

SUBJECT: Creating a presumption about certain illnesses among emergency workers

COMMITTEE: Pensions and Investments — committee substitute recommended

VOTE: 5 ayes — Eiland, Flynn, Krusee, McClendon, Straus

0 nays

2 absent — Griggs, Rodriguez

SENATE VOTE: On final passage, April 7 — 25-0

WITNESSES: (*On the House companion, HB 3306:*)

For — Steve Bresnen, Mike Higgins, Texas State Association of Fire
Fighters; Johnny Villarreal, Houston Fire Fighters; Stuart Yates;

(*Registered, but did not testify:* Teddy Stewart, President - San Antonio
Police Officers Association; Dinah Welsh, Texas Hospital Association)

Against — None

BACKGROUND: Under Government Code, ch. 607, a peace officer, fire fighter, or
emergency medical responder exposed to a contagious disease is entitled
reimbursement from the employing governmental entity for reasonable
medical expenses if the employee can prove that exposure to the disease
occurred on the job.

DIGEST: CSSB 310 would establish a presumption, in the case of certain paid and
volunteer fire fighters and emergency medical technicians employed by
political subdivisions, that the occurrence of certain medical conditions
among these employees resulted from exposure to harmful agents in the
course of performing their duties. The medical conditions covered by the
bill would include heart attack, stroke, tuberculosis, respiratory illness,
cancer, or injury resulting from an immunization against smallpox or
another disease.

The presumption could be rebutted by showing through a preponderance
of the evidence that the medical condition resulted from some factor not

related to an individual's service as a fire fighter or emergency medical technician.

The bill would not create a cause of action and would apply only to fire fighters and emergency personnel who:

- had been employed for five or more years;
- had passed previous physical examinations; and
- sought benefits for disease or illness during employment.

The presumption would not:

- affect the determination of benefits for survivors of certain fire fighters and emergency personnel;
- apply to a cause of action brought in state or federal court;
- entitle firefighters or emergency personnel to additional benefits beyond current benefits or compensation;
- apply to life or disability insurance policies; or
- apply to personnel or their spouses who had used tobacco products if the disease was one that could be traced to the use of tobacco.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSSB 310 would improve fire fighter and emergency personnel benefit security and shift the burden of proof away from the employee to the local government or risk pool in determining whether an employee's illness was caused by the performance of duties. Fire fighters and emergency personnel often face hazardous situations and sustain injuries, illness, and death in their efforts to save lives and property. To receive medical coverage and workers' compensation, they must document when and where they sustained injury and illness. Because of the nature of their work, determining the origin of disease exposure or injury can be impossible to prove, yet the burden of proof currently lies with the employee. This bill appropriately would create a presumption in favor of the employee for diseases, such as certain cancers and respiratory illnesses, which typically are associated with the performance of emergency personnel duties.

The bill would not remove or decrease any employee benefits. By allowing for the rebuttal of the presumption in specific situations, it would not create barriers to receiving benefits in unrelated situations. For

example, an emergency medical technician who contracted smallpox following a preventive immunization could not be denied benefits based simply on the fact that he or his wife smoked.

The bill would not dramatically increase costs across the state, and it would not affect the number of claims approved. Thirty-eight other states have invoked similar provisions, as well as the cities of Houston and Austin, without creating excessive claims and costs.

**OPPONENTS
SAY:**

The bill could increase medical costs to local governments. Local governments already provide comprehensive benefits and adequate security for fire fighters and emergency personnel. The burden of proof should remain on the employee to ensure that local governments were not forced to foot the bill for non-work-related injuries and illnesses.

**OTHER
OPPONENTS
SAY:**

While CSSB 310 would benefit many fire fighters and emergency personnel, its exclusion of tobacco product users from the presumption is drafted too broadly and unfairly could deny benefits to deserving individuals. Tracing a certain disease to tobacco use is not always possible. For example, a fire fighter who smoked for a short period of time in the past might be denied benefits if he developed certain forms of cancer, even though fire fighters in burning buildings can be exposed to a variety of cancer-causing carcinogens.

NOTES:

The substitute narrowed the definition of “emergency medical technician” to apply only to one employed by a political subdivision. It also states that a presumption would be for purposes of benefits and compensation provided under another employee benefit, law, or plan, including a pension plan.

The House companion bill, HB 3306 by Bohac, was heard on April 7 in the Pensions and Investments Committee, where it was left pending.