

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 2089  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In the past, the workers' compensation division of the Texas Department of Insurance has interpreted state law relating to workers' compensation as providing that a claimant is entitled to only those benefits afforded by the law. However, in an effort to ensure the prompt payment of benefits, overpayments and underpayments occasionally occur, which the law does not specifically address.

Recently, appeals panels have taken a narrow approach to overpayments, requiring a specific statutory provision or rule permitting recoupment. In practice, carriers are essentially limited to recouping benefits when the average weekly wage was not properly reported. Under the appeals panels' current analysis, a carrier has difficulty recouping the overpayment of benefits, even when such an overpayment was made as a result of the injured worker's failure to inform the carrier that the worker has been working and earning wages since the worker's injury.

H.B. 2089 seeks to remedy this situation by requiring the commissioner of workers' compensation to establish procedures providing for the timely and accurate payment of workers' compensation income benefits and the resolution of overpayments and underpayments of such benefits.

H.B. 2089 amends current law relating to the resolution of overpayment or underpayment of income benefits under the workers' compensation program.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTION 2 (Section 408.0815, Labor Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 408.081(a), Labor Code, to entitle an employee to timely and accurate income benefits as provided in this chapter.

SECTION 2. Amends Subchapter E, Chapter 408, Labor Code, by adding Section 408.0815, as follows:

Sec. 408.0815. RESOLUTION OF OVERPAYMENT OR UNDERPAYMENT OF INCOME BENEFITS. (a) Requires the commissioner of workers' compensation (commissioner) by rule to establish a procedure by which an insurance carrier:

(1) is authorized to recoup an overpayment of income benefits from future income benefit payments that are not reimbursable under Section 410.209 (Reimbursement for Overpayment); and

(2) is required to pay an underpayment of income benefits, including interest on accrued but unpaid benefits, in accordance with this subtitle.

(b) Requires that the procedure under Subsection (a) include:

(1) a process by which an injured employee may notify the insurance carrier of an underpayment;

(2) the time frame and methodology by which an insurance carrier shall pay to an injured employee an underpayment;

(3) a process by which an insurance carrier shall notify an injured employee of an overpayment of income benefits;

(4) the time frame and methodology by which an insurance carrier may recoup an overpayment through the reduction of a future income benefit payment; and

(5) a method for coordinating overpayments that may be recouped from future income benefits and reimbursements described by Section 410.209.

(c) Requires that the procedure for recouping overpayments under Subsection (a)(1) take into consideration the cause of the overpayment and minimize the cost to the injured employee.

SECTION 3. Requires the commissioner to adopt rules to implement Section 408.0815, Labor Code, as added by this Act, not later than January 1, 2012.

SECTION 4. Effective date: September 1, 2011.