

BILL ANALYSIS

Senate Research Center

S.B. 22
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

First responders play a vital role in responding to requests for assistance, triaging patients, and providing emergency medical treatment and transport for ill or injured persons. However, unlike patient care in the controlled environment of a healthcare facility, patient care and transportation by first responders present unique challenges because of the nature of their work environment:

- interventions with limited information;
- performing duties in uncontrolled public venues; or
- interacting with individuals in enclosed space, especially during transport; and
- frequent need for rapid medical decision-making.

Many first responders with suspected COVID-19 work-related cases are currently required to prove that exposure occurred during their work duties.

The Officer Down Memorial Page and the National Law Enforcement Officers Memorial Fund have recorded more COVID-19-related law enforcement deaths than those attributed to gun violence, vehicle-related, and all other causes combined in 2020. Both list about 100 law enforcement deaths from COVID-19. Officer Down is verifying another 150 deaths at this time.

The legislation would establish a statutory presumption for first responders who die from or are disabled by complications related to any disease that is the basis for a disaster declared by the governor. Therefore COVID-19-related first responder deaths or illnesses are line-of-duty deaths under the legislation.

This would resolve first responders' current problem of proving to insurance companies that they contracted COVID-19 while on the job to obtain health and death benefits related to COVID-19.

(Original Author's / Sponsor's Statement of Intent)

S.B. 22 amends current law relating to certain claims for benefits, compensation, or assistance by certain public safety employees and survivors of certain public safety employees.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter B, Chapter 607, Government Code, to read as follows:

SUBCHAPTER B. DISEASES OR ILLNESSES SUFFERED BY DETENTION
OFFICERS, CUSTODIAL OFFICERS, FIREFIGHTERS, PEACE OFFICERS, AND
EMERGENCY MEDICAL TECHNICIANS

SECTION 2. Amends Section 607.051, Government Code, by amending Subdivision (1) and adding Subdivisions (1-a) and (1-b), to define "custodial officer" and "detention officer" in Subchapter B. Makes a nonsubstantive change.

SECTION 3. Amends Sections 607.052(a), (b), (e), and (g), Government Code, as follows:

(a) Provides that notwithstanding any other law, Subchapter B applies only to certain public safety employees, including a detention officer and custodial officer who meet certain conditions. Makes conforming changes.

(b), (e), and (g) Makes conforming changes to these subsections.

SECTION 4. Amends Section 607.054, Government Code, as follows:

Sec. 607.054. TUBERCULOSIS OR OTHER RESPIRATORY ILLNESS. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that the presumption that certain respiratory illnesses that resulted in death or disability have been contracted in the course and scope of employment does not apply to a claim for benefits that a firefighter, peace officer, or emergency medical technician suffers from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19).

SECTION 5. Amends Subchapter B, Chapter 607, Government Code, by adding Section 607.0545, as follows:

Sec. 607.0545. SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2 (SARS-CoV-2) OR CORONAVIRUS DISEASE 2019 (COVID-19). (a) Provides that a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician who suffers from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) that results in death or total or partial disability is presumed to have contracted the virus or disease during the course and scope of employment as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician if the detention officer, custodial officer, firefighter, peace officer, or emergency medical technician:

(1) is employed in the area designated in a disaster declaration by the governor under Section 418.014 (Declaration of State of Disaster) or another law and the disaster is related to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19); and

(2) contracts the disease during the disaster declared by the governor described by Subdivision (1).

(b) Provides that the presumption under this section applies only to a person who:

(1) is employed as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician on a full-time basis;

(2) is diagnosed with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19):

(A) using a test authorized, approved, or licensed by the United States Food and Drug Administration; or

(B) if the person is deceased, using a test described by Paragraph (A) or by another means, including by a physician; and

(3) was last on duty:

(A) not more than 15 days before the date the person is diagnosed with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) using a test described by Subdivision (2)(A); or

(B) if the person is deceased, not more than 15 days before the date the person:

(i) was diagnosed with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) using a test described by Subdivision (2)(A);

(ii) began to show symptoms of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) as determined by a licensed physician;

(iii) was hospitalized for symptoms related to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19); or

(iv) died if severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) was a contributing factor in the person's death.

(c) Provides that this section does not affect the right of a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician to provide proof, without the use of the presumption under this section, that an injury or illness occurred during the course and scope of employment.

(d) Provides that Sections 409.009 (Subclaims) and 409.0091 (Reimbursement Procedures for Certain Entities), Labor Code, do not apply to a claim for compensation determined to be compensable or accepted by an insurance carrier as compensable using the presumption under this section. Authorizes an injured employee, notwithstanding this subsection, to request reimbursement for health care paid by the employee as provided by Section 409.0092, Labor Code.

(e) Provides that this section expires September 1, 2023.

SECTION 6. Amends Section 607.057, Government Code, as follows:

Sec. 607.057. EFFECT OF PRESUMPTION. Makes conforming changes to this section.

SECTION 7. Amends Section 607.058, Government Code as follows:

Sec. 607.058. PRESUMPTION REBUTTABLE. (a) Provides that a presumption under certain sections, including Section 607.0545, may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.

(b) and (c) Makes conforming changes to these subsections.

(d) Prohibits a rebuttal offered under this section to a presumption under Section 607.0545 from being based solely on evidence relating to the risk of exposure to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) of a person with whom a detention officer, custodial

officer, firefighter, peace officer, or emergency medical technician resides. Provides that this subsection expires September 1, 2023.

SECTION 8. Amends Subchapter A, Chapter 409, Labor Code, by adding Section 409.0092, as follows:

Sec. 409.0092. HEALTH CARE REIMBURSEMENT PROCEDURES FOR CERTAIN INJURED EMPLOYEES. (a) Authorizes an injured employee who is subject to Section 607.0545, Government Code, and whose claim for benefits is determined to be compensable by an insurance carrier or the division of workers' compensation of the Texas Department of Insurance (division), to request reimbursement for health care paid by the employee, including copayments and partial payments, by submitting to the carrier a legible written request and documentation showing the amounts paid to the health care provider.

(b) Requires the carrier, not later than the 45th day after the date an injured employee submits a request for reimbursement for health care to an insurance carrier under Subsection (a), to provide reimbursement or deny the request.

(c) Authorizes an employee, if an insurance carrier denies an injured employee's request for reimbursement for health care, to seek medical dispute resolution as provided by Chapter 413 (Medical Review) and division rules. Provides that, notwithstanding any other law, an employee's request for medical dispute resolution is considered timely if the employee submits the request not later than the 120th day after the date the carrier denies the employee's request for reimbursement.

(d) Provides that this section expires September 1, 2023.

SECTION 9. Amends Section 409.022(d), Labor Code, to define "custodial officer" and "detention officer" in Subsection (d) (relating to requiring that an insurance carrier's notice of refusal to pay certain benefits include a statement by the carrier that contains certain information). Makes conforming changes.

SECTION 10. (a) Provides that the changes in law made by this Act apply to a claim for benefits pending on or filed on or after the effective date of this Act. Provides that a claim for benefits filed before that date is covered by the law in effect on the date the claim was made, and that law is continued in effect for that purpose.

(b) Authorizes a person, notwithstanding any other law, subject to Section 607.0545, Government Code, as added by this Act, who on or after the date the governor declared a disaster under Chapter 418 (Emergency Management), Government Code, relating to SARS-CoV-2, coronavirus disease 2019 (COVID-19), but before the effective date of this Act, contracted SARS-CoV-2, coronavirus disease 2019 (COVID-19), to file a claim for benefits, compensation, or assistance related to SARS-CoV-2, coronavirus disease 2019 (COVID-19), on or after the effective date of this Act, regardless of whether that claim is otherwise considered untimely and the changes in law made by this Act apply to that claim. Requires that a claim authorized under this subsection be filed not later than six months after the effective date of this Act.

(c) Authorizes a person, notwithstanding Subsection (a) of this section or Section 409.003 (Claim for Compensation), 409.007 (Death Benefit Claims), 410.169 (Effect of Decision), or 410.205 (Effect of Decision), Labor Code, subject to Section 607.0545, Government Code, as added by this Act, who on or after the date the governor declared a disaster under Chapter 418, Government Code, relating to SARS-CoV-2, coronavirus disease 2019 (COVID-19), but before the effective date of this Act, filed a claim for benefits related to SARS-CoV-2, coronavirus disease 2019 (COVID-19), and whose claim was subsequently denied to, on or after the effective date of this Act, request in writing that the insurance carrier reprocess the claim and requires that the changes in law made by this Act apply to that claim. Requires that a request to reprocess a claim as

authorized by this subsection be filed not later than one year after the effective date of this Act.

(d) Requires the insurance carrier, not later than the 60th day after the date an insurance carrier receives a written request to reprocess a claim under Subsection (c) of this section, to reprocess the claim and notify the person in writing whether the carrier accepted or denied the claim. Requires that the notice, if the insurance carrier denies the claim, include information on the process for disputing the denial. Requires that the notice provided by the insurance carrier use the notice provisions prescribed by the division under Subsection (e) of this section.

(e) Requires the division, as soon as practicable after the effective date of this Act, to prescribe notice provisions for an insurance carrier to use when providing notice of the insurance carrier's acceptance or denial of a person's claim. Requires that the notice provisions be clear and easily understandable.

SECTION 11. Effective date: upon passage or September 1, 2021.