

SUBJECT: Presuming COVID-19 was contracted on the job for certain employees

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 5 ayes — Turner, Hefner, Lambert, Ordaz Perez, Patterson

1 nay — Crockett

3 absent — Cain, Shine, S. Thompson

WITNESSES: For — Joe Hamill, AFSCME Texas Corrections; Noel Johnson and Carlos Lopez, Justices of the Peace and Constables Association of Texas; John Wilkerson, Texas Municipal Police Association; Pete Martinez, Texas State Association of Fire Fighters; (*Registered, but did not testify*: Adam Becker, Abilene Police Officers Association; Marvin Ryals, Chris Jones, and Charley Wilkison, Combined Law Enforcement Associations of Texas, CLEAT; Scott Leeton and Greg Shipley, Corpus Christi Police Officers Association; Frederick Frazier, Dallas Police Association/FOP716 State FOP; Ky Ash, Department of Public Safety Officers Association (DPSOA); Carolina Aldaba, Fred Arias, and Brendan Kearns, El Paso Municipal Police Officers Association; Ray Hunt, Houston Police Officers' Union; Blaik Kemp, Hutchinson County Sheriffs Office; Jama Pantel, Justices of the Peace and Constables Association of Texas; Jose Gonzalez, Nueces County Sheriff Officers Association; Jimmy Rodriguez, San Antonio Police Officers Association; Ted Allen, Sherman County Sheriffs Office; Chanze Fowler, Texas Panhandle Peace Officers Association; John Riddle, Texas State Association of Fire Fighters; and eight individuals)

Against — (*Registered, but did not testify*: Lee Ann Alexander, American Property and Casualty Insurance Association)

On — Adam Haynes, Conference of Urban Counties; Jim Allison, County Judges and Commissioners Association of Texas; Rick Bailey, Johnson County; Tom Maddox, Sheriffs Association of Texas; Robert Graves, TACRMP; Robert Stokes, TMLIRP; (*Registered, but did not testify*: Jeff

Ormsby, AFSCME Texas Corrections; Todd Holt and Stephen Vollbrecht, State Office of Risk Management; Amy Lee, Texas Department of Insurance-Division of Workers' Compensation)

BACKGROUND: Under Government Code ch. 607, a firefighter, peace officer, or emergency medical technician (EMT) who suffers from certain respiratory diseases or illnesses that result in death or disability is presumed to have contracted the disease or illness during the course and scope of employment.

Under sec. 607.057, the presumption applies to a determination of whether a firefighter's, peace officer's, or EMT's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan.

DIGEST: CSHB 541 would provide that a detention officer, corrections employee, firefighter, peace officer, or emergency medical technician (EMT) who, based on an FDA-approved test, suffered from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) that resulted in death or disability would be presumed to have contracted the virus or disease during the course and scope of employment if the person:

- was employed in the area designated in a disaster declaration by the governor and the disaster was related to SARS-CoV-2 or COVID-19; and
- contracted the disease during the disaster.

"Corrections employee" would mean an employee of the Texas Department of Criminal Justice whose job duties required regular interaction with the public or an incarcerated population. "Detention officer" would mean an individual employed by a state agency or political subdivision to ensure the safekeeping of prisoners and the security of a municipal, county, or state penal institution.

The presumption would apply only to a person who was employed on a full-time basis and was last on duty no more than 10 days before testing positive.

CSHB 541 would subject the presumption for SARS-CoV-2 and COVID-19 to the same conditions as others under Government Code ch. 607, except that the presumption:

- would be exempt from a provision requiring a person to have been employed for five or more years; and
- would apply to a determination of a survivor's eligibility for benefits.

Certain conditions of the presumption established for tuberculosis or other respiratory illnesses would not apply to a claim that an employee suffered from SARS-CoV-2 or COVID-19.

A rebuttal offered to a presumption under this bill could not be based solely on evidence relating to the risk of exposure to SARS-CoV-2 or COVID-19 of a person with whom the officer, employee, firefighter, or EMT resided.

The bill would not affect the right of a detention officer, corrections employee, firefighter, peace officer, or EMT to provide proof that an injury or illness occurred during the course and scope of employment without using the presumption.

A person who on or after March 13, 2020, but before the bill's effective date, filed a claim for benefits, compensation, or assistance related to SARS-CoV-2 or COVID-19 and whose claim was denied could file another claim using the presumption.

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. Except as otherwise provided, the bill would apply to a claim pending on or filed on or after the effective date.

SUPPORTERS
SAY:

CSHB 541 would establish COVID-19 as a presumptive illness for full-time public safety employees and first responders for workers' compensation and other benefits. During the pandemic, many people were able to work from home to avoid exposure, but public safety employees did not have that option and had to encounter that risk to perform their duties and protect the people of Texas. Many have faced issues with obtaining workers' compensation due to injury or illness in the past, so by adding COVID-19 as presumptive, the bill would simplify the process.

The bill would be retroactive to ensure that employees who had claims denied could reapply for workers' compensation. The bill also would ensure that the families of employees who had passed away were cared for by providing that the presumption qualified for a line of duty death.

CSHB 541 accurately would be tailored to just those employees who had contracted COVID-19 in an area of disaster while on the job and would include certain protections for the employer and provide for rebuttal.

While workers' compensation and line of duty death payments do create significant costs, the Legislature could continue to work on how federal funds could be used to fill this need. Regardless of the cost, it is critical that the state provide care and compensation for first responders who contracted COVID-19 on the job.

The bill would qualify specific employees for the presumption based on input from interested stakeholders and with due consideration of which public safety employees lacked control over their environments and had to be exposed to disease within the scope of the job. Not every individual can be covered by the presumption, but the bill responsibly would include those who risked their health to provide necessary public safety services.

CRITICS
SAY:

CSHB 541 would impact local governments by creating a presumption that public safety employees contracted COVID-19 on the job for the purpose of worker's compensation and other benefits. This could come at great cost, especially to small or rural regions, and such costs would have

to be borne by taxpayers. While the state should recognize the first responders who performed their duties during the pandemic, this bill may not be the best way to do so. The Legislature instead could create a special benefit fund, with state or federal dollars, to directly pay benefits without requiring first responders to apply for benefits through the complicated system of worker's compensation.

OTHER
CRITICS
SAY:

The definition of "detention officer" in CSHB 541 should be amended to ensure it covered all employees who work closely with inmates and the public, not just those providing for the safekeeping of prisoners. These employees share the same risks and should receive the same benefits.

NOTES:

According to the Legislative Budget Board, the bill would require approval of workers' compensation claims related to SARS-CoV-2 or COVID-19 for certain persons. However, it is unknown how many employees would file or refile claims, so the fiscal impact cannot be determined.

The State Office of Risk Management estimated that payment of previously denied claims could be about \$28 million, which could result in an increase in assessments charged to state agencies.

The author intends to offer floor amendments to the bill that would:

- extend from 10 to 14 days the number of days since last on duty prior to testing positive to qualify for the presumption;
- allow a rebuttal to the presumption to be based on evidence that a person with whom an employee resides had a confirmed diagnosis of SARS-CoV-2 or COVID-19;
- specify that a person who had filed a claim after the governor declared a disaster but before the bill's effective date could request the insurance carrier to reprocess the claim; and
- specify applicability of certain laws regarding claims for reimbursement for health care using the presumption.