

By: Eiland

H.B. No. 1638

A BILL TO BE ENTITLED

1 AN ACT

2 relating to creation and operation of a pilot program under which  
3 benefits for a compensable injury sustained by an employee are  
4 provided through a qualified accident and health insurance policy  
5 and endorsements to that policy.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Title 5, Labor Code, is amended by adding  
8 Subtitle D to read as follows:

9 SUBTITLE D. ALTERNATIVE COMPENSATION PROGRAMS

10 CHAPTER 551. PILOT PROGRAM ON USE OF INSURANCE POLICY TO PROVIDE

11 MEDICAL AND INCOME BENEFITS

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 551.001. DEFINITIONS. In this chapter:

14 (1) "Alternative benefit plan" means a plan of health  
15 care benefits and wage replacement benefits offered by an employer  
16 to an employee who sustains an injury in the course and scope of  
17 employment in lieu of workers' compensation insurance coverage.

18 (2) "Commission" means the Texas Workers' Compensation  
19 Commission.

20 (3) "Commissioner" means the commissioner of  
21 insurance.

22 (4) "Course and scope of employment" has the meaning  
23 assigned by Section 401.011(12).

24 (5) "Department" means the Texas Department of

1 Insurance.

2 (6) "Employer" means a person who employs one or more  
3 employees.

4 (7) "Employee" means a person in the service of  
5 another under any contract of hire, whether express or implied or  
6 oral or written. The term includes an employee employed in the  
7 usual course and scope of the employer's business who is directed by  
8 the employer to perform services temporarily outside the usual  
9 course and scope of the employer's business. The term does not  
10 include an independent contractor or the employee of an independent  
11 contractor.

12 (8) "Group health insurance policy" means a group,  
13 blanket, or franchise insurance policy that provides benefits for  
14 health care services resulting from accident or disease. For  
15 purposes of this chapter, the term includes a group hospital  
16 service contract or a group subscriber contract.

17 (9) "Plan issuer" means:

18 (A) a health insurer, including a life, health,  
19 and accident insurance company, a health and accident insurance  
20 company, and any other person operating under Chapter 841, 842,  
21 884, 885, 982, or 1501, Insurance Code, who is authorized to deliver  
22 or issue for delivery group health insurance policies in this  
23 state; or

24 (B) an insurer authorized by the department to  
25 write workers' compensation insurance in this state.

26 (10) "Program" means the alternative benefit plan  
27 pilot program established under this chapter.

1           (11) "Qualified insurance policy" means a group health  
2 insurance policy approved by the department and the commission as  
3 provided by Section 551.051 that provides health care benefits for  
4 accident or disease to each employee of an employer, regardless of  
5 whether the accident or disease is caused by or directly related to  
6 the employee's employment.

7           Sec. 551.002. EXPIRATION. The program is abolished and  
8 this chapter expires effective September 1, 2009.

9           [Sections 551.003-551.050 reserved for expansion]

10           SUBCHAPTER B. GENERAL POWERS AND DUTIES OF  
11                           COMMISSIONER AND COMMISSION

12           Sec. 551.051. IMPLEMENTATION OF PROGRAM; POLICY APPROVAL  
13 PROCESS. (a) The commissioner, in cooperation with the  
14 commission, shall develop and operate a pilot program under which  
15 an employer may offer an alternative benefit plan to the employer's  
16 employees through a qualified insurance policy offered by a plan  
17 issuer that:

18                   (1) provides health care benefits to the employees,  
19 including benefits for an injury sustained by an employee in the  
20 course and scope of the employee's employment; and

21                   (2) is in lieu of medical benefits under workers'  
22 compensation insurance coverage as described by Subtitle A.

23           (b) Before a plan issuer may deliver or issue for delivery  
24 in this state a qualified insurance policy, the plan issuer must  
25 submit the policy to the department for approval in the manner  
26 prescribed by the commissioner, accompanied by a filing fee set by  
27 the commissioner by rule.

1       (c) The commissioner, by rule and in cooperation with the  
2 commission, shall adopt guidelines for the approval of policies  
3 submitted to the department under this section. The guidelines  
4 must require that the policy include limits and coverages for  
5 health care services, including hospitalization, that are at least  
6 equivalent to the limits and coverages applicable to the medical  
7 benefits provided to an employee covered under Subtitle A. The  
8 policy may provide health care benefits using a preferred provider  
9 benefit plan subject to Chapter 1301, Insurance Code.

10       (d) The commissioner shall review a policy submitted under  
11 Subsection (b) not later than the 30th day after the date the policy  
12 is submitted to the department. If the commissioner approves a  
13 policy under Subsection (b), the commissioner shall submit the  
14 approved policy to the commission for review not later than the  
15 fifth day after the date on which the commissioner approval is  
16 final. If the commissioner disapproves a policy, the department  
17 shall notify the plan issuer who submitted the policy not later than  
18 the fifth day after the date on which the policy is disapproved.

19       (e) The commission shall review a policy approved by the  
20 commissioner not later than the 30th day after the date the approved  
21 policy is received by the commission. If the commission determines  
22 that the policy meets the guidelines adopted under Subsection (c),  
23 the commission shall approve the policy and shall notify the  
24 department not later than the fifth day after the date the  
25 commission approval is final. If the commission disapproves a  
26 policy, the commission shall notify the department, and the  
27 department shall notify the plan issuer who submitted the policy

1 not later than the fifth day after the date on which the commission  
2 disapproval notice is received by the department.

3 (f) If both the commissioner and the commission approve the  
4 policy, the department shall notify the plan issuer not later than  
5 the 10th day after the date of the final approval. The plan issuer  
6 may begin using the policy as of the date of the final approval.

7 Sec. 551.052. ENDORSEMENTS; COVERAGE IN LIEU OF INCOME  
8 BENEFITS; APPROVAL. (a) If a policy is approved under Section  
9 551.051, the plan issuer shall offer the employer endorsements to  
10 the policy that provide insurance coverage for each employee of the  
11 employer, or the legal beneficiary of a deceased employee, against  
12 a loss caused by:

13 (1) any loss of wages incurred as a result of an  
14 accident or disease, regardless of whether the accident or disease  
15 is caused by or directly related to the employee's employment; or

16 (2) the death of the employee.

17 (b) The plan issuer must submit an endorsement to the  
18 commissioner and commission for approval in the manner prescribed  
19 for approval of a policy under Section 551.051.

20 (c) The commissioner, by rule and in cooperation with the  
21 commission, shall adopt guidelines for the approval of policy  
22 endorsements submitted to the department under this section. The  
23 guidelines must require that the endorsements include:

24 (1) reasonable income replacement coverage for the  
25 period during which the injured employee is unable to work; and

26 (2) limits and coverages for death and burial benefits  
27 that are at least equivalent to the limits and coverages applicable

1 to the benefits provided to an employee covered under Subtitle A.

2 Sec. 551.053. RULEMAKING. (a) The commissioner shall  
3 adopt rules as necessary to implement the duties of the department  
4 under this chapter.

5 (b) The commission shall adopt rules as necessary to  
6 implement the duties of the commission under this chapter.

7 Sec. 551.054. REPORT TO LEGISLATURE. Not later than  
8 December 1 of each year, the commission and the commissioner shall  
9 submit a joint report to the governor, the lieutenant governor, the  
10 speaker of the house of representatives, and the members of the  
11 legislature regarding the status and results of the program.

12 [Sections 551.055-551.100 reserved for expansion]

13 SUBCHAPTER C. OPERATION OF PROGRAM

14 Sec. 551.101. EMPLOYER AUTHORIZATION TO OFFER ALTERNATIVE  
15 BENEFIT PLAN. (a) Notwithstanding Subtitle A, an employer who  
16 elects to participate in the program may offer an alternative  
17 benefit plan to provide benefits to an employee who sustains an  
18 injury in the course and scope of the employee's employment. An  
19 employer may not offer an alternative benefit plan other than  
20 through the program as provided by this chapter.

21 (b) An employer may offer an alternative benefit plan only  
22 through:

23 (1) insurance coverage provided through a qualified  
24 insurance policy; and

25 (2) endorsements to that policy approved by the  
26 commission and the commissioner.

27 Sec. 551.102. WAIVER PROHIBITED; USE OF ARBITRATION. (a)

1 Unless the commission determines that the plan offers benefits to  
2 an employee that are at least equivalent to the medical benefits and  
3 income benefits required under Subtitle A, an employer may not  
4 require an employee who is covered under an alternative benefit  
5 plan to waive:

6 (1) a right of action of the employee or a legal  
7 beneficiary of the employee at common law or under a statute of this  
8 state to recover damages for personal injuries or death sustained  
9 in the course and scope of the employment; or

10 (2) a right established under this chapter.

11 (b) An alternative benefit plan may not require an employee  
12 or a legal beneficiary of an employee to submit a claim for personal  
13 injuries or death sustained in the course and scope of the  
14 employment to binding arbitration.

15 Sec. 551.103. PROVISION OF ALTERNATIVE BENEFIT PLAN  
16 OPTIONAL. An employer who does not elect to obtain workers'  
17 compensation insurance coverage under Subtitle A is not required by  
18 this chapter to participate in the program. This chapter does not  
19 affect the application of Section 406.033 to such an employer.

20 [Sections 551.104-551.150 reserved for expansion]

21 SUBCHAPTER D. PROVISION OF ALTERNATIVE BENEFIT PLAN  
22 THROUGH QUALIFIED INSURANCE POLICY AND ENDORSEMENTS

23 Sec. 551.151. RESPONSIBILITIES OF EMPLOYER. (a) An  
24 employer who elects to provide coverage under this chapter shall:

25 (1) pay any coinsurance or deductible otherwise  
26 imposed on the insured employee; and

27 (2) continue the payment of wages to an insured

1 employee until that employee begins to receive insurance payments  
2 in lieu of wages under the insurance coverage provided through  
3 endorsements to the qualified insurance policy.

4 (b) If an employee receives benefits under an alternative  
5 benefit plan, the employer shall maintain a qualified insurance  
6 policy and endorsements for the benefit of that employee until the  
7 benefits to which the employee is entitled have been paid. A  
8 qualified insurance policy and endorsements required to be  
9 maintained under this subsection must provide benefits adequate to  
10 pay all benefits to which the employee is entitled.

11 Sec. 551.152. SUBROGATION. (a) This section applies to an  
12 action to recover damages for personal injuries or death sustained  
13 by an employee in the course and scope of employment against:

14 (1) an employer who has obtained a qualified insurance  
15 policy and endorsements covering that employee; or

16 (2) a third party.

17 (b) A judgment against an employer shall be reduced to the  
18 extent that the employee has been compensated or is entitled to be  
19 compensated under the employer's qualified insurance policy or  
20 endorsements. A judgment reduced under this subsection shall be  
21 reinstated to the extent that the qualified insurance policy or  
22 endorsements are canceled or otherwise fail to fully compensate the  
23 employee or a legal beneficiary of the employee to the extent  
24 provided by the policy or endorsements.

25 (c) An insurance company that is liable for the payment of  
26 benefits to the employee or a legal beneficiary of the employee is  
27 subrogated to the rights of the employee or legal beneficiary



1 against a third party.

2 [Sections 551.153-551.200 reserved for expansion]

3 SUBCHAPTER E. EFFECT OF ALTERNATIVE BENEFIT PLAN

4 Sec. 551.201. EFFECT OF ALTERNATIVE BENEFIT PLAN. (a)

5 Except as specifically provided by this chapter, Subtitle A does  
6 not apply to an employer who provides an alternative benefit plan.

7 (b) An action brought to recover damages against an employer  
8 for personal injury or death sustained by an employee in the course  
9 and scope of employment is governed by this chapter only if the  
10 employee or the employee's beneficiaries are covered by an  
11 alternative benefit plan on the date that the cause of action  
12 accrues.

13 Sec. 551.202. CONTRACT REQUIREMENTS. A person who  
14 requires an employer, as a prerequisite to entering into a contract  
15 with that employer, to present evidence of workers' compensation  
16 insurance coverage shall accept instead of that evidence a  
17 qualified insurance policy and endorsements issued under this  
18 chapter from an employer who obtains and maintains in effect a  
19 qualified insurance policy and endorsements.

20 SECTION 2. (a) The Texas Workers' Compensation Commission  
21 and the commissioner of insurance shall adopt rules as required by  
22 this Act not later than January 1, 2006.

23 (b) Subchapter E, Chapter 551, Labor Code, as added by this  
24 Act, takes effect March 1, 2006, and applies only to an alternative  
25 benefit plan entered into on or after that date.

26 SECTION 3. Except as provided by Section 2(b) of this Act,  
27 this Act takes effect September 1, 2005.