

BILL ANALYSIS

C.S.H.B. 4372
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In the past, the division of workers' compensation of the Texas Department of Insurance has interpreted the Texas Workers' Compensation Act to provide that a claimant is entitled to those benefits afforded by the act, no more and no less. However, in an effort to ensure the prompt payment of benefits, overpayments and underpayments occasionally occur, which the act does not specifically address. In recent decisions, the division's appeals panel has taken a very narrow approach to overpayments, requiring a specific statutory provision or rule permitting recoupment. Carriers are now essentially limited to recouping benefits when the average weekly wage was not properly reported. Under the appeals panel's current analysis, a carrier has difficulty recouping the overpayment of benefits, even when such an overpayment was made as a result of the injured worker's failure to inform the carrier that the worker has been working and earning wages since the worker's injury.

C.S.H.B. 4372 requires the commissioner of workers' compensation to adopt rules establishing the timely and accurate payment of workers' compensation income benefits and provides for the resolution of overpayments and underpayments of such benefits.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTIONS 2 and 3 of this bill.

ANALYSIS

C.S.H.B. 4372 amends the Labor Code to specify that the income benefits an employee is entitled to under the state's workers' compensation laws are timely and accurate. The bill requires the commissioner of workers' compensation, not later than January 1, 2010, to establish by rule a procedure to require an overpayment of income benefits to be recouped from future income benefit payments and an underpayment of income benefits to be paid in a future income benefit payment. The bill requires the procedure to include a process by which an injured worker may notify the carrier of an underpayment, the timeframe and methodology by which a carrier is required to pay to an injured worker an underpayment through a future payment, a process by which a carrier is required to notify the injured worker of an overpayment, and the time frame and methodology by which a carrier may recoup the overpayment through the reduction of a future payment.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4372 removes a provision in the original requiring overpayments and underpayments of such income benefits to be resolved through future income benefits, except as otherwise provided. The substitute differs from the original by requiring the commissioner to establish a procedure to require an overpayment of income benefits to be recouped from future income benefit payments and an underpayment of income benefits to be paid in a future income benefit payment, whereas the original requires the commissioner to establish requirements for the resolution of overpayments and underpayments of income benefits. The substitute differs from the original by requiring the procedure to include the time frame and methodology by which a carrier is required to pay an injured worker an underpayment, whereas the original requires the inclusion of the time frame and methodology by which a carrier is required to settle the underpayment. The substitute differs from the original by requiring the procedure to include a process by which a carrier is required to notify an injured worker of an overpayment, whereas the original requires the inclusion of procedures by which a carrier can notify the injured worker. The substitute differs from the original by requiring the procedure to include the time frame and methodology by which a carrier may recoup the overpayment, whereas the original requires the inclusion of the time frame and methodology by which a carrier is required to recoup the overpayment. The substitute omits a provision in the original making the changes in law made by this bill effective on the date provided by commissioner rule.

C.S.H.B. 4372 differs from the original in nonsubstantive ways by using language reflective of certain drafting conventions.