

1-1 By: Burrows, et al. (Senate Sponsor - Perry) H.B. No. 2468
 1-2 (In the Senate - Received from the House April 5, 2023;
 1-3 April 12, 2023, read first time and referred to Committee on
 1-4 Business & Commerce; May 10, 2023, reported favorably by the
 1-5 following vote: Yeas 11, Nays 0; May 10, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the entitlement of an injured employee to lifetime
 1-22 income benefits under the workers' compensation system.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 408.0041, Labor Code, is amended by
 1-25 amending Subsection (j) and adding Subsection (k-1) to read as
 1-26 follows:

1-27 (j) An employee is not entitled to temporary income
 1-28 benefits, or to lifetime income benefits under Section 408.1615, if
 1-29 applicable to the employee, and an insurance carrier is authorized
 1-30 to suspend the payment of those [~~temporary income~~] benefits, during
 1-31 and for a period in which the employee fails to submit to an
 1-32 examination required by Subsection (a) or (f) or, if applicable,
 1-33 Section 408.1615(h), unless the commissioner determines that the
 1-34 employee had good cause for the failure to submit to the
 1-35 examination. The commissioner may order temporary income benefits
 1-36 or lifetime income benefits under Section 408.1615, as applicable,
 1-37 to be paid for the period for which the commissioner determined that
 1-38 the employee had good cause. The commissioner by rule shall ensure
 1-39 that:

1-40 (1) an employee receives reasonable notice of an
 1-41 examination and the insurance carrier's basis for suspension; and

1-42 (2) the employee is provided a reasonable opportunity
 1-43 to reschedule an examination for good cause.

1-44 (k-1) If the report of a designated doctor indicates that an
 1-45 employee receiving lifetime income benefits under Section 408.1615
 1-46 is no longer entitled to those benefits, the insurance carrier may
 1-47 suspend the payment of lifetime income benefits as provided by that
 1-48 section.

1-49 SECTION 2. Section 408.161(a), Labor Code, is amended to
 1-50 read as follows:

1-51 (a) Lifetime income benefits are paid until the death of the
 1-52 employee for:

1-53 (1) total and permanent loss of sight in both eyes;

1-54 (2) loss of both feet at or above the ankle;

1-55 (3) loss of both hands at or above the wrist;

1-56 (4) loss of one foot at or above the ankle and the loss
 1-57 of one hand at or above the wrist;

1-58 (5) an injury to the spine that results in permanent
 1-59 and complete paralysis of both arms, both legs, or one arm and one
 1-60 leg;

1-61 (6) a physically traumatic injury to the brain that,

2-1 as determined using evidence-based medicine, results in a permanent
 2-2 major neurocognitive disorder:

2-3 (A) for which the employee requires occasional
 2-4 supervision in the performance of routine daily tasks of self-care;
 2-5 and

2-6 (B) that renders the employee permanently
 2-7 unemployable [~~resulting in incurable insanity or imbecility~~]; or

2-8 (7) third degree burns that cover at least 40 percent
 2-9 of the body and require grafting, or third degree burns covering the
 2-10 majority of:

2-11 (A) [~~either~~] both hands;

2-12 (B) [~~or~~] one hand and one foot; or

2-13 (C) one hand or one foot and the face.

2-14 SECTION 3. Subchapter I, Chapter 408, Labor Code, is
 2-15 amended by adding Section 408.1615 to read as follows:

2-16 Sec. 408.1615. LIFETIME INCOME BENEFITS FOR CERTAIN FIRST
 2-17 RESPONDERS. (a) In this section:

2-18 (1) "First responder" means an individual who is:

2-19 (A) a peace officer under Article 2.12, Code of
 2-20 Criminal Procedure;

2-21 (B) certified under Chapter 773, Health and
 2-22 Safety Code, as an emergency care attendant, advanced emergency
 2-23 medical technician, emergency medical technician-paramedic or a
 2-24 licensed paramedic;

2-25 (C) a firefighter subject to certification by the
 2-26 Texas Commission on Fire Protection under Chapter 419, Government
 2-27 Code, whose principal duties are aircraft crash and rescue or fire
 2-28 fighting; or

2-29 (D) an individual covered under Section 504.012
 2-30 who is providing volunteer services as:

2-31 (i) a volunteer firefighter, regardless of
 2-32 whether the individual is certified under Chapter 419, Government
 2-33 Code; or

2-34 (ii) an emergency medical services
 2-35 volunteer, as defined by Section 773.003, Health and Safety Code.

2-36 (2) "Serious bodily injury" has the meaning assigned
 2-37 by Section 1.07, Penal Code.

2-38 (b) This section applies only to an employee who sustains a
 2-39 serious bodily injury, other than an injury described by Section
 2-40 408.161, in the course and scope of the employee's employment or
 2-41 volunteer service as a first responder that renders the employee
 2-42 permanently unemployable.

2-43 (c) Except as otherwise provided by this section, an
 2-44 employee to which this section applies is entitled to receive
 2-45 lifetime income benefits paid until the employee's death for the
 2-46 employee's injury. Sections 408.161(c) and (d) apply to the
 2-47 payment of lifetime income benefits under this section.

2-48 (d) The division shall accelerate any dispute, including a
 2-49 contested case hearing or appeal requested by the employee,
 2-50 regarding an employee's continuing entitlement to lifetime income
 2-51 benefits under this section. The employee shall provide notice to
 2-52 the division that the dispute involves a first responder.

2-53 (e) An employee receiving lifetime income benefits under
 2-54 this section shall annually certify to the insurance carrier, in
 2-55 the form and manner prescribed by the division, that the employee
 2-56 was not employed in any capacity during the preceding year.

2-57 (f) Notwithstanding Sections 410.169 and 410.205, an
 2-58 insurance carrier may periodically review an employee's continuing
 2-59 entitlement to lifetime income benefits under this section, but not
 2-60 more than once during any five-year period.

2-61 (g) Notwithstanding Subsection (f), an insurance carrier
 2-62 may review an employee's continuing entitlement to lifetime income
 2-63 benefits under this section regardless of the date on which the
 2-64 insurance carrier most recently reviewed the employee's continuing
 2-65 entitlement, if:

2-66 (1) the employee certifies to the insurance carrier
 2-67 under Subsection (e) that the employee was not employed in any
 2-68 capacity during the preceding year;

2-69 (2) the insurance carrier provides evidence to the

3-1 commissioner that the certification provided by the employee under
3-2 Subsection (e) is not accurate; and

3-3 (3) the commissioner notifies the insurance carrier
3-4 that the commissioner has determined that the evidence provided by
3-5 the insurance carrier is sufficient to show that the certification
3-6 provided by the employee under Subsection (e) may not be accurate.

3-7 (h) An insurance carrier reviewing an employee's continuing
3-8 entitlement under Subsection (f) or (g) shall request the
3-9 commissioner to order a medical examination conducted by a
3-10 designated doctor under Section 408.0041. Except as otherwise
3-11 provided by this section, the requirements of Section 408.0041
3-12 apply to an examination ordered under this subsection to the same
3-13 extent as if the examination were ordered under Section
3-14 408.0041(a).

3-15 (i) An employee is not entitled to lifetime income benefits
3-16 under this section, and an insurance carrier is authorized to
3-17 suspend the payment of lifetime income benefits, during and for a
3-18 period in which the employee fails to complete the annual
3-19 certification required by Subsection (e), the employee is employed
3-20 in any capacity, or as provided under Section 408.0041(j) or (k-1),
3-21 unless the commissioner determines that there is good cause. The
3-22 commissioner by rule shall ensure that an employee receives
3-23 reasonable notice of the insurance carrier's basis for the
3-24 suspension and is provided a reasonable opportunity to complete the
3-25 annual certification under Subsection (e) or otherwise respond to
3-26 the notice.

3-27 (j) The commissioner shall adopt rules necessary to
3-28 implement this section, including rules:

3-29 (1) prescribing the deadline for the submission and
3-30 the form and the manner of the submission of the annual
3-31 certification required by Subsection (e); and

3-32 (2) establishing procedures for:

3-33 (A) the review of an employee's continuing
3-34 entitlement to lifetime income benefits under this section;

3-35 (B) the suspension and reinstatement of lifetime
3-36 income benefits under this section; and

3-37 (C) the termination of lifetime income benefits
3-38 under this section on a final determination that an employee is no
3-39 longer entitled to the benefits.

3-40 SECTION 4. The changes in law made by this Act apply to a
3-41 claim for lifetime income benefits based on a compensable injury
3-42 that occurs on or after the effective date of this Act. A claim
3-43 based on a compensable injury that occurs before the effective date
3-44 of this Act is governed by the law in effect on the date the
3-45 compensable injury occurred, and the former law is continued in
3-46 effect for that purpose.

3-47 SECTION 5. This Act takes effect September 1, 2023.

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