

BILL ANALYSIS

C.S.H.B. 396
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Nurses have been put at risk for contracting COVID-19 by working with contagious patients, sometimes even without the recommended personal protective equipment to protect the nurses caring for patients. Under state law, there are certain established presumptions regarding conditions contracted in the course and scope of employment that make the condition compensable under the Texas Workers' Compensation Act. It has been suggested that the law should be updated to establish a presumption with respect to COVID-19 for nurses who have been forced to come into contact with patients with COVID-19. C.S.H.B. 396 seeks to establish such a presumption.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 396 amends the Labor Code to establish that a state-licensed nurse who suffers from COVID-19 on or after February 1, 2020, resulting in disability or death has a compensable claim for workers' compensation benefits based on a presumption that the nurse contracted COVID-19 during the course and scope of employment as a nurse if the following criteria are met:

- the nurse is assigned to treat a patient diagnosed with COVID-19 or to duties that require the nurse to come in contact with such a patient;
- the nurse contracts COVID-19 not later than the 14th day following the date the nurse treated or came in contact with the patient; and
- before diagnosis, the nurse did not decline or refuse to receive a preventative COVID-19 immunization, unless the nurse declined or refused the immunization because the immunization was medically contraindicated.

C.S.H.B. 396 provides that this presumption may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's employment as a nurse was a substantial factor in the individual's contracting COVID-19 or illness from COVID-19, without which the individual would not have contracted COVID-19 or the illness would not have occurred. The bill requires the person offering the rebuttal to include a statement that describes, in detail, the evidence that the person reviewed and requires an administrative law judge addressing an argument based on the rebuttal to make findings of fact and conclusions of law that consider whether a qualified expert, relying on evidence-based medicine, stated the opinion based on reasonable medical probability that a

cause not associated with the individual's employment was a substantial factor in the individual's contracting COVID-19 or the illness.

C.S.H.B. 396 establishes that the amount of a death benefit paid to the legal beneficiary of a nurse who suffered from COVID-19 on or after February 1, 2020, resulting in death is \$500,000 in a lump sum, in lieu of any other benefits to which a beneficiary is entitled.

C.S.H.B. 396 provides that an insurance carrier is not required to initiate compensation under the Texas Workers' Compensation Act promptly for a claim that results from the presumption regarding COVID-19 if the carrier has provided the following not later than the 15th day after the date on which the carrier received written notice of the injury:

- notice to the nurse and to the Texas Department of Insurance's workers' compensation division that describes all steps taken by the carrier to investigate the injury before the notice was given;
- the evidence the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury; and
- a statement that explains why the carrier determined the presumption does not apply to the claim and describes the evidence that the carrier reviewed in making that determination.

In determining whether to assess certain administrative penalties against an insurance carrier involving a claim in which such notice was provided, the commissioner of workers' compensation must consider whether the carrier conducted an investigation, applied the presumption regarding COVID-19, and expedited medical benefits.

C.S.H.B. 396 authorizes a nurse whose claim for workers' compensation benefits based on an injury related to COVID-19 that occurred on or after February 1, 2020, but before the bill's effective date was denied to request in writing that the insurance carrier reprocess the claim on or after the bill's effective date, but not later than six months after that date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 396 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original established as a condition of the presumption that the nurse have contracted COVID-19 during the admission of a patient diagnosed with COVID-19 to the health care facility at which the nurse treated or came in contact with the patient or not later than the 14th day following the date the patient is discharged from the facility. The substitute revises this condition to instead require that the nurse have contracted COVID-19 not later than the 14th day following the date the nurse treated or came into contact with the patient. The substitute includes as an additional condition for that presumption, not included in the original, that the nurse, before diagnosis with COVID-19, did not decline or refuse to receive a preventative COVID-19 immunization for a reason other than that the immunization was medically contraindicated.

The substitute includes provisions, which were not included in the original, creating a rebuttal of the presumption whereby the presumption is rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's employment as a nurse was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.

The substitute includes a provision that was not in the original that establishes that the amount of a death benefit paid to the legal beneficiary of a nurse who suffered from COVID-19 on or after February 1, 2020, resulting in death is \$500,000 in a lump sum, in lieu of any other benefits to which a beneficiary is entitled.

The substitute requires an insurance carrier that refuses to pay benefits for a claim resulting from a nurse's disability or death for which a COVID-19 presumption is claimed to provide with the requisite refusal notice a statement that explains why the carrier determined the presumption does not apply to the claim and describes the evidence that the carrier reviewed in making that determination, whereas the original did not.

Whereas the original applied to a claim filed on or after the bill's effective date, the substitute applies to a claim that is based on an injury that occurs on or after that date.

The original authorized a person who filed a claim related to COVID-19 on or after February 1, 2020, but before the bill's effective date that was subsequently denied to file another claim on or after the bill's effective date to which the presumption then applies. The substitute revises this provision to specify that a written request may be made that the insurance carrier reprocess the claim and to require that the request be made not later than six months after the bill's effective date.