

## **BILL ANALYSIS**

C.S.H.B. 3362  
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State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

One of the goals of the Texas workers' compensation system reform approximately 20 years ago was to give injured workers the ability to represent themselves in the workers' compensation process without needing legal counsel. This ability allows an injured worker to save the money that otherwise would be spent on attorney's fees. Subsequently, the office of injured employee counsel (OIEC) was established to direct the ombudsman program created to help injured workers represent themselves in the administrative appeals process and represent the injured employees as a class.

While these reforms have resulted in a more equitable system for workers at the administrative level, the OIEC is prohibited from assisting injured employees during a judicial review proceeding. Retaining legal representation for this proceeding is also problematic for injured employees. In many cases, an injured employee's difficulty in retaining legal representation gives insurance carriers, who are more likely to have retained legal counsel for judicial review, an unfair advantage. Though previous legislatures have attempted to address this problem, adequate assistance remains unavailable to injured employees who need an attorney at the district court level. C.S.H.B. 3362 seeks to address this issue by requiring a court to appoint an attorney to represent a workers' compensation claimant in certain proceedings.

### **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. 3362 amends the Labor Code to require a court, at the request of the claimant in a trial initiated by an insurance carrier seeking judicial review either of an appeals panel final decision regarding compensability or eligibility for or the amount of income or death benefits or of a final decision of the State Office of Administrative Hearings regarding a medical dispute resolution to appoint an attorney to represent the claimant before the court. The bill authorizes the court to hold a pretrial hearing to determine whether the claimant has made a good faith effort to obtain representation by an attorney before the appointment of an attorney. The bill establishes that a claimant who did not prevail in an administrative proceeding before the division of workers' compensation of the Texas Department of Insurance is not entitled to a court-appointed attorney and is authorized to recover reasonable and necessary attorney's fees and expenses incurred in a trial initiated by the claimant in which the claimant prevails. The bill makes the insurance carrier liable for the attorney's reasonable and necessary fees as determined by the jury or trial judge, as applicable, on any issue on which the claimant prevails and makes the subsequent injury fund liable for the attorney's reasonable and necessary fees as determined by the jury or trial judge, as applicable, on any issue on which the insurance carrier prevails.

C.S.H.B. 3362 makes the subsequent injury fund, in a judicial review proceeding regarding compensability or income or death benefits, or medical dispute resolution issues initiated by an

insurance carrier in which the court has appointed an attorney for the claimant, liable for the attorney's reasonable and necessary fees on any issue on which the insurance carrier prevails. The bill requires the court, if the insurance carrier appeals multiple issues and prevails on some, but not all, of the issues appealed, to apportion and award fees to the claimant's court-appointed attorney from the subsequent injury fund only for issues on which the insurance carrier prevails. The bill requires the court, in making that apportionment, to consider certain factors specified in provisions of law relating to attorney's fees paid to a claimant's counsel. The bill exempts an award of attorney's fees under the bill's provisions from commissioner of workers' compensation rules relating to maximum attorney's fees. The bill makes conforming changes.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3362 contains a provision not included in the original establishing that a claimant who did not prevail in an administrative proceeding before the division of workers' compensation of the Texas Department of Insurance is not entitled to a court-appointed attorney and is authorized to recover reasonable and necessary attorney's fees and expenses incurred in a trial initiated by the claimant in which the claimant prevails.

C.S.H.B. 3362 differs from the original by requiring a court, at the request of the claimant in a trial initiated by an insurance carrier seeking judicial review either of a final decision regarding compensability or income or death benefits or of a final decision regarding a medical dispute resolution, to appoint an attorney to represent the claimant before the court, whereas the original applies this requirement only to a court in a trial initiated by an insurance carrier seeking judicial review of a final decision regarding compensability or income or death benefits.

C.S.H.B. 3362 contains a provision not included in the original applying the bill's provisions relating to the appointment of an attorney for a claimant in a proceeding initiated by an insurance carrier seeking judicial review of a final decision regarding compensability or income or death benefits to a proceeding initiated by an insurance carrier seeking judicial review of a final decision relating to a medical dispute resolution.

C.S.H.B. 3362 differs from the original, in a saving provision, by making a conforming change reflecting the inclusion of the provisions relating to a proceeding initiated by an insurance carrier seeking judicial review of a final decision relating to a medical dispute resolution.