

- SUBJECT:** Requiring proof for denying firefighter, EMT workplace injury claims
- COMMITTEE:** Homeland Security and Public Safety — committee substitute recommended
- VOTE:** 7 ayes — Phillips, Burns, Dale, Metcalf, Moody, M. White, Wray  
0 nays  
2 absent — Nevárez, Johnson
- WITNESSES:** For — Rafael Torres, Texas State Association of Fire Fighters; (*Registered, but did not testify:* David Crow, Arlington Professional Fire Fighters; Mike Martinez and Randy Moreno, Austin Firefighters Association; Chris Jones, Combined Law Enforcement Associations of Texas; John Riddle, Conroe Professional Fire Fighters; Johnny Villarreal, Houston Professional Fire Fighters Local 341; Sean Dailey, Houston Professional Firefighters Association; Glenn Trubee, Lake Travis Firefighters Association IAFF Local 4117; Aidan Alvarado, Laredo Fire Fighters Association; Glenn Deshields, Texas State Association of Fire Fighters; Wayne Delanghe; Katherine McAnally)
- Against — David Reagan, Texas Municipal League Intergovernmental Risk Pool; (*Registered, but did not testify:* Paul Sugg, Texas Association of Counties Risk Management Pool; Laura Mueller, Texas Municipal League)
- On — (*Registered, but did not testify:* Brent Hatch and Amy Lee, Texas Department of Insurance)
- BACKGROUND:** Government Code, ch. 607, subch. B creates a presumption that certain diseases and illnesses of firefighters and emergency medical technicians (EMTs) are workplace injuries and are covered under benefits and workers' compensation systems. This presumption only applies for a firefighter or EMT who has been employed for more than five years and discovers the illness during their employment.

Current law allows the presumption to be rebutted if a preponderance of evidence shows that a factor other than their employment as a firefighter or EMT caused the illness or injury.

**DIGEST:**

CSHB 1388 would adjust the conditions under which a firefighter or EMT who suffered a heart attack or stroke resulting in disability or death was presumed to have suffered it during the course and scope of employment for the purpose of receiving compensation or benefits. Language specifying that the incident have occurred while the EMT or firefighter was on duty and engaged in nonroutine stressful or strenuous physical activity or training would be removed. The bill would require that the firefighter or EMT have been on duty at the time of the heart attack or stroke for the incident to be presumed to have occurred during the course and scope of employment.

The bill also would require that a rebuttal of the presumption of workplace injury include a statement by the person issuing the rebuttal that described the evidence reviewed to determine that the cause of the illness or injury was not related to the firefighter or EMT's employment.

The bill would add a requirement that insurance carriers who refused to pay benefits under the Texas Workers' Compensation Act (Labor Code, ch. 409) in response to a claim for a presumed workplace injury include notice of the evidence the carrier reviewed to make the determination.

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, 2015, and would apply only to a claim brought on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1388 would help ensure the fair treatment of firefighters and EMTs who sustained workplace injuries and illnesses and were seeking workers' compensation and other benefits. Political subdivisions or insurance carriers currently can deny applications for benefits without first providing substantive evidence on the reasons for the denial. Firefighters and EMTs must dispute this denial to access their benefits, which is a costly and

time-consuming process and may take place while they are still injured or ill. Requiring carriers and employers to provide an explanation with an initial denial would prevent the workers' compensation system from forcing an appeal and dragging out the process.

This bill would prevent the denial of applications from being used as a bureaucratic tactic to delay benefits and force individuals to use their private health insurance to cover illnesses or injuries sustained in the line of duty. After an individual uses private insurance, it is difficult to rejoin the workers' compensation system to get workplace injuries covered. This practice is an inappropriate use of resources.

The bill also would ensure that firefighters and EMTs were covered for heart attacks or strokes that occurred while they were on duty and remove the burden placed on those individuals of having to prove the work that caused the injury was above and beyond the already stressful job these individuals have.

**OPPONENTS  
SAY:**

CSHB 1388 would add unnecessary provisions that would require the political subdivision or insurance carrier to provide substantive evidence on the reasons for the denial of an application for benefits or workers' compensation. These bodies already are required to provide reasons for denial of a workers' compensation claim.

The bill could require political subdivisions to provide benefits and workers' compensation for heart attacks and strokes that occurred outside the scope of a firefighter's or EMT's employment by presuming it was a workplace injury if the individual was on duty. The presumption provision in current law appropriately requires heart attacks or strokes that occur while on duty to be tied to an individual's work. The bill would expand the conditions for eligible injuries or illnesses beyond the intention of the law and beyond what the workers' compensation program is intended to cover.

Under the bill, taxpayers would bear the burden of paying for benefits via workers' compensation for injuries that might not be actual workplace

injuries. Most cities and counties do not purchase workers' compensation from private insurance companies, so the cities and counties would directly pay for the benefits, not an insurance company.

NOTES:

The Senate companion bill, SB 1768 by Creighton, was referred to the Senate State Affairs Committee on March 24.

The author intends to offer a floor amendment that would remove section 1 of the bill, leaving current law in place regarding certain conditions under which a heart attack and stroke were presumed to have occurred during the course and scope of employment. The amendment also would change section 3 to specify that an insurance carrier's notice of refusal to pay benefits would have to describe the reason the presumption claimed to be applicable under Government Code, ch. 607, subch. B did not apply and the evidence that the person reviewed before making the determination.