

LABOR CODE

TITLE 5. WORKERS' COMPENSATION

SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT

CHAPTER 402. OPERATION AND ADMINISTRATION OF WORKERS' COMPENSATION
SYSTEM

SUBCHAPTER A. GENERAL ADMINISTRATION OF SYSTEM; WORKERS'
COMPENSATION DIVISION

Sec. 402.001. ADMINISTRATION OF SYSTEM: TEXAS DEPARTMENT OF INSURANCE; WORKERS' COMPENSATION DIVISION. (a) Except as provided by Section 402.002, the Texas Department of Insurance is the state agency designated to oversee the workers' compensation system of this state.

(b) The division of workers' compensation is established as a division within the Texas Department of Insurance to administer and operate the workers' compensation system of this state as provided by this title.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.02, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.003, eff. September 1, 2005.

Sec. 402.00111. RELATIONSHIP BETWEEN COMMISSIONER OF INSURANCE AND COMMISSIONER OF WORKERS' COMPENSATION; SEPARATION OF AUTHORITY; RULEMAKING. (a) The division is administered by the commissioner of workers' compensation as provided by this subchapter. Except as otherwise provided by this title, the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under this title.

(b) The commissioner of insurance may delegate to the commissioner of workers' compensation or to that person's designee and may redact any delegation, and the commissioner of workers' compensation may delegate to the commissioner of insurance or to that person's designee, any power or duty regarding workers' compensation imposed on the commissioner of insurance or the

commissioner of workers' compensation under this title, including the authority to make final orders or decisions. A delegation made under this subsection must be made in writing.

(c) The commissioner of insurance shall develop and implement policies that clearly separate the respective responsibilities of the department and the division.

(d) The commissioner of insurance may provide advice, research, and comment regarding the adoption of rules by the commissioner of workers' compensation under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00112. INVESTIGATION OF DIVISION. The department shall investigate the conduct of the work of the division. For that purpose, the department shall have access at any time to all division books and records and may require an officer or employee of the division to furnish written or oral information.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00113. ADMINISTRATIVE ATTACHMENT TO DEPARTMENT.

(a) The division of workers' compensation is administratively attached to the department.

(b) The department shall provide the staff and facilities necessary to enable the division to perform the duties of the division under this title, including:

(1) administrative assistance and services to the division, including budget planning and purchasing;

(2) personnel and financial services; and

(3) computer equipment and support.

(c) The commissioner of workers' compensation and the commissioner of insurance may enter into agreements as necessary to implement this title.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00114. DUTIES OF DIVISION; SINGLE POINT OF

CONTACT. (a) In addition to other duties required under this title, the division shall:

(1) regulate and administer the business of workers' compensation in this state; and

(2) ensure that this title and other laws regarding workers' compensation are executed.

(b) To the extent determined feasible by the commissioner, the division shall establish a single point of contact for injured employees receiving services from the division.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00115. COMPOSITION OF DIVISION. The division is composed of the commissioner of workers' compensation and other officers and employees as required to efficiently implement:

(1) this title;

(2) other workers' compensation laws of this state; and

(3) other laws granting jurisdiction or applicable to the division or the commissioner.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00116. CHIEF EXECUTIVE. (a) The commissioner of workers' compensation is the division's chief executive and administrative officer. The commissioner shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner. Except as otherwise specifically provided by this title, a reference in this title to the "commissioner" means the commissioner of workers' compensation.

(b) The commissioner has the powers and duties vested in the division by this title and other workers' compensation laws of this state.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00117. APPOINTMENT; TERM. (a) The governor, with the advice and consent of the senate, shall appoint the commissioner. The commissioner serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the commissioner without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00118. QUALIFICATIONS. The commissioner must:

(1) be a competent and experienced administrator;
(2) be well-informed and qualified in the field of workers' compensation; and

(3) have at least five years of experience as an executive in the administration of business or government or as a practicing attorney, physician, or certified public accountant.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00119. INELIGIBILITY FOR PUBLIC OFFICE. The commissioner is ineligible to be a candidate for a public elective office in this state unless the commissioner has resigned and the governor has accepted the resignation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00120. COMPENSATION. The commissioner is entitled to compensation as provided by the General Appropriations Act.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00121. GROUNDS FOR REMOVAL. (a) It is a ground for removal from office that the commissioner:

(1) does not have at the time of appointment the qualifications required by Section 402.00118;

(2) does not maintain during service as commissioner

the qualifications required by Section 402.00118;

(3) violates a prohibition established by Section 402.00122, 402.00124, 402.00125, or 402.00126; or

(4) cannot because of illness or incapacity discharge the commissioner's duties for a substantial part of the commissioner's term.

(b) The validity of an action of the commissioner or the division is not affected by the fact that it is taken when a ground for removal of the commissioner exists.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00122. PROHIBITED GIFTS; ADMINISTRATIVE VIOLATION. (a) The commissioner or an employee of the division may not accept a gift, a gratuity, or entertainment from a person having an interest in a matter or proceeding pending before the division.

(b) A violation of Subsection (a) is an administrative violation and constitutes a ground for removal from office or termination of employment.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00123. CIVIL LIABILITY OF COMMISSIONER. The commissioner is not liable in a civil action for an act performed in good faith in the execution of duties as commissioner.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00124. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be the commissioner and may not be a division employee employed in a "bona fide executive, administrative, or professional capacity" as that phrase is used

for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of workers' compensation; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of workers' compensation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00125. PROHIBITION ON CERTAIN EMPLOYMENT OR REPRESENTATION. (a) A former commissioner or former employee of the division involved in hearing cases under this title may not:

(1) be employed by an insurance carrier that was subject to the scope of the commissioner's or employee's official responsibility while the commissioner or employee was associated with the division; or

(2) represent a person before the division or a court in a matter:

(A) in which the commissioner or employee was personally involved while associated with the division; or

(B) that was within the commissioner's or employee's official responsibilities while the commissioner or employee was associated with the division.

(b) The prohibition under Subsection (a)(1) applies until the:

(1) second anniversary of the date the commissioner ceases to serve as the commissioner; and

(2) first anniversary of the date the employee's employment with the division ceases.

(c) The prohibition under Subsection (a)(2) applies to a current commissioner or employee of the division while the commissioner or employee is involved in hearing cases under this title and at any time thereafter.

(d) A person commits an offense if the person violates this

section. An offense under this section is a Class A misdemeanor.
Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff.
September 1, 2005.

Sec. 402.00126. LOBBYING ACTIVITIES. A person may not serve as commissioner or act as general counsel to the commissioner if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department or the division.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff.
September 1, 2005.

Sec. 402.00127. TRAINING PROGRAM FOR COMMISSIONER. (a) Not later than the 90th day after the date on which the commissioner takes office, the commissioner shall complete a training program that complies with this section.

(b) The training program must provide the commissioner with information regarding:

- (1) the legislation that created the division;
- (2) the programs operated by the division;
- (3) the role and functions of the division;
- (4) the rules of the commissioner of insurance relating to the division, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the division;
- (6) the results of the most recent formal audit of the division;
- (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the division or the Texas Ethics Commission.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00128. GENERAL POWERS AND DUTIES OF COMMISSIONER.

(a) The commissioner shall conduct the daily operations of the division and otherwise implement division policy.

(b) The commissioner or the commissioner's designee may:

- (1) investigate misconduct;
 - (2) hold hearings;
 - (3) issue subpoenas to compel the attendance of witnesses and the production of documents;
 - (4) administer oaths;
 - (5) take testimony directly or by deposition or interrogatory;
 - (6) assess and enforce penalties established under this title;
 - (7) enter appropriate orders as authorized by this title;
 - (8) institute an action in the division's name to enjoin the violation of this title;
 - (9) initiate an action under Section 410.254 to intervene in a judicial proceeding;
 - (10) prescribe the form, manner, and procedure for the transmission of information to the division;
 - (11) correct clerical errors in the entry of orders;
- and
- (12) exercise other powers and perform other duties as necessary to implement and enforce this title.

(c) The commissioner is the agent for service of process on out-of-state employers.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.002. ADMINISTRATION OF SYSTEM: OFFICE OF INJURED EMPLOYEE COUNSEL. The office of injured employee counsel

established under Chapter 404 shall perform the functions regarding the provision of workers' compensation benefits in this state designated by this subtitle as under the authority of that office. Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 47.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.005, eff. September 1, 2005.

SUBCHAPTER B. SYSTEM GOALS; GENERAL ADMINISTRATION OF SYSTEM

Sec. 402.021. GOALS; LEGISLATIVE INTENT; GENERAL WORKERS' COMPENSATION MISSION OF DEPARTMENT. (a) The basic goals of the workers' compensation system of this state are as follows:

(1) each employee shall be treated with dignity and respect when injured on the job;

(2) each injured employee shall have access to a fair and accessible dispute resolution process;

(3) each injured employee shall have access to prompt, high-quality medical care within the framework established by this subtitle; and

(4) each injured employee shall receive services to facilitate the employee's return to employment as soon as it is considered safe and appropriate by the employee's health care provider.

(b) It is the intent of the legislature that, in implementing the goals described by Subsection (a), the workers' compensation system of this state must:

(1) promote safe and healthy workplaces through appropriate incentives, education, and other actions;

(2) encourage the safe and timely return of injured employees to productive roles in the workplace;

(3) provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective;

(4) provide timely, appropriate, and high-quality medical care supporting restoration of the injured employee's physical condition and earning capacity;

(5) minimize the likelihood of disputes and resolve them promptly and fairly when identified;

(6) promote compliance with this subtitle and rules adopted under this subtitle through performance-based incentives;

(7) promptly detect and appropriately address acts or practices of noncompliance with this subtitle and rules adopted under this subtitle;

(8) effectively educate and clearly inform each person who participates in the system as a claimant, employer, insurance carrier, health care provider, or other participant of the person's rights and responsibilities under the system and how to appropriately interact within the system; and

(9) take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants.

(c) This section may not be construed as:

(1) creating a cause of action; or

(2) establishing an entitlement to benefits to which a claimant is not otherwise entitled by this subtitle.

(d) As provided by this subtitle, the division shall work to promote and help ensure the safe and timely return of injured employees to productive roles in the workforce.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.0065, eff. September 1, 2005.

Sec. 402.0215. REFERENCE TO COMMISSION DIVISIONS. A reference in this title or any other law to the division of workers' health and safety, the division of medical review, the division of compliance and practices, the division of hearings, and the division of self-insurance regulation of the former Texas Workers' Compensation Commission means the division of workers' compensation of the Texas Department of Insurance.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.001, eff.

September 1, 2005.

Sec. 402.022. PUBLIC INTEREST INFORMATION. (a) The commissioner shall prepare information of public interest describing the functions of the division and the procedures by which complaints are filed with and resolved by the division.

(b) The commissioner shall make the information available to the public and appropriate state agencies.

(c) The commissioner by rule shall ensure that each division form, standard letter, and brochure under this subtitle:

- (1) is written in plain language;
- (2) is in a readable and understandable format; and
- (3) complies with all applicable requirements relating to minimum readability requirements.

(d) The division shall make informational materials described by this section available in English and Spanish.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.002, eff. September 1, 2005.

Sec. 402.023. COMPLAINT INFORMATION. (a) The commissioner shall:

(1) adopt rules regarding the filing of a complaint under this subtitle against an individual or entity subject to regulation under this subtitle; and

(2) ensure that information regarding the complaint process is available on the division's Internet website.

(b) The rules adopted under this section must, at a minimum:

(1) ensure that the division clearly defines in rule the method for filing a complaint; and

(2) define what constitutes a frivolous complaint under this subtitle.

(c) The division shall develop and post on the division's Internet website:

(1) a simple standardized form for filing complaints under this subtitle; and

(2) information regarding the complaint filing process.

(c-1) The division shall adopt a policy outlining the division's complaint process from receipt of the initial complaint to the complaint's disposition.

(d) The division shall keep an information file about each written complaint filed with the division under this subtitle that is unrelated to a specific workers' compensation claim, including a complaint regarding the administration of the workers' compensation system. The information must include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the division took no action, an explanation of the reason the complaint was closed without action.

(e) For each written complaint that is unrelated to a specific workers' compensation claim that the division has authority to resolve, the division shall provide to the person filing the complaint and the person about whom the complaint is made information about the division's policies and procedures under this subtitle relating to complaint investigation and resolution. The division, at least quarterly and until final disposition of the complaint, shall notify those persons about the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.08, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.003, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 6, eff. September 1, 2011.

Sec. 402.0231. DOCUMENTATION AND ANALYSIS OF COMPLAINTS.

(a) The division shall develop procedures to formally document and analyze complaints received by the division.

(b) The division shall compile detailed statistics on all complaints received and analyze complaint information trends, including:

- (1) the number of complaints;
- (2) the source of each complaint;
- (3) the types of complaints;
- (4) the length of time from the receipt of the complaint to its disposition; and
- (5) the disposition of complaints.

(c) The division shall further analyze the information compiled under Subsection (b) by field office and by program.

(d) The division shall report the information compiled and analyzed under Subsections (b) and (c) to the commissioner at regular intervals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 7, eff. September 1, 2011.

Sec. 402.0235. PRIORITIES FOR COMPLAINT INVESTIGATIONS.

(a) The division shall assign priorities to complaint investigations under this subtitle based on risk. In developing priorities under this section, the division shall develop a formal, risk-based complaint investigation system that considers:

- (1) the severity of the alleged violation;
- (2) whether the alleged violator showed continued or wilful noncompliance; and
- (3) whether a commissioner order has been violated.

(b) The commissioner may develop additional risk-based criteria as determined necessary.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.003, eff. September 1, 2005.

Sec. 402.024. PUBLIC PARTICIPATION. (a) The commissioner shall develop and implement policies that provide the public with a

reasonable opportunity to appear before the division and to speak on issues under the general jurisdiction of the division.

(b) The division shall comply with federal and state laws related to program and facility accessibility.

(c) In addition to compliance with Subsection (a), the commissioner shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the division's programs and services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.09, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.004, eff. September 1, 2005.

SUBCHAPTER C. PERSONNEL

Sec. 402.041. APPOINTMENTS. (a) Subject to the General Appropriations Act or other law, the commissioner shall appoint deputies, assistants, and other personnel as necessary to carry out the powers and duties of the commissioner and the division under this title, other workers' compensation laws of this state, and other laws granting jurisdiction or applicable to the division or the commissioner.

(b) A person appointed under this section must have the professional, administrative, and workers' compensation experience necessary to qualify the person for the position to which the person is appointed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.10, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff. September 1, 2005.

Sec. 402.042. DIVISION OF RESPONSIBILITIES. The commissioner shall develop and implement policies that clearly define the respective responsibilities of the commissioner and the staff of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff. September 1, 2005.

Sec. 402.043. CAREER LADDER; ANNUAL PERFORMANCE EVALUATIONS. (a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the division. The program shall require intra-agency postings of all positions concurrently with any public posting.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for division employees must be based on the system established under this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff. September 1, 2005.

Sec. 402.044. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the requirements of Chapter 21;

(2) a comprehensive analysis of the division work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the division work force of all persons for whom federal or state guidelines encourage a more equitable

balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under this section must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the civil rights division of the Texas Workforce Commission for compliance with Subsection (a)(1); and

(4) be filed with the Texas Workforce Commission.

(c) The Texas Workforce Commission shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports made to the legislature.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.11, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff. September 1, 2005.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF DIVISION AND COMMISSIONER

Sec. 402.061. ADOPTION OF RULES. The commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.006, eff. September 1, 2005.

Sec. 402.062. ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS.

(a) The division may accept gifts, grants, or donations as provided by rules adopted by the commissioner.

(b) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(15), eff. September 1, 2005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1999, 76th Leg., ch. 1426, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1195, Sec. 2.08, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.007, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(15), eff. September 1, 2005.

Sec. 402.064. FEES. In addition to fees established by this subtitle, the commissioner shall set reasonable fees for services provided to persons requesting services from the division, including services provided under Subchapter E.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.008, eff. September 1, 2005.

Sec. 402.065. EMPLOYMENT OF COUNSEL. Notwithstanding Article 1.09-1, Insurance Code, or any other law, the commissioner may employ counsel to represent the division in any legal action the division is authorized to initiate.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.009, eff. September 1, 2005.

Sec. 402.066. RECOMMENDATIONS TO LEGISLATURE. (a) The commissioner shall consider and recommend to the legislature changes to this subtitle.

(b) The commissioner shall forward the recommended changes to the legislature not later than December 1 of each even-numbered year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.010, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 1, eff.

June 9, 2017.

Sec. 402.0665. LEGISLATIVE OVERSIGHT. The legislature may adopt requirements relating to legislative oversight of the division and the workers' compensation system of this state. The division shall comply with any requirements adopted by the legislature under this section.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.13, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.011, eff. September 1, 2005.

Sec. 402.067. ADVISORY COMMITTEES. The commissioner may appoint advisory committees as the commissioner considers necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.012, eff. September 1, 2005.

Sec. 402.068. DELEGATION OF RIGHTS AND DUTIES. Except as expressly provided by this subtitle, the division may not delegate rights and duties imposed on it by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.14, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.013, eff. September 1, 2005.

Sec. 402.069. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The commissioner or the commissioner's designee shall provide to division employees, as often as necessary, information regarding their:

(1) qualifications for office or employment under this subtitle; and

(2) responsibilities under applicable law relating to

standards of conduct for state officers or employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.15, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.014, eff. September 1, 2005.

Sec. 402.071. REPRESENTATIVES. (a) The commissioner shall establish qualifications for a representative and shall adopt rules establishing procedures for authorization of representatives.

(b) A representative may receive a fee for providing representation under this subtitle only if the representative is:

- (1) an adjuster representing an insurance carrier; or
- (2) licensed to practice law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.015, eff. September 1, 2005.

Sec. 402.073. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) The commissioner and the chief administrative law judge of the State Office of Administrative Hearings shall adopt a memorandum of understanding governing administrative procedure law hearings under this subtitle conducted by the State Office of Administrative Hearings in the manner provided for a contested case hearing under Chapter 2001, Government Code. The memorandum of understanding must address the payment of costs by parties to a medical fee dispute under Section 413.0312.

(b) In a case in which a hearing is conducted by the State Office of Administrative Hearings under Section 413.031 or 413.055, the administrative law judge who conducts the hearing for the State Office of Administrative Hearings shall enter the final decision in the case after completion of the hearing.

(c) In a case in which a hearing is conducted in conjunction with Section 402.072, 407.046, 408.023, or 415.034, and in other cases under this subtitle that are not subject to Subsection (b),

the administrative law judge who conducts the hearing for the State Office of Administrative Hearings shall propose a decision to the commissioner for final consideration and decision by the commissioner.

(d) The notice of the commissioner's order must include a statement of the right of the person to judicial review of the order.

(e) In issuing an order under this section, the commissioner shall comply with the requirements applicable to a state agency under Section 2001.058, Government Code.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.17, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.017, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 8, eff. September 1, 2011.

Sec. 402.075. INCENTIVES; PERFORMANCE-BASED OVERSIGHT. (a) The commissioner by rule shall adopt requirements that:

(1) provide incentives for overall compliance in the workers' compensation system of this state; and

(2) emphasize performance-based oversight linked to regulatory outcomes.

(b) The commissioner shall develop key regulatory goals to be used in assessing the performance of insurance carriers and health care providers. The goals adopted under this subsection must align with the general regulatory goals of the division under this subtitle, such as improving workplace safety and return-to-work outcomes, in addition to goals that support timely payment of benefits and increased communication.

(c) At least biennially, the division shall assess the performance of insurance carriers and health care providers in meeting the key regulatory goals. The division shall examine

overall compliance records and dispute resolution and complaint resolution practices to identify insurance carriers and health care providers who adversely impact the workers' compensation system and who may require enhanced regulatory oversight. The division shall conduct the assessment through analysis of data maintained by the division and through self-reporting by insurance carriers and health care providers.

(d) Based on the performance assessment, the division shall develop regulatory tiers that distinguish among insurance carriers and health care providers who are poor performers, who generally are average performers, and who are consistently high performers. The division shall focus its regulatory oversight on insurance carriers and health care providers identified as poor performers.

(e) The commissioner by rule shall develop incentives within each tier under Subsection (d) that promote greater overall compliance and performance. The regulatory incentives may include modified penalties, self-audits, or flexibility based on performance.

(f) The division shall:

(1) ensure that high-performing entities are publicly recognized; and

(2) allow those entities to use that designation as a marketing tool.

(g) In conjunction with the division's accident prevention services under Subchapter E, Chapter 411, the division shall conduct audits of accident prevention services offered by insurance carriers based on the comprehensive risk assessment. The division shall periodically review those services, but may provide incentives for less regulation of carriers based on performance.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

Sec. 402.076. GENERAL DUTIES; FUNDING. (a) The division shall perform the workforce education and safety functions of the workers' compensation system of this state.

(b) The operations of the division under this section are funded through the maintenance tax assessed under Section 403.002.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

Sec. 402.077. EDUCATIONAL PROGRAMS. (a) The division shall provide education on best practices for return-to-work programs and workplace safety.

(b) The division shall evaluate and develop the most efficient, cost-effective procedures for implementing this section.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

Sec. 402.078. REGIONAL OFFICES. The department shall operate regional offices throughout this state as necessary to implement the duties of the division and the department under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

SUBCHAPTER E. RECORDS AND EMPLOYEE INFORMATION

Sec. 402.081. DIVISION RECORDS. (a) The commissioner is the custodian of the division's records and shall perform the duties of a custodian required by law, including providing copies and the certification of records.

(b) The division shall comply with records retention schedules as provided by Chapter 441.185, Government Code.

(c) A record maintained by the division may be preserved in any format permitted by Chapter 441, Government Code, and rules adopted by the Texas State Library and Archives Commission under that chapter.

(d) The division may charge a reasonable fee for making available for inspection any of its information that contains confidential information that must be redacted before the information is made available. However, when a request for information is for the inspection of 10 or fewer pages, and a copy of the information is not requested, the division may charge only

the cost of making a copy of the page from which confidential information must be redacted. The fee for access to information under Chapter 552, Government Code, shall be in accord with the rules of the attorney general that prescribe the method for computing the charge for copies under that chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1270, Sec. 1 eff. June 20, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.019, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 329 (S.B. 727), Sec. 13, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. 452), Sec. 11, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 10.003, eff. September 1, 2007.

Sec. 402.082. INJURY INFORMATION MAINTAINED BY DIVISION.

(a) The division shall maintain information on every compensable injury as to the:

- (1) race, ethnicity, and sex of the claimant;
- (2) classification of the injury;
- (3) identification of whether the claimant is receiving medical care through a workers' compensation health care network certified under Chapter 1305, Insurance Code;
- (4) amount of wages earned by the claimant before the injury; and
- (5) amount of compensation received by the claimant.

(b) On request from the office of injured employee counsel, the division shall provide to the office the identity, claim number, and contact information of claimants receiving assistance from the office.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.020, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 5, eff.

September 1, 2011.

Sec. 402.083. CONFIDENTIALITY OF INJURY INFORMATION. (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the division except as provided by this subtitle or other law.

(b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 415.008 is not confidential.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.42, 14.49, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.021, eff. September 1, 2005.

Sec. 402.084. RECORD CHECK; RELEASE OF INFORMATION. (a) The division shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (b) if:

(1) the claim is:

(A) open or pending before the division;

(B) on appeal to a court of competent jurisdiction; or

(C) the subject of a subsequent suit in which the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form prescribed by the division for this purpose and provides all required information.

(b) Information on a claim may be released as provided by Subsection (a) to:

(1) the employee or the employee's legal beneficiary;

(2) the employee's or the legal beneficiary's representative;

(3) the employer at the time of injury;

(4) the insurance carrier;

(5) the Texas Certified Self-Insurer Guaranty Association established under Subchapter G, Chapter 407, if that association has assumed the obligations of an impaired employer;

(6) the Texas Property and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an impaired insurance company;

(7) a third-party litigant in a lawsuit in which the cause of action arises from the incident that gave rise to the injury; or

(8) with regard to information described by Subsection (c-3), an insurance carrier that has adopted an antifraud plan under Subchapter B, Chapter 704, Insurance Code, or the authorized representative of such an insurance carrier.

(c) The requirements of Subsection (a)(1) do not apply to a request from a third-party litigant described by Subsection (b)(7).

(c-1) For purposes of this section only, "insurance carrier" means:

(1) a certified self-insurer; or

(2) an entity authorized under the Insurance Code or another insurance law of this state that provides health insurance coverage or health benefits in this state, including:

(A) an insurance company, including an insurance company that holds a certificate of authority issued by the commissioner of insurance to engage in the business of workers' compensation insurance in this state;

(B) a group hospital service corporation under Chapter 842, Insurance Code;

(C) a health maintenance organization under Chapter 843, Insurance Code;

(D) a stipulated premium company under Chapter 884, Insurance Code;

(E) a fully self-insured plan, as described by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(F) a governmental plan, as defined by Section 3(32), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(32));

(G) an employee welfare benefit plan, as defined by Section 3(1), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)); and

(H) an insurer authorized by the Texas Department of Insurance to offer disability insurance in this state.

(c-2) An insurance carrier is not required to demonstrate that a subclaim exists in order to obtain information under Subsection (b)(8).

(c-3) An insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier may submit to the commission on a monthly basis a written request for claims information. The request must contain a list of the names of persons about whom claims information is requested. The insurance carrier must certify in the carrier's request that each person listed is, or has been, an insured under the carrier's insurance program. The commission shall examine the commission's records to identify all claims related to the listed persons. If a claims record exists for a listed person, the commission promptly shall provide information on each workers' compensation claim filed by that person to the carrier or the carrier's representative in an electronic format. The information provided under this subsection must include, if available:

(1) the full name of the workers' compensation claimant;

(2) the social security number of the workers' compensation claimant;

(3) the date of birth of the workers' compensation claimant;

(4) the name of the employer of the workers' compensation claimant;

(5) the date of the injury;

(6) a description of the type of injury or the body part affected, including the workers' compensation claimant's description of how the injury occurred;

(7) the name of the treating doctor;

(8) the name, address, and claim number of the insurance carrier handling the claim;

(9) the name of the insurance adjustor handling the claim; and

(10) the identifying number assigned to the claim by the commission and the commission field office handling the claim.

(c-4) A potential subclaim identified by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier may form the basis for the identification and filing of a subclaim against an insurance carrier under this subtitle.

(c-5) Information received under this section by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier remains subject to confidentiality requirements of this subtitle while in the possession of the insurance carrier or representative. However, the following laws do not prohibit the commission from disclosing full information regarding a claim as necessary to determine if a valid subclaim exists:

- (1) Chapter 552, Government Code;
- (2) Chapter 159, Occupations Code; or
- (3) any other analogous law restricting disclosure of health care information.

(c-6) The commission may not redact claims records produced in an electronic data format under a request made under this section.

(c-7) An insurance carrier and its authorized representative may request full claims data under Subsection (b)(8), and the records shall be produced once each month. For purposes of this subsection, "full claims data" means an electronic download or tape in an electronic data format of the information listed in Subsection (c-3) on all cases relating to the workers' compensation claimants listed as insureds of the requesting insurance carrier.

(d) The commissioner by rule may establish a reasonable fee, not to exceed five cents for each claimant listed in an information request, for all information requested by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier in an electronic data

format. The commissioner shall adopt rules under Section 401.024(d) to establish:

(1) reasonable security parameters for all transfers of information requested under this section in electronic data format; and

(2) requirements regarding the maintenance of electronic data in the possession of an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier.

(e) The insurance carrier or the carrier's authorized representative must execute a written agreement with the commission before submitting the carrier's first request under Subsection (c-3). The agreement must contain a provision by which the carrier and the representative agree to comply with the commission's rules governing security parameters applicable to the transfer of information under Subsection (d)(1) and the maintenance of electronic data under Subsection (d)(2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1033, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.022, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.132, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1190 (H.B. 251), Sec. 1, eff. June 18, 2005.

Sec. 402.085. EXCEPTIONS TO CONFIDENTIALITY. (a) The division shall release information on a claim to:

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

(2) a legislative committee for legislative purposes;

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

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

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

(B) locating an absent parent; or

(5) the office of injured employee counsel for any statutory or regulatory purpose that relates to a duty of that office as provided by Section 404.111(a).

(b) The division may release information on a claim to a governmental agency, political subdivision, or regulatory body to use to:

(1) investigate an allegation of a criminal offense or licensing or regulatory violation;

(2) provide:

(A) unemployment compensation benefits;

(B) crime victims compensation benefits;

(C) vocational rehabilitation services; or

(D) health care benefits;

(3) investigate occupational safety or health violations;

(4) verify income on an application for benefits under an income-based state or federal assistance program; or

(5) assess financial resources in an action, including an administrative action, to:

(A) establish, modify, or enforce a child support, medical support, or dental support obligation;

(B) establish paternity;

(C) locate an absent parent; or

(D) cooperate with another state in an action authorized under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), or Chapter 231, Family Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.43(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1426, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.023, eff.

September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. [1774](#)), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. [550](#)), Sec. 71, eff. September 1, 2018.

Sec. 402.086. TRANSFER OF CONFIDENTIALITY. (a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

(b) This section does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has applied for employment, if that information was lawfully acquired by the employer releasing the information.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 402.087. INFORMATION AVAILABLE TO PROSPECTIVE EMPLOYERS. (a) A prospective employer who has workers' compensation insurance coverage and who complies with this subchapter is entitled to obtain information on the prior injuries of an applicant for employment if the employer obtains written authorization from the applicant before making the request.

(b) The employer must make the request by telephone or file the request in writing not later than the 14th day after the date on which the application for employment is made.

(c) The request must include the applicant's name, address, and social security number.

(d) If the request is made in writing, the authorization must be filed simultaneously. If the request is made by telephone, the employer must file the authorization not later than the 10th day after the date on which the request is made.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 402.088. REPORT OF PRIOR INJURY. (a) On receipt of a valid request made under and complying with Section [402.087](#), the division shall review its records.

(b) If the division finds that the applicant has made two or more general injury claims in the preceding five years, the division shall release the date and description of each injury to the employer.

(c) The information may be released in writing or by telephone.

(d) If the employer requests information on three or more applicants at the same time, the division may refuse to release information until it receives the written authorization from each applicant.

(e) In this section, "general injury" means an injury other than an injury limited to one or more of the following:

- (1) an injury to a digit, limb, or member;
- (2) an inguinal hernia; or
- (3) vision or hearing loss.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.024, eff. September 1, 2005.

Sec. 402.089. FAILURE TO FILE AUTHORIZATION. An employer who receives information by telephone from the division under Section 402.088 and who fails to file the necessary authorization in accordance with Section 402.087 commits an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.025, eff. September 1, 2005.

Sec. 402.090. STATISTICAL INFORMATION. The division, the Texas Department of Insurance, or any other governmental agency may prepare and release statistical information if the identity of an employee is not explicitly or implicitly disclosed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.026, eff.

September 1, 2005.

Sec. 402.091. FAILURE TO MAINTAIN CONFIDENTIALITY; OFFENSE; PENALTY. (a) A person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this subchapter to a person not authorized to receive the information directly from the division.

(b) A person commits an offense if the person knowingly, intentionally, or recklessly receives information that is confidential under this subchapter and that the person is not authorized to receive.

(c) An offense under this section is a Class A misdemeanor.

(d) An offense under this section may be prosecuted in a court in the county where the information was unlawfully received, published, disclosed, or distributed.

(e) A district court in Travis County has jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.18, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.027, eff. September 1, 2005.

Sec. 402.092. INVESTIGATION FILES CONFIDENTIAL; DISCLOSURE OF CERTAIN INFORMATION. (a) In this section, "investigation file" means any information compiled or maintained by the division with respect to a division investigation authorized under this subtitle or other workers' compensation law. The term does not include information or material acquired by the division that is relevant to an investigation by the insurance fraud unit and subject to Section 701.151, Insurance Code.

(b) Information maintained in the investigation files of the division is confidential and may not be disclosed except:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the division;

(3) on a judicial determination of good cause;

(4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States; or

(5) to an insurance carrier if the investigation file relates directly to a felony regarding workers' compensation or to a claim in which restitution is required to be paid to the insurance carrier.

(c) Division investigation files are not open records for purposes of Chapter 552, Government Code.

(d) Information in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information.

(e) The division, upon request, shall disclose the identity of a complainant under this section if the division finds:

(1) the complaint was groundless or made in bad faith;

(2) the complaint lacks any basis in fact or evidence;

(3) the complaint is frivolous; or

(4) the complaint is done specifically for competitive or economic advantage.

(f) Upon completion of an investigation in which the division determines a complaint is described by Subsection (e), the division shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.19, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.028, eff. September 1, 2005.

SUBCHAPTER F. COOPERATION WITH OFFICE OF INJURED EMPLOYEE COUNSEL

Sec. 402.251. COOPERATION; FACILITIES. (a) The department and the division shall cooperate with the office of injured employee counsel in providing services to claimants under this

subtitle.

(b) The department shall provide facilities to the office of injured employee counsel in each regional office operated to administer the duties of the division under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.029, eff. September 1, 2005.