

BILL ANALYSIS

Senate Research Center

H.B. 673
By: Solomons (Watson)
State Affairs
5/19/2009
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 673 amends current law relating to certain services provided by the office of injured employee counsel under the workers' compensation program of this state.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 404, Labor Code, by adding Section 404.1015, as follows:

Sec. 404.1015. REFUSAL TO PROVIDE OR TERMINATION OF SERVICES. (a) Authorizes the injured employee public counsel (public counsel) to refuse to provide or to terminate the services of the office of injured employee counsel (office) to any claimant who is abusive or violent to or who threatens any employee of the office; makes unreasonable demands for office services or for assistance in claiming benefits not provided by law; or commits or threatens to commit a criminal act in pursuit of a workers' compensation claim.

(b) Requires the office, if the public counsel determines under Subsection (a) that the services of the office should be refused or terminated, to inform the affected claimant in writing and notify the division of workers' compensation of the Texas Department of Insurance (division).

(c) Requires the office to notify the appropriate law enforcement authority if the office becomes aware that the claimant or a person acting on the claimant's behalf commits or threatens to commit a criminal act.

SECTION 2. Amends Section 404.105, Labor Code, as follows:

Sec. 404.105. AUTHORITY TO ASSIST INDIVIDUAL INJURED EMPLOYEES IN ADMINISTRATIVE PROCEDURES. (a) Creates this subsection from existing text. Authorizes the office, through the ombudsman program, to appear before the commissioner of workers' compensation (commissioner), division, or State Office of Administrative Hearings to provide assistance to, rather than on behalf of, an individual injured employee during a workers' compensation administrative dispute resolution process; or an enforcement action by the Texas Department of Insurance (TDI) or division against an employee for a violation of the Texas Workers' Compensation Act. Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Prohibits the chapter from being construed as requiring or allowing legal representation for an individual injured employee by an office attorney or ombudsman in any proceeding.

SECTION 3. Amends Section 404.109, Labor Code, as follows:

Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. Requires the public counsel to adopt, in the form and manner prescribed by the public counsel and after consultation with the commissioner, rather than submit to the division and TDI for adoption by the commissioners, a notice of injured employee rights and responsibilities to be distributed by the division as provided by commissioner or, rather than and, commissioner of insurance rules. Requires that a right or responsibility adopted under this section be consistent with the requirements of this subtitle and division rules. Prohibits this section from being construed as establishing an entitlement to benefits to which the claimant is not otherwise entitled under this subtitle.

SECTION 4. Amends Section 404.110, Labor Code, as follows:

Sec. 404.110. New heading: APPLICABILITY TO PUBLIC COUNSEL OF CONFIDENTIALITY REQUIREMENTS. (a) Creates this subsection from existing text. Provides that confidentiality requirements applicable to examination reports and to the commissioner of insurance under Sections 401.058 (Confidentiality of Reports), 401.105 (Oath of Examiners and Assistants), 401.106 (Right of Action on Bond), 441.201 (Confidentiality), and 501.158 (Confidentiality Requirements), Insurance Code, rather than Article 1.18, as applicable, and Section 404.111, rather than providing that confidentiality requirements applicable to examination reports and to the commissioner of insurance under Section 3A, Article 21.28-A, Insurance Code, apply to the public counsel.

(b) Prohibits an employee of the office from being compelled to disclose information communicated to the employee by a claimant on any matter relating to the claimant's claim. Provides that this subsection does not prohibit or alter the office's duty to notify appropriate law enforcement authorities under Section 404.1015(c).

SECTION 5. Amends Section 404.111, Labor Code, as follows:

Sec. 404.111. ACCESS TO INFORMATION. (a) Authorizes the office, except as otherwise provided by this section, to access information from an executive agency that is otherwise confidential under a law of this state if that information is necessary for the performance of the duties of the office, including information made confidential under certain chapters and sections. Makes a nonsubstantive change.

(b) Prohibits the office from accessing information under Subsection (a) that is an attorney-client communication or an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) Prohibits the office, in furtherance of assisting an employee under Section 404.105(a)(2) (relating to an enforcement action by the department or division against an employee for a violation of the Texas Workers' Compensation Act), from accessing information under Section 404.111(a) to which the employee is not otherwise entitled. Prohibits information, if the office possesses any information made confidential by the Texas Workers' Compensation Act or any other laws of this state to which an employee is not otherwise entitled, from being disclosed to the employee or any other party assisting an employee under Section 404.105(a)(2). Provides that nothing in this subsection prohibits or alters the office's duty to notify appropriate law enforcement authorities under Section 404.1015(c).

(d) Creates this subsection from existing text. Requires the division or TDI, except as provided by this section, rather than on request by the public counsel, to provide any information or data requested by the public counsel, rather than office, in furtherance of the duties of the office under this chapter.

(e) Redesignates Subsection (c) as Subsection (e). Prohibits the office from making public any confidential information provided to the office under this

chapter. Authorizes the office, except as provided by Subsection (c), to disclose a summary of the information that does not directly or indirectly identify the individual or entity that is the subject of the information. Makes nonsubstantive changes.

(f) Redesignates Subsection (d) as Subsection (f). Provides that information collected or used by the office under this chapter is subject to the confidentiality provisions and criminal penalties of Section 402.091 (Failure to Maintain Confidentiality; Offense, Penalty), rather than Sections 81.103 (Confidentiality; Criminal Penalty) and 311.037 (Confidential Data; Criminal Penalty), Health and Safety Code, and Chapter 159 (Physician-Patient Communication), Occupations Code.

(g) Redesignates Subsection (e) as Subsection (g). Makes no further changes to this subsection.

(h) Redesignates Subsection (f) as Subsection (h). Makes a conforming change.

SECTION 6. Effective date: September 1, 2009.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment No. 1

(1) Amends SECTION 1 of the bill in Section 404.1015, Labor Code (on page 1, lines 13 thru 14), to strike "makes unreasonable demands for office services or for" and to insert "requests";

(2) Amends SECTION 1 of the bill in Section 404.1015, Labor Code (on page 1, line 21), between "notify" and "the", to insert "and cooperate with";

(2) [sic] Amends SECTION 1 of the bill in Section 404.1015, Labor Code (on page 1, line 22), between "authority" and "if", to insert "and the Department of Insurance, Fraud Unit"; and

(3) Amends SECTION 4 of the bill in Section 404.110, Labor Code (on page 3, line 15), between "notify" and "appropriate", to insert "and cooperate with".