

- SUBJECT:** Suspending workers' compensation income benefits
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 4 ayes — Oliveira, Bohac, Orr, Workman
2 nays — E. Rodriguez, Walle
1 absent — Villalba
- WITNESSES:** For — Lance Mullins, American Institute of Architects; (*Registered, but did not testify:* Lindsey Baker, City of Denton; Pam Beachley, Texas Cotton Ginners' Trust; Albert Betts, Association of Fire and Casualty Companies of Texas; Ron Cobb, American Insurance Association; Cathy Dewitt, Texas Association of Business; Jon Fisher, Associated Builders and Contractors of Texas; Sam McMurry, Texas Self Insurance Association; David Reagan, Texas Municipal League Intergovernmental Risk Pool; Paul Sugg, Texas Association of Counties; Joe Woods, Property Casualty Insurers Association of America)
- Against — Alan Tysinger; (*Registered, but did not testify:* Rick Levy, Texas AFL-CIO; Brad McClellan)
- On — (*Registered, but did not testify:* Amy Lee, Texas Department of Insurance)
- BACKGROUND:** Labor Code, sec. 408.0041 allows the commissioner of the Department of Insurance (TDI) to issue an order for an employee to have a medical examination, on the request of the employee or the insurance carrier. This medical examination is carried out by a designated doctor and specifically evaluates the following and related issues:
- the impairment caused by the compensable injury;
 - the possible attainment of maximum medical improvement;
 - the extent of the compensable injury;
 - whether the disability is a result of a work-related injury; and
 - the ability of the employee to return to work.

If the insurance carrier is dissatisfied with the designated doctor's verdict,

it may request another examination by a doctor selected by the carrier from the Department of Insurance. If the employee misses a designated doctor's examination without good cause, the commissioner of TDI may suspend the employee's temporary income benefits.

DIGEST: HB 1155 would suspend all income benefits during a period in which the employee missed a designated doctor's examination, as described by Labor Code sec. 408.0041.

The bill would apply to a suspension of payment on or after the effective date. The bill would take effect September 1, 2013.

SUPPORTERS SAY: This bill is only fair to the insurance carriers who should not have to continue paying any income benefits to an employee who could not show up to a doctor's appointment. The bill would extend the suspension of temporary benefits after missing an appointment, already in law, to include other types of benefits the employee would otherwise receive. If the employee did attend a designated doctor's appointment after missing a previous appointment, benefits would be reinstated at the level at which they were before.

At present, although temporary income benefits may be suspended, impairment income benefits, supplemental benefits, or lifetime benefits cannot be suspended. The benefits system is tiered, meaning that an employee must exhaust temporary income benefits before moving onto other types of income benefits. If the employee no longer received temporary income benefits, then the person might not be subject to any enforcement action and this might cause them to attend a designated doctor's appointment.

Employees who demonstrate to TDI that they have good cause to miss the doctor's appointment (which takes into account an employee's attempt to reschedule the appointment) would not have any benefits suspended. The bill would penalize only those employees who missed the doctor's appointment and failed to show they had a good reason to do so.

The bill would be important as an extra enforcement mechanism to get the employee to go to the doctor's office. Administrative actions taken by TDI are not enough. They are in the form of fines, and frequently these employees do not have a source of income while they are not at work.

OPPONENTS
SAY:

The penalty outweighs the crime vastly. Just for missing a doctor's appointment, an employee could have all benefits cut, which could be the only source of income for an employee's family during the period of physical impairment.

The suspension of the permanent lifetime income benefits is serious and not justified for missing a single doctor's appointment. These lifetime benefits are paid to employees who lose total and permanent sight in both eyes, loss of limbs, paralysis, a brain injury resulting in insanity or imbecility, or massive third-degree burns. Lifetime income benefits are guaranteed until the employee's death, and if an employee had one of these injuries an insurance company would pay them regardless of the outcome of a designated doctor examination.

The bill is redundant, as TDI already has the ability to enforce administrative penalties on employees who fail to attend designated doctor's appointments.