

By: Moody, Guillen, Howard

H.B. No. 396

Substitute the following for H.B. No. 396:

By: Turner of Tarrant

C.S.H.B. No. 396

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the eligibility of nurses for workers' compensation
3 benefits for coronavirus disease (COVID-19) and payment of those
4 benefits.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter A, Chapter 408, Labor Code, is
7 amended by adding Section 408.009 to read as follows:

8 Sec. 408.009. REBUTTABLE PRESUMPTION OF COMPENSABILITY OF
9 CORONAVIRUS DISEASE (COVID-19) FOR NURSES. (a) In this section,
10 "nurse" means an individual licensed under Chapter 301, Occupations
11 Code.

12 (b) A nurse, including a nurse employed by a state agency or
13 a political subdivision of this state, who suffers from coronavirus
14 disease (COVID-19) on or after February 1, 2020, resulting in
15 disability or death is presumed to have contracted the disease
16 during the course and scope of employment as a nurse if the nurse:

17 (1) is assigned:

18 (A) to treat a patient diagnosed with the
19 disease; or

20 (B) to duties that require the nurse to come in
21 contact with a patient diagnosed with the disease;

22 (2) contracts the disease not later than the 14th day
23 following the date the nurse treated or came in contact with the
24 patient; and

1 (3) before diagnosis did not decline or refuse to
2 receive a preventative immunization against the disease, unless the
3 nurse declined or refused the immunization because the immunization
4 was medically contraindicated.

5 (c) The presumption under Subsection (b) may be rebutted
6 through a showing by a preponderance of the evidence that a risk
7 factor, accident, hazard, or other cause not associated with the
8 individual's employment as a nurse was a substantial factor in
9 bringing about the individual's disease or illness, without which
10 the disease or illness would not have occurred.

11 (d) A rebuttal offered under Subsection (c) must include a
12 statement by the person offering the rebuttal that describes, in
13 detail, the evidence that the person reviewed before making the
14 determination that a cause not associated with the individual's
15 employment as a nurse was a substantial factor in bringing about the
16 individual's disease or illness, without which the disease or
17 illness would not have occurred.

18 (e) In addressing an argument based on a rebuttal offered
19 under Subsection (c), an administrative law judge shall make
20 findings of fact and conclusions of law that consider whether a
21 qualified expert, relying on evidence-based medicine, stated the
22 opinion that, based on reasonable medical probability, an
23 identified risk factor, accident, hazard, or other cause not
24 associated with the individual's employment as a nurse was a
25 substantial factor in bringing about the individual's disease or
26 illness without which the disease or illness would not have
27 occurred.

1 SECTION 2. Section 408.181(b), Labor Code, is amended to
2 read as follows:

3 (b) Subject to Sections [~~Section~~] 408.061 and 408.1811, the
4 amount of a death benefit is equal to 75 percent of the employee's
5 average weekly wage.

6 SECTION 3. Subchapter J, Chapter 408, Labor Code, is
7 amended by adding Section 408.1811 to read as follows:

8 Sec. 408.1811. DEATH BENEFITS FOR CERTAIN NURSES.
9 Notwithstanding Section 408.181, in lieu of any other benefits to
10 which a beneficiary is entitled under this subchapter, the amount
11 of a death benefit paid to the legal beneficiary of a nurse who
12 suffered from coronavirus disease (COVID-19) on or after February
13 1, 2020, resulting in death is \$500,000 in a lump sum.

14 SECTION 4. Section 409.021(a-3), Labor Code, is amended to
15 read as follows:

16 (a-3) An insurance carrier is not required to comply with
17 Subsection (a) if the claim results from an employee's disability
18 or death for which a presumption is claimed to be applicable under
19 Section 408.009 of this code or Subchapter B, Chapter 607,
20 Government Code, and, not later than the 15th day after the date on
21 which the insurance carrier received written notice of the injury,
22 the insurance carrier has provided the employee and the division
23 with a notice that describes all steps taken by the insurance
24 carrier to investigate the injury before the notice was given and
25 the evidence the carrier reasonably believes is necessary to
26 complete its investigation of the compensability of the
27 injury. The commissioner shall adopt rules as necessary to

1 implement this subsection.

2 SECTION 5. Section 409.022(d), Labor Code, is amended to
3 read as follows:

4 (d) In this subsection, the terms "emergency medical
5 technician," "firefighter," and "peace officer" have the meanings
6 assigned by Section 607.051, Government Code. The term "nurse" has
7 the meaning assigned by Section 408.009. In addition to the other
8 requirements of this section, if an insurance carrier's notice of
9 refusal to pay benefits under Section 409.021 is sent in response to
10 a claim for compensation resulting from an emergency medical
11 technician's, a firefighter's, or a peace officer's disability or
12 death for which a presumption is claimed to be applicable under
13 Subchapter B, Chapter 607, Government Code, or from a nurse's
14 disability or death for which a presumption is claimed to be
15 applicable under Section 408.009, the notice must include a
16 statement by the carrier that:

17 (1) explains why the carrier determined a presumption
18 under that subchapter does not apply to the claim for compensation;
19 and

20 (2) describes the evidence that the carrier reviewed
21 in making the determination described by Subdivision (1).

22 SECTION 6. Section 415.021(c-2), Labor Code, is amended to
23 read as follows:

24 (c-2) In determining whether to assess an administrative
25 penalty involving a claim in which the insurance carrier provided
26 notice under Section 409.021(a-3), the commissioner shall consider
27 whether:

1 (1) the employee cooperated with the insurance
2 carrier's investigation of the claim;

3 (2) the employee timely authorized access to the
4 applicable medical records before the insurance carrier's deadline
5 to:

6 (A) begin payment of benefits; or

7 (B) notify the division and the employee of the
8 insurance carrier's refusal to pay benefits; and

9 (3) the insurance carrier conducted an investigation
10 of the claim, applied the statutory presumptions under Section
11 408.009 of this code or Subchapter B, Chapter 607, Government Code,
12 and expedited medical benefits under Section 504.055.

13 SECTION 7. (a) Except as otherwise provided by this
14 section, Section 408.009, Labor Code, as added by this Act, applies
15 only to a claim for workers' compensation benefits based on an
16 injury that occurs on or after the effective date of this Act. A
17 claim based on an injury that occurs before that date is governed by
18 the law as it existed on the date the injury occurred, and the
19 former law is continued in effect for that purpose.

20 (b) Notwithstanding Section 410.169 or 410.205, Labor Code,
21 or any other law, a nurse whose injury occurred on or after February
22 1, 2020, but before the effective date of this Act, and whose claim
23 was subsequently denied may request in writing that the insurance
24 carrier reprocess the claim on or after the effective date of this
25 Act, but not later than six months after the effective date of this
26 Act, and the changes in law made by this Act apply to that claim.

27 SECTION 8. This Act takes effect immediately if it receives

1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2021.