

1-1 By: Deuell, Gallegos S.B. No. 1414
1-2 (In the Senate - Filed March 13, 2003; March 20, 2003, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 14, 2003, rereferred to Committee on Intergovernmental
1-5 Relations; May 7, 2003, reported adversely, with favorable
1-6 Committee Substitute by the following vote: Yeas 3, Nays 0;
1-7 May 7, 2003, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR S.B. No. 1414 By: Deuell

1-9 A BILL TO BE ENTITLED
1-10 AN ACT

1-11 relating to certain diseases or illnesses suffered by certain
1-12 emergency first responders.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. The heading to Chapter 607, Government Code, is
1-15 amended to read as follows:

1-16 CHAPTER 607. BENEFITS RELATING TO CERTAIN [~~CONTAGIOUS~~] DISEASES
1-17 AND ILLNESSES

1-18 SECTION 2. Sections 607.001 through 607.004, Government
1-19 Code, are designated as Subchapter A, Chapter 607, and a heading for
1-20 that subchapter is added to read as follows:

1-21 SUBCHAPTER A. CONTAGIOUS DISEASES

1-22 SECTION 3. Chapter 607, Government Code, is amended by
1-23 adding Subchapter B to read as follows:

1-24 SUBCHAPTER B. DISEASES OR ILLNESSES SUFFERED BY FIRST RESPONDERS

1-25 Sec. 607.051. DEFINITION. In this subchapter, "first
1-26 responder" means:

1-27 (1) a public safety employee whose duties include
1-28 responding rapidly to an emergency to be the first person to arrive
1-29 at the scene of the emergency;

1-30 (2) a person who is defined as fire protection
1-31 personnel under Section 419.021;

1-32 (3) a volunteer fire fighter certified by the Texas
1-33 Commission on Fire Protection or the State Firemen's and Fire
1-34 Marshals' Association of Texas;

1-35 (4) a peace officer, fire fighter, or emergency
1-36 medical services employee who provides that service under an
1-37 interlocal agreement; and

1-38 (5) an individual certified as an emergency medical
1-39 technician by the Texas Department of Health.

1-40 Sec. 607.052. APPLICABILITY. (a) Notwithstanding any
1-41 other law, this subchapter applies to a first responder who:

1-42 (1) on becoming or during employment as a first
1-43 responder, received a physical examination that failed to reveal
1-44 evidence of the illness or disease for which benefits or
1-45 compensation are sought using a presumption established by this
1-46 subchapter;

1-47 (2) is employed for five or more years as a first
1-48 responder; and

1-49 (3) seeks compensation for a disease or illness
1-50 covered by this subchapter that is discovered during employment as
1-51 a first responder or before the fifth anniversary of the date the
1-52 person was last employed as a first responder.

1-53 (b) A presumption under this subchapter does not apply:

1-54 (1) to a determination of a survivor's eligibility for
1-55 benefits under Chapter 615;

1-56 (2) in a cause of action brought in a state or federal
1-57 court except for judicial review of a proceeding in which there has
1-58 been a grant or denial of employment-related benefits or
1-59 compensation;

1-60 (3) to a determination regarding benefits or
1-61 compensation under a policy of life or disability insurance
1-62 purchased by or on behalf of the first responder that provides
1-63 coverage that is in addition to any benefits or compensation

2-1 required by law; or
 2-2 (4) if the disease or illness for which benefits or
 2-3 compensation is sought is known to be caused by the use of tobacco
 2-4 and the person is or has been a user of tobacco.

2-5 (c)(1) This subchapter does not create a cause of action.
 2-6 (2) This subchapter does not enlarge or establish a
 2-7 right to any benefit or compensation or eligibility for any benefit
 2-8 or compensation.

2-9 (3) A first responder who uses a presumption under
 2-10 this subchapter is entitled only to the benefits or compensation to
 2-11 which the first responder would be entitled at the time the claim is
 2-12 filed, if, in the absence of the presumption, the first responder
 2-13 provided evidence of exposure to the cause of the disease or illness
 2-14 for which the benefits or compensation are sought sufficient to
 2-15 support an award of benefits or compensation.

2-16 Sec. 607.053. DISABILITY OR DEATH FROM IMMUNIZATION.

2-17 (a) A first responder is presumed to have suffered a disability or
 2-18 death during the course and scope of employment if the first
 2-19 responder:

2-20 (1) received preventative immunization against
 2-21 smallpox, or another disease to which the first responder may be
 2-22 exposed during the course and scope of employment and for which
 2-23 immunization is possible; and

2-24 (2) suffered total or partial disability or death as a
 2-25 result of the immunization.

2-26 (b) An immunization described by this section is considered
 2-27 preventative whether the immunization occurs before or after
 2-28 exposure to the disease for which the immunization is prescribed.

2-29 (c) A presumption established under Subsection (a) may not
 2-30 be rebutted by evidence that the immunization was:

2-31 (1) not require by the employer;
 2-32 (2) not required by law; or
 2-33 (3) received voluntarily or with the consent of the
 2-34 first responder.

2-35 (d) A first responder who suffers from smallpox that results
 2-36 in total or partial disability or death is presumed to have
 2-37 contracted the disease during the course and scope of employment as
 2-38 a first responder.

2-39 (e) For purposes of this section, a registered nurse or
 2-40 licensed vocational nurse is considered to be a first responder
 2-41 without regard to whether the registered nurse or licensed
 2-42 vocational nurse is a first responder under Section 607.051.

2-43 Sec. 607.054. TUBERCULOSIS OR RESPIRATORY ILLNESS. A first
 2-44 responder who suffers from tuberculosis or any other disease or
 2-45 illness of the lungs or respiratory tract that results in total or
 2-46 partial disability or death is presumed to have contracted the
 2-47 disease or illness during the course and scope of employment as a
 2-48 first responder.

2-49 Sec. 607.055. CANCER. (a) A first responder who suffers
 2-50 from cancer resulting in total or partial disability or death is
 2-51 presumed to have developed the cancer during the course and scope of
 2-52 employment as a first responder if:

2-53 (1)(A) the person regularly responded on the scene to
 2-54 calls involving fires or fire fighting; or

2-55 (B) responded to an event involving the
 2-56 documented release of radiation or known or suspected carcinogens
 2-57 while the person was employed as a first responder; and

2-58 (2) the cancer is associated with fire fighting or
 2-59 exposure to heat, pollutants, smoke, radiation, or a known or
 2-60 suspected carcinogen, as described by Subsection (b).

2-61 (b) This section applies to any type of cancer that the
 2-62 Texas Department of Health determines by rule has a statistically
 2-63 positive correlation with service in the category of first
 2-64 responder in which the person seeking benefits using a presumption
 2-65 under this subchapter is employed. The department is not required
 2-66 to collect and maintain data on types of cancer and causation for
 2-67 purposes of this section but may rely on information and data
 2-68 published by any source the department determines to be reliable,
 2-69 including the National Institutes of Health, the International

3-1 Agency for Research on Cancer, or any other agency of the state or
3-2 federal government.

3-3 (c)(1) The Texas Department of Health shall determine by
3-4 rule when a first responder shall be considered to have regularly
3-5 responded to calls involving fires and fire fighting as provided by
3-6 Subsection (a)(1)(A). The rule required by this subsection shall
3-7 identify the criteria by which each category of first responder
3-8 shall be considered to have regularly responded to calls involving
3-9 fires and fire fighting.

3-10 (2) To the extent practical, the Texas Department of
3-11 Health shall incorporate into the rule required by Subdivision (1)
3-12 the use of records, logs, and data maintained by entities that
3-13 employ first responders to provide an objective basis for proof
3-14 that a first responder regularly responded to calls involving fires
3-15 and fire fighting.

3-16 (3) Each agency of the state that licenses, certifies,
3-17 or regulates a first responder shall assist the Texas Department of
3-18 Health, and the department shall consult each such agency, in
3-19 making the determination required by Subdivision (1).

3-20 (4) The rule required by Subdivision (1) may be
3-21 adopted by interagency memorandum.

3-22 Sec. 607.056. EFFECT OF PRESUMPTION. Except as provided by
3-23 Section 607.052(b), a presumption established under this
3-24 subchapter applies to a determination of whether a first
3-25 responder's disability or death resulted from a disease or illness
3-26 contracted in the course and scope of employment for purposes of
3-27 benefits or compensation provided under another employee benefit,
3-28 law, or plan, including a pension plan.

3-29 Sec. 607.057. PRESUMPTION REBUTTABLE. A presumption under
3-30 Section 607.053, 607.054, or 607.055 may be rebutted by credible
3-31 evidence that a risk factor, accident, hazard or other cause not
3-32 associated with the individual's service as a first responder
3-33 caused the person's disease or illness.

3-34 SECTION 4. The changes in law made by this Act apply to a
3-35 claim for benefits or compensation brought on or after the
3-36 effective date of this Act. A claim for benefits or compensation
3-37 brought before the effective date of this Act is covered by the law
3-38 in effect on the date the claim was made, and that law is continued
3-39 in effect for that purpose.

3-40 SECTION 5. This Act takes effect September 1, 2003.

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