

By: Deuell, Gallegos, West

S.B. No. 310

A BILL TO BE ENTITLED

AN ACT

relating to certain diseases or illnesses suffered by firefighters and 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
FIREFIGHTERS AND EMERGENCY MEDICAL TECHNICIANS

Sec. 607.051. DEFINITIONS. 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 as provided by Chapter 773, Health and Safety Code.

(3) "Firefighter" means:

(A) an individual who is defined as fire

1 protection personnel under Section 419.021; or

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

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

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

13 (2) is employed for five or more years as a firefighter
14 or emergency medical technician; and

15 (3) seeks benefits or compensation for a disease or
16 illness covered by this subchapter that is discovered during
17 employment as a firefighter or emergency medical technician.

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

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

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

25 (3) to a determination regarding benefits or
26 compensation under a life or disability insurance policy purchased
27 by or on behalf of the firefighter or emergency medical technician

1 that provides coverage in addition to any benefits or compensation
2 required by law; or

3 (4) if the disease or illness for which benefits or
4 compensation is sought is known to be caused by the use of tobacco
5 and:

6 (A) the firefighter or emergency medical
7 technician is or has been a user of tobacco; or

8 (B) the firefighter's or emergency medical
9 technician's spouse has, during the marriage, been a user of
10 tobacco that is consumed through smoking.

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

12 (d) This subchapter does not enlarge or establish a right to
13 any benefit or compensation or eligibility for any benefit or
14 compensation.

15 (e) A firefighter or emergency medical technician who uses a
16 presumption established under this subchapter is entitled only to
17 the benefits or compensation to which the firefighter or emergency
18 medical technician would otherwise be entitled to receive at the
19 time the claim for benefits or compensation is filed.

20 (f) For purposes of this subchapter, an individual
21 described by Section 607.051(3)(B) is considered to have been
22 employed or compensated while the individual actively served as a
23 volunteer firefighter. An individual who actively serves as a
24 volunteer firefighter is one who participates in a minimum of 40
25 percent of the drills conducted by the individual's department and
26 25 percent of the fire/emergency calls during the time that the
27 volunteer firefighter is on call.

1 (g) This subchapter applies to a firefighter or emergency
2 medical technician who provides services as an employee of an
3 entity created by an interlocal agreement.

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

9 Sec. 607.053. IMMUNIZATION; SMALLPOX. (a) A firefighter
10 or emergency medical technician is presumed to have suffered a
11 disability or death during the course and scope of employment if the
12 firefighter or emergency medical technician:

13 (1) received preventative immunization against
14 smallpox, or another disease to which the firefighter or emergency
15 medical technician may be exposed during the course and scope of
16 employment and for which immunization is possible; and

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

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

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

24 (1) not required by the employer;

25 (2) not required by law; or

26 (3) received voluntarily or with the consent of the
27 firefighter or emergency medical technician.

1 (d) A firefighter or emergency medical technician who
2 suffers from smallpox that results in death or total or partial
3 disability is presumed to have contracted the disease during the
4 course and scope of employment as a firefighter or emergency
5 medical technician.

6 Sec. 607.054. TUBERCULOSIS OR OTHER RESPIRATORY ILLNESS. A
7 firefighter or emergency medical technician who suffers from
8 tuberculosis, or any other disease or illness of the lungs or
9 respiratory tract that has a statistically positive correlation
10 with service as a firefighter or emergency medical technician, that
11 results in death or total or partial disability is presumed to have
12 contracted the disease or illness during the course and scope of
13 employment as a firefighter or emergency medical technician.

14 Sec. 607.055. CANCER. (a) A firefighter or emergency
15 medical technician who suffers from cancer resulting in death or
16 total or partial disability is presumed to have developed the
17 cancer during the course and scope of employment as a firefighter or
18 emergency medical technician if:

19 (1) the firefighter or emergency medical technician:
20 (A) regularly responded on the scene to calls
21 involving fires or fire fighting; or
22 (B) regularly responded to an event involving the
23 documented release of radiation or a known or suspected carcinogen
24 while the person was employed as a firefighter or emergency medical
25 technician; and

26 (2) the cancer is known to be associated with fire
27 fighting or exposure to heat, smoke, radiation, or a known or

1 suspected carcinogen, as described by Subsection (b).

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

6 Sec. 607.056. ACUTE MYOCARDIAL INFARCTION OR STROKE.

7 (a) A firefighter or emergency medical technician who suffers an
8 acute myocardial infarction or stroke resulting in disability or
9 death is presumed to have suffered the disability or death during
10 the course and scope of employment as a firefighter or emergency
11 medical technician if:

12 (1) while on duty, the firefighter or emergency
13 medical technician:

14 (A) was engaged in a situation that involved
15 nonroutine stressful or strenuous physical activity involving fire
16 suppression, rescue, hazardous material response, emergency
17 medical services, or other emergency response activity; or

18 (B) participated in a training exercise that
19 involved nonroutine stressful or strenuous physical activity; and

20 (2) the acute myocardial infarction or stroke occurred
21 while the firefighter or emergency medical technician was engaging
22 in the activity described under Subdivision (1).

23 (b) For purposes of this section, "nonroutine stressful or
24 strenuous physical activity" does not include clerical,
25 administrative, or nonmanual activities.

26 Sec. 607.057. EFFECT OF PRESUMPTION. Except as provided by
27 Section 607.052(b), a presumption established under this

1 subchapter applies to a determination of whether the disability or
2 death of a firefighter or emergency medical technician resulted
3 from a disease or illness contracted in the course and scope of
4 employment for purposes of benefits or compensation provided under
5 the applicable workers' compensation laws of this state.

6 Sec. 607.058. PRESUMPTION REBUTTABLE. A presumption under
7 Section 607.053, 607.054, 607.055, or 607.056 may be rebutted
8 through a showing by a preponderance of the evidence that a risk
9 factor, accident, hazard, or other cause not associated with the
10 individual's service as a firefighter or emergency medical
11 technician caused the individual's disease or illness.

12 Sec. 607.059. No payment shall be made to the subsequent
13 injury fund under Section 403.007, Labor Code, for any death
14 resulting from a disease or illness presumed to have been
15 contracted in the course and scope of employment under this
16 subchapter.

17 SECTION 4. The changes in law made by this Act apply to a
18 claim for benefits or compensation brought on or after the
19 effective date of this Act. A claim for benefits or compensation
20 brought before that date is covered by the law in effect on the date
21 the claim was made, and that law is continued in effect for that
22 purpose.

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