

BILL ANALYSIS

C.S.H.B. 790
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Constituents have raised concerns that the workers' compensation system for first responders continues to leave imbalances and confusions that lead to first responder cases taking longer than needed to return employees back to continued employment. Issues of note include the inability to request a treating doctor examination, which leads to continued misdiagnosis and inaccurate coverage; unclear timelines for carriers to provide certain coverages; and a lack of access to needed resources due to the current videoconference case hearing rules. C.S.H.B. 790 seeks to resolve these issues by allowing first responders to request an examination by the treating physician, requiring a 60-day timeline for carriers to comply with the initiation of benefits after the initial 15-day rule, allowing case hearings to be conducted via videoconference, requiring carriers to provide the specific reasons why a claim is disputed on the basis of compensability or the extent of the injury, and providing clarity on liability and reimbursement on case costs.

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 SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 790 amends the Labor Code to set out provisions relating to claims under the Texas Workers' Compensation Act for an injured employee who is a custodial officer, a detention officer, an emergency medical technician, a firefighter, or a peace officer. The bill, with respect to such a claim, does the following:

- authorizes the Texas Department of Insurance division of workers' compensation, on request by the injured employee, to authorize the performance of a medical examination to define the compensable injury, regardless of whether an examination requested by the insurance carrier was previously performed;
- establishes that an insurance carrier that fails to begin payment of benefits or notify the division and injured employee of its refusal to pay on or before the 60th day after the date the carrier receives written notice of the injury waives its right to contest the extent of the injury specifically claimed by the employee or reasonably reflected in the employee's medical records available to the carrier for review during that time period, but that failure to comply with that 60-day timeline does not waive the carrier's right to contest the compensability of the injury;
- requires an insurance carrier's notice of refusal to pay benefits to include a statement by the carrier that includes the specific reasons why the carrier is disputing the

compensability or the extent of the injury and describes the evidence that the carrier reviewed in making the determination to dispute the issue;

- requires the division to conduct a contested case hearing by videoconference on request of the injured employee or that employee's attorney and clarifies that such a hearing is exempt from the prohibition against a contested case hearing being conducted more than 75 miles from the claimant's residence;
- requires an insurance carrier to reimburse the injured employee for all medical expenses incurred by the employee that are related to the specific injury claimed by the employee, notwithstanding the amount of an award of benefits due in a written decision by an administrative law judge in a contested case hearing, if the following circumstances apply:
 - the carrier denied the employee's claim for medical benefits on or before the 60th day after the carrier had reasonable notice of the specific injury claimed by the employee; and
 - the administrative law judge's decision includes a determination that the injury is compensable, and the decision is not appealed to the appeals panel and becomes final;
- additionally requires an insurance carrier that denies an injured employee's claim for medical benefits on or before the 60th day after the carrier had reasonable notice of the specific injury claimed by the employee to directly reimburse the employee for all such medical expenses if either:
 - the administrative law judge's determination that benefits are owed becomes final without an appeal; or
 - an appeals panel affirms the judge's determination that the benefits are owed or reverses the judge's determination that benefits are not owed;
- requires the carrier, if the appeals panel affirms the administrative law judge's decision, to directly reimburse the employee for all medical expenses incurred by the employee, regardless of the amount of an award of benefits due in the written decision by the judge; and
- requires the carrier to reimburse the employee regardless of whether the appeals panel's decision is appealed for judicial review.

C.S.H.B. 790 authorizes the commissioner of workers' compensation to adopt rules relating to requirements for a request for a medical examination to define a compensable injury, for both insurance carrier requests regarding any injured employee and requests from an employee to which the bill's provisions apply.

C.S.H.B. 790 applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the bill's effective date. The bill's provisions relating to the conduct of certain contested case hearings by videoconference apply only to a hearing held on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 790 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas some of the introduced version's provisions apply generally to any injured employee and some apply to an injured employee who is a custodial officer, a detention officer, an emergency medical technician, a firefighter, or a peace officer, the substitute applies only to an

injured employee who is a custodial officer, a detention officer, an emergency medical technician, a firefighter, or a peace officer.

The substitute does not include the requirement from the introduced for the first request of a designated doctor's examination by an insurance carrier, an injured employee, or the division to include a request to the designated doctor to provide an opinion on the extent of the compensable injury. The substitute includes the following provisions instead, which did not appear in the introduced:

- an authorization for the division, on request by an applicable injured employee, to authorize the performance of a medical examination to define the compensable injury, regardless of whether a medical examination requested by the insurance carrier was previously performed; and
- an authorization for the commissioner to adopt rules relating to requirements for a request for such an examination by an insurance carrier or applicable injured employee.

Both versions include provisions relating to the conduct of a contested case hearing by videoconference. However, the substitute requires the division to conduct such a hearing by videoconference on request of an applicable injured employee or the employee's attorney, whereas the introduced authorized a party or witness to attend a hearing telephonically or by videoconference if good cause exists, as determined by the administrative law judge, and provided that an attorney representing a party in such a hearing must be permitted to do so telephonically or by videoconference. The substitute also includes a provision that did not appear in the introduced making the videoconferencing provisions applicable to a hearing held on or after the bill's effective date.

The introduced required an insurance carrier to include in a notice regarding the carrier's refusal to pay a claim for any injured employee the specific reasons why the carrier is contesting the claim, including any disputes in the cause of the injury, the extent of the injury, or the treatment of the injury. The substitute includes a similar provision, but it only applies to the specified employees and only requires that the notice include the specific reasons why the carrier is disputing the compensability of the injury or the extent of injury. The substitute also requires the notice to describe the evidence that the carrier reviewed in making the determination to dispute the issue.

The substitute does not include a provision from the introduced establishing that an insurance carrier that does not contest or deny the extent of a compensable injury in writing on or before the 60th day on which the carrier received reasonable notice of the specific claimed injury waives its right to contest or deny the extent of the specific injury claimed by the injured employee or reasonably reflected in a review of the injured employee's medical records.

The substitute does not include a provision from the introduced requiring the division to adopt the rules necessary to comply with certain of the introduced version's changes regarding the initiation of benefits and a carrier's refusal to pay.

Both versions provide for an insurance carrier that denies a claim on or before the 60th day on which the carrier had reasonable notice of the specific injury claimed by the employee to reimburse the injured employee for all medical expenses incurred by the employee that are related to the specific claimed injury under certain circumstances. However, the introduced applied to any injured employee and required such reimbursement if an administrative law judge determines that the claimed injury is compensable, whereas the substitute applies only to the specified employees and requires reimbursement in the following circumstances:

- if the administrative law judge's decision includes a determination that the injury is compensable and the decision is not appealed to the appeals panel and becomes final;
- if the administrative law judge's determination that benefits are owed becomes final without an appeal;

- if the appeals panel affirms the administrative law judge's determination that the benefits are owed; or
- if the appeals panel reverses the administrative law judge's determination that the benefits are not owed.

The substitute includes provisions that did not appear in the introduced establishing that reimbursement of all applicable medical expenses is required regardless of the amount of an award of benefits in the administrative law judge's decision and regardless of whether the appeals panel's decision is appealed for judicial review.

Whereas the introduced made its provisions applicable to a claim for benefits, compensation, or assistance brought on or after the bill's effective date, the substitute applies to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the bill's effective date.

The substitute does not include language from the introduced providing for the possible immediate effect of the bill if it receives the requisite constitutional vote.