

SUBJECT: Creating presumption of compensability of COVID-19 for nurses

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 5 ayes — C. Turner, Hefner, Crockett, Ordaz Perez, Patterson

1 nay — Lambert

3 absent — Cain, Shine, S. Thompson

WITNESSES: For — Rene Lara, Texas AFL-CIO; Serena Bumpus, Texas Nurses Association; Kimberly Smith, Texas Nurses Association and National Nurses United; (*Registered, but did not testify*: Susana Carranza; Idona Griffith; Georgia Keysor; Vanessa MacDougal; Suzanne Mitchell)

Against — Lee Ann Alexander, American Property and Casualty Insurance Association; Jon Schnautz, National Association of Mutual Insurance Companies; Cesar Lopez, Texas Hospital Association; (*Registered, but did not testify*: Adam Burklund, Sentry Insurance)

On — (*Registered, but did not testify*: Todd Holt and Stephen Vollbrecht, State Office of Risk Management; Amy Lee, Texas Department of Insurance, Division of Workers' Compensation; Timothy Cox)

BACKGROUND: Under sec. 408.001 of the Texas Workers' Compensation Act (Labor Code Subtitle A), recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance coverage or a legal beneficiary against the employer for the death of an employee or a work-related injury sustained by the employee.

During the COVID-19 pandemic, many observed that nurses were put at risk of contracting the disease by working with contagious patients. State law provides presumptions that certain illnesses were contracted on the job for compensation under the Texas Workers' Compensation Act. Calls have been made to establish a presumption for nurses who contracted COVID-19 to ease the process of seeking compensation.

DIGEST:

CSHB 396 would provide that a licensed nurse who suffered from coronavirus disease (COVID-19) on or after February 1, 2020, resulting in disability or death was presumed to have contracted the disease during the course and scope of employment as a nurse if the nurse:

- was assigned to treat a patient diagnosed with COVID-19 or to duties that required contact with patients diagnosed with the disease;
- contracted the disease within 14 days of treating or coming into contact with the patient; and
- before diagnosis did not decline or refuse a preventative immunization against the disease, unless the immunization was medically contraindicated.

Under the bill, a nurse would include a nurse employed by a state agency or political subdivision.

The presumption could be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the nurse's employment was a substantial factor in bringing about their disease or illness, without which the disease or illness would not have occurred.

A rebuttal would have to include a statement by the person offering the rebuttal that described, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the nurse's employment was a substantial factor in bringing about the disease or illness.

In addressing an argument based on a rebuttal, an administrative judge would have to make findings of fact and conclusions of law that considered whether a qualified expert stated the opinion that a cause not associated with the nurse's employment was a substantial factor in bringing about the disease or illness. The expert would have to rely on evidence-based medicine and base the opinion on reasonable medical

probability.

In lieu of any other benefits to which a beneficiary was entitled to, the amount of a death benefit paid to the legal beneficiary of a nurse who suffered from COVID-19 on or after February 1, 2020, resulting in death would be \$500,000 in a lump sum.

A nurse whose injury occurred between February 1, 2020, and the bill's effective date and whose claim was subsequently denied could request that the insurance carrier reprocess the claim. The request could not be made later than six months after the bill's effective date.

The bill would apply only to a claim for workers' compensation based on an injury that occurred on or after the effective date, except as otherwise provided.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact of about \$564,000 from interagency contracts if all previously denied claims for workers' compensation due to COVID-19 were deemed compensable. This analysis did not take into account potential new claims.

The State Office of Risk Management would need to increase assessments charged to state agencies to cover the bill's costs, and it is assumed that payments could be a significant cost to affected agencies. However, the cost cannot be determined currently, according to the Legislative Budget Board.