

AN ACT

relating to certain services provided by the office of injured employee counsel under the workers' compensation program of this state.

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

SECTION 1. Subchapter C, Chapter 404, Labor Code, is amended by adding Section 404.1015 to read as follows:

Sec. 404.1015. REFUSAL TO PROVIDE OR TERMINATION OF SERVICES. (a) The public counsel may refuse to provide or may terminate the services of the office to any claimant who:

(1) is abusive or violent to or who threatens any employee of the office;

(2) requests assistance in claiming benefits not provided by law; or

(3) commits or threatens to commit a criminal act in pursuit of a workers' compensation claim.

(b) If the public counsel determines under Subsection (a) that the services of the office should be refused or terminated, the office shall inform the affected claimant in writing and notify the division.

(c) The office shall notify and cooperate with the appropriate law enforcement authority and the Department of Insurance, Fraud Unit, if the office becomes aware that the claimant or a person acting on the claimant's behalf commits or

1 threatens to commit a criminal act.

2 SECTION 2. Section 404.105, Labor Code, is amended to read
3 as follows:

4 Sec. 404.105. AUTHORITY TO ASSIST INDIVIDUAL INJURED
5 EMPLOYEES IN ADMINISTRATIVE PROCEDURES. (a) The office, through
6 the ombudsman program, may appear before the commissioner, ~~[or]~~
7 division, or State Office of Administrative Hearings to provide
8 assistance to ~~[on behalf of]~~ an individual injured employee during:

9 (1) a workers' compensation ~~[an]~~ administrative
10 dispute resolution process; or

11 (2) an enforcement action by the department or
12 division against an employee for a violation of the Texas Workers'
13 Compensation Act.

14 (b) This chapter may not be construed as requiring or
15 allowing legal representation for an individual injured employee by
16 an office attorney or ombudsman in any proceeding.

17 SECTION 3. Section 404.109, Labor Code, is amended to read
18 as follows:

19 Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public
20 counsel shall adopt, in the form and manner prescribed by the public
21 counsel and after consultation with the commissioner of workers'
22 compensation, ~~[submit to the division and the department for~~
23 ~~adoption by the commissioners]~~ a notice of injured employee rights
24 and responsibilities to be distributed by the division as provided
25 by commissioner or ~~[and]~~ commissioner of insurance rules. A right
26 or responsibility adopted under this section must be consistent
27 with the requirements of this subtitle and division rules. This

1 section may not be construed as establishing an entitlement to
2 benefits to which the claimant is not otherwise entitled under this
3 subtitle.

4 SECTION 4. Section 404.110, Labor Code, is amended to read
5 as follows:

6 Sec. 404.110. APPLICABILITY TO PUBLIC COUNSEL OF
7 CONFIDENTIALITY REQUIREMENTS. (a) Confidentiality requirements
8 applicable to examination reports and to the commissioner of
9 insurance under Sections 401.058, 401.105, 401.106, 441.201, and
10 501.158 [~~Article 1.18~~], Insurance Code, as applicable, and Section
11 404.111, [~~and to the commissioner of insurance under Section 3A,~~
12 ~~Article 21.28-A, Insurance Code,~~] apply to the public counsel.

13 (b) An employee of the office may not be compelled to
14 disclose information communicated to the employee by a claimant on
15 any matter relating to the claimant's claim. This subsection does
16 not prohibit or alter the office's duty to notify and cooperate with
17 appropriate law enforcement authorities under Section 404.1015(c).

18 SECTION 5. Section 404.111, Labor Code, is amended to read
19 as follows:

20 Sec. 404.111. ACCESS TO INFORMATION. (a) Except as
21 otherwise provided by this section, the [~~The~~] office may access
22 information from an executive agency that is otherwise confidential
23 under a law of this state if that information is necessary for the
24 performance of the duties of the office, including information made
25 confidential under [+

26 [~~(1)~~] Section [~~843.006, Insurance Code,~~

27 [~~(2)~~] ~~Chapter 108, Health and Safety Code,~~

1 ~~[(3) Chapter 552, Government Code, and~~
2 ~~[(4) Sections 402.083,] 402.091[, and 402.092 of this~~
3 ~~code].~~

4 (b) The office may not access information under Subsection
5 (a) that is an attorney-client communication or an attorney work
6 product, or other information protected by a privilege recognized
7 by the Texas Rules of Civil Procedure or the Texas Rules of
8 Evidence.

9 (c) In furtherance of assisting an employee under Section
10 404.105(a)(2), the office may not access information under Section
11 404.111(a) to which the employee is not otherwise entitled. If the
12 office possesses any information made confidential by the Texas
13 Workers' Compensation Act or any other laws of this state to which
14 the employee is not otherwise entitled, that information may not be
15 disclosed to the employee or any other party assisting an employee
16 under Section 404.105(a)(2). Nothing in this subsection prohibits
17 or alters the office's duty to notify appropriate law enforcement
18 authorities under Section 404.1015(c).

19 (d) Except as provided by this section ~~[On request by the~~
20 ~~public counsel],~~ the division or the department shall provide any
21 information or data requested by the public counsel ~~[office]~~ in
22 furtherance of the duties of the office under this chapter.

23 (e) ~~[(e)]~~ The office may not make public any confidential
24 information provided to the office under this chapter. Except as
25 provided by Subsection (c), the office ~~[but]~~ may disclose a summary
26 of the information that does not directly or indirectly identify
27 the individual or entity that is the subject of the

1 information. The office may not release, and an individual or
2 entity may not gain access to, any information that:

3 (1) could reasonably be expected to reveal the
4 identity of a health care provider or an injured employee;

5 (2) reveals the zip code of an injured employee's
6 primary residence;

7 (3) discloses a health care provider discount or a
8 differential between a payment and a billed charge; or

9 (4) relates to an actual payment made by a payer to an
10 identified health care provider.

11 (f) [~~(d)~~] Information collected or used by the office under
12 this chapter is subject to the confidentiality provisions and
13 criminal penalties of[+]

14 [~~(1) Section 81.103, Health and Safety Code,~~

15 [~~(2) Section 311.037, Health and Safety Code,~~

16 [~~(3) Chapter 159, Occupations Code, and~~

17 [~~(4)~~] Section 402.091 [~~of this code~~].

18 (g) [~~(e)~~] Information on health care providers and injured
19 employees that is in the possession of the office, and any
20 compilation, report, or analysis produced from the information that
21 identifies providers and injured employees is not:

22 (1) subject to discovery, subpoena, or other means of
23 legal compulsion for release to any individual or entity; or

24 (2) admissible in any civil, administrative, or
25 criminal proceeding.

26 (h) [~~(f)~~] Notwithstanding Subsection (e)(2) [~~(e)(2)~~], the
27 office may use zip code information to analyze information on a

1 geographical basis.

2 SECTION 6. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 673 was passed by the House on April 24, 2009, by the following vote: Yeas 140, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 673 on May 29, 2009, by the following vote: Yeas 144, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 673 was passed by the Senate, with amendments, on May 26, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor