

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-1245.01 Yelana Love x2295

SENATE BILL 20-216

SENATE SPONSORSHIP

Rodriguez, Danielson, Gonzales, Pettersen

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A BILL FOR AN ACT

101 CONCERNING THE CREATION OF PRESUMPTIONS RELATED TO AN
102 ESSENTIAL WORKER WHO CONTRACTS COVID-19 FOR
103 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.

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

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

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

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

20 (c) COVID-19 is disproportionately affecting communities of
21 color, who hold many of these essential jobs. According to a study in May
22 2020, Coloradans who are African American are disproportionately
23 adversely affected by COVID-19 infections. Coloradans who are African

1 American are experiencing 28.2 deaths per 100,000 people while
2 Coloradans who are Caucasian are experiencing 15.4 deaths per 100,000
3 people. In the United States, the latest overall COVID-19 mortality rate
4 for African Americans is 2.4 times higher than the rate for Caucasians
5 and 2.2 times higher than the rate for Asian Americans and Latinx
6 Americans.

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

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

13 **8-41-208.5. Coverage for job-related contraction of COVID-19**
14 **- definitions.** (1) AS USED IN THIS SECTION:

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

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

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

22 (II) CORRECTIONS OFFICERS;

23 (III) MEDICAL, HEALTH CARE, AND PUBLIC HEALTH WORKERS,
24 INCLUDING PHYSICIANS AND PHYSICIAN ASSISTANTS LICENSED UNDER
25 ARTICLE 240 OF TITLE 12; NURSES LICENSED UNDER ARTICLE 255 OF TITLE
26 12; NURSE AIDES CERTIFIED UNDER ARTICLE 260 OF TITLE 12; AND
27 SURGICAL ASSISTANTS AND SURGICAL TECHNOLOGISTS REGISTERED UNDER

1 ARTICLE 310 OF TITLE 12;

2 (IV) HOME HEALTH CARE WORKERS PROVIDING HOME HEALTH
3 SERVICES AS DEFINED IN SECTION 25.5-4-103 (7);

4 (V) COMMERCIAL CLEANING WORKERS, INCLUDING JANITORS AND
5 CUSTODIANS, AT ANY FACILITY TREATING COVID-19 PATIENTS;

6 (VI) NURSING HOME WORKERS, INCLUDING CLEANING STAFF;

7 (VII) UTILITY WORKERS AND IN-HOME SERVICE TECHNICIANS,
8 INCLUDING WORKERS WHO PROVIDE TELECOMMUNICATIONS; ELECTRICAL;
9 HEATING, VENTILATION, AND AIR CONDITIONING; OR MECHANICAL
10 SERVICES AT ANY FACILITY TREATING PATIENTS DIAGNOSED WITH
11 COVID-19, ANY FACILITY WITH AN IDENTIFIED COVID-19 OUTBREAK, OR
12 A HOME OR DWELLING WITH AN INDIVIDUAL DIAGNOSED WITH COVID-19;

13 (VIII) CONSTRUCTION OR MAINTENANCE WORKERS AT A FACILITY
14 TREATING PATIENTS DIAGNOSED WITH COVID-19, A FACILITY WITH AN
15 IDENTIFIED COVID-19 OUTBREAK, OR A HOME OR DWELLING WITH AN
16 INDIVIDUAL DIAGNOSED WITH COVID-19;

17 (IX) WORKERS AT RESIDENTIAL CARE OR RESIDENTIAL LIVING
18 FACILITIES, INCLUDING MENTAL HEALTH FACILITIES, TREATING PATIENTS
19 DIAGNOSED WITH COVID-19 OR WITH AN IDENTIFIED COVID-19
20 OUTBREAK;

21 (X) FOOD PROCESSING AND AGRICULTURAL WORKERS;

22 (XI) GROCERY STORE WORKERS;

23 (XII) DRIVERS AND OPERATORS EMPLOYED BY THE REGIONAL
24 TRANSPORTATION DISTRICT CREATED IN ARTICLE 9 OF TITLE 32, A MASS
25 TRANSIT DISTRICT, A MASS TRANSIT AUTHORITY, OR ANY PUBLIC ENTITY
26 AUTHORIZED UNDER THE LAWS OF THIS STATE TO PROVIDE MASS
27 TRANSPORTATION SERVICES TO THE GENERAL PUBLIC; AND

1 (XIII) AIRLINE EMPLOYEES, INCLUDING FLIGHT ATTENDANTS,
2 PILOTS, CLEANING CREW WORKERS, AND FOOD SERVICE AND CATERING
3 WORKERS.

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

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

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

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

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

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

18 (II) IF LABORATORY TESTING IS UNAVAILABLE:

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

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

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

24 (a) MAY BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE OF
25 SPECIFIC CAUSATION ESTABLISHING THAT THE ESSENTIAL WORKER'S
26 CONTRACTION OF COVID-19 DID NOT ARISE OUT OF OR IN THE COURSE OF
27 THE ESSENTIAL WORKER'S EMPLOYMENT; AND

1 (b) DOES NOT APPLY TO A CLAIM FOR DAMAGES BY A THIRD PARTY.

2 (4) NOTHING IN THIS SECTION LIMITS AN ESSENTIAL WORKER'S
3 ABILITY TO ESTABLISH A COMPENSABLE ACCIDENT, INJURY, OR
4 OCCUPATIONAL DISEASE CLAIM UNDER ARTICLES 40 TO 47 OF THIS TITLE
5 8 THAT WAS FILED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION.

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

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

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

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

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