

BILL ANALYSIS

C.S.H.B. 1468
By: Sheets
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that a recent decision of the Texas Supreme Court impacts the confidentiality of communications between an insured employer and its insurance carrier with regard to the handling of workers' compensation claims. The parties further contend that the inability to have a frank, confidential discussion between the policyholder and insurance carrier prevents the meaningful exercise of the employer's statutory rights to participate in the investigation and resolution of a workers' compensation claim.

C.S.H.B. 1468 seeks to revise the applicable laws under the Texas Workers' Compensation Act with the goal of restoring the confidentiality of communications between the policyholder and the workers' compensation insurance carrier.

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. 1468 amends the Labor Code to specify that communications between an insurance carrier and a covered employer are confidential and not subject to disclosure if the communications include certain information and are made in furtherance of the covered employer's rights. The bill authorizes the insurance carrier to refuse to disclose and to prevent the disclosure by another person of such confidential communications.

C.S.H.B. 1468 exempts from its provisions communications between an insurance carrier and covered employer that are offered as evidence in a judicial proceeding between the insurance carrier and a covered employer; communications made to the insurance carrier by the covered employer through a method that constitutes a certain administrative violation; or public records subject to state public information law. The bill's provisions do not affect the requirement to exchange documentation under Texas Workers' Compensation Act provisions relating to the adjudication of disputes or affect the right of the commissioner of insurance to obtain information from an insurance carrier or covered employer in monitoring for compliance the Texas Workers' Compensation Act and other related laws. The bill specifies that, for the purposes of the bill's provisions, a reference to the insurance carrier or covered employer includes the insurance carrier's or covered employer's attorneys, consultants, sureties, indemnitors, employees, third-party administrators, and other agents.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1468 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter B, Chapter 409, Labor Code, is amended by adding Section 409.025 to read as follows:

Sec. 409.025. CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS. (a)

For purposes of this section, a reference to the insurance carrier or employer includes the insurance carrier's or employer's attorneys, consultants, sureties, indemnitors, employees, third-party administrators, and other agents.

(b) Communications between an insurance carrier and an employer are confidential and privileged if the communications are:

(1) in furtherance of the employer's rights under Chapter 408, 409, or 410;

(2) in anticipation of an administrative or judicial proceeding, including material prepared or mental impressions developed in anticipation of the proceeding; or

(3) for the purpose of facilitating the provision of professional services by the insurance carrier to the employer.

(c) An insurance carrier or employer may not disclose and may prevent the disclosure of communications described by Subsection (b).

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 409.011, Labor Code, is amended by adding Subsection (d) to read as follows:

(d) For purposes of this subsection, a reference to the insurance carrier or covered employer includes the insurance carrier's or covered employer's attorneys, consultants, sureties, indemnitors, employees, third-party administrators, and other agents.

Communications between an insurance carrier and a covered employer are confidential and not subject to disclosure if the communications include information regarding mental impressions, conclusions, opinions, claims-handling strategies, litigation strategies, legal theories regarding the claim, claim status, claim reserves, or proprietary business practices of the insurance carrier or covered employer or other similar classes of information and are made in furtherance of the covered employer's rights, including rights described by Subsections (b)(1)-(5) and Section 415.002(b).

An insurance carrier may refuse to disclose and may prevent the disclosure by another person of confidential communications described by this subsection. This subsection:

(1) does not apply to:

(A) communications between the insurance carrier and covered employer that are offered as evidence in a judicial proceeding between the insurance carrier and covered employer;

(B) communications made to the insurance carrier by the covered employer in violation of Section 415.002(a)(6); or

(C) public records subject to Chapter 552, Government Code; and

(2) does not affect:

(A) the requirement to exchange documentation under Chapter 410; or
(B) the right of the commissioner to obtain information from an insurance carrier or covered employer under Chapter 414.

(d) In a judicial proceeding between the insurance carrier and employer, a communication described by Subsection (b) made by an insurance carrier or an employer is not privileged and may be offered as evidence.
(e) Chapter 552, Government Code, does not apply to a record of a communication described by Subsection (b).

SECTION 2. Section 409.025, Labor Code, as added by this Act, applies to communications between an insurance carrier and an employer made before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2013.

SECTION 2. Section 409.011, Labor Code, as amended by this Act, applies only to communications between an insurance carrier and a covered employer made on or after the effective date of this Act.

SECTION 3. Same as introduced version.