

SUBJECT: Texas Workers' Compensation Commission revisions

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Brimer, Rhodes, Corte, Dukes, Elkins, Giddings, Janek, Woolley
0 nays
1 absent — Solomons

WITNESSES: For — None
Against — None
On — Bart Griffin, Texas Workers' Compensation Commission; June Karp, Research and Oversight Council on Workers' Compensation

BACKGROUND : The Texas Workers' Compensation Commission (TWCC) is governed by a six-member board made up of three employers and three wage-earners who are appointed by the governor to two-year terms. Commission members are entitled to reimbursement for lost wages while attending quarterly meetings and for actual and necessary expenses incurred in performing commission functions. Reimbursement may not exceed \$100 per day and \$12,000 per year.

The TWCC operations are funded by an annual assessment on workers' compensation insurance premiums. Workers' compensation insurance carriers pay an annual maintenance tax assessment established each year by TWCC. This assessment takes into account administrative expenses, projected employee benefits, any surplus or deficit from the preceding year, and revenue recovered from other sources. It may not take into account revenue or expenditures related to the division of risk management or the Texas Workers' Compensation Research Center.

Under the Texas Workers' Compensation Act, injured workers are usually paid benefits until they have reached “maximum medical improvement,” which is defined as the point where further recovery or improvement cannot be expected or 104 weeks, whichever comes first.

DIGEST: CSHB 3522 would make several changes to statutes governing the TWCC. The bill would specify the number of days commission members could be reimbursed for lost wages for various commission functions. Commission members would be entitled to reimbursement for actual and necessary expenses for attendance at not more than five seminars per year, provided the member was invited to participate as a representative of the commission and such participation was approved by the commission chair.

CSHB 3522 would authorize the commission to assess insurance carriers and self-insured employers up to one-tenth of one percent of gross premiums for the prosecution of workers' compensation insurance fraud. This amount could be assessed in addition to the amount currently assessed to pay TWCC administrative costs.

CSHB 3522 would authorize the commission to extend the 104-week limit on benefits for cases where an employee was recovering from or approved for spinal surgery, so long as the extension was granted within 12 weeks prior to the expiration of the 104-week period. Either the employee or the insurance carrier could request the extension; either party could also dispute the request for an extension. TWCC could only provide an extension to a specific date. The commission would be required to adopt rules for implementing this process, including procedures for requesting and disputing an extension.

In other provisions, CSHB 3522 would reduce from three to one the number of years of experience in workers' compensation required for designation as an ombudsman and increase the penalty for a breach of settlement from a Class C administrative violation (fine of up to \$1,000) to an administrative penalty of up to \$50,000.

CSHB 3522 would take effect on September 1, 1997. Its provisions on violations or injuries would apply to events taking place on or after that date.

SUPPORTERS SAY: CSHB 3522 would enhance the TWCC's ability to effectively serve employers, employees and insurers in several areas. The bill would ensure that, within reasonable limits, commission members were not forced to lose their regular incomes while fulfilling their commission duties. CSHB 3522 would also encourage commission members to reach out to constituent

groups by authorizing TWCC to reimburse for expenses related to attending up to five seminars per year.

CSHB 3522 would increase the insurer assessment that currently pays for all TWCC administrative costs in order to allow TWCC to strengthen its fraud prevention efforts by working more closely with district attorneys throughout the state. In California, workers' compensation insurance fraud decreased significantly after a similar program of cooperation between regulators and district attorneys was initiated. Preventing fraud is a necessary activity of the commission and one that directly benefits the insurers who fund the system.

The bill also would give the commission more flexibility in dealing with spinal surgery cases. Spinal surgery is often seen as a last resort in dealing with back problems and other injuries, and prudent doctors may wait until other avenues have been pursued before performing surgery. Injured workers often find that their benefits are about to run out at the same time as surgery is scheduled or performed. Doctors have difficulty providing an accurate rating of a patient's long-term condition when surgery is about to be performed or has just been performed. CSHB 3522 would allow doctors, workers or insurers to request an extension so that patients would have time to recover and accurate assessments of their long-term health situation can be made. The bill contains sufficient protections to ensure that the interests of the worker and the insurer could be considered as part of this process.

CSHB 3522 would eliminate the three-year experience requirement for the ombudsmen who assist workers with their claims since this has proven to be a barrier to finding qualified people. Experience is far less important than the training the commission provides.

CSHB 3522 would put teeth into the penalties the commission may impose on employers who do not follow through on settlement agreements to pay for improvements to the workplace that would improve compliance with workers' compensation requirements. The current maximum penalty for failing to fulfill the terms of a settlement is \$1,000. This amount is so low that it encourages employers to pay the fine rather than comply with the settlement. The threat of a fine of up to \$50,000 would give employers a greater incentive to comply with settlement terms.

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OPPONENTS
SAY:

CSHB 3522 may be opening a Pandora's box by extending the 104-week period for benefits in cases of spinal surgery. These injuries constitute an area where a great deal of fraud occurs. Furthermore, this initial exception would set the stage for others in the future.

The penalties allowed for breach of settlement in CSHB 3522 may not be high enough. If improvements required as part of a settlement cost more than \$50,000, the employer may still choose to pay the penalty rather than fulfill the terms of the settlement. A better option might be to allow the commission decide the penalty based on the cost of the improvements needed.

NOTES:

The committee substitute reduced from ten to five the number of seminars for which TWCC would reimburse commission members.