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H.B. No. 2468

A BILL TO BE ENTITLED

AN ACT

relating to the entitlement of an injured employee to lifetime income benefits under the workers' compensation system.

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

SECTION 1. Section 408.0041, Labor Code, is amended by amending Subsection (j) and adding Subsection (k-1) to read as follows:

(j) An employee is not entitled to temporary income benefits, or to lifetime income benefits under Section 408.1615, if applicable to the employee, and an insurance carrier is authorized to suspend the payment of those [~~temporary income~~] benefits, during and for a period in which the employee fails to submit to an examination required by Subsection (a) or (f) or, if applicable, Section 408.1615(h), unless the commissioner determines that the employee had good cause for the failure to submit to the examination. The commissioner may order temporary income benefits or lifetime income benefits under Section 408.1615, as applicable, to be paid for the period for which the commissioner determined that the employee had good cause. The commissioner by rule shall ensure that:

(1) an employee receives reasonable notice of an examination and the insurance carrier's basis for suspension; and

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

1 (k-1) If the report of a designated doctor indicates that an
2 employee receiving lifetime income benefits under Section 408.1615
3 is no longer entitled to those benefits, the insurance carrier may
4 suspend the payment of lifetime income benefits as provided by that
5 section.

6 SECTION 2. Section 408.161(a), Labor Code, is amended to
7 read as follows:

8 (a) Lifetime income benefits are paid until the death of the
9 employee for:

- 10 (1) total and permanent loss of sight in both eyes;
11 (2) loss of both feet at or above the ankle;
12 (3) loss of both hands at or above the wrist;
13 (4) loss of one foot at or above the ankle and the loss
14 of one hand at or above the wrist;

15 (5) an injury to the spine that results in permanent
16 and complete paralysis of both arms, both legs, or one arm and one
17 leg;

18 (6) a physically traumatic injury to the brain that,
19 as determined using evidence-based medicine, results in a permanent
20 major neurocognitive disorder:

21 (A) for which the employee requires occasional
22 supervision in the performance of routine daily tasks of self-care;
23 and

24 (B) that renders the employee permanently
25 unemployable [~~resulting in incurable insanity or imbecility~~]; or

26 (7) third degree burns that cover at least 40 percent
27 of the body and require grafting, or third degree burns covering the

1 majority of:

2 (A) [~~either~~] both hands;

3 (B) [~~or~~] one hand and one foot; or

4 (C) one hand or one foot and the face.

5 SECTION 3. Subchapter I, Chapter 408, Labor Code, is
6 amended by adding Section 408.1615 to read as follows:

7 Sec. 408.1615. LIFETIME INCOME BENEFITS FOR CERTAIN FIRST
8 RESPONDERS. (a) In this section:

9 (1) "First responder" means an individual who is:

10 (A) a peace officer under Article 2.12, Code of
11 Criminal Procedure;

12 (B) certified under Chapter 773, Health and
13 Safety Code, as an emergency care attendant, advanced emergency
14 medical technician, emergency medical technician-paramedic or a
15 licensed paramedic;

16 (C) a firefighter subject to certification by the
17 Texas Commission on Fire Protection under Chapter 419, Government
18 Code, whose principal duties are aircraft crash and rescue or fire
19 fighting; or

20 (D) an individual covered under Section 504.012
21 who is providing volunteer services as:

22 (i) a volunteer firefighter, regardless of
23 whether the individual is certified under Chapter 419, Government
24 Code; or

25 (ii) an emergency medical services
26 volunteer, as defined by Section 773.003, Health and Safety Code.

27 (2) "Serious bodily injury" has the meaning assigned

1 by Section 1.07, Penal Code.

2 (b) This section applies only to an employee who sustains a
3 serious bodily injury, other than an injury described by Section
4 408.161, in the course and scope of the employee's employment or
5 volunteer service as a first responder that renders the employee
6 permanently unemployable.

7 (c) Except as otherwise provided by this section, an
8 employee to which this section applies is entitled to receive
9 lifetime income benefits paid until the employee's death for the
10 employee's injury. Sections 408.161(c) and (d) apply to the
11 payment of lifetime income benefits under this section.

12 (d) The division shall accelerate any dispute, including a
13 contested case hearing or appeal requested by the employee,
14 regarding an employee's continuing entitlement to lifetime income
15 benefits under this section. The employee shall provide notice to
16 the division that the dispute involves a first responder.

17 (e) An employee receiving lifetime income benefits under
18 this section shall annually certify to the insurance carrier, in
19 the form and manner prescribed by the division, that the employee
20 was not employed in any capacity during the preceding year.

21 (f) Notwithstanding Sections 410.169 and 410.205, an
22 insurance carrier may periodically review an employee's continuing
23 entitlement to lifetime income benefits under this section, but not
24 more than once during any five-year period.

25 (g) Notwithstanding Subsection (f), an insurance carrier
26 may review an employee's continuing entitlement to lifetime income
27 benefits under this section regardless of the date on which the

1 insurance carrier most recently reviewed the employee's continuing
2 entitlement, if:

3 (1) the employee certifies to the insurance carrier
4 under Subsection (e) that the employee was not employed in any
5 capacity during the preceding year;

6 (2) the insurance carrier provides evidence to the
7 commissioner that the certification provided by the employee under
8 Subsection (e) is not accurate; and

9 (3) the commissioner notifies the insurance carrier
10 that the commissioner has determined that the evidence provided by
11 the insurance carrier is sufficient to show that the certification
12 provided by the employee under Subsection (e) may not be accurate.

13 (h) An insurance carrier reviewing an employee's continuing
14 entitlement under Subsection (f) or (g) shall request the
15 commissioner to order a medical examination conducted by a
16 designated doctor under Section 408.0041. Except as otherwise
17 provided by this section, the requirements of Section 408.0041
18 apply to an examination ordered under this subsection to the same
19 extent as if the examination were ordered under Section
20 408.0041(a).

21 (i) An employee is not entitled to lifetime income benefits
22 under this section, and an insurance carrier is authorized to
23 suspend the payment of lifetime income benefits, during and for a
24 period in which the employee fails to complete the annual
25 certification required by Subsection (e), the employee is employed
26 in any capacity, or as provided under Section 408.0041(j) or (k-1),
27 unless the commissioner determines that there is good cause. The

1 commissioner by rule shall ensure that an employee receives
2 reasonable notice of the insurance carrier's basis for the
3 suspension and is provided a reasonable opportunity to complete the
4 annual certification under Subsection (e) or otherwise respond to
5 the notice.

6 (j) The commissioner shall adopt rules necessary to
7 implement this section, including rules:

8 (1) prescribing the deadline for the submission and
9 the form and the manner of the submission of the annual
10 certification required by Subsection (e); and

11 (2) establishing procedures for:

12 (A) the review of an employee's continuing
13 entitlement to lifetime income benefits under this section;

14 (B) the suspension and reinstatement of lifetime
15 income benefits under this section; and

16 (C) the termination of lifetime income benefits
17 under this section on a final determination that an employee is no
18 longer entitled to the benefits.

19 SECTION 4. The changes in law made by this Act apply to a
20 claim for lifetime income benefits based on a compensable injury
21 that occurs on or after the effective date of this Act. A claim
22 based on a compensable injury that occurs before the effective date
23 of this Act is governed by the law in effect on the date the
24 compensable injury occurred, and the former law is continued in
25 effect for that purpose.

26 SECTION 5. This Act takes effect September 1, 2023.