

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 409.003, 409.007, 410.169, or  
21 410.205, Labor Code, a nurse whose injury occurred on or after  
22 February 1, 2020, but before the effective date of this Act, and  
23 whose claim was subsequently denied may, on or after the effective  
24 date of this Act, request in writing that the insurance carrier  
25 reprocess the claim and the changes in law made by this Act shall  
26 apply to that claim.

27           (c) Not later than the 60th day after the date an insurance

1 carrier receives a written request to reprocess a claim under  
2 Subsection (b) of this section, the insurance carrier shall  
3 reprocess the claim and notify the person in writing whether the  
4 carrier accepted or denied the claim. If the insurance carrier  
5 denies the claim, the notice must include information on the  
6 process for disputing the denial. The notice provided by the  
7 insurance carrier must use the notice provisions prescribed by the  
8 division of workers' compensation of the Texas Department of  
9 Insurance under Subsection (d) of this section.

10 (d) As soon as practicable after the effective date of this  
11 Act, the division of workers' compensation of the Texas Department  
12 of Insurance shall prescribe notice provisions for an insurance  
13 carrier to use when providing notice of the insurance carrier's  
14 acceptance or denial of a person's claim. The notice provisions  
15 must be clear and easily understandable.

16 SECTION 8. This Act takes effect immediately if it receives  
17 a vote of two-thirds of all the members elected to each house, as  
18 provided by Section 39, Article III, Texas Constitution. If this  
19 Act does not receive the vote necessary for immediate effect, this  
20 Act takes effect September 1, 2021.