

By: Hinojosa, et al.
(Burrows)

S.B. No. 2551

Substitute the following for S.B. No. 2551:

By: Hernandez

C.S.S.B. No. 2551

A BILL TO BE ENTITLED

AN ACT

relating to liability, payment, and death benefits for certain workers' compensation claims.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 607.055, Government Code, is amended to read as follows:

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:

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

1 (2) non-Hodgkin's lymphoma;

2 (3) multiple myeloma;

3 (4) malignant melanoma; and

4 (5) renal cell carcinoma [~~a type of cancer that may be~~
5 ~~caused by exposure to heat, smoke, radiation, or a known or~~
6 ~~suspected carcinogen as determined by the International Agency for~~
7 ~~Research on Cancer~~].

8 SECTION 2. Section 409.021, Labor Code, is amended by
9 adding Subsection (a-3) to read as follows:

10 (a-3) An insurance carrier is not required to comply with
11 Subsection (a) if the claim results from an employee's disability
12 or death for which a presumption is claimed to be applicable under
13 Subchapter B, Chapter 607, Government Code, and, not later than the
14 15th day after the date on which the insurance carrier received
15 written notice of the injury, the insurance carrier has provided
16 the employee and the division with a notice that describes all steps
17 taken by the insurance carrier to investigate the injury before the
18 notice was given and the evidence the carrier reasonably believes
19 is necessary to complete its investigation of the compensability of
20 the injury. The commissioner shall adopt rules as necessary to
21 implement this subsection.

22 SECTION 3. Section 409.022, Labor Code, is amended by
23 adding Subsection (d-1) to read as follows:

24 (d-1) An insurance carrier has not committed an
25 administrative violation if the carrier has sent notice to the
26 employee as required by Subsection (d) or Section 409.021(a-3).

27 SECTION 4. Section 415.021, Labor Code, is amended by

1 adding Subsection (c-2) to read as follows:

2 (c-2) In determining whether to assess an administrative
3 penalty involving a claim in which the insurance carrier provided
4 notice under Section 409.021(a-3), the commissioner shall consider
5 whether:

6 (1) the employee cooperated with the insurance
7 carrier's investigation of the claim;

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

11 (A) begin payment of benefits; or

12 (B) notify the division and the employee of the
13 insurance carrier's refusal to pay benefits; and

14 (3) the insurance carrier conducted an investigation
15 of the claim, applied the statutory presumptions under Subchapter
16 B, Chapter 607, Government Code, and expedited medical benefits
17 under Section 504.055.

18 SECTION 5. Section 504.053(e), Labor Code, is amended to
19 read as follows:

20 (e) Nothing in this chapter waives sovereign immunity or
21 creates a new cause of action, except that a political subdivision
22 that self-insures either individually or collectively is liable
23 for:

24 (1) sanctions, administrative penalties, and other
25 remedies authorized under Chapter 415;

26 (2) attorney's fees as provided by Section 408.221(c);

27 and

1 (3) attorney's fees as provided by Section 417.003.

2 SECTION 6. Subchapter D, Chapter 504, Labor Code, is
3 amended by adding Section 504.074 to read as follows:

4 Sec. 504.074. SELF-INSURANCE ACCOUNT FOR CERTAIN DEATH
5 BENEFITS. (a) A pool or a political subdivision that self-insures
6 may establish an account for the payment of death benefits for a
7 compensable injury to a firefighter or emergency medical technician
8 described by Section 607.055, Government Code.

9 (b) An account established under this section may
10 accumulate assets in an amount that the pool or political
11 subdivision, in its sole discretion, determines is necessary in
12 order to pay death benefits described by Subsection (a). The
13 establishment of an account under this section or the amount of
14 assets accumulated in the account does not affect the liability of a
15 pool or political subdivision for the payment of death benefits.

16 (c) Chapter 2256, Government Code, does not apply to the
17 investment of assets in an account established under this section.
18 A pool or political subdivision investing or reinvesting the assets
19 of an account shall exercise the judgment and care, under the
20 circumstances, that a person of prudence, discretion, and
21 intelligence would exercise in the management of the person's own
22 affairs, considering the probable income to be derived and the
23 probable safety of capital. A determination of whether the pool or
24 political subdivision exercised prudence in making an investment
25 decision shall be made by considering the investment of all assets
26 of the account rather than by considering the prudence of a single
27 investment.

1 SECTION 7. Section 607.055, Government Code, as amended by
2 this Act, applies only to a claim for workers' compensation
3 benefits filed on or after the effective date of this Act. A claim
4 filed before that date is governed by the law as it existed on the
5 date the claim was filed, and the former law is continued in effect
6 for that purpose.

7 SECTION 8. The commissioner of workers' compensation shall
8 adopt rules as required by or necessary to implement this Act not
9 later than January 1, 2020.

10 SECTION 9. (a) Section 504.053(e)(1), Labor Code, as added
11 by this Act, applies only to an administrative violation that
12 occurs on or after the effective date of this Act. An
13 administrative violation that occurs before the effective date of
14 this Act is governed by the law applicable to the violation
15 immediately before the effective date of this Act, and that law is
16 continued in effect for that purpose.

17 (b) Section 504.053(e)(2), Labor Code, as added by this Act,
18 applies only to a claim for workers' compensation benefits filed on
19 or after the effective date of this Act. A claim filed before the
20 effective date of this Act is governed by the law in effect on the
21 date the claim was filed, and the former law is continued in effect
22 for that purpose.

23 SECTION 10. This Act takes effect immediately if it
24 receives a vote of two-thirds of all the members elected to each
25 house, as provided by Section 39, Article III, Texas Constitution.
26 If this Act does not receive the vote necessary for immediate
27 effect, this Act takes effect September 1, 2019.