

1 AN ACT
2 relating to certain diseases or illnesses suffered by firefighters
3 and emergency medical technicians.

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

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

7 CHAPTER 607. BENEFITS RELATING TO CERTAIN [~~CONTAGIOUS~~] DISEASES
8 AND ILLNESSES

9 SECTION 2. Sections 607.001 through 607.004, Government
10 Code, are designated as Subchapter A, Chapter 607, and a heading for
11 that subchapter is added to read as follows:

12 SUBCHAPTER A. CONTAGIOUS DISEASES

13 SECTION 3. Chapter 607, Government Code, is amended by
14 adding Subchapter B to read as follows:

15 SUBCHAPTER B. DISEASES OR ILLNESSES SUFFERED BY
16 FIREFIGHTERS AND EMERGENCY MEDICAL TECHNICIANS

17 Sec. 607.051. DEFINITIONS. In this subchapter:

18 (1) "Disability" means partial or total disability.

19 (2) "Emergency medical technician" means an
20 individual who is certified as an emergency medical technician by
21 the Department of State Health Services as provided by Chapter 773,
22 Health and Safety Code, and who is employed by a political
23 subdivision.

24 (3) "Firefighter" means:

1 (A) an individual who is defined as fire
2 protection personnel under Section 419.021; or

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

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

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

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

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

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

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

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

26 (3) to a determination regarding benefits or
27 compensation under a life or disability insurance policy purchased

1 by or on behalf of the firefighter or emergency medical technician
2 that provides coverage in addition to any benefits or compensation
3 required by law; or

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

7 (A) the firefighter or emergency medical
8 technician is or has been a user of tobacco; or

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

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

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

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

21 (f) For purposes of this subchapter, an individual
22 described by Section 607.051(3)(B) is considered to have been
23 employed or compensated while the individual actively served as a
24 volunteer firefighter. An individual who actively serves as a
25 volunteer firefighter is one who participates in a minimum of 40
26 percent of the drills conducted by the individual's department and
27 25 percent of the fire or other emergency calls received by the

1 department during the time that the volunteer firefighter is on
2 call.

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

6 (h) Subsection (b)(4) only prevents the application of the
7 presumption authorized by this subchapter and does not affect the
8 right of a firefighter or emergency medical technician to provide
9 proof, without the use of that presumption, that an injury or
10 illness occurred during the course and scope of employment.

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

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

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

21 (b) An immunization described by this section is considered
22 preventative whether the immunization occurs before or after
23 exposure to the disease for which the immunization is prescribed.

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

26 (1) not required by the employer;

27 (2) not required by law; or

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

3 (d) A firefighter or emergency medical technician who
4 suffers from smallpox that results in death or total or partial
5 disability is presumed to have contracted the disease during the
6 course and scope of employment as a firefighter or emergency
7 medical technician.

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

16 Sec. 607.055. CANCER. (a) A firefighter or emergency
17 medical technician who suffers from cancer resulting in death or
18 total or partial disability is presumed to have developed the
19 cancer during the course and scope of employment as a firefighter or
20 emergency medical technician if:

21 (1) the firefighter or emergency medical technician:

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

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

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

4 (b) This section applies only to 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 Sec. 607.056. ACUTE MYOCARDIAL INFARCTION OR STROKE.

9 (a) A firefighter or emergency medical technician who suffers an
10 acute myocardial infarction or stroke resulting in disability or
11 death is presumed to have suffered the disability or death during
12 the course and scope of employment as a firefighter or emergency
13 medical technician if:

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

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

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

22 (2) the acute myocardial infarction or stroke occurred
23 while the firefighter or emergency medical technician was engaging
24 in the activity described under Subdivision (1).

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

1 Sec. 607.057. EFFECT OF PRESUMPTION. Except as provided by
2 Section 607.052(b), a presumption established under this
3 subchapter applies to a determination of whether a firefighter's or
4 emergency medical technician's disability or death resulted from a
5 disease or illness contracted in the course and scope of employment
6 for purposes of benefits or compensation provided under another
7 employee benefit, law, or plan, including a pension plan.

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

14 Sec. 607.059. PROHIBITED PAYMENT. No payment shall be made
15 to the subsequent injury fund under Section 403.007, Labor Code,
16 for any death resulting from a disease or illness presumed to have
17 been contracted in the course and scope of employment under this
18 subchapter.

19 SECTION 4. The changes in law made by this Act apply to a
20 claim for benefits or compensation brought on or after the
21 effective date of this Act. A claim for benefits or compensation
22 brought before that date is covered by the law in effect on the date
23 the claim was made, and that law is continued in effect for that
24 purpose.

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

David Newkum
President of the Senate

Jim Coakley
Speaker of the House

I hereby certify that S.B. No. 310 passed the Senate on April 7, 2005, by the following vote: Yeas 25, Nays 0; and that the Senate concurred in House amendment on May 20, 2005, by the following vote: Yeas 31, Nays 0. _____

Patsey Spaw
Secretary of the Senate

I hereby certify that S.B. No. 310 passed the House, with amendment, on May 17, 2005, by a non-record vote. _____

Robert Haney
Chief Clerk of the House

Approved:

17 JUNE '05
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:22 AM O'CLOCK

Roger Williams
JUN 17 2005
Secretary of State