

(1) Amend Article 3 of the committee printing of CSSB 5 by inserting appropriately numbered SECTIONS as follows:

SECTION 3. Subtitle A, Title 5, Labor Code, is amended by adding Chapter 404 to read as follows:

"CHAPTER 404. OFFICE OF INJURED EMPLOYEE COUNSEL

SUBCHAPTER A. OFFICE; GENERAL PROVISIONS

Sec. 404.001. DEFINITIONS. In this chapter:

(1) "Office" means the office of injured employee counsel.

(2) "Public counsel" means the injured employee public counsel.

Sec. 404.002. ESTABLISHMENT OF OFFICE; ADMINISTRATIVE ATTACHMENT TO TEXAS DEPARTMENT OF WORKERS' COMPENSATION. (a) The office of injured employee counsel is established to represent the interests of workers' compensation claimants in this state.

(b) The office is administratively attached to the Texas Department of Workers' Compensation but is independent of direction by the commissioner of workers' compensation and the Texas Department of Workers' Compensation.

(c) The Texas Department of Workers' Compensation shall provide the staff and facilities necessary to enable the office to perform the duties of the office under this subtitle, including:

(1) administrative assistance and services to the office, including budget planning and purchasing;

(2) personnel services; and

(3) computer equipment and support.

(d) The public counsel and the commissioner of workers' compensation may enter into interagency contracts and other agreements as necessary to implement this chapter.

Sec. 404.003. SUNSET PROVISION. The office of injured employee counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2019.

Sec. 404.004. PUBLIC INTEREST INFORMATION. (a) The office shall prepare information of public interest describing the functions of the office.

(b) The office shall make the information available to the public and appropriate state agencies.

Sec. 404.005. ACCESS TO PROGRAMS AND FACILITIES. (a) The office shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the office's programs.

(b) The office shall comply with federal and state laws for program and facility accessibility.

Sec. 404.006. RULEMAKING. (a) The public counsel shall adopt rules as necessary to implement this chapter.

(b) Rulemaking under this section is subject to Chapter 2001, Government Code.

[Sections 404.007-404.050 reserved for expansion]

SUBCHAPTER B. INJURED EMPLOYEE PUBLIC COUNSEL

Sec. 404.051. APPOINTMENT; TERM. (a) The governor, with the advice and consent of the senate, shall appoint the injured employee public counsel. The public counsel serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the public counsel without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(c) If a vacancy occurs during a term, the governor shall fill the vacancy for the unexpired term.

(d) In appointing the public counsel, the governor may consider recommendations made by groups that represent wage earners.

Sec. 404.052. QUALIFICATIONS. To be eligible to serve as public counsel, a person must:

- (1) be a resident of Texas;
- (2) be licensed to practice law in this state;
- (3) have management experience;
- (4) possess knowledge and experience with the workers' compensation system; and
- (5) have experience with legislative procedures and administrative law.

Sec. 404.053. BUSINESS INTEREST; SERVICE AS PUBLIC COUNSEL. (a) A person is not eligible for appointment as public counsel if

the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization that holds a license, certificate of authority, or other authorization from the department or that receives funds from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the department or the office; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department or the office, other than compensation or reimbursement authorized by law.

Sec. 404.054. LOBBYING ACTIVITIES. A person may not serve as public counsel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department or the office.

Sec. 404.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from office that the public counsel:

(1) does not have at the time of appointment or maintain during service as public counsel the qualifications required by Section 404.052;

(2) violates a prohibition established by Section 404.053, 404.054, 404.056, or 404.057; or

(3) cannot, because of illness or disability, discharge the public counsel's duties for a substantial part of the public counsel's term.

(b) The validity of an action of the office is not affected by the fact that the action is taken when a ground for removal of the public counsel exists.

Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT.

(a) A former public counsel may not make any communication to or appearance before the Texas Department of Workers' Compensation, Texas Department of Insurance, commissioner of workers' compensation, commissioner of insurance, or an employee of the Texas Department of Workers' Compensation, Texas Department of Insurance before the second anniversary of the date the person

ceases to serve as public counsel if the communication or appearance is made:

(1) on behalf of another person in connection with any matter on which the person seeks official action; or

(2) with the intent to influence the commissioner of workers' compensation or commissioner of insurance decision or action, unless the person is acting on the person's own behalf and without remuneration.

(b) A former public counsel may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter before the Texas Department of Workers' Compensation or the Texas Department of Insurance before the second anniversary of the date the person ceases to serve as public counsel.

(c) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

(d) A former employee of the office may not:

(1) be employed by an insurance carrier regarding a matter that was in the scope of the employee's official responsibility while the employee was associated with the office; or

(2) represent a person before the Texas Department of Workers' Compensation or the Texas Department of Insurance or a court in a matter:

(A) in which the employee was personally involved while associated with the office; or

(B) that was within the employee's official responsibility while the employee was associated with the office.

(e) The prohibition of Subsection (d)(1) applies until the first anniversary of the date the employee's employment with the office ceases.

(f) The prohibition of Subsection (d)(2) applies to a current employee of the office while the employee is associated with the office and at any time after.

Sec. 404.057. TRADE ASSOCIATIONS. (a) In this section, "trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional

competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not serve as public counsel if the person has been, within the previous two years:

(1) an officer, employee, or paid consultant of a trade association in the field of workers' compensation; or

(2) the spouse of an officer, manager, or paid consultant of a trade association in the field of workers' compensation.

[Sections 404.058-404.100 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

Sec. 404.101. GENERAL DUTIES. (a) The office shall, as provided by this subtitle:

(1) provide assistance to workers' compensation claimants as provided by this subtitle; and

(2) advocate on behalf of the public regarding rulemaking by the commissioner of workers' compensation and commissioner of insurance relating to workers' compensation.

(3) assist injured employees with contacting appropriate licensing boards for complaints against a health care provider; and

(4) assist injured employees with referral to local, state, and federal financial assistance, rehabilitation, and work placement programs, as well as other social services that the office considers appropriate.

(e) The office:

(1) may assess the impact of workers' compensation laws, rules, procedures, and forms on injured employees in this state; and

(2) shall, as provided by this subtitle:

(A) monitor the performance and operation of the workers' compensation system, with a focus on the system's effect on the return to work of injured employees;

(B) assist injured employees, through the ombudsman program, with the resolution of complaints pending at the Texas Department of Workers' Compensation;

(C) assist injured workers, through the ombudsman program, in the Texas Department of Workers' Compensation's administrative dispute resolution system; and

(D) advocate in the office's own name positions determined by the public counsel to be most advantageous to a substantial number of injured workers.

(f) The office may not appear or intervene, as a party or otherwise, before the commissioner of workers' compensation, commissioner of insurance, Department of Workers' Compensation or Department of Insurance on behalf of an individual injured employee.

Sec. 404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL.

The public counsel shall administer and enforce this chapter, including preparing and submitting to the legislature a budget for the office and approving expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the office.

Sec. 404.103. OPERATION OF OMBUDSMAN PROGRAM. (a) The

office shall operate the ombudsman program under Subchapter D.

(b) The office shall coordinate services provided by the ombudsman program with services provided by the Department of Assistive and Rehabilitative Services.

Sec. 404.104. AUTHORITY TO APPEAR OR INTERVENE. The public counsel:

(1) may appear or intervene, as a party or otherwise, as a matter of right before the commissioner of workers' compensation, commissioner of insurance, Department of Workers' Compensation or Department of Insurance on behalf of injured employees as a class in matters involving rates, rules, and forms affecting workers' compensation insurance for which the commissioner of workers' compensation or the commissioner of insurance promulgates rates or adopts or approves rules or forms;

(2) may intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising from an action taken by an administrative agency in a proceeding in which the public counsel previously appeared under the authority granted by this chapter;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of injured employees as a class in any proceeding in which the public counsel determines that injured employees are in need of representation, except that the public counsel may not intervene in an enforcement or parens patriae proceeding brought by the attorney general; and

(4) may appear or intervene before the commissioner of workers' compensation commissioner of insurance, Texas Department of Workers' Compensation or Texas Department of Insurance as a party or otherwise, on behalf of injured employees as a class in a matter involving rates, rules, or forms affecting injured employees as a class in any proceeding in which the public counsel determines that injured employees are in need of representation.

Sec. 404.105. AUTHORITY TO REPRESENT INJURED EMPLOYEES IN ADMINISTRATIVE PROCEDURES. (a) The office, through the ombudsman program, may appear before the commissioner of workers' compensation or Texas Department of Workers' Compensation on behalf of an individual injured employee during an administrative dispute resolution process.

Sec. 404.106. LEGISLATIVE REPORT. (a) The office shall report to the governor, lieutenant governor, speaker of the house of representatives, and the chairs of the legislative committees with appropriate jurisdiction not later than December 31 of each even-numbered year. The report must include:

(1) a description of the activities of the office;

(2) identification of any problems in the workers' compensation system from the perspective of injured employees as considered by the public counsel, with recommendations for regulatory and legislative action; and

(3) an analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.

(b) The office shall coordinate with the workers' compensation research and evaluation group to obtain needed information and data to make the evaluations required for the report.

(c) The office shall publish and disseminate the

legislative report to interested persons, and may charge a fee for the publication as necessary to achieve optimal dissemination.

Sec. 404.107. ACCESS TO INFORMATION BY PUBLIC COUNSEL.

(a) The public counsel:

(1) is entitled to the same access as a party, other than Texas Department of Workers' Compensation or Texas Department of Insurance staff, to Texas Department of Workers' Compensation or Texas Department of Insurance records available in a proceeding before the commissioner of workers' compensation or commissioner, insurance, Texas Department of Workers' Compensation or Texas Department of Insurance under the authority granted to the public counsel by this chapter; and

(2) is entitled to obtain discovery under Chapter 2001, Government Code, of any non-privileged matter that is relevant to the subject matter involved in a proceeding or submission before the commissioner of workers' compensation, commissioner of insurance, Texas Department of Workers' Compensation or Texas Department of Insurance as authorized by this chapter.

Sec. 404.108. LEGISLATIVE RECOMMENDATIONS. The public counsel may recommend proposed legislation to the legislature that the public counsel determines would positively affect the interests of injured employees.

Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public counsel shall submit to the Texas Department of Workers' Compensation and Texas Department of Insurance for adoption by the commissioners a notice of injured employee rights and responsibilities to be distributed as provided by commissioner of workers' compensation and commissioner of insurance rules.

Sec. 404.110. APPLICABILITY OF CONFIDENTIALITY REQUIREMENTS. Confidentiality requirements applicable to examination reports under Article 1.18, Insurance Code, and to the commissioner under Section 3A, Article 21.28-A, Insurance Code, apply to the public counsel.

Sec. 404.111. ACCESS TO INFORMATION. (a) The office is entitled to information that is otherwise confidential under a law of this state, including information made confidential under:

- (1) Section 843.006, Insurance Code;
- (2) Chapter 108, Health and Safety Code; and
- (3) Chapter 552, Government Code.

(b) On request by the public counsel, the Texas Department of Workers' Compensation or Texas Department of Insurance shall provide any information or data requested by the office in furtherance of the duties of the office under this chapter.

(c) The office may not make public any confidential information provided to the office under this chapter but may disclose a summary of the information that does not directly or indirectly identify the individual or entity that is the subject of the information. The office may not release, and an individual or entity may not gain access to, any information that:

(1) could reasonably be expected to reveal the identity of a doctor or an injured employee;

(2) reveals the zip code of an injured employee's primary residence;

(3) discloses a provider discount or a differential between a payment and a billed charge; or

(4) relates to an actual payment made by a payer to an identified provider.

(c) Information collected or used by the office under this chapter is subject to the confidentiality provisions and criminal penalties of:

- (1) Section 81.103, Health and Safety Code;
- (2) Section 311.037, Health and Safety Code; and
- (3) Chapter 159, Occupations Code.

(d) Information on doctors and injured employees that is in the possession of the office, and any compilation, report, or analysis produced from the information that identifies doctors and injured employees is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any individual or entity; or

(2) admissible in any civil, administrative, or criminal proceeding.

(e) Notwithstanding Subsection (b)(2), the office may use zip code information to analyze information on a geographical

basis.

Sec. 404.112. LITERACY AND BASIC SKILLS CURRICULUM.

(a) The office shall coordinate with the Texas Workforce Commission and local workforce development boards to develop a workplace literacy and basic skills curriculum designed to eliminate the skills gap between employees and current and emerging jobs.

(b) The public counsel may enter into memoranda of understanding or other agreements with the Texas Workforce Commission and local workforce development boards as necessary to implement Subsection (a).

SECTION 5.09. Subchapter C, Chapter 409, Labor Code, is redesignated as Subchapter D, Chapter 404, Labor Code, and Sections 409.041-409.044, Labor Code, are renumbered as Sections 404.151-404.154, Labor Code, and amended to read as follows:

SUBCHAPTER D [~~C~~]. OMBUDSMAN PROGRAM

Sec. 404.151 [~~409.041~~]. OMBUDSMAN PROGRAM. (a) The office [~~commission~~] shall maintain an ombudsman program as provided by this subchapter to assist injured employees [~~workers~~] and persons claiming death benefits in obtaining benefits under this subtitle.

(b) An ombudsman shall:

(1) meet with or otherwise provide information to injured employees [~~workers~~];

(2) investigate complaints;

(3) communicate with employers, insurance carriers, and health care providers on behalf of injured employees [~~workers~~];

(4) assist unrepresented claimants, employers, and other parties to enable those persons to protect their rights in the workers' compensation system; and

(5) meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any informal or formal hearing.

Sec. 404.152 [~~409.042~~]. DESIGNATION AS OMBUDSMAN; ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION REQUIREMENTS. (a) At least one specially qualified employee in each Texas Department of Workers' Compensation [~~commission~~] office shall be an ombudsman designated by the office [~~an ombudsman~~] who shall perform the duties under this subchapter [~~section~~] as the

person's primary responsibility.

(b) To be eligible for designation as an ombudsman, a person must:

(1) demonstrate satisfactory knowledge of the requirements of:

(A) this subtitle and the provisions of Subtitle C that relate to claims management;

(B) other laws relating to workers' compensation; and

(C) rules adopted under this subtitle and the laws described under Subdivision (1)(B);

(2) have demonstrated experience in handling and resolving problems for the general public;

(3) possess strong interpersonal skills; and

(4) have at least one year of demonstrated experience in the field of workers' compensation.

(c) The public counsel shall ~~[commission]~~ by rule ~~[shall]~~ adopt training guidelines and continuing education requirements for ombudsmen. Training provided under this subsection must:

(1) include education regarding this subtitle and ~~[7]~~ rules adopted under this subtitle, ~~[and appeals panel decisions,]~~ with emphasis on benefits and the dispute resolution process; and

(2) require an ombudsman undergoing training to be observed and monitored by an experienced ombudsman during daily activities conducted under this subchapter.

Sec. 404.153 ~~[409.043]~~. EMPLOYER NOTIFICATION; ADMINISTRATIVE VIOLATION. (a) Each employer shall notify its employees of the ombudsman program in the ~~[a]~~ manner prescribed by the office ~~[commission]~~.

Sec. 404.154 ~~[409.044]~~. PUBLIC INFORMATION. The office ~~[commission]~~ shall widely disseminate information about the ombudsman program."

(2) Amend Article 7 of the committee printing of C.S.S.B. 5 by inserting appropriately numbered SECTIONS as follows:

"SECTION 7.____. OFFICE OF INJURED EMPLOYEE COUNSEL. (a) The office of injured employee counsel created under Chapter 404, Labor Code, as added by this Act, is established September 1,

2005.

(b) The governor shall appoint the injured employee public counsel of the office of injured employee counsel not later than October 1, 2005.

(c) The injured employee public counsel of the office of injured employee counsel shall adopt initial rules for the office under Section 404.006, Labor Code, as added by this Act, not later than March 1, 2006.

(d) The Texas Department of Workers' Compensation shall provide, in Austin and in each regional office operated by the department to administer Subtitle A, Title 5, Labor Code, as amended by this Act, suitable office space, personnel, computer support, and other administrative support to the office of injured employee counsel as required by Chapter 404, Labor Code, as added by this Act. The department shall provide the facilities and support not later than October 1, 2005.

(e) All powers, duties, obligations, rights, contracts, funds, unspent appropriations, records, real or personal property, and personnel of the Texas Workers' Compensation Commission relating to the operation of the workers' compensation ombudsman program under Subchapter C, Chapter 409, Labor Code, as that subchapter existed before amendment by this Act, shall be transferred to the office of injured employee counsel not later than March 1, 2006. An ombudsman transferred to the office of injured employee counsel under this section shall begin providing services under Chapter 404, Labor Code, as added by this Act, not later than March 1, 2006.

SECTION 7.____. BUDGET EXECUTION AUTHORITY. Notwithstanding Section 317.005(e), Government Code, the Legislative Budget Board may adopt an order under Section 317.005, Government Code, affecting any portion of the total appropriation of the Texas Department of Workers' Compensation or Office of Injured Employee Counsel if necessary to implement the provisions of this Act. This section expires March 31, 2006.

STAPLES

