

1-1 By: Solomons (Senate Sponsor - Watson) H.B. No. 673
1-2 (In the Senate - Received from the House April 27, 2009;
1-3 April 27, 2009, read first time and referred to Committee on State
1-4 Affairs; May 19, 2009, reported favorably, as amended, by the
1-5 following vote: Yeas 7, Nays 0; May 19, 2009, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Duncan

1-7 Amend H.B. 673 with the following changes:

1-8 (1) On page 1, lines 30 thru 31, strike "makes unreasonable
1-9 demands for office services or for" and insert the following:
1-10 "requests";

1-11 (2) On page 1, line 38, between "notify" and "the", insert
1-12 the following: "and cooperate with";

1-13 (3) On page 1, line 39, between "authority" and "if", insert
1-14 the following: "and the Department of Insurance, Fraud Unit";

1-15 (4) On page 2, line 21, between "notify" and "appropriate",
1-16 insert "and cooperate with"

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to certain services provided by the office of injured
1-20 employee counsel under the workers' compensation program of this
1-21 state.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Subchapter C, Chapter 404, Labor Code, is
1-24 amended by adding Section 404.1015 to read as follows:

1-25 Sec. 404.1015. REFUSAL TO PROVIDE OR TERMINATION OF
1-26 SERVICES. (a) The public counsel may refuse to provide or may
1-27 terminate the services of the office to any claimant who:

1-28 (1) is abusive or violent to or who threatens any
1-29 employee of the office;

1-30 (2) makes unreasonable demands for office services or
1-31 for assistance in claiming benefits not provided by law; or

1-32 (3) commits or threatens to commit a criminal act in
1-33 pursuit of a workers' compensation claim.

1-34 (b) If the public counsel determines under Subsection (a)
1-35 that the services of the office should be refused or terminated, the
1-36 office shall inform the affected claimant in writing and notify the
1-37 division.

1-38 (c) The office shall notify the appropriate law enforcement
1-39 authority if the office becomes aware that the claimant or a person
1-40 acting on the claimant's behalf commits or threatens to commit a
1-41 criminal act.

1-42 SECTION 2. Section 404.105, Labor Code, is amended to read
1-43 as follows:

1-44 Sec. 404.105. AUTHORITY TO ASSIST INDIVIDUAL INJURED
1-45 EMPLOYEES IN ADMINISTRATIVE PROCEDURES. (a) The office, through
1-46 the ombudsman program, may appear before the commissioner, ~~or~~
1-47 division, or State Office of Administrative Hearings to provide
1-48 assistance to ~~on behalf of~~ an individual injured employee during:

1-49 (1) a workers' compensation ~~an~~ administrative
1-50 dispute resolution process; or

1-51 (2) an enforcement action by the department or
1-52 division against an employee for a violation of the Texas Workers'
1-53 Compensation Act.

1-54 (b) This chapter may not be construed as requiring or
1-55 allowing legal representation for an individual injured employee by
1-56 an office attorney or ombudsman in any proceeding.

1-57 SECTION 3. Section 404.109, Labor Code, is amended to read
1-58 as follows:

1-59 Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public
1-60 counsel shall adopt, in the form and manner prescribed by the public
1-61 counsel and after consultation with the commissioner of workers'
1-62 compensation, ~~submit to the division and the department for~~

2-1 ~~adoption by the commissioners]~~ a notice of injured employee rights
 2-2 and responsibilities to be distributed by the division as provided
 2-3 by commissioner or [and] commissioner of insurance rules. A right
 2-4 or responsibility adopted under this section must be consistent
 2-5 with the requirements of this subtitle and division rules. This
 2-6 section may not be construed as establishing an entitlement to
 2-7 benefits to which the claimant is not otherwise entitled under this
 2-8 subtitle.

2-9 SECTION 4. Section 404.110, Labor Code, is amended to read
 2-10 as follows:

2-11 Sec. 404.110. APPLICABILITY TO PUBLIC COUNSEL OF
 2-12 CONFIDENTIALITY REQUIREMENTS. (a) Confidentiality requirements
 2-13 applicable to examination reports and to the commissioner of
 2-14 insurance under Sections 401.058, 401.105, 401.106, 441.201, and
 2-15 501.158 [Article 1.18], Insurance Code, as applicable, and Section
 2-16 404.111, [and to the commissioner of insurance under Section 3A,
 2-17 Article 21.28-A, Insurance Code,] apply to the public counsel.

2-18 (b) An employee of the office may not be compelled to
 2-19 disclose information communicated to the employee by a claimant on
 2-20 any matter relating to the claimant's claim. This subsection does
 2-21 not prohibit or alter the office's duty to notify appropriate law
 2-22 enforcement authorities under Section 404.1015(c).

2-23 SECTION 5. Section 404.111, Labor Code, is amended to read
 2-24 as follows:

2-25 Sec. 404.111. ACCESS TO INFORMATION. (a) Except as
 2-26 otherwise provided by this section, the [The] office may access
 2-27 information from an executive agency that is otherwise confidential
 2-28 under a law of this state if that information is necessary for the
 2-29 performance of the duties of the office, including information made
 2-30 confidential under[+]

- 2-31 [~~(1)~~] ~~Section [843.006, Insurance Code;~~
- 2-32 [~~(2)~~] ~~Chapter 108, Health and Safety Code;~~
- 2-33 [~~(3)~~] ~~Chapter 552, Government Code; and~~
- 2-34 [~~(4)~~] ~~Sections 402.083,] 402.091[, and 402.092 of this~~
- 2-35 ~~code].~~

2-36 (b) The office may not access information under Subsection
 2-37 (a) that is an attorney-client communication or an attorney work
 2-38 product, or other information protected by a privilege recognized
 2-39 by the Texas Rules of Civil Procedure or the Texas Rules of
 2-40 Evidence.

2-41 (c) In furtherance of assisting an employee under Section
 2-42 404.105(a)(2), the office may not access information under Section
 2-43 404.111(a) to which the employee is not otherwise entitled. If the
 2-44 office possesses any information made confidential by the Texas
 2-45 Workers' Compensation Act or any other laws of this state to which
 2-46 the employee is not otherwise entitled, that information may not be
 2-47 disclosed to the employee or any other party assisting an employee
 2-48 under Section 404.105(a)(2). Nothing in this subsection prohibits
 2-49 or alters the office's duty to notify appropriate law enforcement
 2-50 authorities under Section 404.1015(c).

2-51 (d) Except as provided by this section [On request by the
 2-52 public counsel], the division or the department shall provide any
 2-53 information or data requested by the public counsel [office] in
 2-54 furtherance of the duties of the office under this chapter.

2-55 (e) [~~(c)~~] The office may not make public any confidential
 2-56 information provided to the office under this chapter. Except as
 2-57 provided by Subsection (c), the office [but] may disclose a summary
 2-58 of the information that does not directly or indirectly identify
 2-59 the individual or entity that is the subject of the
 2-60 information. The office may not release, and an individual or
 2-61 entity may not gain access to, any information that:

- 2-62 (1) could reasonably be expected to reveal the
- 2-63 identity of a health care provider or an injured employee;
- 2-64 (2) reveals the zip code of an injured employee's
- 2-65 primary residence;
- 2-66 (3) discloses a health care provider discount or a
- 2-67 differential between a payment and a billed charge; or
- 2-68 (4) relates to an actual payment made by a payer to an
- 2-69 identified health care provider.

3-1 (f) [~~(d)~~] Information collected or used by the office under
3-2 this chapter is subject to the confidentiality provisions and
3-3 criminal penalties of[+]

3-4 [~~(1) Section 81.103, Health and Safety Code,~~
3-5 [~~(2) Section 311.037, Health and Safety Code,~~
3-6 [~~(3) Chapter 159, Occupations Code, and~~
3-7 [~~(4)~~] Section 402.091 [~~of this code~~].

3-8 (g) [~~(e)~~] Information on health care providers and injured
3-9 employees that is in the possession of the office, and any
3-10 compilation, report, or analysis produced from the information that
3-11 identifies providers and injured employees is not:

3-12 (1) subject to discovery, subpoena, or other means of
3-13 legal compulsion for release to any individual or entity; or

3-14 (2) admissible in any civil, administrative, or
3-15 criminal proceeding.

3-16 (h) [~~(f)~~] Notwithstanding Subsection (e)(2) [~~(e)(2)~~], the
3-17 office may use zip code information to analyze information on a
3-18 geographical basis.

3-19 SECTION 6. This Act takes effect September 1, 2009.

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