seen in recent years only stands

to drive up the cost of traditional, domestic energy sources.

Bloated bureaucracy slows any hope we've had to drill for more domestic energy, both oil and natural gas, on federal lands. And, the supposed lifting of offshore gas and oil drilling seems to be more talk than reality with an approval process that is moving at a tectonic pace.

Yet, here we go again, prepared to put questionable science ahead of reasonable policy.

Let's be reasonable. A more measured, consensus-based approach would be to make landowners, oil and gas operators and local Texans part of the solution.

In New Mexico, companies and landowners enter into voluntary agreements to help conserve this lizard's natural habitat, while at the same time allowing responsible, reasonable and necessary use of the lands for energy and agricultural production.

Is there any doubt as to why we are confused about where the Administration stands on the issue of domestic energy policy, and whether addressing high fuel prices is even on its to-do list?