

BILL ANALYSIS

C.S.H.B. 2468
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are reports of first responders being critically injured in the line of duty but, nevertheless, not qualifying for lifetime income benefits under the Texas Workers' Compensation Act due to unclear and confusing qualification requirements. C.S.H.B. 2468 seeks to address this issue by setting out provisions specific to first responders making a person eligible to receive lifetime income benefits for a serious bodily injury sustained in the course and scope of employment or volunteer service as a first responder that renders the person permanently unemployable.

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 3 of this bill.

ANALYSIS

C.S.H.B. 2468 amends the Labor Code to revise certain conditions establishing an injured employee's eligibility for lifetime income benefits until death under the Texas Workers' Compensation Act. The bill, as follows:

- updates the description of the compensable condition of an injured employee with a physically traumatic brain injury to specify that such an injury, rather than resulting in incurable insanity or imbecility, is an injury that results in a permanent major neurocognitive disorder for which the employee requires occasional supervision in the performance of routine daily tasks of self-care and that renders the employee permanently unemployable;
- requires that this conclusion regarding the result of the brain injury be determined using evidence-based medicine; and
- changes the type of compensable burn injury to an injured employee from third degree burns covering the majority of either both hands or one hand and the face to, as follows, third degree burns covering the majority of:
 - both hands;
 - one hand and one foot; or
 - one hand or foot and the face.

C.S.H.B. 2468 makes an employee who sustains a serious bodily injury, other than an injury for which the employee would otherwise already qualify to receive 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 eligible to receive lifetime income benefits

paid until the employee's death for the injury. With respect to these benefits, the bill provides the following:

- provisions applicable to the amount and the payment of lifetime income benefits for employees generally apply to the payment of these benefits for first responders;
- the workers' compensation division of the Texas Department of Insurance must accelerate any dispute, including a contested case hearing or appeal requested by the employee, regarding the employee's eligibility for the benefits and the employee must provide notice to the division that the dispute involves a first responder;
- the employee, once receiving the benefits, must 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;
- an insurance carrier may periodically review the employee's eligibility for the benefits, but not more than once during any five-year period;
- the employee is not entitled to the benefits, and an insurance carrier is authorized to suspend the payment of the benefits, during and for a period in which the employee fails to certify the employee's eligibility, the employee is employed in any capacity, or the report of a designated doctor indicates that the employee is no longer eligible to receive the benefits, unless the commissioner of workers' compensation determines that there is good cause.

The bill requires the commissioner by rule to ensure that an employee receives reasonable notice of the insurance carrier's basis for a suspension of the benefits and is provided a reasonable opportunity to certify the employee's eligibility or otherwise respond to the notice. The bill requires the commissioner to adopt rules necessary to implement these provisions, including rules prescribing the form and manner for the annual certification and establishing procedures for the suspension and reinstatement of the benefits and the termination of the benefits on a final determination that an employee is no longer eligible for the benefits.

C.S.H.B. 2468 specifies that, for purposes of lifetime benefits under the bill's provisions, "first responder" means an individual who is, as follows:

- a peace officer;
- certified under state law as an emergency care attendant, advanced emergency medical technician, emergency medical technician-paramedic, or a licensed paramedic;
- a firefighter subject to certification by the Texas Commission on Fire Protection (TCFP) whose principal duties are aircraft crash and rescue or fire fighting; or
- an individual covered under optional workers' compensation coverage provided by a political subdivision for certain first responders who provide volunteer services as:
 - a volunteer fire fighter, regardless of whether the individual is certified by TCFP;
 - or
 - an emergency medical services volunteer.

C.S.H.B. 2468 applies to a claim for lifetime income benefits based on a compensable injury that occurs on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2468 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.

Both the introduced and the substitute update the description of the compensable condition of an injured employee with a physically traumatic brain injury that qualifies the employee for lifetime income benefits. However, whereas the introduced updated the description to specify

that such a brain injury is one that results in either a permanent major neurocognitive disorder or a psychotic disorder, the substitute updates the description instead to specify that such a brain injury is one that results only in a permanent major neurocognitive disorder. In addition, the substitute includes provisions, which the introduced did not, that further condition the eligibility of the brain injury to qualify an employee for the benefits as follows:

- the substitute requires the disorder that results from the injury to render the employee permanently unemployable and to be a disorder for which the employee requires occasional supervision in the performance of routine daily tasks of self-care; and
- the substitute requires the conclusion regarding the result of the injury to be determined using evidence-based medicine.

Whereas the introduced included both feet among the body parts that, if covered by third degree burns on a majority of the body parts, qualify an employee to receive lifetime income benefits, the substitute does not.

The introduced included among the compensable injuries that qualify an employee for lifetime income benefits a serious bodily injury sustained by the employee in the course and scope of the employee's employment or volunteer service as a first responder that permanently prevents the employee from performing any gainful work. The introduced also included a provision authorizing the adjudication of lifetime income benefits for a first responder to proceed in the manner prescribed for an expedited proceeding under statutory provisions governing the expedited provision of medical benefits for certain injuries sustained by a first responder in the course and scope of employment. The substitute does not include either of these provisions. Instead, the substitute sets out provisions providing for lifetime income benefits for first responders who sustain a serious bodily injury in the course and scope of employment or volunteer service as a first responder that renders the individual permanently unemployable and that does not otherwise qualify the individual for such benefits under the general eligibility criteria.

In establishing these separate provisions, the substitute changes who qualifies as a first responder for purposes of the extension of lifetime income benefits. The introduced defined "first responder" by reference to Government Code provisions relating to the governor's interoperable radio communications program, which includes the following:

- a peace officer whose duties include responding rapidly to an emergency;
- fire protection personnel;
- a volunteer firefighter who is either certified by TCFP or by the State Firemen's and Fire Marshalls' Association of Texas or who is a member of an organized volunteer fire-fighting unit;
- an individual certified as emergency medical services personnel by the Department of State Health Services;
- an emergency response operator or emergency services dispatcher who provides communication support services for an agency by responding to requests for assistance in emergencies; and
- other emergency response personnel employed by a law enforcement agency.

The substitute sets out its own definition of the term, which includes the following:

- a peace officer, irrespective of the officer's duties;
- an individual certified under state law as an emergency care attendant, advanced emergency medical technician, emergency medical technician-paramedic, or a licensed paramedic;
- a firefighter subject to certification by TCFP whose principal duties are aircraft crash and rescue or fire fighting; or
- an individual covered under optional workers' compensation coverage provided by a political subdivision for certain first responders who is providing volunteer services as:
 - a volunteer fire fighter, regardless of whether the individual is certified by TCFP; or
 - an emergency medical services volunteer.