

By: Deuell

S.B. No. 310

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. DEFINITIONS. In this subchapter:

(1) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2) "First responder" means:

(A) a public safety employee whose primary duties include responding rapidly to an emergency as the first person to arrive at the scene of the emergency;

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

1 (C) a volunteer firefighter certified by the
2 Texas Commission on Fire Protection or the State Firemen's and Fire
3 Marshals' Association of Texas;

4 (D) a peace officer, firefighter, or emergency
5 medical services employee who provides first responder services
6 under an interlocal agreement; and

7 (E) emergency medical services personnel
8 certified as an emergency medical technician or at a higher level of
9 training by the Department of State Health Services.

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

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

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

19 (3) seeks compensation for a disease or illness
20 covered by this subchapter that is discovered while the first
21 responder is employed as a first responder.

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

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

25 (2) in a cause of action brought in a state or federal
26 court other than judicial review of a proceeding that granted or
27 denied benefits or compensation related to employment;

1 (3) to a determination regarding benefits or
2 compensation under a life or disability insurance policy purchased
3 by or on behalf of the first responder that provides coverage in
4 addition to any benefits or compensation required by law; or

5 (4) in relation to a disease or illness known to be
6 caused by the use of tobacco if the first responder or the first
7 responder's spouse is or has been a user of tobacco.

8 (c) This subchapter does not:

9 (1) create a cause of action;

10 (2) enlarge or establish a right to any benefit or
11 compensation; or

12 (3) establish eligibility for any benefit or
13 compensation.

14 (d) A first responder to whom a presumption established
15 under this subchapter applies is entitled only to the benefits or
16 compensation the first responder is entitled to receive at the time
17 the claim for benefits or compensation is filed.

18 (e) For purposes of this subchapter, a person described by
19 Section 607.051(2)(C) is considered to be employed or compensated
20 while the person actively serves as a volunteer firefighter.

21 Sec. 607.053. DISABILITY OR DEATH FROM IMMUNIZATION;
22 SMALLPOX. (a) A first responder is presumed to have suffered a
23 disability or death during the course and scope of employment if the
24 first responder:

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

1 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 first responder.

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

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

26 Sec. 607.055. CANCER. (a) A first responder who suffers
27 from cancer resulting in total or partial disability or death is

1 presumed to have developed the cancer during the course and scope of
2 employment as a first responder if while employed as a first
3 responder:

4 (1) the first responder:

5 (A) regularly responded on the scene to calls
6 involving fires or fire fighting as provided by rule of the
7 executive commissioner; or

8 (B) regularly responded to an event involving the
9 documented release of radiation or a known or suspected carcinogen;
10 and

11 (2) the cancer is determined as provided by Subsection
12 (b) to be associated with:

13 (A) fire fighting; or

14 (B) exposure to heat, smoke, radiation, or a
15 known carcinogen as provided by rule of the executive commissioner.

16 (b) The executive commissioner by rule shall determine the
17 types of cancer that are scientifically known to be associated with
18 fire fighting or caused by the exposure described by Subsection
19 (a)(2)(B). The executive commissioner is not required to collect
20 and maintain data on types of cancer and causation for purposes of
21 this subsection but may rely on information and data published by
22 any source the executive commissioner determines to be reliable,
23 including the National Institutes of Health, the International
24 Agency for Research on Cancer, or any other agency of this state or
25 the federal government.

26 (c) The executive commissioner, in consultation with each
27 state agency that licenses, certifies, or regulates a first

1 responder, by rule shall determine when a first responder is
2 considered to have regularly responded to calls involving fires and
3 fire fighting as provided by Subsection (a)(1)(A). The rule must:

4 (1) identify the criteria by which each category of
5 first responder is considered to have regularly responded to calls
6 involving fires and fire fighting; and

7 (2) to the extent practical, require the use of
8 records, logs, and data maintained by entities that employ first
9 responders to objectively prove that a first responder regularly
10 responded to calls involving fires and fire fighting.

11 (d) Each state agency that licenses, certifies, or
12 regulates a first responder shall assist the executive commissioner
13 in making the determination required by Subsection (c).

14 (e) The rule required by Subsection (c) may be adopted in
15 accordance with a memorandum of understanding between the executive
16 commissioner, the Department of State Health Services, the Texas
17 Commission on Fire Protection, and any other state agency that
18 licenses, certifies, or regulates a first responder.

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

26 Sec. 607.057. PRESUMPTION REBUTTABLE. A presumption under
27 Section 607.053, 607.054, or 607.055 may be rebutted through a

1 showing by a preponderance of the evidence that a risk factor,
2 accident, hazard, or other cause not associated with the person's
3 service as a first responder caused the person's disease or
4 illness.

5 SECTION 4. As soon as possible after the effective date of
6 this Act, the executive commissioner of the Health and Human
7 Services Commission shall adopt the rules required by Subchapter B,
8 Chapter 607, Government Code, as added by this Act.

9 SECTION 5. The changes in law made by this Act apply to a
10 claim for benefits or compensation brought on or after the
11 effective date of this Act. A claim for benefits or compensation
12 brought before that date is covered by the law in effect on the date
13 the claim was made, and that law is continued in effect for that
14 purpose.

15 SECTION 6. This Act takes effect September 1, 2005.