

SUBJECT: Presuming COVID-19 was contracted on the job for certain employees

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 5 ayes — C. Turner, Ordaz Perez, Patterson, Shine, S. Thompson

0 nays

4 absent — Hefner, Cain, Crockett, Lambert

SENATE VOTE: On final passage, April 21 — 31-0

WITNESSES: No public hearing.

BACKGROUND: Under Government Code ch. 607, a firefighter, peace officer, or emergency medical technician (EMT) who suffers from certain respiratory diseases or illnesses that result in death or disability is presumed to have contracted the disease or illness during the course and scope of employment.

Under sec. 607.057, the presumption applies to a determination of whether a firefighter's, peace officer's, or EMT's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan

DIGEST: CSSB 22 would provide that a detention officer, corrections employee, firefighter, peace officer, or EMT who, based on an FDA-approved test, suffered from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) that resulted in death or disability would be presumed to have contracted the virus or disease during the course and scope of employment if the person:

- was employed in the area designated in a disaster declaration by the governor and the disaster was related to SARS-CoV-2 or COVID-19; and

- contracted the disease during the disaster.

"Corrections employee" would mean an employee of the Texas Department of Criminal Justice whose job duties required regular interaction with the public or an incarcerated population. "Detention officer" would mean an individual employed by a state agency or political subdivision to ensure the safekeeping of prisoners and the security of a municipal, county, or state penal institution.

The presumption would apply only to a person who was employed on a full-time basis and was last on duty no more than 14 days before testing positive.

The presumption for SARS-CoV-2 and COVID-19 would be subject to the same conditions as others under Government Code ch. 607, except that the presumption would be exempt from a provision requiring a person to have been employed for five or more years. Certain conditions of the presumption established for tuberculosis or other respiratory illnesses would not apply to a claim that an employee suffered from SARS-CoV-2 or COVID-19.

A rebuttal offered to a presumption under this bill could be based on evidence that a person with whom the employee resided had a confirmed diagnosis of SARS-CoV-2 or COVID-19 but could not be based solely on evidence relating to the risk of exposure of the person with whom the employee resided.

The bill would not affect the right of a detention officer, corrections employee, firefighter, peace officer, or EMT to provide proof that an injury or illness occurred during the course and scope of employment without using the presumption.

Current law regarding subclaims and reimbursement procedures for certain entities would not apply to a claim determined to be compensable or accepted by an insurance carrier using the presumption. Notwithstanding this provision, an injured employee could request

reimbursement for health care paid by the employee as provided below.

An injured employee whose claim was determined to be compensable using the presumption could request reimbursement for health care paid by the employee, including copayments and partial payments, by submitting to the insurance carrier a legible written request and documentation showing the amounts paid to the health care provider. The carrier would have to provide reimbursement or deny the request within 45 days of the request.

If an insurance carrier denied a request, the employee could seek medical dispute resolution as provided by current law and the Texas Department of Insurance Division of Workers' Compensation rules. An employee's request for medical dispute resolution would be considered timely if submitted no later than 120 days after the carrier denied the request for reimbursement.

A person who on or after the date the governor declared a disaster relating to COVID-19, but before the effective date of this bill, contracted SARS-CoV-2 or COVID-19 could file a claim for benefits, compensation, or assistance on or after the effective date of this bill, regardless of whether the claim was otherwise considered untimely. The provisions of this bill would apply to such a claim, which would have to be filed within six months of the effective date.

A person who on or after the date the governor declared a disaster relating to SARS-CoV-2 or COVID-19, but before the effective date of this bill, filed a claim for benefits, compensation, or assistance that was denied could, on or after the effective date, request in writing that the insurance carrier reprocess the claim. The provisions of this bill would apply to such a request, which would have to be filed within one year of the effective date.

No later than 60 days after receiving a written request, the insurance carrier would have to reprocess the claim and notify the individual of whether the carrier accepted or denied the claim. If the claim was denied,

the notice would have to include information on the process for disputing the denial. The Division of Workers' Compensation, as soon as practicable after the effective date of this bill, would have to prescribe the provisions of such a notice, which would have to be clear and easily understandable.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021, and except as otherwise provided, the bill would apply to a claim pending on or filed on or after the effective date.

**SUPPORTERS
SAY:**

CSSB 22 would support first responders and public safety employees by establishing COVID-19 as a presumptive illness for workers' compensation and other benefits for detention officers, corrections employees, firefighters, peace officers, and EMTs. During the pandemic, many people were able to work from home to avoid exposure, but these employees did not have that option and had to encounter the risk of exposure to perform their duties and protect the people of Texas. Many have faced issues with obtaining workers' compensation due to injury or illness in the past, so the bill would simplify the process by adding COVID-19 as presumptive.

CSSB 22 would be accurately tailored to just those employees who had contracted COVID-19 in an area of disaster and while on the job by providing that the employee had to have tested positive using an FDA-approved test no more than two weeks after being on duty. The bill also would include certain protections for the employer and provide for rebuttal. The bill would be retroactive to ensure that employees who had claims denied in the past year could reapply for workers' compensation within six months after the bill's effective date.

While workers' compensation payments create significant costs, the Legislature could continue to work this session on how federal funds could be used to fill this need. Regardless of the cost, it is critical that the state provide care and compensation for first responders who contracted COVID-19 on the job.

The COVID-19 presumption for workers' compensation under the bill also could apply to line of duty death benefits, even if not explicitly stated in statute. The bill would qualify specific employees for the presumption based on input from interested stakeholders and with due consideration of which public safety employees lacked control over their environments and had to be exposed to disease within the scope of their jobs. Not every individual can be covered by the presumption, but the bill would include those who risked their health to provide necessary public safety services.

CRITICS
SAY:

CSSB 22 would negatively impact local governments by creating a presumption that public safety employees contracted COVID-19 on the job for the purpose of worker's compensation and other benefits. This could come at a cost, especially to small or rural regions, and such costs would have to be borne by taxpayers. While the state should recognize the first responders who performed their duties during the pandemic, the Legislature instead could create a special benefit fund, with state or federal dollars, to directly pay benefits without requiring first responders to apply for benefits through the complicated system of worker's compensation.

OTHER
CRITICS
SAY:

CSSB 22 would not go far enough to provide benefits for first responders who risked their health and safety to perform their duties during the COVID-19 pandemic. The presumption should explicitly apply to line of duty death benefits to ensure that the surviving families of a first responder who passed away from the disease received the necessary benefits. By explicitly stating this in law, families would not be tied up in negotiations for such benefits for months. CSSB 22 also should cover all employees who risked exposure to COVID-19, such as custodial staff, to ensure those employees received the same benefits.

NOTES:

According to the Legislative Budget Board, it is unknown how many employees would file or refile claims under the bill, so the fiscal impact cannot be determined. The State Office of Risk Management estimates that payment of previously denied claims could be about \$22.1 million.