

- SUBJECT:** Improper payments or inducements for benefits to an injured employee
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 8 ayes — Giddings, Elkins, Darby, Bailey, Bohac, Martinez, Solomons, Zedler
- 0 nays
- 1 present not voting — Castro
- WITNESSES:** For — Andrew Kant, Texas Orthopedic Association; Charlotte H. Smith, Texas Medical Association; (*Registered, but did not testify:* Tristan Castaneda, Jr., Workers' Compensation Pharmacy Alliance; Cathy DeWitt, Texas Association of Business; Rick Levy, Texas AFL-CIO; John Pike, Texas Orthopedic Association)
- Against — None
- On — (*Registered, but did not testify:* Stan Strickland, Texas Department of Insurance, Division of Workers' Compensation)
- BACKGROUND:** Under Insurance Code, sec. 4005.053, an insurer or insurer's agent may not pay to any person, directly or indirectly, and may not accept a commission or other valuable consideration for a service performed by that person as an agent unless the person holds an agent's license. Further, an agent may not pay, permit, or give or offer to pay, permit, or give, directly or indirectly, to any person who does not hold an agent's license:
- a rebate of premiums payable, a commission, employment, a contract for service, or any other valuable consideration or inducement that is not specified in the insurance policy or contract; or
 - a fee or other valuable consideration for referring a customer who seeks to purchase an insurance product or seeks an opinion on or advice regarding an insurance product based on that customer's purchase of insurance.
- Insurance Code, sec. 541.056 prohibits payment of rebates and inducements related to a life insurance contract, life annuity contract,

accident and health insurance contract, or an agreement regarding the contract.

DIGEST:

CSHB 34 would amend the Labor Code to prohibit certain people from offering to pay, paying, soliciting, or receiving improper inducements regarding the delivery of workers' compensation claim benefits to an injured employee, or from improperly trying to influence these benefits, including by making threats.

The bill would apply to an insurance adjuster, case manager, or other person who had authority under the Texas Workers' Compensation Act to request a service affecting the delivery of benefits to an injured employee – including peer reviews, required medical examinations, or case management. It also would apply to the agent of such a person.

CSHB 34 would establish a Class A administrative violation, punishable by an administrative penalty not to exceed \$10,000.

The bill would take effect September 1, 2007.

SUPPORTERS
SAY:

CSHB 34 would prohibit inappropriate inducements or payments to people who could affect delivery of benefits to an injured employee. Some people in the utilization review process have complained that they have been at a competitive disadvantage with others in the process because they could not give adjusters kickbacks, such as cash or tickets to sporting events or concerts. It is unclear whether the Texas Department of Insurance's (TDI's) Division of Workers' Compensation, if it were to pursue specific allegations, would have enforcement authority under the Labor Code that extended to all parties involved in the workers' compensation benefit process. While TDI's authority covers insurance carriers, agents, and adjusters, it might not reach, for example, case managers or occupational therapists.

CSHB 34 would cover kickbacks and bribes from health care providers, attorneys, or other parties who could influence the outcome of benefits for an injured worker. The bill would provide an administrative penalty up to \$10,000, but the commissioner of insurance has authority to assess up to an additional \$25,000 a day per occurrence if the commissioner feels that the violation warrants the extra penalty.

Professionals who could affect the delivery of benefits should be paid for their services, not for referrals or influence. While the circumstances that created the need for this bill could be limited, there is no place for such conduct in the workers' compensation system. Integrity is critical to the success of the Texas Workers' Compensation Act as passed last session. CSHB 34 would be necessary to prevent these inducements.

OPPONENTS
SAY:

No apparent opposition

NOTES:

The original bill applied to a service regarding the management of a workers' compensation claim. The committee substitute would apply to a service affecting the delivery of benefits to an injured employee.

HB 34 as introduced prohibited any payment or offer of payment, directly or indirectly, as an inducement for performance of service regarding the management of a workers' compensation claim or a referral for such service. The substitute would prohibit any offer of payment, payment, solicitation, or improper inducement related to the delivery of benefits to an injured employee or any improper attempts to influence the delivery of these benefits, including making improper threats.