

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Solomons

H.B. No. 673

A BILL TO BE ENTITLED

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) makes unreasonable demands for office services or for 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 the appropriate law enforcement authority if the office becomes aware that the claimant or a person acting on the claimant's behalf commits or threatens to commit a 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) [~~(c)(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.

**ADOPTED**

MAY 26 2009

*Debra Spaw*  
Secretary of the Senate

COMMITTEE AMENDMENT NO. 1

BY: *[Signature]*

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

2 (1) On page <sup>change at printing</sup> ①, lines ⑬ thru ⑭ strike "makes  
3 unreasonable demands for office services or for" and insert the  
4 following: "requests";

5 (2) On page <sup>chg. at printing</sup> ① line ⑳ between "notify" and "the", insert  
6 the following: "and cooperate with";

7 <sup>3</sup> (2) On page <sup>chg. at printing</sup> ① line ㉒ between "authority" and "if",  
8 insert the following: "and the Department of Insurance, Fraud  
9 Unit";

10 <sup>4</sup> (8) On page ③ line ⑮, between "notify" and "appropriate",  
11 insert "and cooperate with"

*[Handwritten mark]*

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 27, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB673** by Solomons (relating to certain services provided by the office of injured employee counsel under the workers' compensation program of this state.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the responsibilities and duties of the public counsel at the Office of Injured Employee Counsel (OIEC). The bill would amend the ombudsman program to include representing injured employees for an enforcement action against an employee for a violation of the Texas Workers Compensation Act and to represent employees before the State Office of Administrative Hearings. The bill would transfer the approval process of adopting a notice of injured employee rights from the Department of Insurance (TDI) to OIEC. The bill would change the public counsel's confidentiality requirements and access to information. Based on the analysis of OIEC, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within existing resources.

Based on the analysis of TDI, implementing the requirements of this bill would require the agency to educate staff about the changes in the public counsel's confidentiality requirements and access to information, and amend rules to reflect the change in the adoption process for the notice of injured employee rights and responsibilities. Based on the information provided by TDI, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within existing resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 448 Office of Injured Employee Counsel, 454 Department of Insurance

**LBB Staff:** JOB, MN, KJG, JRO, MW, CH



**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

May 19, 2009

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB673** by Solomons (Relating to certain services provided by the office of injured employee counsel under the workers' compensation program of this state.), **Committee Report 2nd House, As Amended**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the responsibilities and duties of the public counsel at the Office of Injured Employee Counsel (OIEC). The bill would amend the ombudsman program to include representing injured employees for an enforcement action against an employee for a violation of the Texas Workers Compensation Act and to represent employees before the State Office of Administrative Hearings. The bill would transfer the approval process of adopting a notice of injured employee rights from the Department of Insurance (TDI) to OIEC. The bill would change the public counsel's confidentiality requirements and access to information. Based on the analysis of OIEC, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within existing resources.

Based on the analysis of TDI, implementing the requirements of this bill would require the agency to educate staff about the changes in the public counsel's confidentiality requirements and access to information, and amend rules to reflect the change in the adoption process for the notice of injured employee rights and responsibilities. Based on the information provided by TDI, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within existing resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 448 Office of Injured Employee Counsel, 454 Department of Insurance

**LBB Staff:** JOB, KJG, JRO, MW, CH

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 15, 2009**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB673** by Solomons (Relating to certain services provided by the office of injured employee counsel under the workers' compensation program of this state.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the responsibilities and duties of the public counsel at the Office of Injured Employee Counsel (OIEC). The bill would amend the ombudsman program to include representing injured employees for an enforcement action against an employee for a violation of the Texas Workers Compensation Act and to represent employees before the State Office of Administrative Hearings. The bill would transfer the approval process of adopting a notice of injured employee rights from the Department of Insurance (TDI) to OIEC. The bill would change the public counsel's confidentiality requirements and access to information. Based on the analysis of OIEC, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within existing resources.

Based on the analysis of TDI, implementing the requirements of this bill would require the agency to educate staff about the changes in the public counsel's confidentiality requirements and access to information, and amend rules to reflect the change in the adoption process for the notice of injured employee rights and responsibilities. Based on the information provided by TDI, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within existing resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 448 Office of Injured Employee Counsel, 454 Department of Insurance

**LBB Staff:** JOB, KJG, JRO, MW, CH

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 9, 2009**

**TO:** Honorable Joe Deshotel, Chair, House Committee on Business & Industry

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB673** by Solomons (Relating to certain services provided by the office of injured employee counsel under the workers' compensation program of this state. ), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the responsibilities and duties of the public counsel at the Office of Injured Employee Counsel (OIEC). The bill would amend the ombudsman program to include representing injured employees for an enforcement action against an employee for a violation of the Texas Workers Compensation Act and to represent employees before the State Office of Administrative Hearings. The bill would transfer the approval process of adopting a notice of injured employee rights from the Department of Insurance (TDI) to OIEC. The bill would change the public counsel's confidentiality requirements and access to information. Based on the analysis of OIEC, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within existing resources.

Based on the analysis of TDI, implementing the requirements of this bill would require the agency to educate staff about the changes in the public counsel's confidentiality requirements and access to information, and amend rules to reflect the change in the adoption process for the notice of injured employee rights and responsibilities. Based on the information provided by TDI, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within existing resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 448 Office of Injured Employee Counsel, 454 Department of Insurance

**LBB Staff:** JOB, JRO, MW, CH

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 2, 2009**

**TO:** Honorable Joe Deshotel, Chair, House Committee on Business & Industry

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB673** by Solomons (Relating to certain services provided by the office of injured employee counsel under the workers' compensation program of this state.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the responsibilities and duties of the public counsel at the Office of Injured Employee Counsel (OIEC). The bill would amend the ombudsman program to include representing injured employees for an enforcement action against an employee for a violation of the Texas Workers Compensation Act and to represent employees before the State Office of Administrative Hearings. The bill would transfer the approval process of adopting a notice of injured employee rights from the Department of Insurance (TDI) to OIEC. The bill would change the public counsel's confidentiality requirements and access to information. Based on the analysis of OIEC, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within existing resources.

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**Local Government Impact**

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**Source Agencies:** 448 Office of Injured Employee Counsel, 454 Department of Insurance

**LBB Staff:** JOB, JRO, MW, CH