

BILL ANALYSIS

C.S.S.B. 310
By: Deuell
Pensions & Investments
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current Texas law provides that public safety personnel who contract certain occupational diseases may receive benefits if the person can prove that the disease was caused by an exposure in the line of duty, and if a specific exposure is documented in a timely manner. There is a lack of available benefits to those who do not show the effects of a disease that they contracted in the line of duty until later. C.S.S.B. 310 provides a rebuttal presumption for firefighters and emergency medical technicians for certain diseases, including heart disease, tuberculosis, respiratory illness, and cancer.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends the heading to Chapter 607, Government Code, to read as follows:

CHAPTER 607. BENEFITS RELATING TO CERTAIN DISEASES AND ILLNESSES

SECTION 2. Redesignates Sections 607.001 through 607.004, Government Code, as Subchapter A, Chapter 607. Provides a new heading for the subchapter as follows:

SUBCHAPTER A. CONTAGIOUS DISEASES

SECTION 3. Amends Chapter 607, Government Code, by adding Subchapter B, as follows:

SUBCHAPTER B. DISEASES OR ILLNESSES SUFFERED BY FIREFIGHTERS AND
EMERGENCY MEDICAL TECHNICIANS

Sec. 607.051. DEFINITIONS. Defines "disability," "emergency medical technician," and "firefighter."

Sec. 607.052. APPLICABILITY. (a) Provides that, notwithstanding any other law, this subchapter applies to certain firefighters and emergency medical technicians (EMTs).

(b) Provides that a presumption under this subchapter does not apply to certain situations.

(c) Provides that this subchapter does not create a cause of action.

(d) Provides that this chapter does not enlarge or establish a right to any benefit or compensation, or establish eligibility for any benefit or compensation.

(e) Provides that a firefighter or EMT who uses a presumption established under this subchapter is entitled only to the benefits or compensation the firefighter or EMT is entitled to receive at the time the claim for benefits or compensation is filed.

(f) Provides that, for the purposes of this chapter, a person who is a volunteer firefighter certified by the Texas Commission on Fire Protection or the State Firemen's and Fire Marshals' Association of Texas is considered to be employed or compensated while the person actively serves as a volunteer firefighter.

(g) Provides that this subchapter applies to a firefighter or EMT who provides services as an employee of an entity created by an interlocal agreement.

(h) Provides that Subsection (b) (4) only prevents the application of the presumption authorized by this subchapter and does not affect the right of a firefighter or EMT to provide proof, without the use of that presumption, that an injury or illness occurred during the course and scope of employment.

Sec. 607.053. IMMUNIZATION; SMALLPOX. (a) Provides that a firefighter or EMT is presumed to have suffered a disability or death during the course of employment if the firefighter or EMT received preventative immunization against smallpox, or another disease to which the firefighter or EMT may be exposed during the course and scope of employment and for which immunization is possible and suffered total or partial disability or death as a result of the immunization.

(b) Provides that an immunization described by this section is considered preventative whether the immunization occurs before or after exposure to the disease for which the immunization is prescribed.

(c) Prohibits a presumption established under Subsection (a) from being rebutted by certain evidence.

(d) Provides that a firefighter or EMT who suffers from smallpox that results in death or total or partial disability is presumed to have contracted the disease during the course and scope of employment as a firefighter or EMT.

Sec. 607.054. TUBERCULOSIS OR OTHER RESPIRATORY ILLNESS. Provides that a firefighter or EMT who suffers from tuberculosis, or any other disease of the lungs or respiratory tract that has a statistically positive correlation with service as a firefighter or EMT, that results in total or partial disability or death is presumed to have contracted the disease or illness during the course and scope of employment as a firefighter or EMT.

Sec. 607.055. CANCER. (a) Provides that a firefighter or EMT who suffers from cancer resulting in death or total or partial disability is presumed to have developed the cancer during the course and scope of employment as a firefighter or EMT if the firefighter or EMT took part in certain activities while a firefighter or EMT or if the cancer is determined to be associated with firefighting or exposure to heat, smoke, radiation, or a known carcinogen.

(b) Provides that this section applies only to a type of cancer that may be caused by exposure to heat, smoke, radiation or a known or suspected carcinogen, as determined by the International Agency for Research on Cancer.

Sec.607.056. ACUTE MYOCARDIAL INFARCTION OR STROKE. (a) Provides that a firefighter or EMT who suffers an acute myocardial infarction or stroke resulting in disability or death is presumed to have suffered the disability or death during the course and scope of employment as a firefighter or EMT if engaged in certain activities.

(b) Defines activities not to be considered as "nonroutine stressful or strenuous physical activity."

Sec.607.057. EFFECT OF PRESUMPTION. Applies a presumption established under this subchapter, except as provided by Section 607.052(b), to a determination of whether the disability or death of a firefighter or EMT resulted from disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan.

PRESUMPTION REBUTTABLE. Authorizes a presumption under Section 607.053, 607.054, 607.055, or 607.056 to be rebutted through showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's services as a firefighter or EMT caused the person's disease or illness.

Sec. 607.059. **PROHIBITED PAYMENT.** Requires that no payment be made to the subsequent injury fund under Section 403.007 (Funding of Subsequent Injury Fund), Labor Code, for any death resulting from a disease or illness presumed to have been contracted in the course and scope of employment under this subchapter.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2005.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends the definition of an "Emergency medical technician" to clarify that this bill only applies to those who are employed by a political subdivision. The substitute also amends Sec. 607.057 to state that a presumption established under this subchapter is for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan. The original stated that in was for purposes of benefits or compensation provided under the applicable workers' compensation laws of this state.