

State: Calif.

Senate Committee Passes One COVID Presumption Bill, Votes Down Another: Top [2020-05-18]

A Senate committee last week passed a bill that its author said would be “the largest and most expansive presumption in the history of the state of California.”



Sen. Jerry Hill

The Senate Labor, Public Employment and Retirement Committee on Thursday approved [Senate Bill 1159](#), which would create a rebuttable presumption for “critical” public and private sector employees who contract COVID-19 while employed to combat the virus’s spread.

The bill’s author, Democratic Sen. Jerry Hill, from San Mateo, said SB 1159 appears similar to Gov. Gavin Newsom’s recent [executive order](#), which created a rebuttable COVID-19 presumption for workers who contract the virus while on the job.

Newsom’s order, however, is retroactive to March 19 and will expire July 5. SB 1159 doesn’t currently include a sunset date, but Hill said one would be added.

“It was an enormous step forward, but it was only a step,” Hill said about the executive order. “The executive order expires in early July, and COVID will be with us much beyond that date.”

The presumption would probably last at least through 2020 and into 2021, Hill said.

“Yes, we need to be sensitive to the costs borne by local governments and small businesses, but we also need to provide necessary medical care to our frontline workers who need it most,” he said.

SB 1159 now heads to the Senate Appropriations Committee.

Hill called SB 1159 “a work in progress” and said he would speak with as many stakeholders as possible in hopes of refining it.

Aside from the lone “no” vote from committee member Sen. Mike Morrell, R-Rancho Cucamonga, SB 1159 faced essentially no outright opposition during Thursday’s hearing.

Individuals speaking in opposition to the bill found themselves being referred to as “tweeners” by committee members because they agreed to help improve the bill despite not approving of it in its entirety.

The committee heard from lobbyists who believed the presumption either went too far or didn’t go far enough.

Mitch Steiger, legislative advocate for the California Labor Federation, said he supported the intent of the bill but wanted the presumption to change from rebuttable to conclusive.

“We’ve seen workers really struggle in the workers’ compensation system to get covered for occupational disease claims, and we think moving to a conclusive presumption would help take care of some of those costs and delays,” Steiger said.

Steiger also posed a question concerning the bill’s mention of a “critical worker.”

SB 1159 doesn’t explicitly state which workers are considered “critical.” The bill defines such a worker as “a public sector or private sector employee who is employed to combat the spread of COVID-19.” The bill also declares the intent of the Legislature to explicitly identify the workers who would be covered by the presumption.

Steiger said the bill in its current form “could create a lot of questions about who it can apply to.”

Jason Schmelzer, speaking on behalf of the California Coalition on Workers' Compensation, also said the bill raises questions about who would be covered. SB 1159 would need to specify what filter is being used to either allow workers into the presumption or keep them out, Schmelzer said.

Schmelzer also cautioned against moving to an irrebuttable presumption because it can be nearly impossible for employers to rebut a claim, even if there is conclusive evidence the illness or injury did not occur while on the job.

“We think that is a fundamental violation of a hundred years of workers’ compensation law, not only in this state but in this country,” Schmelzer said. “It would be a gross violation of what this system is intended to do. So, we obviously would not support that.”

Representatives from nearly a dozen other organizations briefly testified that they agreed with Schmelzer’s statements.

Earlier Thursday, committee members voted down another COVID-19-related workers’ compensation bill – [Senate Bill 893](#) – which would have created a rebuttable presumption for hospital employees who provide direct patient care in an acute care hospital.

The bill would have covered “diseases, musculoskeletal injuries and respiratory diseases, as defined,” going beyond specifically COVID-19.

SB 893, authored by Democratic Sen. Anna Caballero, Salinas, failed despite passionate testimony from the California Nurses Association.

CNA legislative advocate Stephanie Roberson testified that dozens of nurses had died in California and across the country due to a lack of access to proper safety equipment, such as N95 masks.

“This is literally about life and death,” Roberson said. “We know that these nurses are getting infections on the job.”

The bill faced more opposition than support Thursday, with nearly twice as many speakers against SB 893 than for it.

Roberson offered the committee a chance to hear testimony from two nurses who claim they were denied workers' compensation benefits after getting sick on the job. Committee members opted not to hear their testimony.

Gail Blanchard-Saiger, vice president and counsel for the California Hospital Association, testified that health care workers were already using California's no-fault workers' compensation system to deal with on-the-job injuries and illnesses.

"There have been few, if any, complaints that the current system is not working outside of COVID-19," Blanchard-Saiger said, citing that only 2% of musculoskeletal injury claims for health care workers were denied.

Blanchard-Saiger also said that if claims went up, small and rural hospitals that are self-insured will see their rates go up.

Caballero argued that her bill was intended to correct an issue of equity. She asked why firefighters, police officers and paramedics could be covered by presumptions while nurses and other hospital workers could not.

"Nurses are dealing with the same injuries, the same body fluids and the same diseases," Caballero said. "Why do we say that first responders on the scene get that benefit, but the next line doesn't get that benefit? They're all on the front line. They're all dealing with the same patient. To me it just doesn't seem to make sense that we need to at least consider if a presumption is right for one group, why isn't it right for another group?"