

By: Zaffirini

S.B. No. 612

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the eligibility of school district employees for
3 workers' compensation benefits for coronavirus disease (COVID-19)
4 and payment of those 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. PRESUMPTION OF COMPENSABILITY OF CORONAVIRUS
9 DISEASE (COVID-19) FOR SCHOOL EMPLOYEES. (a) In this section,
10 "School employee" means a person who receives compensation for
11 service performed, other than as an independent contractor, for a
12 school district.

13 (b) A school employee, who suffers from coronavirus disease
14 (COVID-19) on or after February 1, 2020, resulting in disability or
15 death, is presumed to have contracted the disease during the course
16 and scope of employment as a school employee if the employee:

17 (1) interacts with a student or a school district
18 employee who is later diagnosed with coronavirus disease; and

19 (2) contracts the disease not later than the 14th day
20 following the date that the employee interacted or came in contact
21 with the student or school district employee diagnosed with the
22 disease.

23 SECTION 2. Subchapter A, Chapter 408, Labor Code, is
24 amended by adding Section 408.010 to read as follows:

1 Sec. 408.010. PRESUMPTION REBUTTABLE. (a) A presumption
2 under Section 408.009 may be rebutted through a showing by a
3 preponderance of the evidence that a risk factor, accident, hazard,
4 or other cause not associated with the individual's service as a
5 school employee was a substantial factor in bringing about the
6 individual's disease or illness, without which the disease or
7 illness would not have occurred.

8 (b) A rebuttal offered under this section must include a
9 statement by the person offering the rebuttal that describes, in
10 detail, the evidence that the person reviewed before making the
11 determination that a cause not associated with the individual's
12 service as a school employee was a substantial factor in bringing
13 about the individual's disease or illness, without which the
14 disease or illness would not have occurred.

15 (c) In addressing an argument based on a rebuttal offered
16 under this section, an administrative law judge shall make findings
17 of fact and conclusions of law that consider whether a qualified
18 expert, relying on evidence-based medicine, stated the opinion
19 that, based on reasonable medical probability, an identified risk
20 factor, accident, hazard, or other cause not associated with the
21 individual's service as a school employee was a substantial factor
22 in bringing about the individual's disease or illness, without
23 which the disease or illness would not have occurred.

24 SECTION 2. Section 409.021(a-3), Labor Code, is amended to
25 read as follows:

26 (a-3) An insurance carrier is not required to comply with
27 Subsection (a) if the claim results from an employee's disability

1 or death for which a presumption is claimed to be applicable under
2 Section 408.009 of this code or Subchapter B, Chapter 607,
3 Government Code, and, not later than the 15th day after the date on
4 which the insurance carrier received written notice of the injury,
5 the insurance carrier has provided the employee and the division
6 with a notice that describes all steps taken by the insurance
7 carrier to investigate the injury before the notice was given and
8 the evidence the carrier reasonably believes is necessary to
9 complete its investigation of the compensability of the injury. The
10 commissioner shall adopt rules as necessary to implement this
11 subsection.

12 SECTION 2. Section 409.022(d), Labor Code, is amended to
13 read as follows:

14 (d) In this subsection, the terms "emergency medical
15 technician," "firefighter," and "peace officer" have the meanings
16 assigned by Section 607.051, Government Code. The term "school
17 employee" has the meaning assigned by Section 408.009. In addition
18 to the other requirements of this section, if an insurance
19 carrier's notice of refusal to pay benefits under Section 409.021
20 is sent in response to a claim for compensation resulting from an
21 emergency medical technician's, a firefighter's, or a peace
22 officer's disability or death for which a presumption is claimed to
23 be applicable under Subchapter B, Chapter 607, Government Code, or
24 from a school employee's disability or death for which a
25 presumption is claimed to be applicable under Section 408.009,
26 Labor Code, the notice must include a statement by the carrier that:

27 (1) explains why the carrier determined a presumption

1 under that subchapter does not apply to the claim for compensation;
2 and

3 (2) describes the evidence that the carrier reviewed
4 in making the determination described by Subdivision (1).

5 SECTION 3. Section 415.021(c-2), Labor Code, is amended to
6 read as follows:

7 (c-2) In determining whether to assess an administrative
8 penalty involving a claim in which the insurance carrier provided
9 notice under Section 409.021(a-3), the commissioner shall consider
10 whether:

11 (1) the employee cooperated with the insurance
12 carrier's investigation of the claim;

13 (2) the employee timely authorized access to the
14 applicable medical records before the insurance carrier's deadline
15 to:

16 (A) begin payment of benefits; or

17 (B) notify the division and the employee of the
18 insurance carrier's refusal to pay benefits; and

19 (3) the insurance carrier conducted an investigation
20 of the claim, applied the statutory presumptions under Section
21 408.009 of this code or Subchapter B, Chapter 607, Government Code,
22 and expedited medical benefits under Section 504.055.

23 SECTION 4. (a) Except as otherwise provided by this
24 section, Section 408.009, Labor Code, as added by this Act, applies
25 only to a claim for workers' compensation benefits based on an
26 injury that occurs on or after the effective date of this Act. A
27 claim based on an injury that occurs before that date is governed by

1 the law as it existed on the date the injury occurred, and the
2 former law is continued in effect for that purpose.

3 (b) Notwithstanding Section 410.169 and 410.205, Labor
4 Code, or any other law, a school employee whose COVID-19 injury
5 occurred on or after February 1, 2020, but before the effective date
6 of this Act, and whose claim was subsequently denied may request in
7 writing that the insurance carrier reprocess the claim on or after
8 the effective date of this Act, but not later than six months after
9 the effective date of this Act, and the changes in law made by this
10 Act apply to that claim.

11 SECTION 5. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2021.