

BILL ANALYSIS

Senate Research Center

C.S.S.B. 2551
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under the Presumptive Act (Chapter 607, Government Code), a peace officer, fire fighter, or emergency medical responder exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses if the employee can prove that exposure to the disease occurred on the job. Currently, most fire fighters and police officers are covered by risk pools or self-insured cities when it comes to workers' compensation insurance. Workers' compensation providers and first responders must now navigate a far more complex system than decades past.

S.B. 2551 is a collaborative effort between first responders, cities, and risk pools to help reform the current workers compensation system that services fire fighters and police officers.

S.B. 2551 would first clarify the Presumptive Act by identifying specific cancers in statute for which the presumption will apply. The list of twelve cancers reflects what stakeholders believe commonly afflict fire fighters and are most likely due to their occupation. This list will put certainty back into the system and still leaves fire fighters with the ability to show causation for cancers not contained in the list. The list covers non-Hodgkin's lymphoma; multiple myeloma; malignant melanoma; renal cell carcinoma; stomach cancer; colon cancer; cancer of the rectum; skin cancer; prostate cancer; cancer of the testis; and brain cancer. The bill also confirms that political subdivisions that act as workers' compensation providers are regulated as any private provider would be.

S.B. 2551 would allow a first responder to request attorney's fees if they are sued by a city and prevail on a workers compensation claim. S.B. 2551 would also authorize risk pools or political subdivisions the ability to invest certain accounts. S.B. 2551 also tasks the division of workers' compensation with two studies pertaining to the costs that a political subdivision would incur to self-insure or join a risk pool and one that analyzes costs incurred if the presumptive act is extended to police officers. S.B. 2551 only applies to claims and administrative violations occurring on or after the enactment date. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 2551 amends current law relating to liability, payment, and death benefits for certain workers' compensation claims.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTION 2 (Section 409.021, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 607.055, Government Code, as follows;

Sec. 607.055. CANCER. (a) Provides that 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) makes no changes to this subdivision; and

(2) the cancer is described by Subsection (b), rather than 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) Makes a nonsubstantive change. Provides that this section applies only to:

(1) cancer that originates at the stomach, colon, rectum, skin, prostate, testis, or brain;

(2) non-Hodgkin's lymphoma;

(3) multiple myeloma;

(4) malignant melanoma; and

(5) renal cell carcinoma, rather than 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.

SECTION 2. Amends Section 409.021, Labor Code, by adding Subsection (a-3), as follows:

(a-3) Provides that an insurance carrier is not required to comply with Subsection (a) (relating to requiring the insurance carrier to initiate compensation under this subtitle promptly) if the claim seeks to recover benefits under Subchapter B (Diseases or Illnesses Suffered By Firefighters and Emergency Medical Technicians), Chapter 607, Government Code, and, not later than the 15th day after the date on which the insurance carrier received written notice of the injury, the insurance carrier has provided the employee with a notice that describes the evidence the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury. Requires the commissioner of workers' compensation (commissioner) to adopt rules as necessary to implement this subsection.

SECTION 3. Amends Section 409.022, Labor Code, by adding Subsection (d-1), as follows:

(d-1) Provides that an insurance carrier has not committed an administrative violation and has reasonable grounds for a refusal to pay benefits if the carrier has sent notice to the employee as required by Subsection (d) (relating to the definitions of "emergency medical technician" and "firefighter" for purposes of this subsection) or Section 409.021(a-3).

SECTION 4. Amends Section 415.021, Labor Code, by adding Subsection (c-2), as follows:

(c-2) Requires the commissioner, in determining whether to assess any sanctions, an administrative penalty, or another remedy authorized by this subtitle, to consider whether:

(1) the employee has cooperated with the insurance carrier's investigation of the claim; and

(2) the employee has timely authorized access to the applicable medical records before the insurance carrier's deadline:

(A) to begin payment of benefits; and

(B) to notify the division and the employee of the refusal to pay benefits.

SECTION 5. Amends Section 504.053(e), Labor Code, as follows:

(e) Makes a nonsubstantive change. Provides that nothing in this chapter (Workers' Compensation Insurance Coverage For Employees of Political Subdivisions) waives sovereign immunity or creates a new cause of action, except that a political subdivision that self-insures either individually or collectively is liable for:

(1) sanctions, administrative penalties, and other remedies authorized under Chapter 415 (Administrative Violations);

(2) attorney's fees as provided by Section 408.221(c) (relating to providing that an insurance carrier that seeks judicial review of a certain final decision of the appeals panel is liable for reasonable and necessary attorney's fees incurred by the claimant as a result of the insurance carrier's appeal if the claimant prevails on an issue on which judicial review is sought by the insurance carrier in accordance with the limitation of issues); and

(3) creates this subdivision from existing text and makes no further changes.

SECTION 6. Amends Subchapter D, Chapter 504, Labor Code, by adding Section 504.074, as follows:

Sec. 504.074. SELF-INSURANCE ACCOUNT FOR CERTAIN DEATH BENEFITS.

(a) Authorizes a pool or a political subdivision that self-insures to establish an account for the payment of death benefits for a compensable injury to a firefighter or emergency medical technician described by Section 607.055, Government Code.

(b) Authorizes an account established under this section to accumulate assets in an amount that the pool or political subdivision, in its sole discretion, determines is necessary in order to pay death benefits described by Subsection (a). Provides that the establishment of an account under this section or the amount of assets accumulated in the account does not affect the liability of a pool or political subdivision for the payment of death benefits.

(c) Provides that Chapter 2256 (Public Funds Investment), Government Code, does not apply to the investment of assets in an account established under this section. Requires a pool or political subdivision investing or reinvesting the assets of an account to exercise the judgment and care, under the circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, considering the probable income to be derived and the probable safety of capital. Requires a determination of whether the pool or political subdivision exercised prudence in making an investment decision to be made by considering the investment of all assets of the account rather than by considering the prudence of a single investment.

SECTION 7. Makes application of Section 607.055, Government Code, as amended by this Act, prospective.

SECTION 8. Requires the commissioner to adopt the rules required by Section 409.021(a-3), Labor Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 9. (a) Makes application of Section 504.053(e)(1), Labor Code, as added by this Act, prospective.

(b) Makes application of Section 504.053(e)(2), Labor Code, as added by this Act, prospective.

SECTION 10. Effective date: upon passage or September 1, 2019.