

## **BILL ANALYSIS**

Senate Research Center

S.B. 2551  
By: Hinojosa  
Business & Commerce  
6/11/2019  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under the Presumptive Act (Chapter 607, Government Code), a peace officer, fire fighter, or emergency medical responder exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses if the employee can prove that exposure to the disease occurred on the job. Currently, most fire fighters and police officers are covered by risk pools or self-insured cities when it comes to workers' compensation insurance. Workers' compensation providers and first responders must now navigate a far more complex system than in decades past.

S.B. 2551 is a collaborative effort between first responders, cities, and risk pools to help reform the current workers' compensation system that services fire fighters and police officers.

S.B. 2551 would first clarify the Presumptive Act by identifying specific cancers in statute for which the presumption will apply. The list of twelve cancers reflects what stakeholders believe commonly afflict fire fighters and are most likely due to their occupation. This list will put certainty back into the system and still leaves fire fighters with the ability to show causation for cancers not contained in the list. The list covers non-Hodgkin's lymphoma; multiple myeloma; malignant melanoma; renal cell carcinoma; stomach cancer; colon cancer; cancer of the rectum; skin cancer; prostate cancer; cancer of the testis; and brain cancer. The bill also confirms that political subdivisions that act as workers' compensation providers are regulated as any private provider would be.

S.B. 2551 would allow a first responder to request attorney's fees if they are sued by a city and prevail on a workers compensation claim. S.B. 2551 would also authorize risk pools or political subdivisions the ability to invest certain accounts. S.B. 2551 also tasks the division of workers' compensation with two studies pertaining to the costs that a political subdivision would incur to self-insure or join a risk pool and one that analyzes costs incurred if the presumptive act is extended to police officers. S.B. 2551 only applies to claims and administrative violations occurring on or after the enactment date. (Original Author's/Sponsor's Statement of Intent)

S.B. 2551 amends current law relating to liability, payment, and benefits for certain workers' compensation claims.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTION 3 (Section 409.021, Labor Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 607.055, Government Code, as follows;

Sec. 607.055. CANCER. (a) Provides that 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) makes no changes to this subdivision; and

(2) the cancer is described by Subsection (b), rather than 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) Makes a nonsubstantive change. Provides that this section applies only to:

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

(2) non-Hodgkin's lymphoma;

(3) multiple myeloma;

(4) malignant melanoma; and

(5) renal cell carcinoma. Deletes existing text providing that this applies only to a type of cancer that may be caused by exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer.

SECTION 2. Amends Section 607.058, Government Code, as follows:

Sec. 607.058. PRESUMPTION REBUTTABLE. (a) Authorizes a presumption under Section 607.053 (Immunization; Smallpox), 607.054 (Tuberculosis or Other Respiratory Illness), 607.055, or 607.056 (Acute Myocardial Infarction or Stroke) to 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 the individual's disease or illness, without which the disease or illness would not have occurred, rather than authorizing a presumption under Section 607.053, 607.054, 607.055, or 607.056 to 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 caused the individual's disease or illness.

(b) Requires a rebuttal offered under this section to 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 the individual's disease or illness, without which the disease or illness would not have occurred, rather than requiring a rebuttal offered under this section to 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 caused the individual's disease or illness.

(c) Requires an administrative law judge, in addressing an argument based on a rebuttal offered under this section, to 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 or illness, without which the disease or illness would not have occurred.

SECTION 3. Amends Section 409.021, Labor Code, by adding Subsection (a-3), as follows:

(a-3) Provides that an insurance carrier is not required to comply with Subsection (a) (relating to requiring the insurance carrier to initiate compensation promptly) if the claim results from an employee's disability or death for which a presumption is claimed to be applicable under Subchapter B (Diseases or Illnesses Suffered by Firefighters and Emergency Medical Technicians), 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 of workers' compensation of the Texas Department of Insurance (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. Requires the commissioner of workers' compensation (commissioner) to adopt rules as necessary to implement this subsection.

SECTION 4. Amends Section 409.022, Labor Code, by adding Subsection (d-1), as follows:

(d-1) Provides that an insurance carrier has not committed an administrative violation under Section 409.021 (Initiation of Benefits; Insurance Carrier's Refusal; Administrative Violation) if the carrier has sent notice to the employee as required by Subsection (d) (relating to the definitions of "emergency medical technician" and "firefighter" for purposes of this subsection) or Section 409.021(a-3).

SECTION 5. Amends Section 415.021, Labor Code, by adding Subsection (c-2), as follows:

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

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

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

(A) begin payment of benefits; and

(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 (Expedited Provision of Medical Benefits For Certain Injuries Sustained by First Responder in Course and Scope of Employment).

SECTION 6. Amends Section 504.053(e), Labor Code, as follows:

(e) Makes a nonsubstantive change. Provides that nothing in this chapter (Workers' Compensation Insurance Coverage For Employees of Political Subdivisions) waives sovereign immunity or creates a new cause of action, except that a political subdivision that self-insures either individually or collectively is liable for:

(1) sanctions, administrative penalties, and other remedies authorized under Chapter 415 (Administrative Violations);

(2) attorney's fees as provided by Section 408.221(c) (relating to providing that an insurance carrier that seeks judicial review of a certain final decision of the appeals panel is liable for reasonable and necessary attorney's fees incurred by the claimant as a result of the insurance carrier's appeal if the claimant prevails on an issue on which judicial review is sought by the insurance carrier in accordance with the limitation of issues); and

(3) creates this subdivision from existing text and makes no further changes.

SECTION 7. Amends Subchapter D, Chapter 504, Labor Code, by adding Section 504.074, as follows:

Sec. 504.074. SELF-INSURANCE ACCOUNT FOR DEATH BENEFITS AND LIFETIME INCOME BENEFITS. (a) Authorizes a pool or a political subdivision that self-insures to establish an account for the payment of death benefits and lifetime income benefits under Chapter 408 (Workers' Compensation Benefits).

(b) Authorizes an account established under this section to accumulate assets in an amount that the pool or political subdivision, in its sole discretion, determines is necessary in order to pay death benefits and lifetime income benefits. Provides that 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.

(c) Provides that Chapter 2256 (Public Funds Investment), Government Code, does not apply to the investment of assets in an account established under this section. Requires a pool or political subdivision investing or reinvesting the assets of an account to 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) Requires the pool or political subdivision, 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, to act prudently and in the interest of the current and future beneficiaries of the account.

SECTION 8. Makes application of Sections 607.055 and 607.058, Government Code, as amended by this Act, prospective.

SECTION 9. Requires the commissioner to adopt rules as required by or necessary to implement this Act not later than January 1, 2020.

SECTION 10. (a) Makes application of Section 504.053(e)(1), Labor Code, as added by this Act, prospective.

(b) Makes application of Section 504.053(e)(2), Labor Code, as added by this Act, prospective.

SECTION 11. Effective date: upon passage or September 1, 2019.