

HCS HB 388 -- INSURANCE COMPLIANCE AUDITS (Yates)

COMMITTEE OF ORIGIN: Insurance Policy

This substitute makes certain documents that are submitted to the Department of Insurance non-public documents, including information in consumer complaint files and information submitted by an insurer or producer for purposes of investigation. This information is confidential and not subject to disclosure unless a subpoena issued by the proper prosecuting attorney, Attorney General, administrative hearing officer, or court. The department director can make these documents public if admitted as evidence in any administrative, civil, or criminal enforcement proceeding.

Any information collected in the course of an insurance compliance audit is considered privileged. 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 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.

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 or criminal 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; and
- (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 substitute.

FISCAL NOTE: Estimated Cost on General Revenue Fund of Unknown less than \$100,000 in FY 2006, FY 2007, and FY 2008. No impact on Other State Funds in FY 2006, FY 2007, and FY 2008.