

By: Bohac

H.B. No. 3306

A BILL TO BE ENTITLED

AN ACT

relating to certain diseases or illnesses suffered by certain emergency fire fighter or emergency medical technicians.

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
FIRE FIGHTERS OR EMERGENCY MEDICAL TECHNICIANS

Sec. 607.051. DEFINITION. In this subchapter:

(1) "Disability" means partial or total disability;

(2) "Emergency medical technician" means an individual certified as an emergency medical technician by the Department of State Health Services; and

(3) "Fire fighter" means:

(A) an individual who is defined as fire protection personnel under Section 419.021; or

1 (B) an individual who is a volunteer fire fighter
2 certified by the Texas Commission on Fire Protection or the State
3 Firemen's and Fire Marshals' Association of Texas.

4 Sec. 607.052. APPLICABILITY. (a) Notwithstanding any
5 other law, this subchapter applies only to a fire fighter or
6 emergency medical technician who:

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

11 (2) is employed for five or more years as a fire
12 fighter or emergency medical technician; and

13 (3) seeks compensation for a disease or illness
14 covered by this subchapter that is discovered during employment as
15 a fire fighter or emergency medical technician.

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

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

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

23 (3) to a determination regarding benefits or
24 compensation under a policy of life or disability insurance
25 purchased by or on behalf of the fire fighter or emergency medical
26 technician that provides coverage that is in addition to any
27 benefits or compensation required by law; or

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

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

6 (2) This subchapter does not enlarge or establish a
7 right to any benefit or compensation or eligibility for any benefit
8 or compensation.

9 (3) A fire fighter or emergency medical technician who
10 uses a presumption under this subchapter is entitled only to the
11 benefits or compensation to which the fire fighter or emergency
12 medical technician would otherwise be entitled at the time the
13 claim is filed.

14 (d)(1) For purposes of this subchapter, a person described
15 by Section 607.051(3)(B) is considered to have been employed or
16 compensated while the person is in active service as a volunteer
17 fire fighter.

18 (2) This subchapter applies to a fire fighter or
19 emergency medical technician whose services are provided as an
20 employee of an entity created by an inter-local agreement.

21 Sec. 607.053. IMMUNIZATIONS. (a) A fire fighter or
22 emergency medical technician is presumed to have suffered a
23 disability or death during the course and scope of employment if the
24 fire fighter or emergency medical technician:

25 (1) received preventative immunization against
26 smallpox, or another disease to which the fire fighter or emergency
27 medical technician may be exposed during the course and scope of

1 employment and for which immunization is possible; and

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

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

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

9 (1) not required by the employer;

10 (2) not required by law; or

11 (3) received voluntarily or with the consent of the
12 fire fighter or emergency medical technician.

13 (d) A fire fighter or emergency medical technician who
14 suffers from smallpox that results in total or partial disability
15 or death is presumed to have contracted the disease during the
16 course and scope of employment as a fire fighter or emergency
17 medical technician.

18 Sec. 607.054. TUBERCULOSIS OR OTHER RESPIRATORY ILLNESS. A
19 fire fighter or emergency medical technician who suffers from
20 tuberculosis, or any other disease or illness of the lungs or
21 respiratory tract that has a statistically positive correlation
22 with service as a fire fighter or emergency medical technician,
23 that results in total or partial disability or death, is presumed to
24 have contracted the disease or illness in the course and scope of
25 employment as a fire fighter or emergency medical technician.

26 Sec. 607.055. CANCER. (a) A fire fighter or emergency
27 medical technician who suffers from cancer resulting in total or

1 partial disability or death is presumed to have developed the
2 cancer during the course and scope of employment as a fire fighter
3 or emergency medical technician if:

4 (1)(A) the person regularly responded on the scene to
5 calls involving fire or fire fighting; or

6 (B) responded regularly to an event involving the
7 documented release of radiation or known or suspected carcinogens
8 while the person was employed as a fire fighter or emergency medical
9 technician; and

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

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

17 Sec. 607.056. HEART ATTACK OR STROKE. (a) A fire fighter
18 or emergency medical technician who suffers a heart attack or
19 stroke resulting in disability or death shall be presumed to have
20 suffered the disability or death during the course and scope of
21 employment as a fire fighter or emergency medical technician if:

22 (1) while on duty, the fire fighter or emergency
23 medical technician:

24 (A) was engaged in a situation that involved
25 non-routine stressful or strenuous physical fire suppression,
26 rescue, hazardous material response, emergency medical services,
27 or other emergency response activity; or

1 (B) participated in a training exercise, and such
2 participation involved non-routine stressful or strenuous physical
3 activity; and

4 (2) the heart attack or stroke occurred while the fire
5 fighter or emergency medical technician was engaging in the
6 activity described under Subsection (a)(1).

7 (b) For purposes of this section, "non-routine stressful or
8 strenuous physical" excludes actions of a clerical,
9 administrative, or non-manual nature.

10 Sec. 607.057. EFFECT OF PRESUMPTION. Except as provided by
11 Section 607.052(b), a presumption established under this
12 subchapter applies to a determination of whether a fire fighter's
13 or emergency medical technician's disability or death resulted from
14 a disease or illness contracted in the course and scope of
15 employment for purposes of benefits or compensation provided under
16 another employee benefit, law, or plan, including a pension plan.

17 Sec. 607.058. PRESUMPTION REBUTTABLE. A presumption under
18 Section 607.053, 607.054, 607.055 or 607.056 may be rebutted by a
19 preponderance of the evidence that a risk factor, accident, hazard
20 or other cause not associated with the individual's service as a
21 fire fighter or emergency medical technician caused the
22 individual'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

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1 in effect for that purpose.

2 SECTION 5. This Act takes effect September 1, 2005.