A BILL FOR AN ACT

CONCERNING THE CREATION OF PRESUMPTIONS RELATED TO AN ESSENTIAL WORKER WHO CONTRACTS COVID-19 FOR PURPOSES RELATED TO WORKERS' COMPENSATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill provides that, for purposes of the "Workers' Compensation Act of Colorado", if an essential worker who works outside of the home contracts COVID-19, the contraction is:

! Presumed to have arisen out of and in the course of employment; and

Shading denotes HOUSE amendment Double underlining denotes SENATE amendment
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.
A compensable accident, injury, or occupational disease. An essential worker is considered to have contracted COVID-19 if the worker tests positive for the virus that causes COVID-19, is diagnosed with COVID-19 by a licensed physician, or has COVID-19 listed as the cause of death on the worker's death certificate.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) When the governor ordered Coloradans to "stay-at-home" in March of 2020, essential workers continued working outside the home. They started their shifts in emergency rooms, responded to emergency calls, stocked shelves, delivered our groceries, processed our meats, cleaned our jails, and drove our buses. They kept the power on and the internet working. Coloradans have shown our gratitude with homemade signs, car parades, flyovers, and online videos.

(b) Colorado is already seeing essential workers denied even basic coverage for prolonged illness and death. When these workers face coronavirus exposure on the job and get seriously ill or die from COVID-19, they are at substantial risk of a denial of workers' compensation coverage because the "Workers' Compensation Act of Colorado" forces them into protracted litigation regarding the origin of their exposure. This is antithetical to the purposes of the "Workers' Compensation Act of Colorado" and the social contract that the general assembly struck between employers and workers in enacting the act.

(c) COVID-19 is disproportionately affecting communities of color, who hold many of these essential jobs. According to a study in May 2020, Coloradans who are African American are disproportionately adversely affected by COVID-19 infections. Coloradans who are African
American are experiencing 28.2 deaths per 100,000 people while Coloradans who are Caucasian are experiencing 15.4 deaths per 100,000 people. In the United States, the latest overall COVID-19 mortality rate for African Americans is 2.4 times higher than the rate for Caucasians and 2.2 times higher than the rate for Asian Americans and Latinx Americans.

(d) The presumptions created in this act are necessary to protect the essential workers who kept our lights on, kept our water running, ensured that food remained on our tables, maintained community safety, and treated our ill and dying.

SECTION 2. In Colorado Revised Statutes, add 8-41-208.5 as follows:

8-41-208.5. Coverage for job-related contraction of COVID-19 - definitions. (1) AS USED IN THIS SECTION:

(a) "COVID-19" MEANS THE RESPIRATORY ILLNESS CAUSED BY SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2.

(b) "ESSENTIAL WORKER" MEANS THE FOLLOWING EMPLOYEES REQUIRED TO WORK OUTSIDE OF THE EMPLOYEE'S HOME:

(I) FIRST RESPONDERS, INCLUDING LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, EMERGENCY MEDICAL SERVICE PROVIDERS, PARAMEDICS, AMBULANCE DRIVERS, OR 911 OPERATORS;

(II) CORRECTIONS OFFICERS;

(III) MEDICAL, HEALTH CARE, AND PUBLIC HEALTH WORKERS, INCLUDING PHYSICIANS AND PHYSICIAN ASSISTANTS LICENSED UNDER ARTICLE 240 OF TITLE 12; NURSES LICENSED UNDER ARTICLE 255 OF TITLE 12; NURSE AIDES CERTIFIED UNDER ARTICLE 260 OF TITLE 12; AND SURGICAL ASSISTANTS AND SURGICAL TECHNOLOGISTS REGISTERED UNDER
ARTICLE 310 of TITLE 12;

(IV) Home health care workers providing home health services as defined in section 25.5-4-103 (7);

(V) Commercial cleaning workers, including janitors and custodians, at any facility treating COVID-19 patients;

(VI) Nursing home workers, including cleaning staff;

(VII) Utility workers and in-home service technicians, including workers who provide telecommunications; electrical; heating, ventilation, and air conditioning; or mechanical services at any facility treating patients diagnosed with COVID-19, any facility with an identified COVID-19 outbreak, or a home or dwelling with an individual diagnosed with COVID-19;

(VIII) Construction or maintenance workers at a facility treating patients diagnosed with COVID-19, a facility with an identified COVID-19 outbreak, or a home or dwelling with an individual diagnosed with COVID-19;

(IX) Workers at residential care or residential living facilities, including mental health facilities, treating patients diagnosed with COVID-19 or with an identified COVID-19 outbreak;

(X) Food processing and agricultural workers;

(XI) Grocery store workers;

(XII) Drivers and operators employed by the regional transportation district created in article 9 of title 32, a mass transit district, a mass transit authority, or any public entity authorized under the laws of this state to provide mass transportation services to the general public; and
(XIII) AIRLINE EMPLOYEES, INCLUDING FLIGHT ATTENDANTS, PILOTS, CLEANING CREW WORKERS, AND FOOD SERVICE AND CATERING WORKERS.

(c) "IDENTIFIED COVID-19 OUTBREAK" MEANS A COVID-19 OUTBREAK AS DETERMINED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT CREATED IN SECTION 25-1-102.

(2) (a) IF AN ESSENTIAL WORKER CONTRACTS COVID-19, THE CONTRACTION IS:

(I) PRESUMED TO HAVE ARISEN OUT OF AND IN THE COURSE OF EMPLOYMENT; AND

(II) A COMPENSABLE ACCIDENT, INJURY, OR OCCUPATIONAL DISEASE.

(b) FOR PURPOSES OF THIS SECTION, AN ESSENTIAL WORKER HAS CONTRACTED COVID-19 IF THE ESSENTIAL WORKER:

(I) THROUGH LABORATORY TESTING PRESCRIBED BY A LICENSED PHYSICIAN OF A SPECIMEN THE ESSENTIAL WORKER PROVIDES, TESTS POSITIVE FOR THE VIRUS THAT CAUSES COVID-19; OR

(II) IF LABORATORY TESTING IS UNAVAILABLE:

(A) IS DIAGNOSED WITH COVID-19 BY A LICENSED PHYSICIAN; OR

(B) DIES AND COVID-19 IS LISTED AS THE CAUSE OF DEATH BY A LICENSED PHYSICIAN ON THE ESSENTIAL WORKER'S DEATH CERTIFICATE.

(3) THE PRESUMPTION SET FORTH IN SUBSECTION (2)(a) OF THIS SECTION:

(a) MAY BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE OF SPECIFIC CAUSATION ESTABLISHING THAT THE ESSENTIAL WORKER'S CONTRACTION OF COVID-19 DID NOT ARISE OUT OF OR IN THE COURSE OF THE ESSENTIAL WORKER'S EMPLOYMENT; AND
(b) DOES NOT APPLY TO A CLAIM FOR DAMAGES BY A THIRD PARTY.

(4) NOTHING IN THIS SECTION LIMITS AN ESSENTIAL WORKER'S ABILITY TO ESTABLISH A COMPENSABLE ACCIDENT, INJURY, OR OCCUPATIONAL DISEASE CLAIM UNDER ARTICLES 40 TO 47 OF THIS TITLE THAT WAS FILED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION.

(5) AN ADMISSION OF LIABILITY OR ORDER AWARDING BENEFITS TO AN ESSENTIAL WORKER WHO IS ENTITLED TO THE PRESUMPTION SET FORTH IN SUBSECTION (2)(a) OF THIS SECTION IS NOT BINDING IN ANY OTHER LEGAL PROCEEDING.

(6) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, AN INSURER OR, IF INSURED, AN EMPLOYER MAY OFFSET ITS LIABILITY FOR TEMPORARY AND PERMANENT DISABILITY BENEFITS AND DEATH BENEFITS BY ANY DISABILITY AND DEATH BENEFITS RECEIVED BY AN ESSENTIAL WORKER OR THE ESSENTIAL WORKER'S DEPENDENTS FROM ANY SOURCE RELATED TO THE ESSENTIAL WORKER'S CONTRACTION OF COVID-19, EXCEPT FROM ANY SOURCE ARISING FROM A CONTRACT ENTERED INTO BY OR ON BEHALF OF THE ESSENTIAL WORKER.

(7) THIS SECTION IS REPEALED, EFFECTIVE JUNE 21, 2022.

SECTION 3. Applicability. This act applies to claims for which disability arises on or after the effective date of this act.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.