

SUBJECT: Reimbursement of carrier for the overpayment of workers' comp benefits

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Giddings, Elkins, Castro, Martinez, Solomons, Zedler

0 nays

3 absent — Darby, Bailey, Bohac

SENATE VOTE: On final passage, April 26 — 30-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 3724 by Elkins:)*

For — Bob Graves, Burns Anderson Jury & Brenner; *(Registered, but did not testify: Rina Hartline, CenterPoint Energy; Chris Miller, Association of Electric Companies of Texas, AECT; Jonathon Sibley, Association of Fire and Casualty Companies of Texas; Joe Woods, Property Casualty Insurers Association of America)*

Against — None

On — *(Registered, but did not testify: Stan Strickland, Texas Department of Insurance, Division of Worker's Compensation)*

BACKGROUND: Under Labor Code, ch. 403.006, the Subsequent Injury Fund is a dedicated account in the general revenue fund. The fund contains workers' compensation death benefits for which no beneficiary exists and may be appropriated as provided by other law. The fund is liable for payments to injured workers with subsequent on-the-job injuries who qualify for lifetime income benefits and certain statutory reimbursements to workers' compensation insurance carriers for overpayments of benefits.

Under sec. 403.007(e), if the commissioner of workers' compensation determines that funding is not adequate to meet the expected obligations of the fund, it must be supplemented by the collection of a maintenance tax paid by insurance carriers. The rate of assessment must be adequate to provide 120 percent of the projected unfunded liabilities of the fund for

the next biennium as certified by an independent actuary or financial advisor.

Sec. 408.0041(f) states that unless otherwise ordered by the commissioner, the workers' compensation insurance carrier shall pay benefits based on the opinion of a designated doctor during any pending dispute. If an insurance carrier is not satisfied with the opinion rendered by a designated doctor, the carrier may request the commissioner to order an employee to attend an examination by a doctor selected by the insurance carrier.

**DIGEST:**

SB 1169 would require the subsequent injury fund to reimburse an insurance carrier for any overpayment of benefits made by the carrier based on opinion of a designated doctor if that opinion was reversed or modified by a final arbitration award or a final order or decision of the commissioner or a court. The commissioner would adopt rules to provide for a periodic reimbursement schedule, providing reimbursement at least annually.

For benefits paid to a part-time employee or an employee with multiple employment that were based on employment other than the employment during which the compensable injury occurred, the bill would add death benefits, in addition to income benefits, to reimbursement an insurance carrier would be entitled to receive from the fund.

The bill would take effect September 1, 2007, and would apply only to a final arbitration award, order, or decision rendered on or after that date.

**SUPPORTERS  
SAY:**

SB 1169 would authorize insurance carriers to recover funds paid as a result of designated doctors' opinions that subsequently were overturned. Most payouts from the Subsequent Injury Fund are for statutory reimbursements to insurance carriers for benefits that later were overturned or determined not due the claimant. The workers' compensation reforms of 1989 initiated these reimbursements from the fund, and they were continued in 2001 under HB 2600 by Brimer and in 2005 under HB 7 by Solomons.

In 2005, the 79th Legislature enacted workers' compensation revisions in HB 7 by Solomons, which broadened the involvement of designated doctors in the workers' compensation system to include, among other things, determinations on impairment ratings, maximum medical improvement, extent of injury, disability, and the ability of an employee to

return to work. Sec. 408.0041(f) requires insurance carriers to pay both income and medical benefits in accordance with a designated doctor's report. As a result, carriers may pay benefits pursuant to a designated doctor's opinion that eventually is overruled. The fund serves an important purpose by allowing reimbursement to insurance companies when certain benefits are overturned during the workers' compensation appeals process. The fund should be extended to include overpayments based on designated doctor's opinions.

OPPONENTS  
SAY:

No apparent opposition.

NOTES:

The identical companion, HB 3724 by Elkins, was reported favorably, without amendment, by the House Business and Industry Committee on April 24.