

## **BILL ANALYSIS**

C.S.S.B. 2551  
By: Hinojosa  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

There have been calls to update state law governing the liability for, payment of, and death benefits due with regard to certain workers' compensation claims, particularly with regard to benefits and other compensation due to a claim arising from disease or illness suffered by a firefighter or emergency medical technician, to bring greater clarity and provide for a better workers' compensation process for all involved parties. C.S.S.B. 2551 seeks to make those updates.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTIONS 2 and 8 of this bill.

### **ANALYSIS**

C.S.S.B. 2551 amends the Government Code to change the types of cancer resulting in death or total or partial disability of a firefighter or emergency medical technician for which the firefighter or technician may qualify for certain benefit payments or compensation from the state from a type of cancer that may be caused by exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer to the following:

- cancer that originates at the stomach, colon, rectum, skin, prostate, testis, or brain;
- non-Hodgkin's lymphoma;
- multiple myeloma;
- malignant melanoma; and
- renal cell carcinoma.

C.S.S.B. 2551 amends the Labor Code to establish that an insurance carrier is not required to comply with certain provisions of the Texas Workers' Compensation Act providing for the prompt initiation of compensation under that act if the applicable claim results from the disability or death of a firefighter or emergency medical technician from a disease or illness for which a presumption that the disease or illness was developed during the course and scope of employment is claimed to be applicable and, not later than the 15th day after the date on which the insurance carrier received written notice of the injury, the carrier has provided the employee and the workers' compensation division of the Texas Workforce Commission with a notice that describes all steps taken by the carrier to investigate the injury before the notice was given and

the evidence the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury. The bill requires the commissioner of workers' compensation to adopt rules as necessary to implement that provision and establishes that an insurance carrier has not committed an administrative violation for refusal to pay benefits if the carrier has sent that or other applicable notice to the employee.

C.S.S.B. 2551 requires the commissioner of workers' compensation, in determining whether to assess an administrative penalty involving a claim in which the insurance carrier provided notice under the bill's provisions, to consider whether:

- the employee cooperated with the carrier's investigation of the claim;
- the employee timely authorized access to the applicable medical records before the carrier's deadline to begin payment of benefits or to notify the workers' compensation division and the employee of its refusal to pay benefits; and
- the carrier has done the following:
  - conducted an investigation of the claim;
  - applied the applicable statutory presumptions regarding the disease or illness having been caused during the course and scope of employment; and
  - expedited the provision of medical benefits.

C.S.S.B. 2551 makes a political subdivision that self-insures either individually or collectively for workers' compensation coverage liable for the following, in addition to attorney's fees for representation of insurance carrier's interest, if applicable:

- sanctions, administrative penalties, and other remedies authorized under applicable provisions of the Texas Workers' Compensation Act; and
- certain attorney's fees paid to the claimant's counsel.

C.S.S.B. 2551 authorizes a pool or a political subdivision that self-insures for workers' compensation coverage to establish an account for the payment of death benefits for a compensable injury caused by an applicable cancer to a firefighter or emergency medical technician. Such an account may accumulate assets in an amount that the pool or political subdivision, in its sole discretion, determines is necessary in order to pay those death benefits. The establishment of an account or the amount of assets accumulated in the account does not affect the liability of a pool or political subdivision for the payment of death benefits. The bill makes the Public Funds Investment Act inapplicable to the investment of assets in the account and requires a pool or political subdivision investing or reinvesting those assets to exercise the judgment and care, under the circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, considering the probable income to be derived and the probable safety of capital. The bill requires a determination of whether the pool or political subdivision exercised prudence in making an investment decision to be made by considering the investment of all assets of the account rather than by considering the prudence of a single investment.

C.S.S.B. 2551 requires the commissioner of workers' compensation to adopt rules as required by or necessary to implement the bill's provisions not later than January 1, 2020.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

#### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 2551 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute revises the conditions under which an insurance carrier is excepted from compliance with certain provisions of the Texas Workers' Compensation Act providing for the prompt initiation of compensation under that act by conditioning the exception on notice being provided to the workers' compensation division of the Texas Workforce Commission in addition to the applicable employee and on the notice describing all steps taken by the insurance carrier to investigate the injury before the notice was given.

The substitute does not establish an insurance carrier having reasonable grounds for a refusal to pay certain workers' compensation benefits on the basis of the carrier having sent applicable notice to the employee.

The substitute does not include sanctions or other authorized remedies, in addition to an administrative penalty, in relation to the duties of the commissioner of workers' compensation for determining assessments against an insurance carrier for a violation with regard to an applicable claim.

The substitute limits the applicability of the provision establishing certain considerations for the commissioner to make in determining whether to assess an administrative penalty to claims in which the insurance carrier has provided a certain notice under the bill's provisions and includes among those required considerations that the insurance carrier conducted an investigation of the claim, applied specified statutory presumptions, and expedited certain medical benefits.

The substitute imposes a January 1, 2020, deadline for the commissioner to adopt the rules required by the bill's provisions and also includes a requirement for the commissioner to adopt any rules necessary to implement those provisions by that date.