

By: Deuell, Gallegos S.B. No. 310
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COMMITTEE SUBSTITUTE FOR S.B. No. 310 By: Armbrister

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
protection personnel under Section 419.021; or

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

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

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

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

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

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

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

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

(3) to a determination regarding benefits or
compensation under a life or disability insurance policy purchased
by or on behalf of the firefighter or emergency medical technician
that provides coverage in addition to any benefits or compensation
required by law; or

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

and the firefighter or emergency medical technician or the firefighter's or emergency medical technician's spouse is or has been a user of tobacco.

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

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

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

(f) For purposes of this subchapter, an individual described by Section 607.051(3)(B) is considered to have been employed or compensated while the individual actively served as a volunteer firefighter.

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

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

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

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

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

(1) not required by the employer;

(2) not required by law; or

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

(d) A firefighter or emergency medical technician 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 emergency medical technician.

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

Sec. 607.055. CANCER. (a) A firefighter or emergency medical technician 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 emergency medical technician if:

(1) the firefighter or emergency medical technician:

(A) regularly responded on the scene to calls involving fires or fire fighting; or

(B) regularly responded to an event involving the documented release of radiation or a known or suspected carcinogen while the person was employed as a firefighter or emergency medical technician; and

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

(b) 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. HEART ATTACK OR STROKE. (a) A firefighter or emergency medical technician who suffers a heart attack 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 emergency medical technician if:

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

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

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

(2) the heart attack or stroke occurred while the firefighter or emergency medical technician was engaging in the activity described under Subdivision (1).

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

Sec. 607.057. EFFECT OF PRESUMPTION. Except as provided by Section 607.052(b), a presumption established under this subchapter applies to a determination of whether the disability or death of a firefighter or emergency medical technician resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under the applicable workers' compensation laws of this state.

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

Sec. 607.059. No payment shall be made to the subsequent injury fund under Section 403.007, 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. The changes in law made by this Act apply to a claim for benefits or compensation brought on or after the effective date of this Act. A claim for benefits or compensation brought before that date is covered by the law in effect on the date the claim was made, and that law is continued in effect for that purpose.

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

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