

By: Patterson

H.B. No. 790

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to certain claims for benefits, compensation, or  
3 assistance by certain public safety employees and survivors of  
4 certain public safety employees.

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

6 SECTION 1. Title 5, Subtitle A, Section [408.0041](#), Labor  
7 Code, is amended by adding subsection (m) to read as follows:

8 Sec. 408.0041. DESIGNATED DOCTOR EXAMINATION. (a) At the  
9 request of an insurance carrier or an employee, or on the  
10 commissioner's own order, the commissioner may order a medical  
11 examination to resolve any question about:

- 12 (1) the impairment caused by the compensable injury;
- 13 (2) the attainment of maximum medical improvement;
- 14 (3) the extent of the employee's compensable injury;
- 15 (4) whether the injured employee's disability is a  
16 direct result of the work-related injury;
- 17 (5) the ability of the employee to return to work; or
- 18 (6) issues similar to those described by Subdivisions  
19 (1)-(5).

20 (b) Except as provided by Section [408.1225](#)(f), a medical  
21 examination requested under Subsection (a) shall be performed by  
22 the next available doctor on the division's list of certified  
23 designated doctors whose credentials are appropriate for the area  
24 of the body affected by the injury and the injured employee's

1 diagnosis as determined by commissioner rule. The division shall  
2 assign a designated doctor not later than the 10th day after the  
3 date on which the request under Subsection (a) is approved, and the  
4 examination must be conducted not later than the 21st day after the  
5 date on which the commissioner issues the order under Subsection  
6 (a). An examination under this section may not be conducted more  
7 frequently than every 60 days, unless good cause for more frequent  
8 examinations exists, as defined by commissioner rules.

9 (b-1) A designated doctor, other than a chiropractor, is  
10 subject to Section 408.0043. A designated doctor who is a  
11 chiropractor is subject to Section 408.0045. To the extent of a  
12 conflict between this section and Section 408.0043 or 408.0045,  
13 this section controls.

14 (c) The treating doctor and the insurance carrier are both  
15 responsible for sending to the designated doctor all of the injured  
16 employee's medical records relating to the issue to be evaluated by  
17 the designated doctor that are in their possession. The treating  
18 doctor and insurance carrier may send the records without a signed  
19 release from the employee. The designated doctor is authorized to  
20 receive the employee's confidential medical records to assist in  
21 the resolution of disputes. The treating doctor and insurance  
22 carrier may also send the designated doctor an analysis of the  
23 injured employee's medical condition, functional abilities, and  
24 return-to-work opportunities.

25 (d) To avoid undue influence on a person selected as a  
26 designated doctor under this section, and except as provided by  
27 Subsection (c), only the injured employee or an appropriate member

1 of the division's staff may communicate with the designated doctor  
2 about the case regarding the injured employee's medical condition  
3 or history before the examination of the injured employee by the  
4 designated doctor. After that examination is completed,  
5 communication with the designated doctor regarding the injured  
6 employee's medical condition or history may be made only through  
7 appropriate division staff members. The designated doctor may  
8 initiate communication with any doctor or health care provider who  
9 has previously treated or examined the injured employee for the  
10 work-related injury or with peer reviewers identified by the  
11 insurance carrier.

12 (e) The designated doctor shall report to the division. The  
13 report of the designated doctor has presumptive weight unless the  
14 preponderance of the evidence is to the contrary. An employer may  
15 make a bona fide offer of employment subject to Sections [408.103](#)(e)  
16 and [408.144](#)(c) based on the designated doctor's report.

17 (f) Unless otherwise ordered by the commissioner, the  
18 insurance carrier shall pay benefits based on the opinion of the  
19 designated doctor during the pendency of any dispute. If an  
20 insurance carrier is not satisfied with the opinion rendered by a  
21 designated doctor under this section, the insurance carrier may  
22 request the commissioner to order an employee to attend an  
23 examination by a doctor selected by the insurance carrier.

24 (f-1) The subsequent injury fund shall reimburse an  
25 insurance carrier for any overpayment of benefits made by the  
26 insurance carrier under Subsection (f) based on an opinion rendered  
27 by a designated doctor if that opinion is reversed or modified by a

1 final arbitration award or a final order or decision of the  
2 commissioner or a court. The commissioner shall adopt rules to  
3 provide for a periodic reimbursement schedule, providing  
4 reimbursement at least annually.

5 (f-2) An employee required to be examined by a designated  
6 doctor may request a medical examination to determine maximum  
7 medical improvement and the employee's impairment rating from the  
8 treating doctor or from another doctor to whom the employee is  
9 referred by the treating doctor if:

10 (1) the designated doctor's opinion is the employee's  
11 first evaluation of maximum medical improvement and impairment  
12 rating; and

13 (2) the employee is not satisfied with the designated  
14 doctor's opinion.

15 (f-3) The commissioner shall provide the insurance carrier  
16 and the employee with reasonable time to obtain and present the  
17 opinion of a doctor selected under Subsection (f) or (f-2) before  
18 the commissioner makes a decision on the merits of the issue.

19 (f-4) The commissioner by rule shall adopt guidelines  
20 prescribing the circumstances under which an examination by the  
21 employee's treating doctor or another doctor to whom the employee  
22 is referred by the treating doctor to determine any issue under  
23 Subsection (a), other than an examination under Subsection (f-2),  
24 may be appropriate.

25 (g) Except as otherwise provided by this subsection, an  
26 injured employee is entitled to have a doctor of the employee's  
27 choice present at an examination requested by an insurance carrier

1 under Subsection (f). The insurance carrier shall pay a fee set by  
2 the commissioner to the doctor selected by the employee. If the  
3 injured employee is subject to a workers' compensation health care  
4 network under Chapter 1305, Insurance Code, the doctor must be the  
5 employee's treating doctor.

6 (h) The insurance carrier shall pay for:

7 (1) an examination required under Subsection (a), (f),  
8 or (f-2), unless otherwise prohibited by this subtitle or by an  
9 order or rule of the commissioner; and

10 (2) the reasonable expenses incident to the employee  
11 in submitting to the examination.

12 (i) An employee who, without good cause as determined by the  
13 commissioner, fails or refuses to appear at the time scheduled for  
14 an examination under Subsection (a) or (f) commits an  
15 administrative violation. An injured employee may not be fined  
16 more than \$10,000 for a violation of this subsection.

17 (j) An employee is not entitled to temporary income  
18 benefits, and an insurance carrier is authorized to suspend the  
19 payment of temporary income benefits, during and for a period in  
20 which the employee fails to submit to an examination required by  
21 Subsection (a) or (f) unless the commissioner determines that the  
22 employee had good cause for the failure to submit to the  
23 examination. The commissioner may order temporary income benefits  
24 to be paid for the period for which the commissioner determined that  
25 the employee had good cause. The commissioner by rule shall ensure  
26 that:

27 (1) an employee receives reasonable notice of an

1 examination and the insurance carrier's basis for suspension; and

2 (2) the employee is provided a reasonable opportunity  
3 to reschedule an examination for good cause.

4 (k) If the report of a designated doctor indicates that an  
5 employee has reached maximum medical improvement or is otherwise  
6 able to return to work immediately, the insurance carrier may  
7 suspend or reduce the payment of temporary income benefits  
8 immediately.

9 (l) A person who makes a frivolous request for a medical  
10 examination under Subsection (a) or (f), as determined by the  
11 commissioner, commits an administrative violation.

12 (m) The first request of a Designated Doctor's examination  
13 by the carrier, injured employee or the Division of Workers'  
14 Compensation must include a request to the Designated Doctor to  
15 provide an opinion of the extent of the compensable injury.

16 SECTION 2. Title 5, Subtitle A, Section 409.021, Labor  
17 Code, has been amended by amending subsection (a) (2) (B) and adding  
18 subsections (a) (2) (B) and (C) and subsection (a-4) to read as  
19 follows:

20 Sec. 409.021. INITIATION OF BENEFITS; INSURANCE CARRIER'S  
21 REFUSAL; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall  
22 initiate compensation under this subtitle promptly. Not later than  
23 the 15th day after the date on which an insurance carrier receives  
24 written notice of an injury, the insurance carrier shall:

25 (1) begin the payment of benefits as required by this  
26 subtitle; or

27 (2) notify the division and the employee in writing of

1 its refusal to pay and advise the employee of:

2 (A) the right to request a benefit review  
3 conference; and

4 (B) the means to obtain additional information  
5 from the division~~;~~; and

6 (C) the specific reasons why the carrier is  
7 contesting the claim, including any disputes in the cause of the  
8 injury, the extent of the injury or the treatment of the injury.

9 (a-1) An insurance carrier that fails to comply with  
10 Subsection (a) does not waive the carrier's right to contest the  
11 compensability of the injury as provided by Subsection (c) but  
12 commits an administrative violation subject to Subsection (e).

13 (a-2) An insurance carrier is not required to comply with  
14 Subsection (a) if the insurance carrier has accepted the claim as a  
15 compensable injury and income or death benefits have not yet  
16 accrued but will be paid by the insurance carrier when the benefits  
17 accrue and are due.

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

1 the injury. The commissioner shall adopt rules as necessary to  
2 implement this subsection.

3 (a-4) Notwithstanding any other provision of this code, an  
4 insurance carrier who fails to comply with subsection (a) within 60  
5 days, when the injured employee is a person described under Section  
6 607.051 of the Texas Government Code, waives its right to contest or  
7 deny the extent of the specific injury claimed by the injured worker  
8 or reasonably reflected in a review of the injured workers medical  
9 records.

10 (b) An insurance carrier shall notify the division in  
11 writing of the initiation of income or death benefit payments in the  
12 manner prescribed by commissioner rules.

13 (c) If an insurance carrier does not contest the  
14 compensability of an injury on or before the 60th day after the date  
15 on which the insurance carrier is notified of the injury, the  
16 insurance carrier waives its right to contest compensability. The  
17 initiation of payments by an insurance carrier does not affect the  
18 right of the insurance carrier to continue to investigate or deny  
19 the compensability of an injury during the 60-day period.

20 (d) If a workers' compensation insurance carrier does not  
21 contest or deny the extent of a compensable injury in writing on or  
22 before the 60th day on which the workers' compensation insurance  
23 carrier had reasonable notice of the specific claimed injury, the  
24 workers' compensation insurance carriers waives its right to  
25 contest or deny the extend of the specific injury claimed by the  
26 injured worker or reasonably reflected in a review of the injured  
27 worker's medical records.



1       ~~(d)~~ (e) An insurance carrier may reopen the issue of the  
2 compensability of an injury if there is a finding of evidence that  
3 could not reasonably have been discovered earlier.

4       ~~(e)~~ (f) An insurance carrier commits an administrative  
5 violation if the insurance carrier does not initiate payments or  
6 file a notice of refusal as required by this section.

7       ~~(f)~~ (g) For purposes of this section, "written notice" to a  
8 certified self-insurer occurs only on written notice to the  
9 qualified claims servicing contractor designated by the certified  
10 self-insurer under Section 407.061(c).

11       ~~(f)~~ (g) For purposes of this section:

12               (1) a certified self-insurer receives notice on the  
13 date the qualified claims servicing contractor designated by the  
14 certified self-insurer under Section 407.061(c) receives notice;  
15 and

16               (2) a political subdivision that self-insures under  
17 Section 504.011, either individually or through an interlocal  
18 agreement with other political subdivisions, receives notice on the  
19 date the intergovernmental risk pool or other entity responsible  
20 for administering the claim for the political subdivision receives  
21 notice.

22       ~~(j)~~ (h) Each insurance carrier shall establish a single  
23 point of contact in the carrier's office for an injured employee for  
24 whom the carrier receives a notice of injury.

25       (i) The division shall adopt the rules necessary to comply  
26 with these changes.

27       SECTION 3. Title 5, Subtitle A, Chapter 417, Labor Code, is

1 amended by adding section 417.005 to read as follows:

2 Sec. 417.005. WORKERS' COMPENSATION INSURANCE CARRIER  
3 LIABILITY TO INJURED PARTY. If a workers' compensation insurance  
4 carrier denies a claim of medical benefits on or before the 60th day  
5 on which the workers' compensation insurance carrier had reasonable  
6 notice of the specific claimed injury and upon final determination  
7 of an administrative law judge that the claimed injury is  
8 compensable, the workers' compensation insurance carrier is liable  
9 to reimburse the injured worker for any and all reasonable and  
10 necessary medical expenses incurred by the injured worker for the  
11 specific claimed injury.

12 SECTION 4. Title 5, Subtitle A, Chapter 410.156, Labor  
13 Code, is amended by adding subsection (c), (d) and (e) to read as  
14 follows:

15 Sec. 410.156. ATTENDANCE REQUIRED; ADMINISTRATIVE  
16 VIOLATION. (a) Each party shall attend a contested case hearing.

17 (b) A party commits an administrative violation if the  
18 party, without good cause as determined by the administrative law  
19 judge, does not attend a contested case hearing.

20 (c) If good cause exists, a party or witness may attend a  
21 contested case hearing telephonically or by videoconference.

22 (d) For the purpose of this subsection, the administrative  
23 law judge shall determine if good cause exists for a party or  
24 witness to attend the contested case hearing telephonically or by  
25 videoconference.

26 (e) An attorney representing a party in a contested case  
27 hearing, shall be permitted to represent a party to the case

1 telephonically or by videoconference.

2           SECTION 5. The changes in law made by this Act apply to a  
3 claim for benefits, compensation, or assistance brought on or after  
4 the effective date of this Act. A claim for benefits, compensation,  
5 or assistance brought before that date is covered by the law in  
6 effect on the date the claim was made, and that law is continued in  
7 effect for that purpose.

8           SECTION 6. This Act takes effect immediately if it receives  
9 a vote of two-thirds of all the members elected to each house, as  
10 provided by Section 39, Article III, Texas Constitution. If this  
11 Act does not receive the vote necessary for immediate effect, this  
12 Act takes effect September 1, 2023.