

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 24, 2019
Date

Honorable Dan Patrick
President of the Senate

Honorable Dennis Bonnen
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 2551 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

J-J. Hincosa
Sen. Juan Hincosa, chair

D Campbell MD
Sen. Donni Campbell

Kelly Hancock
Sen. Kelly Hancock

Robert Nichols
Sen. Robert Nichols

John Whitmire
On the part of the Senate
Sen. John Whitmire

Dustin Burrows
Rep. Dustin Burrows, chair

Phil King
Rep. Phil King

Trey Martinez Fischer
Rep. Trey Martinez Fischer

Morgan Myer
Rep. Morgan Myer

Dade Phelan
On the part of the House
Rep. Dade Phelan

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 2551

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

7 Sec. 607.055. CANCER. (a) A firefighter or emergency
8 medical technician who suffers from cancer resulting in death or
9 total or partial disability is presumed to have developed the
10 cancer during the course and scope of employment as a firefighter or
11 emergency medical technician if:

12 (1) the firefighter or emergency medical technician:

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

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

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

22 (b) This section applies only to:

23 (1) cancer that originates at the stomach, colon,
24 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 607.058, Government Code, is amended to
9 read as follows:

10 Sec. 607.058. PRESUMPTION REBUTTABLE. (a) A presumption
11 under Section 607.053, 607.054, 607.055, or 607.056 may be rebutted
12 through a showing by a preponderance of the evidence that a risk
13 factor, accident, hazard, or other cause not associated with the
14 individual's service as a firefighter or emergency medical
15 technician was a substantial factor in bringing about ~~[caused]~~ the
16 individual's disease or illness, without which the disease or
17 illness would not have occurred.

18 (b) A rebuttal offered under this section must include a
19 statement by the person offering the rebuttal that describes, in
20 detail, the evidence that the person reviewed before making the
21 determination that a cause not associated with the individual's
22 service as a firefighter or emergency medical technician was a
23 substantial factor in bringing about ~~[caused]~~ the individual's
24 disease or illness, without which the disease or illness would not
25 have occurred.

26 (c) In addressing an argument based on a rebuttal offered
27 under this section, an administrative law judge shall make findings

1 of fact and conclusions of law that consider whether a qualified
2 expert, relying on evidence-based medicine, stated the opinion
3 that, based on reasonable medical probability, an identified risk
4 factor, accident, hazard, or other cause not associated with the
5 individual's service as a firefighter or emergency medical
6 technician was a substantial factor in bringing about the
7 individual's disease or illness, without which the disease or
8 illness would not have occurred.

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

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

23 SECTION 4. Section 409.022, Labor Code, is amended by
24 adding Subsection (d-1) to read as follows:

25 (d-1) An insurance carrier has not committed an
26 administrative violation under Section 409.021 if the carrier has
27 sent notice to the employee as required by Subsection (d) of this

1 section or Section 409.021(a-3).

2 SECTION 5. Section 415.021, Labor Code, is amended by
3 adding Subsection (c-2) to read as follows:

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

8 (1) the employee cooperated with the insurance
9 carrier's investigation of the claim;

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

13 (A) begin payment of benefits; or

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

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

20 SECTION 6. Section 504.053(e), Labor Code, is amended to
21 read as follows:

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

26 (1) sanctions, administrative penalties, and other
27 remedies authorized under Chapter 415;

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

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

4 SECTION 7. Subchapter D, Chapter 504, Labor Code, is
5 amended by adding Section 504.074 to read as follows:

6 Sec. 504.074. SELF-INSURANCE ACCOUNT FOR DEATH BENEFITS AND
7 LIFETIME INCOME BENEFITS. (a) A pool or a political subdivision
8 that self-insures may establish an account for the payment of death
9 benefits and lifetime income benefits under Chapter 408.

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

18 (c) Chapter 2256, Government Code, does not apply to the
19 investment of assets in an account established under this section.
20 A pool or political subdivision investing or reinvesting the assets
21 of an account shall discharge its duties solely in the interest of
22 current and future beneficiaries:

23 (1) for the exclusive purposes of:

24 (A) providing death benefits and lifetime income
25 benefits to current and future beneficiaries; and

26 (B) defraying reasonable expenses of
27 administering the account;

1 (2) with the care, skill, prudence, and diligence
2 under the prevailing circumstances that a prudent person acting in
3 a like capacity and familiar with matters of the type would use in
4 the conduct of an enterprise with a like character and like aims;

5 (3) by diversifying the investments of the account to
6 minimize the risk of large losses, unless under the circumstances
7 it is clearly prudent not to do so; and

8 (4) in accordance with the documents and instruments
9 governing the account to the extent that the documents and
10 instruments are consistent with this section.

11 (d) In choosing and contracting for professional investment
12 management services for an account established under this section
13 and in continuing the use of an investment manager, the pool or
14 political subdivision must act prudently and in the interest of the
15 current and future beneficiaries of the account.

16 SECTION 8. Sections 607.055 and 607.058, Government Code,
17 as amended by this Act, apply only to a claim for workers'
18 compensation benefits filed on or after the effective date of this
19 Act. A claim filed before that date is governed by the law as it
20 existed on the date the claim was filed, and the former law is
21 continued in effect for that purpose.

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

25 SECTION 10. (a) Section 504.053(e)(1), Labor Code, as
26 added by this Act, applies only to an administrative violation that
27 occurs on or after the effective date of this Act. An

1 administrative violation that occurs before the effective date of
2 this Act is governed by the law applicable to the violation
3 immediately before the effective date of this Act, and that law is
4 continued in effect for that purpose.

5 (b) Section 504.053(e)(2), Labor Code, as added by this Act,
6 applies only to a claim for workers' compensation benefits filed on
7 or after the effective date of this Act. A claim filed before the
8 effective date of this Act is governed by the law in effect on the
9 date the claim was filed, and the former law is continued in effect
10 for that purpose.

11 SECTION 11. This Act takes effect immediately if it
12 receives a vote of two-thirds of all the members elected to each
13 house, as provided by Section 39, Article III, Texas Constitution.
14 If this Act does not receive the vote necessary for immediate
15 effect, this Act takes effect September 1, 2019.

Senate Bill 2551
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

SECTION 1. Section 607.055, Government Code, is amended.

No equivalent provision.

HOUSE VERSION (IE)

SECTION 1. Same as Senate version.

SECTION __. 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, 607.055, 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 was a substantial factor in bringing about [caused] 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 firefighter or emergency medical technician was a substantial factor in bringing about [caused] 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 firefighter or emergency medical technician was a substantial factor in bringing about the individual's disease

CONFERENCE

SECTION 1. Same as Senate version.

SECTION 2. Same as House version.

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SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

or illness, without which the disease or illness would not have occurred. [FA2(1)]

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

(a-3) An insurance carrier is not required to comply with Subsection (a) if the claim *seeks to recover benefits* under Subchapter B, 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. The commissioner shall adopt rules as necessary to implement this subsection.

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

(a-3) An insurance carrier is not required to comply with Subsection (a) if the claim *results from an employee's disability or death for which a presumption is claimed to be applicable* under Subchapter B, 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 *and the division* with a notice that describes *all steps taken by the insurance carrier to investigate the injury before the notice was given* and the evidence the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury. The commissioner shall adopt rules as necessary to implement this subsection.

SECTION 3. Same as House version.

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

(d-1) 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) or Section 409.021(a-3).

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

(d-1) An insurance carrier has not committed an administrative violation *under Section 409.021* if the carrier has sent notice to the employee as required by Subsection (d) *of this section* or Section 409.021(a-3). [FA1(1)-(2)]

SECTION 4. Same as House version.

SECTION 4. Section 415.021, Labor Code, is amended by adding Subsection (c-2) to read as follows:

SECTION 4. Section 415.021, Labor Code, is amended by adding Subsection (c-2) to read as follows:

SECTION 5. Same as House version.

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Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

(c-2) In determining whether to assess *any sanctions, an administrative penalty, or another remedy authorized by this subtitle*, the commissioner shall 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; or
 - (B) to notify the division and the employee of *its* refusal to pay benefits.

SECTION 5. Section 504.053(e), Labor Code, is amended.

SECTION 6. Subchapter D, Chapter 504, Labor Code, is amended by adding Section 504.074 to read as follows:
Sec. 504.074. SELF-INSURANCE ACCOUNT FOR CERTAIN DEATH BENEFITS.
(a) A pool or a political subdivision that self-insures may 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.*

HOUSE VERSION (IE)

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

- (1) the employee cooperated with the insurance carrier's investigation of the claim;
- (2) the employee timely authorized access to the applicable medical records before the insurance carrier's deadline to:
 - (A) begin payment of benefits; or
 - (B) notify the division and the employee of *the insurance carrier's* refusal to pay benefits; and
- (3) *the insurance carrier conducted an investigation of the claim, applied the statutory presumptions under Subchapter B, Chapter 607, Government Code, and expedited medical benefits under Section 504.055.*

SECTION 5. Same as Senate version.

SECTION 6. Subchapter D, Chapter 504, Labor Code, is amended by adding Section 504.074 to read as follows:
Sec. 504.074. SELF-INSURANCE ACCOUNT FOR DEATH BENEFITS AND LIFETIME INCOME BENEFITS. (a) A pool or a political subdivision that self-insures may establish an account for the payment of death benefits *and lifetime income benefits under Chapter 408.*
[FA1(3)-(4)]
(b) An account established under this section may accumulate assets in an amount that the pool or political

CONFERENCE

SECTION 6. Same as Senate version.

SECTION 7. Same as House version.

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SENATE VERSION

(b) An account established under this section may 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)*. 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) Chapter 2256, Government Code, does not apply to the investment of assets in an account established under this section. A pool or political subdivision investing or reinvesting the assets of an account shall *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. A determination of whether the pool or political subdivision exercised prudence in making an investment decision shall be made by considering the investment of all assets of the account rather than by considering the prudence of a single investment.*

HOUSE VERSION (IE)

subdivision, in its sole discretion, determines is necessary in order to pay death benefits and lifetime income benefits. 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 *and lifetime income benefits*. [FA1(5)-(6)]

(c) Chapter 2256, Government Code, does not apply to the investment of assets in an account established under this section. A pool or political subdivision investing or reinvesting the assets of an account shall *discharge its duties solely in the interest of current and future beneficiaries:*

(1) for the exclusive purposes of:

(A) providing death benefits and lifetime income benefits to current and future beneficiaries; and

(B) defraying reasonable expenses of administering the account;

(2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;

(3) by diversifying the investments of the account to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the documents and instruments governing the account to the extent that the documents and instruments are consistent with this section.

(d) In choosing and contracting for professional investment management services for an account established under this section and in continuing the use of an investment manager, the pool or political subdivision

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HOUSE VERSION (IE)

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must act prudently and in the interest of the current and future beneficiaries of the account. [FA1(7)]

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

SECTION 7. *Sections* 607.055 and 607.058, Government Code, as amended by this Act, *apply* only to a claim for workers' compensation benefits filed on or after the effective date of this Act. A claim filed before that date is governed by the law as it existed on the date the claim was filed, and the former law is continued in effect for that purpose. [FA2(2)-(3)]

SECTION 8. Same as House version.

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

SECTION 9. Same as House version.

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

SECTION 9. (a) Section 504.053(e)(1), Labor Code, as added by this Act, applies to an administrative violation *proceeding that is pending on or initiated* on or after the effective date of this Act.

SECTION 10. Same as Senate version.

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

(b) Section 504.053(e)(2), Labor Code, as added by this Act, applies to a *cause of action that is pending on or* filed on or after the effective date of this Act. [FA3]

Senate Bill 2551
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Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

SECTION 10. Effective date.

SECTION 10. Same as Senate version.

SECTION 11. Same as Senate version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 25, 2019

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: SB2551 by Hinojosa (Relating to liability, payment, and death benefits for certain workers' compensation claims.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code and Labor Code relating to liability, payment, and death benefits for certain workers' compensation claims. Based on information provided by the Texas Department of Insurance, State Office of Risk Management, and Texas A&M University System Administration, this analysis assumes that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The bill would take effect immediately upon receiving a vote of two-thirds of all members elected to the House and Senate or otherwise on September 1, 2019.

Local Government Impact

The Texas Association of Counties (TAC) anticipates a potential fiscal impact on the TAC Risk Management Pool, which covers approximately 1,500 firefighters and emergency medical technicians. However, the extent of the impact cannot be determined at this time due to inability to predict the number or severity of future cancer claims.

According to the Texas Municipal League (TML), the TML Intergovernmental Risk Pool estimates that it will cost \$6.0 million annually for the Pool. For all paid firefighters statewide, the cost is over \$13.0 million annually.

Source Agencies: 360 State Office of Administrative Hearings, 454 Department of Insurance, 479 State Office of Risk Management, 601 Department of Transportation, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 407 Commission on Law Enforcement, 411 Commission on Fire Protection

LBB Staff: WP, AF, CMa, CP, CLo