

1-1 By: Eissler (Senate Sponsor - Williams) H.B. No. 251
1-2 (In the Senate - Received from the House May 13, 2005;
1-3 May 16, 2005, read first time and referred to Committee on State
1-4 Affairs; May 19, 2005, reported favorably by the following vote:
1-5 Yeas 8, Nays 0; May 19, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the release of certain information regarding a workers'
1-9 compensation claim.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 402.084, Labor Code, is amended by
1-12 amending Subsections (b) and (d) and adding Subsections (c-1)-(c-7)
1-13 and (e) to read as follows:

1-14 (b) Information on a claim may be released as provided by
1-15 Subsection (a) to:

1-16 (1) the employee or the employee's legal beneficiary;

1-17 (2) the employee's or the legal beneficiary's
1-18 representative;

1-19 (3) the employer at the time of injury;

1-20 (4) the insurance carrier;

1-21 (5) the Texas Certified Self-Insurer Guaranty
1-22 Association established under Subchapter G, Chapter 407, if that
1-23 association has assumed the obligations of an impaired employer;

1-24 (6) the Texas Property and Casualty Insurance Guaranty
1-25 Association, if that association has assumed the obligations of an
1-26 impaired insurance company;

1-27 (7) a third-party litigant in a lawsuit in which the
1-28 cause of action arises from the incident that gave rise to the
1-29 injury; or

1-30 (8) with regard to information described by Subsection
1-31 (c-3), [a subclaimant under Section 409.009 that is] an insurance
1-32 carrier that has adopted an antifraud plan under Subchapter B,
1-33 Chapter 704 [Article 3.97-3], Insurance Code, or the authorized
1-34 representative of such an insurance carrier [a subclaimant].

1-35 (c-1) For purposes of this section only, "insurance
1-36 carrier" means:

1-37 (1) a certified self-insurer; or

1-38 (2) an entity authorized under the Insurance Code or
1-39 another insurance law of this state that provides health insurance
1-40 coverage or health benefits in this state, including:

1-41 (A) an insurance company, including an insurance
1-42 company that holds a certificate of authority issued by the
1-43 commissioner of insurance to engage in the business of workers'
1-44 compensation insurance in this state;

1-45 (B) a group hospital service corporation under
1-46 Chapter 842, Insurance Code;

1-47 (C) a health maintenance organization under
1-48 Chapter 843, Insurance Code;

1-49 (D) a stipulated premium company under Chapter
1-50 884, Insurance Code;

1-51 (E) a fully self-insured plan, as described by
1-52 the Employee Retirement Income Security Act of 1974 (29 U.S.C.
1-53 Section 1001 et seq.);

1-54 (F) a governmental plan, as defined by Section
1-55 3(32), Employee Retirement Income Security Act of 1974 (29 U.S.C.
1-56 Section 1002(32));

1-57 (G) an employee welfare benefit plan, as defined
1-58 by Section 3(1), Employee Retirement Income Security Act of 1974
1-59 (29 U.S.C. Section 1002(1)); and

1-60 (H) an insurer authorized by the Texas Department
1-61 of Insurance to offer disability insurance in this state.

1-62 (c-2) An insurance carrier is not required to demonstrate
1-63 that a subclaim exists in order to obtain information under
1-64 Subsection (b)(8).

2-1 (c-3) An insurance carrier described by Subsection (b)(8)
 2-2 or an authorized representative of the insurance carrier may submit
 2-3 to the commission on a monthly basis a written request for claims
 2-4 information. The request must contain a list of the names of
 2-5 persons about whom claims information is requested. The insurance
 2-6 carrier must certify in the carrier's request that each person
 2-7 listed is, or has been, an insured under the carrier's insurance
 2-8 program. The commission shall examine the commission's records to
 2-9 identify all claims related to the listed persons. If a claims
 2-10 record exists for a listed person, the commission promptly shall
 2-11 provide information on each workers' compensation claim filed by
 2-12 that person to the carrier or the carrier's representative in an
 2-13 electronic format. The information provided under this subsection
 2-14 must include, if available:

2-15 (1) the full name of the workers' compensation
 2-16 claimant;
 2-17 (2) the social security number of the workers'
 2-18 compensation claimant;
 2-19 (3) the date of birth of the workers' compensation
 2-20 claimant;
 2-21 (4) the name of the employer of the workers'
 2-22 compensation claimant;
 2-23 (5) the date of the injury;
 2-24 (6) a description of the type of injury or the body
 2-25 part affected, including the workers' compensation claimant's
 2-26 description of how the injury occurred;
 2-27 (7) the name of the treating doctor;
 2-28 (8) the name, address, and claim number of the
 2-29 insurance carrier handling the claim;
 2-30 (9) the name of the insurance adjustor handling the
 2-31 claim; and
 2-32 (10) the identifying number assigned to the claim by
 2-33 the commission and the commission field office handling the claim.

2-34 (c-4) A potential subclaim identified by an insurance
 2-35 carrier described by Subsection (b)(8) or an authorized
 2-36 representative of the insurance carrier may form the basis for the
 2-37 identification and filing of a subclaim against an insurance
 2-38 carrier under this subtitle.

2-39 (c-5) Information received under this section by an
 2-40 insurance carrier described by Subsection (b)(8) or an authorized
 2-41 representative of the insurance carrier remains subject to
 2-42 confidentiality requirements of this subtitle while in the
 2-43 possession of the insurance carrier or representative. However,
 2-44 the following laws do not prohibit the commission from disclosing
 2-45 full information regarding a claim as necessary to determine if a
 2-46 valid subclaim exists:

2-47 (1) Chapter 552, Government Code;
 2-48 (2) Chapter 159, Occupations Code; or
 2-49 (3) any other analogous law restricting disclosure of
 2-50 health care information.

2-51 (c-6) The commission may not redact claims records produced
 2-52 in an electronic data format under a request made under this
 2-53 section.

2-54 (c-7) An insurance carrier and its authorized
 2-55 representative may request full claims data under Subsection
 2-56 (b)(8), and the records shall be produced once each month. For
 2-57 purposes of this subsection, "full claims data" means an electronic
 2-58 download or tape in an electronic data format of the information
 2-59 listed in Subsection (c-3) on all cases relating to the workers'
 2-60 compensation claimants listed as insureds of the requesting
 2-61 insurance carrier.

2-62 (d) [Information on a claim relating to a subclaimant under
 2-63 Subsection (b)(8) may include information, in an electronic data
 2-64 format, on all workers' compensation claims necessary to determine
 2-65 if a subclaim exists. The information on a claim remains subject to
 2-66 confidentiality requirements while in the possession of a
 2-67 subclaimant or representative.] The commission by rule may
 2-68 establish a reasonable fee, not to exceed five cents for each
 2-69 claimant listed in an information request, for all information

3-1 requested by an insurance carrier described by Subsection (b)(8) or
3-2 an authorized representative of the insurance carrier [under this
3-3 subsection] in an electronic data format [by subclaimants or
3-4 authorized representatives of subclaimants]. The commission shall
3-5 adopt rules under Section 401.024(d) to establish:

3-6 (1) reasonable security parameters for all transfers
3-7 of information requested under this section [~~subsection~~] in
3-8 electronic data format; and

3-9 (2) requirements regarding the maintenance of
3-10 electronic data in the possession of an insurance carrier described
3-11 by Subsection (b)(8) or an authorized representative of the
3-12 insurance carrier [a subclaimant or the subclaimant's
3-13 representative].

3-14 (e) The insurance carrier or the carrier's authorized
3-15 representative must execute a written agreement with the commission
3-16 before submitting the carrier's first request under Subsection
3-17 (c-3). The agreement must contain a provision by which the carrier
3-18 and the representative agree to comply with the commission's rules
3-19 governing security parameters applicable to the transfer of
3-20 information under Subsection (d)(1) and the maintenance of
3-21 electronic data under Subsection (d)(2).

3-22 SECTION 2. Section 671.013, Health and Safety Code, is
3-23 amended by adding Subsections (d) and (e) to read as follows:

3-24 (d) Except as provided by Subsection (e), an autopsy report
3-25 released in connection with the determination of the cause of death
3-26 in relation to a workers' compensation claim under Subsection (a)
3-27 shall be released not later than the 15th business day after the
3-28 date the request is received from the authorized person.

3-29 (e) If the report has not been filed as provided by Section
3-30 671.012, a representative of the office designated by the autopsy
3-31 order shall, not later than the 10th business day after the date of
3-32 the request, notify the requesting person that the report has not
3-33 been filed and of the date, to the best of the knowledge of the
3-34 representative, that the requesting person may anticipate
3-35 receiving the report.

3-36 SECTION 3. The change in law made by this Act applies only
3-37 to a claim for workers' compensation benefits based on a
3-38 compensable injury that occurred on or after September 1, 2002. A
3-39 claim based on a compensable injury that occurred before that date
3-40 is governed by the law in effect on the date the compensable injury
3-41 occurred, and the former law is continued in effect for that
3-42 purpose.

3-43 SECTION 4. This Act takes effect immediately if it receives
3-44 a vote of two-thirds of all the members elected to each house, as
3-45 provided by Section 39, Article III, Texas Constitution. If this
3-46 Act does not receive the vote necessary for immediate effect, this
3-47 Act takes effect September 1, 2005.

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