

SUBJECT: Amending lifetime income benefits eligibility for workers' compensation

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — C. Turner, Hefner, Crockett, Lambert, Ordaz Perez, Patterson,
S. Thompson

0 nays

2 absent — Cain, Shine

WITNESSES: For — Joaquin Criner, Lewisville Firefighters Association; Pete Martinez, Texas State Association of Fire Fighters; Robert Stokes, TMLIRP; (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas; Aidan Alvarado, Laredo Fire Fighters Association; Robert Graves, TACRMP; John Wilkerson, Texas Municipal Police Association; John Riddle, Texas State Association of Fire Fighters; Jonathan Firebaugh; Jerod Kostecka)

Against — (*Registered, but did not testify*: Pam Beachley, Texas Cotton Ginners Trust)

On — (*Registered, but did not testify*: Amy Lee, Texas Department of Insurance)

BACKGROUND: Labor Code sec. 408.161 establishes that lifetime income benefits are paid until the death of the employee for certain injuries. These injuries include a physically traumatic injury to the brain resulting in incurable insanity or imbecility as well as third-degree burns that cover at least 40 percent of the body and require grafting or third-degree burns covering the majority of either both hands or one hand and the face, among other conditions.

Penal Code sec. 1.07 defines "serious bodily injury" as bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Labor Code sec. 504.055 requires a political subdivision, the division of workers' compensation at the Texas Department of Insurance, and the insurance carrier to accelerate and give priority to an injured first responder's claim for medical benefits, including all health care required to cure or relieve the effects naturally resulting from a compensable serious bodily injury.

DIGEST: CSHB 3120 would amend the criteria for which lifetime income benefits had to be paid until the death of the employee to include:

- a physically traumatic brain injury resulting in a permanent major neurocognitive disorder or a psychotic disorder; or
- third-degree burns covering the majority of both feet, one hand and one foot, or one hand or foot and the face.

The bill would add to the criteria for lifetime income benefits eligibility by including a serious bodily injury sustained by the employee in the course and scope of employment or volunteer service as a first responder that permanently prevented the employee from performing any gainful work.

Adjudication of lifetime income benefits for a first responder could proceed in an expedited proceeding under current law.

The bill would take effect September 1, 2021, and would apply to a claim for lifetime income benefits based on a compensable injury that occurred on or after that date.

**SUPPORTERS
SAY:**

CSHB 3120 would update outdated terminology and ensure first responders with serious bodily injuries could more easily seek lifetime income benefits. First responders who are catastrophically injured in the line of duty often have to medically retire much earlier than anticipated and have to navigate a complex worker's compensation system.

To qualify for lifetime income benefits under current state law, a

physically traumatic brain injury must result in "incurable insanity or imbecility." This language is inappropriate, antiquated, and lacks an identifiable medical standard with which a determination on lifetime income benefits eligibility could be made. By amending statute, the bill would adopt a more identifiable medical standard for a physically traumatic brain injury by removing "incurable insanity or imbecility" and replacing it with "a permanent major neurocognitive disorder or a psychotic disorder." These disorders would be evaluated on a case-by-case basis when determining eligibility for lifetime income benefits.

The bill also would apply to only a handful of first responders every year. Any costs could be absorbed by the state using existing resources.

**CRITICS
SAY:**

CSHB 3120 could create confusion and increase disputes by changing well established statutes that determine whether certain injuries qualify for lifetime income benefits. Some administrative law judges and jurors may not have enough training or knowledge of what qualifies as a permanent major neurocognitive disorder. It would be better for the bill to include professional standards that clearly define a permanent major neurocognitive disorder.

**OTHER
CRITICS
SAY:**

It would be more appropriate for the Legislature to discuss the proposed changes to lifetime income benefits for injured first responders during the 2022-2023 Sunset review of the Texas Department of Insurance.