

BILL ANALYSIS

C.S.H.B. 541
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many public safety employees, such as police officers, firefighters, and those who work in correctional facilities, have been forced to work through the COVID-19 pandemic in close proximity to others, potentially exposing them to COVID-19. Given the nature of the disease, it can be difficult to prove that it was contracted while on the job. C.S.H.B. 541 seeks to make it easier for qualifying public safety employees to obtain appropriate benefits and compensation by establishing a presumption that SARS-CoV-2 or COVID-19 was contracted in the scope of employment, subject to certain conditions.

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.H.B. 541 amends the Government Code to establish a presumption for purposes of benefits and compensation for an employment-related disease that a detention officer, corrections employee, firefighter, peace officer, or emergency medical technician who, based on an FDA-approved test, suffers from SARS-CoV-2 or COVID-19 that results in disability or death contracted the virus or disease during the course and scope of employment if the person is employed in an area designated as a disaster area by the governor in a disaster declaration related to SARS-CoV-2 or COVID-19 and the person contracts the disease during the declared disaster. This presumption applies only to a person who is employed on a full-time basis and was last on duty not more than 10 days before the date the person tests positive for SARS-CoV-2 or COVID-19. These provisions expressly do not affect a person's right to provide proof, without the use of the presumption, that an injury or illness occurred during the course and scope of employment.

C.S.H.B. 541 subjects the presumption established by the bill regarding SARS-CoV-2 and COVID-19 to the same conditions of applicability as other statutory presumptions regarding diseases or illnesses suffered by certain public safety employees, except as follows:

- employment for five or more years in the applicable occupation is not a condition of the SARS-CoV-2 and COVID-19 presumption; and
- that presumption also applies to a determination of a survivor's eligibility for certain financial assistance.

The bill establishes that a rebuttal to the SARS-CoV-2 and COVID-19 presumption seeking to show that a cause not associated with the individual's service was a substantial factor in bringing

about the disease may not be based solely on evidence relating to the risk of exposure of a person with whom a detention officer, corrections employee, firefighter, peace officer, or emergency medical technician resides. The bill clarifies that the conditions of the presumption established for tuberculosis or certain other respiratory illnesses do not apply to a claim that a firefighter, peace officer, or emergency medical technician suffers from SARS-CoV-2 or COVID-19.

C.S.H.B. 541 defines "corrections employee" and "detention officer" as follows:

- "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 to ensure the safekeeping of prisoners and the security of a municipal, county, or state penal institution in Texas.

C.S.H.B. 541 establishes that its provisions apply to a claim pending on or filed on or after the bill's effective date. The bill authorizes a person who filed a claim for benefits, compensation, or assistance related to SARS-CoV-2 or COVID-19 on or after March 13, 2020, but before the bill's effective date, and whose claim was subsequently denied to file another claim on or after the bill's effective date and establishes that the SARS-CoV-2 and COVID-19 presumption applies to that claim.

EFFECTIVE DATE

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

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 541 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original established a presumption for purposes of benefits and compensation that a public safety employee who suffers from COVID-19 resulting in disability or death contracted the disease during the course and scope of employment. The substitute retains this presumption but expands the scope to include SARS-CoV-2. The substitute revises the applicability of the presumption by listing each occupation to which the presumption applies, rather than applying the presumption broadly to all public safety employees as in the original. In doing so, the substitute does not explicitly include county jailers as an occupation to which the presumption applies but does include corrections employees.

The substitute includes the following, which were absent from the original:

- conditions that must be met to qualify for the presumption, including diagnosis using an FDA-approved test and certain conditions relating to full-time employment in a qualifying disaster area within a specified period before the test;
- a provision specifying that the presumption does not affect the right of a person employed in a profession to whom the presumption applies to provide proof, without the use of the presumption, that the injury or illness occurred during the course and scope of employment;
- provisions excepting the SARS-CoV-2 and COVID-19 presumption from a condition requiring five or more years of employment in the case of a firefighter, peace officer, or emergency medical technician and establishing that the presumption applies to a determination of a survivor's eligibility for certain assistance;
- a provision prohibiting a certain rebuttal to the presumption from being based solely on the exposure risk of a person with whom an applicable public employee resides;

- a provision clarifying that the terms of the presumption established for tuberculosis or another respiratory illness for applicable public employees do not apply to a claim relating to SARS-CoV-2 or COVID-19; and
- definitions of "corrections employee" and "detention officer."

The substitute revises the original's saving provision by including a claim pending on the bill's effective date among the claims to which the provision applies.

The original authorized a person who, within a certain period before the bill's effective date, filed a claim for benefits or compensation related to COVID-19 that was denied to file another claim on or after the bill's effective date to which the presumption would then apply. The substitute changes the start date of that period to March 13, 2020.