87R18313 MCK-D

By:  Patterson, Collier, Burrows, Hunter, H.B. No. 541

     Canales, et al.

Substitute the following for H.B. No. 541:

By:  Patterson C.S.H.B. No. 541

A BILL TO BE ENTITLED

AN ACT

relating to certain claims for benefits, compensation, or assistance by certain public safety employees and survivors of certain public safety employees.

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

SECTION 1.  The heading to Subchapter B, Chapter 607, Government Code, is amended to read as follows:

SUBCHAPTER B. DISEASES OR ILLNESSES SUFFERED BY DETENTION OFFICERS, CORRECTIONS EMPLOYEES, FIREFIGHTERS, PEACE OFFICERS, AND EMERGENCY MEDICAL TECHNICIANS

SECTION 2.  Section 607.051, Government Code, is amended by amending Subdivision (1) and adding Subdivisions (1-a) and (1-b) to read as follows:

(1)  "Corrections employee" means an employee of the Texas Department of Criminal Justice whose job duties require regular interaction with the public or an incarcerated population.

(1-a)  "Detention officer" means an individual employed by a state agency or political subdivision of the state to ensure the safekeeping of prisoners and the security of a municipal, county, or state penal institution in this state.

(1-b)  "Disability" means partial or total disability.

SECTION 3.  Sections 607.052(a), (b), (e), and (g), Government Code, are amended to read as follows:

(a)  Notwithstanding any other law, this subchapter applies only to a detention officer, corrections employee, firefighter, peace officer, or emergency medical technician who:

(1)  on becoming employed or during employment as a detention officer, corrections employee, firefighter, peace officer, 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, peace officer, or emergency medical technician, except for the presumption under Section 607.0545; and

(3)  seeks benefits or compensation for a disease or illness covered by this subchapter that is discovered during employment as a detention officer, corrections employee, firefighter, peace officer, 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, except for the presumption under Section 607.0545;

(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 detention officer, corrections employee, firefighter, peace officer, 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:

(A)  the firefighter, peace officer, or emergency medical technician is or has been a user of tobacco; or

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

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

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

SECTION 4.  Section 607.054, Government Code, is amended to read as follows:

Sec. 607.054.  TUBERCULOSIS OR OTHER RESPIRATORY ILLNESS. (a) A firefighter, peace officer, 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, peace officer, 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, peace officer, or emergency medical technician.

(b)  This section does not apply to a claim that a firefighter, peace officer, or emergency medical technician suffers from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19).

SECTION 5.  Subchapter B, Chapter 607, Government Code, is amended by adding Section 607.0545 to read as follows:

Sec. 607.0545.  SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2 (SARS-CoV-2) OR CORONAVIRUS DISEASE 2019 (COVID-19). (a) A detention officer, corrections employee, firefighter, peace officer, or emergency medical technician who, based on a test approved by the United States Food and Drug Administration, suffers from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) that results in death or total or partial disability is presumed to have contracted the virus or disease during the course and scope of employment as a detention officer, corrections employee, firefighter, peace officer, or emergency medical technician if the detention officer, corrections employee, firefighter, peace officer, or emergency medical technician:

(1)  is employed in the area designated in a disaster declaration by the governor under Section 418.014 or another law and the disaster is related to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19); and

(2)  contracts the disease during the disaster declared by the governor described by Subdivision (1).

(b)  The presumption under this section applies only to a person who:

(1)  is employed as a detention officer, corrections employee, firefighter, peace officer, or emergency medical technician on a full-time basis; and

(2)  was last on duty not more than 10 days before the date the person tests positive for severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19).

(c)  This section does not affect the right of a detention officer, corrections employee, firefighter, peace officer, or emergency medical technician to provide proof, without the use of the presumption under this section, that an injury or illness occurred during the course and scope of employment.

SECTION 6.  Section 607.057, Government Code, is amended to read as follows:

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 a detention officer's, corrections employee's, firefighter's, peace officer's, or emergency medical technician's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan.

SECTION 7.  Section 607.058, Government Code, is amended to read as follows:

Sec. 607.058.  PRESUMPTION REBUTTABLE. (a) A presumption under Section 607.053, 607.054, 607.0545, 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 detention officer, corrections employee, firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.

(b)  A rebuttal offered under this section must include a statement by the person offering the rebuttal that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's service as a detention officer, corrections employee, firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.

(c)  In addressing an argument based on a rebuttal offered under this section, an administrative law judge shall make findings of fact and conclusions of law that consider whether a qualified expert, relying on evidence-based medicine, stated the opinion that, based on reasonable medical probability, an identified risk factor, accident, hazard, or other cause not associated with the individual's service as a detention officer, corrections employee, firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.

(d)  A rebuttal offered under this section to a presumption under Section 607.0545 may not be based solely on evidence relating to the risk of exposure to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) of a person with whom a detention officer, corrections employee, firefighter, peace officer, or emergency medical technician resides.

SECTION 8.  (a) The changes in law made by this Act apply to a claim for benefits, compensation, or assistance pending on or filed on or after the effective date of this Act. A claim for benefits, compensation, or assistance filed before that date, other than a claim pending on 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.

(b)  Notwithstanding Subsection (a) of this section, a person who on or after March 13, 2020, but before the effective date of this Act, filed a claim for benefits, compensation, or assistance related to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) and whose claim was subsequently denied may file another claim on or after the effective date of this Act, and the changes in law made by this Act apply to that claim.

SECTION 9.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.