

BILL ANALYSIS

C.S.H.B. 687
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns regarding a recent Texas Supreme Court decision impacting the confidentiality of communications between an insured employer and its insurance carrier with regard to the handling of workers' compensation claims. Interested parties contend that in workers' compensation cases, the employer is the policyholder, and communication between the insurance company and the policyholder should be confidential. These parties suggest that such confidentiality promotes open and independent discussion, allowing the policyholder to effectively participate in the resolution of the disputed claims. The parties further contend that the Texas Supreme Court's decision frustrates such frank discussions, which prevents the meaningful exercise of the employer's statutory rights. C.S.H.B. 687 seeks to restore the confidentiality of communications between a policyholder and a workers' compensation insurance carrier.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 687 amends the Labor Code to establish that communications between an insurance carrier and a covered employer under the Texas Workers' Compensation Act are confidential and not subject to disclosure if the communications include information regarding mental impressions, conclusions, opinions, claims-handling strategies, litigation strategies, legal theories regarding the claim, claim status, claim reserves, or proprietary business practices of the insurance carrier or covered employer or other similar classes of information and are made in furtherance of the covered employer's rights. The bill authorizes an insurance carrier to refuse to disclose and to prevent the disclosure by another person of such confidential communications. The bill specifies that, for purposes of the bill's provisions, an insurance carrier or covered employer includes the insurance carrier's or covered employer's attorneys, consultants, sureties, indemnitors, employees, third-party administrators, and other agents.

C.S.H.B. 687 does not apply to communications between the insurance carrier and covered employer that are offered as evidence in a judicial proceeding between the insurance carrier and covered employer, communications made to the insurance carrier by the covered employer in which the employer dictates the methods by which and the terms on which the claim is handled

and settled, or public records subject to state public information law. The bill does not affect the requirement to exchange documentation under Texas Workers' Compensation Act provisions relating to the adjudication of disputes or the right of the commissioner of workers' compensation to obtain information from an insurance carrier or covered employer under the act. The bill requires an insurance carrier or covered employer to disclose any communications, including confidential communications described by the bill, that are requested by the commissioner in order to detect and address acts or practices of noncompliance with the Texas Workers' Compensation Act and rules adopted under the act.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 687 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 409.011, Labor Code, is amended by adding Subsection (d) to read as follows:

(d) For purposes of this subsection, a reference to the insurance carrier or covered employer includes the insurance carrier's or covered employer's attorneys, consultants, sureties, indemnitors, employees, third-party administrators, and other agents. Communications between an insurance carrier and a covered employer are confidential and not subject to disclosure if the communications include information regarding mental impressions, conclusions, opinions, claims-handling strategies, litigation strategies, legal theories regarding the claim, claim status, claim reserves, or proprietary business practices of the insurance carrier or covered employer or other similar classes of information and are made in furtherance of the covered employer's rights, including rights described by Subsections (b)(1)-(5) and Section 415.002(b).

An insurance carrier may refuse to disclose and may prevent the disclosure by another person of confidential communications described by this subsection. This subsection:

(1) does not apply to:

(A) communications between the insurance carrier and covered employer that are

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 409, Labor Code, is amended by adding Section 409.0115 to read as follows:

Sec. 409.0115. **CONFIDENTIAL COMMUNICATIONS.**

(a) For purposes of this section, a reference to an insurance carrier or covered employer includes the insurance carrier's or covered employer's attorneys, consultants, sureties, indemnitors, employees, third-party administrators, and other agents.

(b) Communications between an insurance carrier and a covered employer are confidential and not subject to disclosure if the communications include information regarding mental impressions, conclusions, opinions, claims-handling strategies, litigation strategies, legal theories regarding the claim, claim status, claim reserves, or proprietary business practices of the insurance carrier or covered employer or other similar classes of information and are made in furtherance of the covered employer's rights, including rights described by Sections 409.011(b)(1)-(5) and Section 415.002(b).

(c) An insurance carrier may refuse to disclose and may prevent the disclosure by another person of confidential communications described by this section.

(d) This section:

(1) does not apply to:

(A) communications between the insurance carrier and covered employer that are

offered as evidence in a judicial proceeding between the insurance carrier and covered employer;

(B) communications made to the insurance carrier by the covered employer in violation of Section 415.002(a)(6); or

(C) public records subject to Chapter 552, Government Code; and

(2) does not affect:

(A) the requirement to exchange documentation under Chapter 410; or

(B) the right of the commissioner to obtain information from an insurance carrier or covered employer under Chapter 414.

SECTION 2. Section 409.011, Labor Code, as amended by this Act, applies only to communications between an insurance carrier and a covered employer made on or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2015.

offered as evidence in a judicial proceeding between the insurance carrier and covered employer;

(B) communications made to the insurance carrier by the covered employer in which the employer dictates the methods by which and the terms on which the claim is handled and settled; or

(C) public records subject to Chapter 552, Government Code; and

(2) does not affect:

(A) the requirement to exchange documentation under Chapter 410; or

(B) the right of the commissioner to obtain information from an insurance carrier or covered employer under this subtitle.

(e) An insurance carrier or covered employer is required to disclose any communications, including confidential communications described by this section, that are requested by the commissioner in order to detect and address acts or practices of noncompliance with this subtitle and rules adopted under this subtitle.

SECTION 2. Section 409.0115, Labor Code, as added by this Act, applies only to communications between an insurance carrier and a covered employer made on or after the effective date of this Act.

SECTION 3. Same as introduced version.