

By: Frullo

H.B. No. 2115

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the authority and duties of the office of inspector
3 general for the Health and Human Services Commission; authorizing
4 the recovery of fees.

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

6 SECTION 1. Section 59.006(a), Finance Code, is amended to
7 read as follows:

8 (a) This section provides the exclusive method for
9 compelled discovery of a record of a financial institution relating
10 to one or more customers but does not create a right of privacy in a
11 record. This section does not apply to and does not require or
12 authorize a financial institution to give a customer notice of:

13 (1) a demand or inquiry from a state or federal
14 government agency authorized by law to conduct an examination of
15 the financial institution;

16 (2) a record request from a state or federal
17 government agency or instrumentality under statutory or
18 administrative authority that provides for, or is accompanied by, a
19 specific mechanism for discovery and protection of a customer
20 record of a financial institution, including a record request from
21 a federal agency subject to the Right to Financial Privacy Act of
22 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the
23 Internal Revenue Service under Section 1205, Internal Revenue Code
24 of 1986;

1 (3) a record request from or report to a government
2 agency arising out of the investigation or prosecution of a
3 criminal offense or the investigation of alleged abuse, neglect, or
4 exploitation of a [an elderly or disabled] person who is elderly or
5 has a disability in accordance with Chapter 48, Human Resources
6 Code;

7 (4) a record request in connection with a garnishment
8 proceeding in which the financial institution is garnishee and the
9 customer is debtor;

10 (5) a record request by a duly appointed receiver for
11 the customer;

12 (6) an investigative demand or inquiry from a state
13 legislative investigating committee;

14 (7) an investigative demand or inquiry from the
15 attorney general of this state as authorized by law other than the
16 procedural law governing discovery in civil cases;

17 (7-a) an administrative subpoena, investigative
18 demand, or inquiry from the Health and Human Services Commission's
19 office of inspector general as authorized by law other than the
20 procedural law governing discovery in civil cases; or

21 (8) the voluntary use or disclosure of a record by a
22 financial institution subject to other applicable state or federal
23 law.

24 SECTION 2. Section 531.102, Government Code, is amended by
25 adding Subsections (i-1) and (i-2) to read as follows:

26 (i-1) In conducting an audit, investigation, or integrity
27 review under this section, the office may, in accordance with

1 Sections 531.1021 and 531.1022, as applicable:

2 (1) require a person to file on a prescribed form a
3 statement in writing, under oath or affirmation, as to all the facts
4 and circumstances concerning an alleged unlawful act and other
5 information considered necessary by the office;

6 (2) examine under oath a person in connection with an
7 alleged unlawful act; and

8 (3) require a person to produce documentary material
9 relevant to an alleged unlawful act and permit inspection and
10 copying of the material.

11 (i-2) The office may use documentary material derived from
12 information obtained under Subsection (i-1), or copies of that
13 material, as the office determines necessary in the enforcement of
14 state law relating to the provision of health and human services,
15 including presentation in an administrative proceeding or before a
16 court.

17 SECTION 3. The heading to Section 531.1021, Government
18 Code, is amended to read as follows:

19 Sec. 531.1021. ADMINISTRATIVE SUBPOENAS.

20 SECTION 4. Sections 531.1021(a), (b), (c), and (g),
21 Government Code, are amended to read as follows:

22 (a) The office of inspector general may issue an
23 administrative [~~request that the commissioner or the~~
24 ~~commissioner's designee approve the issuance by the office of a~~
25 subpoena in connection with an audit, investigation, or integrity
26 review conducted by the office. The [~~If the request is approved,~~
27 ~~the~~] office may issue a subpoena to compel the attendance of a

1 relevant witness or the production, for inspection or copying, of
2 relevant evidence that is in this state.

3 (b) A subpoena may be served personally, ~~or~~ by certified
4 mail, or as provided in a written agreement between the office and
5 the person to be served.

6 (c) If a person fails to comply with a subpoena, the office
7 may impose an administrative sanction or, acting through the
8 attorney general, may file suit to enforce the subpoena in a
9 district court in this state.

10 (g) All information and materials subpoenaed or compiled by
11 the office in connection with an audit, ~~or~~ investigation, or
12 integrity review that relate to any person receiving state or
13 federal funds under a health and human services program, or by the
14 office of the attorney general in connection with a Medicaid fraud
15 investigation, are confidential and not subject to disclosure under
16 Chapter 552, and not subject to disclosure, discovery, subpoena, or
17 other means of legal compulsion for their release to anyone other
18 than the office or the attorney general or their employees or agents
19 involved in the audit, ~~or~~ investigation, or integrity review
20 conducted by the office or the attorney general, except that this
21 information may be disclosed to the state auditor's office, law
22 enforcement agencies, health and human services agencies, other
23 agencies with regulatory authority over health and human services
24 providers, and other entities as permitted by other law.

25 SECTION 5. Subchapter C, Chapter 531, Government Code, is
26 amended by adding Sections 531.1022, 531.1023, and 531.1024 to read
27 as follows:

1 Sec. 531.1022. CIVIL INVESTIGATIVE DEMANDS. (a) The
2 office of inspector general may, in connection with an audit,
3 investigation, or integrity review conducted by the office, execute
4 in writing and serve on a person a civil investigative demand
5 requiring the person to produce relevant documentary material as
6 provided by this section.

7 (b) An investigative demand must:

8 (1) state the rule or statute under which the alleged
9 unlawful act is being investigated and the general subject matter
10 of the investigation;

11 (2) describe the class or classes of documentary
12 material to be produced with reasonable specificity to fairly
13 indicate the documentary material demanded;

14 (3) prescribe a return date within which the
15 documentary material is to be produced; and

16 (4) identify an authorized employee of the office of
17 inspector general to whom the documentary material is to be
18 provided.

19 (c) Service of an investigative demand may be made by:

20 (1) delivering an executed copy of the demand to the
21 person to be served or to a partner, an officer, or an agent
22 authorized by appointment or law to receive service of process on
23 behalf of that person;

24 (2) delivering an executed copy of the demand to the
25 principal place of business in this state of the person to be
26 served; or

27 (3) mailing by registered or certified mail an

1 executed copy of the demand addressed to the person to be served at
2 the person's principal place of business in this state or, if the
3 person has no place of business in this state, to a person's
4 principal office or place of business.

5 (d) The office of inspector general shall prescribe terms
6 and conditions relating to the production of documentary material
7 under this section.

8 (e) The person on whom the investigative demand is served
9 under this section shall provide the requested documentary material
10 or copies of documentary material at no cost to the office.

11 (f) Any documentary material produced under this section or
12 copies of that material may be used in enforcing state law relating
13 to the provision of health and human services, including
14 presentation in an administrative proceeding or before a court.

15 (g) A person may file a petition in a district court of
16 Travis County or a district court in a county in which the person
17 has a place of business, stating good cause, to extend the return
18 date for the investigative demand or to modify or set aside the
19 demand.

20 (h) Except as provided by a court order, a person on whom an
21 investigative demand has been served under this section shall
22 comply with the terms of the demand.

23 (i) A person who has committed an unlawful act relating to
24 the provision of health and human services in this state has
25 submitted to the jurisdiction of this state, and personal service
26 of an investigative demand under this section may be made on the
27 person outside of this state.

1 (j) This section does not limit the authority of the office
2 of inspector general to conduct investigations or to access a
3 person's documentary materials or other information under another
4 state or federal law or the Texas Rules of Civil Procedure.

5 (k) If a person fails to comply with an investigative
6 demand, or if copying and reproduction of the documentary material
7 demande d cannot be satisfactorily accomplished and the person
8 refuses to surrender the documentary material without filing a
9 petition in accordance with Subsection (g), the office of inspector
10 general may impose an administrative sanction or file in a district
11 court of Travis County a petition for an order to enforce the
12 demand.

13 (l) If a petition is filed under Subsection (k), the court
14 may determine the matter presented and may enter an order to
15 implement this section.

16 (m) Failure to comply with a final order entered under
17 Subsection (l) is punishable by contempt.

18 (n) A final order issued by a district court under
19 Subsection (l) is subject to appeal to the supreme court.

20 Sec. 531.1023. RECOVERY OF FEES, EXPENSES, AND COSTS. The
21 office of inspector general may recover fees, expenses, and costs
22 that are related to the office's responsibilities under Section
23 531.102(a) and are:

24 (1) reasonably incurred in obtaining administrative
25 remedies, imposing administrative sanctions, or conducting
26 investigations, including court costs, reasonable attorney's fees,
27 witness fees, and deposition fees; or

1 (2) otherwise specified by the legislature in the
2 General Appropriations Act.

3 Sec. 531.1024. EXPERT IMMUNITY. An expert who assists the
4 office of inspector general is immune from suit and judgment and may
5 not be subjected to a suit for damages for any investigation,
6 report, recommendation, statement, evaluation, finding, or other
7 action taken without fraud or malice in the course of assisting the
8 office with an audit, investigation, or integrity review. The
9 attorney general shall represent the expert in any suit resulting
10 from a service provided by the expert in good faith to the office of
11 inspector general.

12 SECTION 6. Section 402.085(a), Labor Code, is amended to
13 read as follows:

14 (a) The division shall release information on a claim to:

15 (1) the Texas Department of Insurance for any
16 statutory or regulatory purpose, including a research purpose under
17 Chapter 405;

18 (2) a legislative committee for legislative purposes;

19 (3) a state or federal elected official requested in
20 writing to provide assistance by a constituent who qualifies to
21 obtain injury information under Section 402.084(b), if the request
22 for assistance is provided to the division;

23 (4) the attorney general or another entity that
24 provides child support services under Part D, Title IV, Social
25 Security Act (42 U.S.C. Section 651 et seq.), relating to:

26 (A) establishing, modifying, or enforcing a
27 child support or medical support obligation; or

- 1 (B) locating an absent parent; [~~or~~]
2 (5) the office of injured employee counsel for any
3 statutory or regulatory purpose that relates to a duty of that
4 office as provided by Section 404.111(a); or
5 (6) the Health and Human Services Commission's office
6 of inspector general under an administrative subpoena,
7 investigative demand, or other written request relating to an
8 audit, investigation, or integrity review conducted by the office.

9 SECTION 7. Section 22.27(b), Tax Code, is amended to read as
10 follows:

11 (b) Information made confidential by this section may be
12 disclosed:

13 (1) in a judicial or administrative proceeding
14 pursuant to a lawful subpoena;

15 (2) to the person who filed the statement or report or
16 the owner of property subject to the statement, report, or
17 information or to a representative of either authorized in writing
18 to receive the information;

19 (3) to the comptroller and the comptroller's employees
20 authorized by the comptroller in writing to receive the information
21 or to an assessor or a chief appraiser if requested in writing;

22 (4) in a judicial or administrative proceeding
23 relating to property taxation to which the person who filed the
24 statement or report or the owner of the property that is a subject
25 of the statement, report, or information is a party;

26 (5) for statistical purposes if in a form that does not
27 identify specific property or a specific property owner;

1 (6) if and to the extent the information is required to
2 be included in a public document or record that the appraisal office
3 is required to prepare or maintain;

4 (7) to a taxing unit or its legal representative that
5 is engaged in the collection of delinquent taxes on the property
6 that is the subject of the information;

7 (8) to an employee or agent of a taxing unit
8 responsible for auditing, monitoring, or reviewing the operations
9 of an appraisal district; ~~or~~

10 (9) to an employee or agent of a school district that
11 is engaged in the preparation of a protest of the comptroller's
12 property value study in accordance with Section 403.303, Government
13 Code; or

14 (10) to the Health and Human Services Commission's
15 office of inspector general under an administrative subpoena,
16 investigative demand, or other written request relating to an
17 audit, investigation, or integrity review conducted by the office.

18 SECTION 8. Section 730.005, Transportation Code, is amended
19 to read as follows:

20 Sec. 730.005. REQUIRED DISCLOSURE. Personal information
21 obtained by an agency in connection with a motor vehicle record
22 shall be disclosed for use in connection with any matter of:

- 23 (1) motor vehicle or motor vehicle operator safety;
24 (2) motor vehicle theft;
25 (3) motor vehicle emissions;
26 (4) motor vehicle product alterations, recalls, or
27 advisories;

1 (5) performance monitoring of motor vehicles or motor
2 vehicle dealers by a motor vehicle manufacturer;

3 (6) removal of nonowner records from the original
4 owner records of a motor vehicle manufacturer to carry out the
5 purposes of:

6 (A) the Automobile Information Disclosure Act,
7 15 U.S.C. Section 1231 et seq.;

8 (B) 49 U.S.C. Chapters 301, 305, 323, 325, 327,
9 329, and 331;

10 (C) the Anti Car Theft Act of 1992, 18 U.S.C.
11 Sections 553, 981, 982, 2119, 2312, 2313, and 2322, 19 U.S.C.
12 Sections 1646b and 1646c, and 42 U.S.C. Section 3750a et seq., all
13 as amended;

14 (D) the Clean Air Act, 42 U.S.C. Section 7401 et
15 seq., as amended; and

16 (E) any other statute or regulation enacted or
17 adopted under or in relation to a law included in Paragraphs
18 (A)-(D);

19 (7) child support enforcement under Chapter 231,
20 Family Code; ~~or~~

21 (8) enforcement by the Texas Workforce Commission
22 under Title 4, Labor Code; or

23 (9) enforcement by the Health and Human Services
24 Commission's office of inspector general under Chapter 531,
25 Government Code.

26 SECTION 9. If before implementing any provision of this Act
27 a state agency determines that a waiver or authorization from a

1 federal agency is necessary for implementation of that provision,
2 the agency affected by the provision shall request the waiver or
3 authorization and may delay implementing that provision until the
4 waiver or authorization is granted.

5 SECTION 10. This Act takes effect September 1, 2013.