

By: Deuell, Gallegos

S.B. No. 1414

A BILL TO BE ENTITLED

AN ACT

relating to certain diseases or illnesses suffered by certain emergency first responders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 607, Government Code, is amended to read as follows:

CHAPTER 607. BENEFITS RELATING TO CERTAIN [~~CONTAGIOUS~~] DISEASES
AND ILLNESSES

SECTION 2. Sections 607.001 through 607.004, Government Code, are designated as Subchapter A, Chapter 607, and a heading for that subchapter is added to read as follows:

SUBCHAPTER A. CONTAGIOUS DISEASES

SECTION 3. Chapter 607, Government Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. DISEASES OR ILLNESSES SUFFERED BY FIRST RESPONDERS

Sec. 607.051. DEFINITION. In this subchapter, "first responder" means:

(1) a public safety employee whose duties primarily include responding rapidly to an emergency to be the first person to arrive at the scene of the emergency;

(2) a person who is defined as fire protection personnel under Section 419.021;

(3) a volunteer fire fighter certified by the Texas Commission on Fire Protection or the State Firemen's and Fire

1 Marshals' Association of Texas;

2 (4) a peace officer, fire fighter, or emergency
3 medical services employee who provides that service under an
4 interlocal agreement; and

5 (5) an individual certified as an emergency medical
6 technician by the Texas Department of Health.

7 Sec. 607.052. APPLICABILITY. (a) Notwithstanding any
8 other law, this subchapter applies to a first responder who:

9 (1) on becoming or during employment as a first
10 responder, received a physical examination that failed to reveal
11 evidence of the illness or disease for which benefits or
12 compensation are sought using a presumption established by this
13 subchapter;

14 (2) is employed for five or more years as a first
15 responder; and

16 (3) seeks compensation for a disease or illness
17 covered by this subchapter that is discovered during employment as
18 a first responder.

19 (b) A presumption under this subchapter does not apply:

20 (1) to a determination of a survivor's eligibility for
21 benefits under Chapter 615;

22 (2) in a cause of action brought in a state or federal
23 court except for judicial review of a proceeding in which there has
24 been a grant or denial of employment-related benefits or
25 compensation;

26 (3) to a determination regarding benefits or
27 compensation under a policy of life or disability insurance

1 purchased by or on behalf of the first responder that provides
2 coverage that is in addition to any benefits or compensation
3 required by law; or

4 (4) if the disease or illness for which benefits or
5 compensation is sought is known to be caused by the use of tobacco
6 and the person or the person's spouse is or has been a user of
7 tobacco.

8 (c)(1) This subchapter does not create a cause of action.

9 (2) This subchapter does not enlarge or establish a
10 right to any benefit or compensation or eligibility for any benefit
11 or compensation.

12 (3) A first responder who uses a presumption under
13 this subchapter is entitled only to the benefits or compensation to
14 which the first responder would be entitled at the time the claim is
15 filed.

16 (d) For purposes of this subchapter, a person described by
17 Section 607.051(3) is considered to have been employed or
18 compensated while the person is in active service as a volunteer
19 fire fighter.

20 Sec. 607.053. DISABILITY OR DEATH FROM IMMUNIZATION.

21 (a) A first responder is presumed to have suffered a disability or
22 death during the course and scope of employment if the first
23 responder:

24 (1) received preventative immunization against
25 smallpox, or another disease to which the first responder may be
26 exposed during the course and scope of employment and for which
27 immunization is possible; and

1 (2) suffered total or partial disability or death as a
2 result of the immunization.

3 (b) An immunization described by this section is considered
4 preventative whether the immunization occurs before or after
5 exposure to the disease for which the immunization is prescribed.

6 (c) A presumption established under Subsection (a) may not
7 be rebutted by evidence that the immunization was:

8 (1) not required by the employer;

9 (2) not required by law; or

10 (3) received voluntarily or with the consent of the
11 first responder.

12 (d) A first responder who suffers from smallpox that results
13 in total or partial disability or death is presumed to have
14 contracted the disease during the course and scope of employment as
15 a first responder.

16 Sec. 607.054. TUBERCULOSIS OR RESPIRATORY ILLNESS. A first
17 responder who suffers from tuberculosis, or any other disease or
18 illness of the lungs or respiratory tract that the Texas Department
19 of Health determines by rule has a statistically positive
20 correlation with service in the category of first responder in
21 which the person seeking benefits or compensation is employed, and
22 that results in total or partial disability or death, is presumed to
23 have contracted the disease or illness in the course and scope of
24 employment as a first responder.

25 Sec. 607.055. CANCER. (a) A first responder who suffers
26 from cancer resulting in total or partial disability or death is
27 presumed to have developed the cancer during the course and scope of

1 employment as a first responder if:

2 (1)(A) the person regularly responded on the scene to
3 calls involving fires or fire fighting; or

4 (B) responded regularly to an event involving the
5 documented release of radiation or known or suspected carcinogens
6 while the person was employed as a first responder; and

7 (2) the cancer is known to be associated with fire
8 fighting or exposure to heat, smoke, radiation, or a known
9 carcinogen, as described by Subsection (b).

10 (b) This section applies only to any type of cancer that the
11 Texas Department of Health determines by rule is scientifically
12 known to be caused by exposures of a first responder described in
13 Subsection (a)(2). The department is not required to collect and
14 maintain data on types of cancer and causation for purposes of this
15 section but may rely on information and data published by any source
16 the department determines to be reliable, including the National
17 Institutes of Health, the International Agency for Research on
18 Cancer, or any other agency of the state or federal government.

19 (c)(1) The Texas Department of Health shall determine by
20 rule when a first responder shall be considered to have regularly
21 responded to calls involving fires and fire fighting as provided by
22 Subsection (a)(1)(A). The rule required by this subsection shall
23 identify the criteria by which each category of first responder
24 shall be considered to have regularly responded to calls involving
25 fires and fire fighting.

26 (2) To the extent practical, the Texas Department of
27 Health shall incorporate into the rule required by Subdivision (1)

1 the use of records, logs, and data maintained by entities that
2 employ first responders to provide an objective basis for proof
3 that a first responder regularly responded to calls involving fires
4 and fire fighting.

5 (3) Each agency of the state that licenses, certifies,
6 or regulates a first responder shall assist the Texas Department of
7 Health, and the department shall consult each such agency, in
8 making the determination required by Subdivision (1).

9 (4) The rule required by Subdivision (1) may be
10 adopted by interagency memorandum.

11 Sec. 607.056. EFFECT OF PRESUMPTION. Except as provided by
12 Section 607.052(b), a presumption established under this
13 subchapter applies to a determination of whether a first
14 responder's disability or death resulted from a disease or illness
15 contracted in the course and scope of employment for purposes of
16 benefits or compensation provided under another employee benefit,
17 law, or plan, including a pension plan.

18 Sec. 607.057. PRESUMPTION REBUTTABLE. A presumption under
19 Section 607.053, 607.054, or 607.055 may be rebutted by a
20 preponderance of the evidence that a risk factor, accident, hazard
21 or other cause not associated with the individual's service as a
22 first responder caused the person's disease or illness.

23 SECTION 4. The changes in law made by this Act apply to a
24 claim for benefits or compensation brought on or after the
25 effective date of this Act. A claim for benefits or compensation
26 brought before the effective date of this Act is covered by the law
27 in effect on the date the claim was made, and that law is continued

1 in effect for that purpose.

2 SECTION 5. This Act takes effect September 1, 2003.