

## **BILL ANALYSIS**

C.S.H.B. 673  
By: Solomons  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The office of injured employee public counsel represents the interests of workers' compensation claimants in Texas by providing assistance to injured employees during administrative disputes, to claimants who are not represented by an attorney, and to injured employees as a class through its advocacy on behalf of these workers to the commissioner of workers' compensation and the commissioner of insurance.

H.B. 724, as enacted by the 80th Legislature, Regular Session, 2007, authorizes hearings for medical or fee disputes and specifies that a dispute involving an amount greater than \$2,000 is adjudicated through a hearing at the State Office of Administrative Hearings (SOAH). Currently, the office of injured employee counsel does not have the authority to represent claimants before SOAH, and office ombudsmen are not specifically authorized to represent a claimant before the Texas Department of Insurance for an administrative penalty that results from the claimant filing a benefit claim to which the claimant is not entitled. Occasionally, a claimant that the office is assisting becomes abusive or even threatens criminal violence against office employees or facilities. In such a situation, the office has no authority under Texas law to terminate services to the individual.

C.S.H.B. 673 expands the office's ability to represent claimants by authorizing the office to represent claimants before SOAH and in administrative penalty hearings and clarifies confidentiality requirements. The bill authorizes the office to refuse services to claimants in certain situations and to adopt the notice of rights to an injured employee.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 673 amends the Labor Code to authorize the injured employee public counsel to terminate or refuse to provide the services of the office of injured employee counsel to a claimant who is abusive or violent to or 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. The bill requires the office to inform a claimant in writing and notify the division of workers' compensation of the Texas Department of Insurance (TDI) if the public counsel determines that the services of the office should be refused to or terminated for the claimant in accordance with these provisions. The bill 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.

C.S.H.B. 673 includes the State Office of Administrative Hearings in the entities that the office of injured employee counsel, through its ombudsman program, is authorized to appear before to

provide assistance to an individual injured employee. The bill specifies that this assistance may be provided by the office of injured employee counsel during an administrative dispute resolution process relating to a workers' compensation claim and authorizes the office to provide such assistance during an enforcement action by TDI or division against an employee for a violation of the Texas Workers' Compensation Act. The bill requires the public counsel to adopt a notice of injured employee rights and responsibilities in a form and manner prescribed by the public counsel and after consulting with the commissioner of workers' compensation, rather than submitting the notice to the division and TDI for adoption by the commissioner of workers' compensation and the commissioner of insurance. The bill specifies that the notice is to be distributed by the division and that the rules for the distribution may be provided by either the commissioner of workers' compensation or the commissioner of insurance, rather than requiring both commissioners to provide such rules. The bill requires a right or responsibility of an injured employee included in the notice to be consistent with the requirements of the Texas Workers' Compensation Act and division rules and prohibits provisions relating to the adoption of the notice from being construed as establishing an entitlement to benefits to which a claimant is not otherwise entitled under the act.

C.S.H.B. 673 provides that confidentiality requirements applicable to certain examination reports relating to the regulation of insurance carriers also may apply to the commissioner of insurance. The bill provides that an employee of the office of injured employee counsel may not be compelled to disclose information communicated to the employee by a claimant on any matter relating to the claimant's claim, except any information relating to a criminal activity committed or threatened by the claimant that the office is required to report to the appropriate law enforcement authority. The bill removes certain governmental information sources from the sources from which the office is authorized to access confidential information, except as provided by law, and maintains the office's authority to access only the confidential records and employee information in the workers' compensation system. The bill prohibits the office from accessing confidential information from an executive agency if that information is an attorney-client communication or an attorney work product, or other information protected by a privilege recognized by the Texas Rules for Civil Procedure or the Texas Rules of Evidence. The bill prohibits the office, while assisting an injured employee during an enforcement action by TDI or the workers' compensation division against the employee for a violation of Texas workers' compensation laws, from accessing confidential information from an executive agency, or from disclosing to the employee or any party assisting the employee any confidential information the office possesses, if the employee is not otherwise entitled to the information. The bill removes certain types of information from the information collected and used by the office and subject to confidentiality provisions and criminal penalties.

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 673 adds a provision not in the original to require the public counsel to consult with the commissioner of workers' compensation before adopting a notice of injured employee rights and responsibilities. The bill adds provisions not in the original to require a right or responsibility of an injured employee included in the notice to be consistent with the requirements of the Texas Workers' Compensation Act and division rules, and to prohibit provisions relating to the adoption of the notice from being construed as establishing an entitlement to benefits to which a claimant is not otherwise entitled under the act.

C.S.H.B. 673 strikes language in the original to remove certain governmental information sources from the sources from which the office of public counsel is authorized to access otherwise confidential information and to remove certain types of information from the information collected or used by the office and subject to confidentiality provisions and criminal

penalties. The substitute removes language in the original that adds public information laws and provisions relating to the division's investigation files to those certain types of information.