

**SUBJECT:** Establishing presumptions for cancers suffered by firefighters or EMTs

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 12 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland,  
Hunter, P. King, Parker, E. Rodriguez, Smithee, Springer

0 nays

1 absent — Raymond

**SENATE VOTE:** On final passage, May 7 — 30-1 (Schwertner)

**WITNESSES:** For — Chris Jones, CLEAT; David Reagan, Texas Municipal League Intergovernmental Risk Pool; Matt Bachop and John Riddle, Texas State Association of Fire Fighters; (*Registered, but did not testify*: Aidan Alvarado, Laredo Fire Fighters Association; Pamela Beachley, Texas Association of Counties Risk Management Pool)

Against — (*Registered, but did not testify*: Clifford Sparks, City of Dallas)

On — Brandi Prejean, City of Fort Worth; Robert Stokes, City of San Antonio; James Smith, San Antonio Police Officers Association; Amy Lee, Texas Department of Insurance-Division of Workers' Compensation; (*Registered, but did not testify*: Jimmy Rodriguez, San Antonio Police Officers Association)

**BACKGROUND:** Government Code ch. 607 subch. B establishes the presumption that firefighters and emergency medical technicians (EMTs) who contracted certain medical conditions leading to death or partial or total disability have done so during the course and scope of employment.

Sec 607.052(a) establishes that this presumption applies only to those who had received, after becoming a firefighter or EMT, a physical examination that failed to reveal evidence of the illness or disease for which benefits or compensation were sought; who had been employed for five or more years

as a firefighter or EMT; and who had sought benefits or compensation for a disease or illness that was discovered during employment as a firefighter or emergency medical technician.

Sec. 607.055 establishes that the presumption applies in the case of a cancer resulting in death or total or partial disability if:

- the firefighter or EMT regularly responded on the scene to calls involving fires or firefighting or regularly responded to an event involving the documented release of radiation or a known or suspected carcinogen.
- the type of cancer is known to be associated with fire fighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen, as determined by the International Agency for Research on Cancer.

Some have called for the state to bring greater clarity to the law governing workers' compensation claims arising from cancer suffered by a firefighter or emergency medical technician.

DIGEST:

CSSB 2551 would modify the criteria for determining whether a firefighter or emergency medical technician (EMT) who suffered from cancer was presumed to have developed the cancer during the course and scope of employment. The presumption would apply to:

- cancer that originated at the stomach, colon, rectum, skin, prostate, testis, or brain;
- non-Hodgkin's lymphoma;
- multiple myeloma;
- malignant melanoma; and
- renal cell carcinoma.

For determining whether the presumption applied, the bill would remove the criterion that the type of cancer was known to be associated with firefighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen, as determined by the International Agency for Research on

Cancer.

**Requirements applicable to insurers.** CSSB 2551 would establish that, under certain circumstances, an insurance carrier would not be required to comply with a requirement to meet a 15-day deadline under the Texas Workers' Compensation Act to either initiate benefits payments in response to a claim or provide a notice of refusal. To qualify for this exemption, the insurer would need to send both the employee and the division of workers' compensation an explanation within 15 days describing the steps it had taken to investigate the employee's injury and any evidence it believed would be necessary to complete its investigation of the compensability of the injury. The commissioner of workers' compensation would be required to adopt rules as necessary to implement this provision, not later than January 1, 2020.

CSSB 2551 would require the commissioner of workers' compensation to consider certain factors in determining whether to assess an administrative penalty on an insurance carrier for refusal to pay benefits in response to a claim for compensation under the bill. These factors would include whether the employee had cooperated with the insurer in the investigation of the claim, whether the employee had timely authorized access to applicable medical records before the 15-day deadline, and whether the insurer had conducted an investigation under the requirements of the bill and other applicable law.

**Death benefits account.** The bill also would authorize a self-insured political subdivision or a risk pool of two or more political subdivisions to establish an account for the payment of death benefits for a compensable injury caused by an applicable cancer to a firefighter or emergency medical technician, to be administered as provided in the bill.

**Exceptions to sovereign immunity.** CSSB 2551 would establish liability for a political subdivision that self-insured either individually or collectively for worker's compensation coverage for sanctions, administrative penalties, and other remedies authorized under provisions of the Texas Worker's Compensation Act, and for certain attorney's fees

paid to the claimant's counsel in a workers' compensation suit.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019. The bill would apply to a claim for benefits filed on or after the effective date of the bill.