

## **BILL ANALYSIS**

C.S.S.B. 22  
By: Springer  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been raised that the burden of proof is currently placed on first responders and other public safety employees to prove that they contracted COVID-19 while on the job in the past year. It has been argued that the burden of proof needs to be shifted instead to the employer in order to ensure that eligible employees and their survivors are receiving appropriate benefits, compensation, or assistance. C.S.S.B. 22 seeks to establish a presumption that certain public safety employees have contracted COVID-19 while on the job, under certain conditions, for purposes of such benefits, compensation, and assistance and provides for related claims to be filed by specified deadlines.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 22 amends the Government Code to establish that an individual who is a full-time detention officer, corrections employee, firefighter, peace officer, or emergency medical technician and who, based on a federally approved test, 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 the individual's employment for purposes of benefits or compensation that the individual is otherwise entitled to receive. The presumption applies in the following circumstances:

- the individual is employed in the area designated in a disaster declaration by the governor under the Texas Disaster Act of 1975 or another law and the disaster is related to SARS-CoV-2 or COVID-19;
- the individual contracts the disease during the disaster declared by the governor; and
- the individual was last on duty not more than 14 days before the date the person tests positive for SARS-CoV-2 or COVID-19.

The presumption does not affect the individual's right to provide proof, without the use of the presumption, that an injury or illness occurred during the course and scope of employment. The bill makes provisions establishing a presumption that a firefighter, peace officer, or emergency medical technician who suffers from tuberculosis or other respiratory illness has contracted the disease or illness during the course and scope of employment inapplicable to a claim that the individual suffers from SARS-CoV-2 or COVID-19. The bill defines the following:

- "corrections employee" means an employee of the Texas Department of Criminal Justice whose job duties require regular interaction with the public or an incarcerated population; and
- "detention officer" means an individual employed by a state agency or political subdivision of the state to ensure the safekeeping of prisoners and the security of a municipal, county, or state penal institution in Texas.

C.S.S.B. 22 extends the applicability of provisions authorizing the rebuttal of a presumption of certain diseases or illnesses being contracted during the course and scope of certain employment to the presumption regarding SARS-CoV-2 and COVID-19 but prohibits a rebuttal to that presumption from being based solely on evidence relating to the risk of exposure to SARS-CoV-2 or COVID-19 of a person with whom a qualified individual resides. The bill establishes that a rebuttal to that presumption may be based on evidence that a person with whom a qualified individual resides had a confirmed diagnosis of SARS-CoV-2 or COVID-19.

C.S.S.B. 22 makes provisions authorizing workers' compensation subclaims and reimbursement of health care paid by a health insurer inapplicable to a claim for compensation determined to be compensable or accepted by an insurance carrier as compensable using the presumption regarding SARS-CoV-2 and COVID-19.

C.S.S.B. 22 amends the Labor Code to provide for an injured employee with such a claim 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. The bill requires the carrier to either provide reimbursement or deny the request not later than the 45th day after the date the employee submits the request for reimbursement and provides for the employee to seek medical dispute resolution if the carrier denies the request.

C.S.S.B. 22 applies to a claim for benefits, compensation, or assistance pending on or filed on or after the bill's effective date. The bill authorizes a person to file a claim for benefits, compensation, or assistance related to SARS-CoV-2 or COVID-19 not later than six months after the bill's effective date if the person contracted SARS-CoV-2 or COVID-19 on or after the date the governor declared a disaster relating to SARS-CoV-2 or COVID-19 but before the bill's effective date, regardless of whether that claim is otherwise considered untimely. The bill authorizes a person who filed such a claim before the bill's effective date and whose claim was subsequently denied to request in writing, not later than one year after the bill's effective date, that the insurance carrier reprocess the claim. The bill requires the carrier to reprocess the claim and provide notice regarding the carrier's decision not later than the 60th day after receiving the written request and requires the division of workers' compensation of the Texas Department of Insurance to prescribe clear and easily understandable notice provisions for a carrier to use.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 22 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute makes changes to the individuals to whom the presumption established by the bill applies, as follows:

- changes from a corrections officer employed by the Texas Department of Criminal Justice (TDCJ), which appeared in the engrossed, to a TDCJ employee whose job duties require regular interaction with the public or an incarcerated population; and

- changes from a person employed as a licensed county jail guard, which appeared in the engrossed, to an individual employed by a state agency or political subdivision of the state to ensure the safekeeping of prisoners and the security of a municipal, county, or state penal institution in Texas.

The substitute does not include the provision contained in the engrossed specifying that a disease is not an applicable "ordinary disease of life" if the disease is the basis for a state of disaster declared by the governor under the Texas Disaster Act of 1975, with respect to the entitlement of a public safety employee exposed to a contagious disease to certain reimbursement for medical expenses from the employing governmental entity.

The substitute revises the provisions of the engrossed establishing the presumption as follows:

- by specifying that SARS-CoV-2 and COVID-19, based on a federally approved test, are the diseases to which the presumption applies, whereas the engrossed applied to any disease that is the basis for a state of disaster declared by the governor; and
- by limiting applicability of the presumption to a full-time employee who was last on duty not more than 14 days before testing positive for SARS-CoV-2 or COVID-19.

The substitute does not include the limitation on the applicability of the presumption to a claim that is filed before the first anniversary of the date the state of disaster is terminated, which appeared in the engrossed.

The substitute also includes provisions not in the engrossed establishing the following:

- the presumption does not affect the individual's right to provide proof, without the use of the presumption, that an injury or illness occurred during the course and scope of employment;
- a presumption related to tuberculosis or other respiratory illness does not apply to a claim that the individual suffers from SARS-CoV-2 or COVID-19; and
- statutory provisions authorizing workers' compensation subclaims and reimbursement of health care paid by a health insurer do not apply to a claim for compensation determined to be compensable or accepted by an insurance carrier as compensable using the presumption under the bill.

With respect to the bill's provisions relating to a rebuttal to the presumption, the substitute includes the following provisions, which did not appear in the engrossed:

- a prohibition against the rebuttal being based solely on evidence relating to the risk of exposure to SARS-CoV-2 or COVID-19 of a person with whom a qualified individual resides; and
- a provision establishing that the rebuttal may be based on evidence that a person with whom a qualified individual resides had a confirmed diagnosis of SARS-CoV-2 or COVID-19.

The substitute includes provisions that did not appear in the engrossed providing for an injured employee whose claim for compensation is determined to be accepted by an insurance carrier as compensable using the presumption under the bill to request reimbursement for health care paid by the employee. The substitute includes additional requirements for the carrier's reimbursement or denial of the request and an authorization for an employee to seek medical dispute resolution if the request is denied, which did not appear in the engrossed.

Whereas the engrossed authorizes an applicable person to file a claim for benefits, compensation, or assistance related to SARS-CoV-2 or COVID-19 any time on or after the bill's effective date regardless of whether the claim is otherwise considered untimely and makes the bill's provisions applicable to that claim, the substitute specifies that the claim must be filed not later than six months after the bill's effective date. The substitute extends the deadline that appeared in the engrossed by which a person is required to file a request to reprocess a previously denied claim from not later than six months after the bill's effective date to not later than one year after the bill's effective date.