

By: Solomons

H.B. No. 673

Substitute the following for H.B. No. 673:

By: Gattis

C.S.H.B. No. 673

A BILL TO BE ENTITLED

1 AN ACT
2 relating to certain services provided by the office of injured
3 employee counsel under the workers' compensation program of this
4 state.

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

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

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

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

13 (2) makes unreasonable demands for office services or
14 for assistance in claiming benefits not provided by law; or

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

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

21 (c) The office shall notify the appropriate law enforcement
22 authority if the office becomes aware that the claimant or a person
23 acting on the claimant's behalf commits or threatens to commit a
24 criminal act.

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

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

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

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

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

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

18 Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public
19 counsel shall adopt, in the form and manner prescribed by the public
20 counsel and after consultation with the commissioner of workers'
21 compensation, ~~[submit to the division and the department for~~
22 adoption by the commissioners] a notice of injured employee rights
23 and responsibilities to be distributed by the division as provided
24 by commissioner or ~~[and]~~ commissioner of insurance rules. A right
25 or responsibility adopted under this section must be consistent
26 with the requirements of this subtitle and division rules. This
27 section may not be construed as establishing an entitlement to

1 benefits to which the claimant is not otherwise entitled under this
2 subtitle.

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

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

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

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

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

- 25 [~~(1)~~] Section [~~843.006, Insurance Code,~~
26 [~~(2)~~] Chapter 108, Health and Safety Code,
27 [~~(3)~~] Chapter 552, Government Code, and

1 ~~[(4) Sections 402.083,]~~ 402.091~~[, and 402.092 of this~~
2 ~~code].~~

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

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

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

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

1 entity may not gain access to, any information that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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