

## **BILL ANALYSIS**

C.S.H.B. 4461  
By: Smithee  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Department of Insurance (TDI) often receives public information requests for case or investigative files maintained in the enforcement division. If a public information request is received for a case file that is open and pending, TDI may seek to prevent public disclosure of the information by submitting a referral to the Office of the Attorney General. TDI may assert that the case file is protected from disclosure as pending litigation under the Government Code, which states that information "relating to litigation of a criminal or civil nature to which the state or political subdivision is, or may be a party" may be excepted from disclosure under the Texas Public Information Act. However, investigative files maintained by the division of workers' compensation are treated differently in that the Labor Code contains statutory language expressly providing that investigative files are confidential and not subject to disclosure under the act.

Since the litigation must be pending or anticipated in order to assert Section 552.103, Government Code, to protect the disclosure of investigative files in the enforcement division, TDI lacks the ability to ensure that all investigative files are treated uniformly. Once the litigation is concluded and the case file is closed, the case file may be subject to public disclosure. Often, there are other case files based on the same facts, and disclosure may jeopardize the enforcement of those cases.

C.S.H.B. 4461 amends the Insurance Code to provide that investigative files maintained by TDI are confidential and not subject to disclosure under the Public Information Act, and provides that information or material acquired by TDI that is relevant to an investigation is not a public record for the period that TDI determines is relevant to further or complete an investigation, protect persons from unwarranted injury, or serve the public interest.

### **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. 4461 amends the Insurance Code to define "investigation file" to mean any information collected, assembled, or maintained by or on behalf of the Texas Department of Insurance (TDI) with respect to an investigation conducted under the Insurance Code or other law. The bill specifies that the term does not include information or material acquired by TDI that is relevant to an investigation by the insurance fraud unit and subject to the provisions relating to confidentiality of TDI information.

C.S.H.B. 4461 establishes that information or material acquired by TDI that is relevant to an investigation is not a public record for the period that TDI determines is relevant to further or complete an investigation, protect persons from unwarranted injury, or serve the public interest. The bill specifies that, except as otherwise provided by the bill's provisions, investigation files are not open records for purposes of access to public information.

C.S.H.B. 4461 specifies that TDI is not required to disclose under these provisions information that is an attorney-client communication or an attorney work product, or other information protected by a recognized privilege, a statute, an administrative rule, the Texas Rules of Civil Procedure, or the Texas Rules of Evidence.

**EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 4461 adds a provision not in the original to establish that information or material acquired by TDI that is relevant to an investigation is not a public record for the period that TDI determines is relevant to further or complete an investigation, protect persons from unwarranted injury, or serve the public interest. The substitute removes provisions in the original specifying the conditions under which such information is subject to discovery, subpoena, or other means of legal compulsion for release.