

BILL ANALYSIS

Senate Research Center

H.B. 2468
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Section 408.161 of the Labor Code gives severely injured first responders access to lifetime income benefits if they receive specific catastrophic injuries while on duty. This benefit pays 75 percent of the injured person's final salary. Unfortunately, this statute only covers insanity, imbecility, very specific amputation injuries, near total paralyzing injuries, and major burns. It does not cover many serious injuries that may prevent a person from ever working again. The people who suffer these types of injuries are often forced to continually prove their disability and may eventually be denied further benefits.

H.B. 2468 would modernize the usage of insanity and imbecility. It would also amend the current statute to cover severe injuries that prevent someone from ever working again, but do not meet the specific language currently used in Section 408.161, Labor Code.

Under H.B. 2468 if an employee fails to submit to an examination as required by statute, he or she is not entitled to temporary benefits or lifetime income benefits unless the commissioner determines that the employee had good cause for the failure to submit to the examination.

Additionally, the bill enables an insurance carrier to review an employee's continuing entitlement to lifetime income benefits regardless of the date on which the carrier most recently reviewed the employee's continuing entitlement.

H.B. 2468 amends current law relating to the entitlement of an injured employee to lifetime income benefits under the workers' compensation system.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTION 3 (Section 408.1615, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 408.0041, Labor Code, by amending Subsection (j) and adding Subsection (k-1), as follows:

(j) Provides that an employee is not entitled to lifetime income benefits under Section 408.1615, if applicable to the employee, and an insurance carrier is authorized to suspend the payment of those benefits, rather than temporary income benefits, during and for a period in which the employee fails to submit to an examination required by, if applicable, Section 408.1615(h), unless the commissioner of workers' compensation (commissioner) determines that the employee had good cause for the failure to submit to the examination. Authorizes the commissioner to order temporary income benefits or lifetime income benefits under Section 408.1615, as applicable, to be paid for the period for which the commissioner determined that the employee had good cause.

(k-1) Authorizes the insurance carrier, if the report of a designated doctor indicates that an employee receiving lifetime income benefits under Section 408.1615 is no longer entitled to those benefits, to suspend the payment of lifetime income benefits as provided by that section.

SECTION 2. Amends Section 408.161(a), Labor Code, as follows:

(a) Provides that lifetime income benefits are paid until the death of the employee for:

(1)-(5) makes no changes to these subdivisions;

(6) a physically traumatic injury to the brain that, as determined using evidence-based medicine, results in a permanent major neurocognitive disorder:

(A) for which the employee requires occasional supervision in the performance of routine daily tasks of self-care; and

(B) that renders the employee permanently unemployable, rather than resulting in incurable insanity or imbecility; or

(7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of:

(A) both hands, rather than either both hands or one hand and the face;

(B) one hand and one foot; or

(C) one hand or one foot and the face.

SECTION 3. Amends Subchapter I, Chapter 408, Labor Code, by adding Section 408.1615, as follows:

Sec. 408.1615. LIFETIME INCOME BENEFITS FOR CERTAIN FIRST RESPONDERS. (a) Defines "first responder" and "serious bodily injury."

(b) Provides that this section applies only to an employee who sustains a serious bodily injury, other than an injury described by Section 408.161 (Lifetime Income Benefits), in the course and scope of the employee's employment or volunteer service as a first responder that renders the employee permanently unemployable.

(c) Provides that an employee to which this section applies, except as otherwise provided by this section, is entitled to receive lifetime income benefits paid until the employee's death for the employee's injury. Provides that Sections 408.161(c) (relating to providing that the amount of lifetime income benefits is equal to 75 percent of the employee's average weekly wage) and (d) (relating to authorizing an insurance carrier to pay lifetime income benefits through an annuity if the annuity agreement meets the terms and conditions for annuity agreements adopted by the commissioner by rule) apply to the payment of lifetime income benefits under this section.

(d) Requires the division of workers' compensation of the Texas Department of Insurance (division) to accelerate any dispute, including a contested case hearing or appeal requested by the employee, regarding an employee's continuing entitlement to lifetime income benefits under this section. Requires the employee to provide notice to the division that the dispute involves a first responder.

(e) Requires an employee receiving lifetime income benefits under this section to annually certify to the insurance carrier, in the form and manner prescribed by the division, that the employee was not employed in any capacity during the preceding year.

(f) Authorizes an insurance carrier, notwithstanding Sections 410.169 (Effect of Decision) and 410.205 (Effect of Decision), to periodically review an employee's

continuing entitlement to lifetime income benefits under this section, but not more than once during any five-year period.

(g) Authorizes an insurance carrier, notwithstanding Subsection (f), to review an employee's continuing entitlement to lifetime income benefits under this section regardless of the date on which the insurance carrier most recently reviewed the employee's continuing entitlement, if:

- (1) the employee certifies to the insurance carrier under Subsection (e) that the employee was not employed in any capacity during the preceding year;
- (2) the insurance carrier provides evidence to the commissioner that the certification provided by the employee under Subsection (e) is not accurate; and
- (3) the commissioner notifies the insurance carrier that the commissioner has determined that the evidence provided by the insurance carrier is sufficient to show that the certification provided by the employee under Subsection (e) may not be accurate.

(h) Requires an insurance carrier reviewing an employee's continuing entitlement under Subsection (f) or (g) to request the commissioner to order a medical examination conducted by a designated doctor under Section 408.0041 (Designated Doctor Examination). Provides that the requirements of Section 408.0041, except as otherwise provided by this section, apply to an examination ordered under this subsection to the same extent as if the examination were ordered under Section 408.0041(a) (relating to authorizing the commissioner to order a medical examination to resolve any question about certain information).

(i) Provides that an employee is not entitled to lifetime income benefits under this section, and an insurance carrier is authorized to suspend the payment of lifetime income benefits, during and for a period in which the employee fails to complete the annual certification required by Subsection (e), the employee is employed in any capacity, or as provided under Section 408.0041(j) or (k-1), unless the commissioner determines that there is good cause. Requires the commissioner by rule to ensure that an employee receives reasonable notice of the insurance carrier's basis for the suspension and is provided a reasonable opportunity to complete the annual certification under Subsection (e) or otherwise respond to the notice.

(j) Requires the commissioner to adopt rules necessary to implement this section, including rules:

- (1) prescribing the deadline for the submission and the form and the manner of the submission of the annual certification required by Subsection (e); and
- (2) establishing procedures for:
 - (A) the review of an employee's continuing entitlement to lifetime income benefits under this section;
 - (B) the suspension and reinstatement of lifetime income benefits under this section; and
 - (C) the termination of lifetime income benefits under this section on a final determination that an employee is no longer entitled to the benefits.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2023.