

SUBJECT: Immunity for doctors' exams requested TDI workers' comp division

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Deshotel, Elkins, Christian, England, Giddings, S. Miller, Orr, Quintanilla

0 nays

3 absent — Gattis, Keffer, S. Turner

SENATE VOTE: On final passage, April 16 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion, HB 2428:*)  
For — (*Registered, but did not testify:* Cathy DeWitt, Texas Association of Business; Greg Herzog, Texas Medical Association)

Against — Marianne Bogel

BACKGROUND: Labor Code, sec 402.00123 provides that the insurance commissioner is not liable in a civil action for an act performed in good faith in the execution of duties as insurance commissioner.

Labor Code, sec. 413.054 provides the same immunity from liability as granted to the Commissioner of Insurance for anyone who serves as a designated doctor, independent medical examiner, case review doctor, or a peer review member for the Texas Department of Insurance (TDI) Division of Workers' Compensation.

The exemption does not apply to a person providing medical treatment to an injured employee.

DIGEST: SB 1815 would amend Labor Code, sec. 413.054 to add doctors who perform required medical examinations for the TDI Division of Workers' Compensation to those who have the same immunity from liability as the insurance commissioner.

The bill would not provide immunity from liability to those who perform medical services for workers' compensation at the request of an insurance company, injured employee, or the injured employee's representative.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

SB 1815 would restore the same level of protection to doctors performing a required medical examination for TDI's workers' compensation division as provided to other doctors providing other services requested by TDI. The bill would bring the standard back to what prevailed before changes in workers' compensation laws in 2005. These reviews are requested by TDI to resolve medical disputes or to review actions by healthcare providers or insurance companies. The bill would not extend immunity to physicians performing reviews requested by an insurance carrier, injured employee, or the employee's representative.

SB 1815 would provide an additional incentive for physicians to participate in workers' compensation cases by reducing their exposure to potential liability. Currently, most physicians do not and will not accept workers' compensation patients — not because of the patients or employers, but because of the administrative burdens created by the workers' compensation insurance industry. Physicians want to treat injured workers. Workers deserve quality health care. However, physicians cannot afford the additional administrative burden and costs inherent in the workers' compensation system. Easing concerns about potential liability would eliminate some of these burdens.

**OPPONENTS  
SAY:**

Immunity for liability should not be extended to physicians performing workers' compensation medical examinations until the entire broken system is reformed. Too many workers' compensation physicians lack the qualifications and experience necessary to render appropriate second opinions or conduct peer reviews. Their mistakes and delays cause harm to injured employees. These doctors should be held responsible for the consequences of their actions and should not be shielded from possible legal liability.

NOTES:

The House companion bill, HB 2428 by Deshotel, was considered in a public hearing on March 23 by the Business and Industry Texas Workers' Compensation and HOA Subcommittee and left pending.