

HB 388 -- Insurance Compliance Audits

Sponsor: Yates

This bill makes privileged any information collected in the course of an insurance compliance audit. The information is not discoverable or admissible as evidence in any legal action, unless the insurer expressly waives the privilege. Persons preparing the audit documents will not be examined in civil, criminal, or administrative hearings unless the documents are not privileged.

In a civil, administrative, or criminal proceeding, a court may order disclosure of materials, after in-camera review, if it is determined that the privilege was asserted for fraudulent purposes or that the privilege does not apply. In a criminal proceeding, disclosure may be ordered if the material contains relevant evidence of a crime which is not otherwise available.

The privilege is deemed to be waived by the insurer 30 days after receiving a request for disclosure of a self-evaluative audit by a prosecutor or the Attorney General, unless a petition for an in-camera examination is filed. After conducting an in-camera review of the insurance compliance audit document, the court may require disclosure of any portion of the document it determines is not privileged. Any compelled disclosure of an audit will not make the audit a public document or be deemed a waiver of the privilege for any other civil, criminal, or administrative proceeding.

An insurer has the burden of demonstrating the applicability of the privilege. The privilege will not apply to information:

- (1) Expressly required to be collected, maintained, or reported to regulatory agencies pursuant to law;
- (2) Obtained by observation or monitoring by any regulatory agency;
- (3) Obtained from a source independent of the insurance compliance audit.

The insurance compliance self-evaluative privilege created in these sections will apply to all litigation or administrative proceedings initiated after the effective date of the bill.