

Amend CSHB 7 on page 333, between lines 22 and 23, by inserting a new Article 2A in the bill, to read as follows:

ARTICLE 2A. ALTERNATIVE COMPENSATION PILOT PROGRAM

SECTION 2A.001. Title 5, Labor Code, is amended by adding Subtitle D to read as follows:

SUBTITLE D. ALTERNATIVE COMPENSATION PROGRAMS

CHAPTER 551. PILOT PROGRAM ON USE OF INSURANCE POLICY TO PROVIDE
MEDICAL AND INCOME BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 551.001. DEFINITIONS. In this chapter:

(1) "Alternative benefit plan" means a plan of health care benefits and wage replacement benefits offered by an employer to an employee who sustains an injury in the course and scope of employment in lieu of workers' compensation insurance coverage.

(2) "Commissioner" means the commissioner of insurance.

(3) "Course and scope of employment" has the meaning assigned by Section 401.011(12).

(4) "Department" means the Texas Department of Insurance.

(5) "Employer" means a person who employs one or more employees.

(6) "Employee" means a person in the service of another under any contract of hire, whether express or implied or oral or written. The term includes an employee employed in the usual course and scope of the employer's business who is directed by the employer to perform services temporarily outside the usual course and scope of the employer's business. The term does not include an independent contractor or the employee of an independent contractor.

(7) "Group health insurance policy" means a group, blanket, or franchise insurance policy that provides benefits for health care services resulting from accident or disease. For purposes of this chapter, the term includes a group hospital service contract or a group subscriber contract.

(8) "Plan issuer" means:

(A) a health insurer, including a life, health,

and accident insurance company, a health and accident insurance company, and any other person operating under Chapter 841, 842, 884, 885, 982, or 1501, Insurance Code, who is authorized to deliver or issue for delivery group health insurance policies in this state; or

(B) an insurer authorized by the department to write workers' compensation insurance in this state.

(9) "Program" means the alternative benefit plan pilot program established under this chapter.

(10) "Qualified insurance policy" means a group health insurance policy approved by the department as provided by Section 551.051 that provides health care benefits for accident or disease to each employee of an employer, regardless of whether the accident or disease is caused by or directly related to the employee's employment.

Sec. 551.002. EXPIRATION. The program is abolished and this chapter expires effective September 1, 2009.

[Sections 551.003-551.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF
COMMISSIONER AND DEPARTMENT

Sec. 551.051. IMPLEMENTATION OF PROGRAM; POLICY APPROVAL PROCESS. (a) The commissioner shall develop and operate a pilot program under which an employer may offer an alternative benefit plan to the employer's employees through a qualified insurance policy offered by a plan issuer that:

(1) provides health care benefits to the employees, including benefits for an injury sustained by an employee in the course and scope of the employee's employment; and

(2) is in lieu of medical benefits under workers' compensation insurance coverage as described by Subtitle A.

(b) Before a plan issuer may deliver or issue for delivery in this state a qualified insurance policy, the plan issuer must submit the policy to the department for approval in the manner prescribed by the commissioner, accompanied by a filing fee set by the commissioner by rule.

(c) The commissioner by rule shall adopt guidelines for the approval of policies submitted to the department under this

section. The guidelines must require that the policy include limits and coverages for health care services, including hospitalization, that are at least equivalent to the limits and coverages applicable to the medical benefits provided to an employee covered under Subtitle A. The policy may provide health care benefits using a preferred provider benefit plan subject to Chapter 1301, Insurance Code.

(d) The commissioner shall review a policy submitted under Subsection (b) not later than the 30th day after the date the policy is submitted to the department. If the commissioner disapproves a policy, the department shall notify the plan issuer who submitted the policy not later than the fifth day after the date on which the policy is disapproved.

(e) If the commissioner approves the policy, the department shall notify the plan issuer not later than the 10th day after the date of the final approval. The plan issuer may begin using the policy as of the date of the final approval.

Sec. 551.052. ENDORSEMENTS; COVERAGE IN LIEU OF INCOME BENEFITS; APPROVAL. (a) If a policy is approved under Section 551.051, the plan issuer shall offer the employer endorsements to the policy that provide insurance coverage for each employee of the employer, or the legal beneficiary of a deceased employee, against a loss caused by:

(1) any loss of wages incurred as a result of an accident or disease, regardless of whether the accident or disease is caused by or directly related to the employee's employment; or

(2) the death of the employee.

(b) The plan issuer must submit an endorsement to the commissioner for approval in the manner prescribed for approval of a policy under Section 551.051.

(c) The commissioner by rule shall adopt guidelines for the approval of policy endorsements submitted to the department under this section. The guidelines must require that the endorsements include:

(1) reasonable income replacement coverage for the period during which the injured employee is unable to work; and

(2) limits and coverages for death and burial benefits

that are at least equivalent to the limits and coverages applicable to the benefits provided to an employee covered under Subtitle A.

Sec. 551.053. RULEMAKING. The commissioner shall adopt rules as necessary to implement the duties of the department under this chapter.

Sec. 551.054. REPORT TO LEGISLATURE. Not later than December 1 of each year, the commissioner shall submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature regarding the status and results of the program.

[Sections 551.055-551.100 reserved for expansion]

SUBCHAPTER C. OPERATION OF PROGRAM

Sec. 551.101. EMPLOYER AUTHORIZATION TO OFFER ALTERNATIVE BENEFIT PLAN. (a) Notwithstanding Subtitle A, an employer who elects to participate in the program may offer an alternative benefit plan to provide benefits to an employee who sustains an injury in the course and scope of the employee's employment. An employer may not offer an alternative benefit plan other than through the program as provided by this chapter.

(b) An employer may offer an alternative benefit plan only through:

(1) insurance coverage provided through a qualified insurance policy; and

(2) endorsements to that policy approved by the commissioner.

Sec. 551.102. WAIVER PROHIBITED; USE OF ARBITRATION. (a) Unless the commissioner determines that the plan offers benefits to an employee that are at least equivalent to the medical benefits and income benefits required under Subtitle A, an employer may not require an employee who is covered under an alternative benefit plan to waive:

(1) a right of action of the employee or a legal beneficiary of the employee at common law or under a statute of this state to recover damages for personal injuries or death sustained in the course and scope of the employment; or

(2) a right established under this chapter.

(b) An alternative benefit plan may not require an employee

or a legal beneficiary of an employee to submit a claim for personal injuries or death sustained in the course and scope of the employment to binding arbitration.

Sec. 551.103. PROVISION OF ALTERNATIVE BENEFIT PLAN OPTIONAL. An employer who does not elect to obtain workers' compensation insurance coverage under Subtitle A is not required by this chapter to participate in the program. This chapter does not affect the application of Section 406.033 to such an employer.

[Sections 551.104-551.150 reserved for expansion]

SUBCHAPTER D. PROVISION OF ALTERNATIVE BENEFIT PLAN THROUGH QUALIFIED INSURANCE POLICY AND ENDORSEMENTS

Sec. 551.151. RESPONSIBILITIES OF EMPLOYER. (a) An employer who elects to provide coverage under this chapter shall:

(1) pay any coinsurance or deductible otherwise imposed on the insured employee; and

(2) continue the payment of wages to an insured employee until that employee begins to receive insurance payments in lieu of wages under the insurance coverage provided through endorsements to the qualified insurance policy.

(b) If an employee receives benefits under an alternative benefit plan, the employer shall maintain a qualified insurance policy and endorsements for the benefit of that employee until the benefits to which the employee is entitled have been paid. A qualified insurance policy and endorsements required to be maintained under this subsection must provide benefits adequate to pay all benefits to which the employee is entitled.

Sec. 551.152. SUBROGATION. (a) This section applies to an action to recover damages for personal injuries or death sustained by an employee in the course and scope of employment against:

(1) an employer who has obtained a qualified insurance policy and endorsements covering that employee; or

(2) a third party.

(b) A judgment against an employer shall be reduced to the extent that the employee has been compensated or is entitled to be compensated under the employer's qualified insurance policy or endorsements. A judgment reduced under this subsection shall be reinstated to the extent that the qualified insurance policy or

endorsements are canceled or otherwise fail to fully compensate the employee or a legal beneficiary of the employee to the extent provided by the policy or endorsements.

(c) An insurance company that is liable for the payment of benefits to the employee or a legal beneficiary of the employee is subrogated to the rights of the employee or legal beneficiary against a third party.

[Sections 551.153-551.200 reserved for expansion]

SUBCHAPTER E. EFFECT OF ALTERNATIVE BENEFIT PLAN

Sec. 551.201. EFFECT OF ALTERNATIVE BENEFIT PLAN. (a) Except as specifically provided by this chapter, Subtitle A does not apply to an employer who provides an alternative benefit plan.

(b) An action brought to recover damages against an employer for personal injury or death sustained by an employee in the course and scope of employment is governed by this chapter only if the employee or the employee's beneficiaries are covered by an alternative benefit plan on the date that the cause of action accrues.

Sec. 551.202. CONTRACT REQUIREMENTS. A person who requires an employer, as a prerequisite to entering into a contract with that employer, to present evidence of workers' compensation insurance coverage shall accept instead of that evidence a qualified insurance policy and endorsements issued under this chapter from an employer who obtains and maintains in effect a qualified insurance policy and endorsements.

SECTION 2A.002. (a) The commissioner of insurance shall adopt rules as required by this article not later than January 1, 2006.

(b) Subchapter E, Chapter 551, Labor Code, as added by this article, takes effect March 1, 2006, and applies only to an alternative benefit plan entered into on or after that date.

SECTION 2A.003. Except as provided by Section 2A.002(b) of this article, this article takes effect September 1, 2005.