

BILL ANALYSIS

Senate Research Center

H.B. 1468
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that a recent decision of the Texas Supreme Court impacts the confidentiality of communications between an insured employer and its insurance carrier with regard to the handling of workers' compensation claims. The parties further contend that the inability to have a frank, confidential discussion between the policyholder and insurance carrier prevents the meaningful exercise of the employer's statutory rights to participate in the investigation and resolution of a workers' compensation claim.

H.B. 1468 seeks to revise the applicable laws under the Texas Workers' Compensation Act with the goal of restoring the confidentiality of communications between the policyholder and the workers' compensation insurance carrier.

H.B. 1468 amends current law relating to confidential communications between an insurance carrier and a covered employer under the Texas Workers' Compensation Act.

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 Section 409.011, Labor Code, by adding Subsection (d) as follows:

(d) Provides that, 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. Provides that 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) (relating to requiring that the information include a clear statement of the right of the employer to be present at all administrative proceedings relating to an employee's claim, present relevant evidence relating to an employee's claim at any proceeding, report suspected fraud, contest the compensability of an injury if the insurance carrier accepts liability for the payment of benefits, and receive notice, after making a written request to the insurance carrier) and Section 415.002(b) (relating to providing that an insurance carrier or its representative does not commit an administrative violation under Subsection (a)(6) by allowing an employer to perform certain actions). Authorizes an insurance carrier to refuse to disclose and to prevent the disclosure by another person of confidential communications described by this subsection. Provides that this subsection:

(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) (relating to providing that an insurance carrier or its representative commits an administrative violation if that person allows an employer to dictate the methods by which and the terms on which a claim is handled and settled); or

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

(2) does not affect:

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

(B) the right of the commissioner of workers' compensation to obtain information from an insurance carrier or an employer.

SECTION 2. Provides that 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. Effective date: September 1, 2013.