

Calendar No. 160111TH CONGRESS
1ST SESSION**S. 599****[Report No. 111-75]**

To amend chapter 81 of title 5, United States Code, to create a presumption that a disability or death of a Federal employee in fire protection activities caused by any of certain diseases is the result of the performance of such employee's duty.

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2009

Mr. CARPER (for himself, Ms. COLLINS, Mr. INHOFE, Mr. WHITEHOUSE, Mr. LIEBERMAN, Mr. DODD, Mr. KERRY, Mrs. BOXER, Mr. WYDEN, Mr. BENNET, Mrs. MURRAY, Ms. LANDRIEU, Mr. BINGAMAN, Mr. KENNEDY, Mr. BEGICH, Mr. WEBB, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

SEPTEMBER 14, 2009

Reported by Mr. LIEBERMAN, with amendments

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A BILL

To amend chapter 81 of title 5, United States Code, to create a presumption that a disability or death of a Federal employee in fire protection activities caused by any of certain diseases is the result of the performance of such employee's duty.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Firefighters
 5 Fairness Act of 2009”.

6 ***TITLE I—FEDERAL***
 7 ***FIREFIGHTERS FAIRNESS***

8 **SEC. 2.101. CERTAIN DISEASES PRESUMED TO BE WORK-RE-**
 9 **LATED CAUSE OF DISABILITY OR DEATH FOR**
 10 **FEDERAL EMPLOYEES IN FIRE PROTECTION**
 11 **ACTIVITIES.**

12 (a) DEFINITION.—Section 8101 of title 5, United
 13 States Code, is amended by adding at the end the fol-
 14 lowing:

15 “(21) ‘employee in fire protection activities’
 16 means a firefighter, paramedic, emergency medical
 17 technician, rescue worker, ambulance personnel, or
 18 hazardous material worker, who—

19 “(A) is trained in fire suppression;

20 “(B) has the legal authority and responsi-
 21 bility to engage in fire suppression;

22 “(C) is engaged in the prevention, control,
 23 and extinguishment of fires or response to
 24 emergency situations where life, property, or
 25 the environment is at risk; and

1 “(D) performs such activities as a primary
2 responsibility of his or her job.”.

3 (b) PRESUMPTION RELATING TO EMPLOYEES IN
4 FIRE PROTECTION ACTIVITIES.—Section 8102 of title 5,
5 United States Code, is amended by adding at the end the
6 following new subsection:

7 “(c)(1) With regard to an employee in fire protection
8 activities, a disease specified in paragraph (2) shall be pre-
9 sumed to be proximately caused by the employment of
10 such employee, subject to the length of service require-
11 ments specified. The disability or death of an employee
12 in fire protection activities due to such a disease shall be
13 presumed to result from personal injury sustained while
14 in the performance of such employee’s duty. Such pre-
15 sumptions may be rebutted by a preponderance of the evi-
16 dence.

17 “(2) The following diseases shall be presumed to be
18 proximately caused by the employment of the employee:

19 “(A) If the employee has been employed for a
20 minimum of 5 years:

21 “(i) Heart disease.

22 “(ii) Lung disease.

23 “(iii) The following cancers:

24 “(I) Brain cancer.

1 “(II) Cancer of the blood or lymphatic
2 systems.

3 “(III) Leukemia.

4 “(IV) Lymphoma (except Hodgkin’s
5 disease).

6 “(V) Multiple myeloma.

7 “(VI) Bladder cancer.

8 “(VII) Kidney cancer.

9 “(VIII) Testicular cancer.

10 “(IX) Cancer of the digestive system.

11 “(X) Colon cancer.

12 “(XI) Liver cancer.

13 “(XII) Skin cancer.

14 “(XIII) Lung cancer.

15 “(iv) Any other cancer the contraction of
16 which the Secretary of Labor determines to be
17 related to the hazards to which an employee in
18 fire protection activities may be subject.

19 “(B) Regardless of the length of time an em-
20 ployee has been employed, any uncommon infectious
21 disease, including tuberculosis, hepatitis A, B, or C,
22 and the human immunodeficiency virus (HIV), the
23 contraction of which the Secretary of Labor deter-
24 mines to be related to the hazards to which an em-
25 ployee in fire protection activities may be subject.”.

1 (c) REPORT.—Not later than 10 years after the date
2 of enactment of this Act, the National Institute of Occupa-
3 tional Safety and Health in the Centers for Disease Con-
4 trol and Prevention shall examine the implementation of
5 this ~~Act~~*title* and appropriate scientific and medical data
6 related to the health risks associated with firefighting and
7 submit to Congress a report which shall include—

8 (1) an analysis of the injury claims made under
9 this ~~Act~~*title*;

10 (2) an analysis of the available research related
11 to the health risks associated with firefighting; and

12 (3) recommendations for any administrative or
13 legislative actions necessary to ensure that those dis-
14 eases most associated with firefighting are included
15 in the presumption created by this ~~Act~~*title*.

16 (d) EFFECTIVE DATE.—The amendment made by
17 this section applies to an injury that is first diagnosed,
18 or a death that occurs, on or after the date of enactment
19 of this Act.

1 **TITLE II—NOTIFICATIONS OF**
 2 **POSSIBLE EXPOSURE TO IN-**
 3 **FECTIONOUS DISEASES**

4 **SEC. 201. INFECTIOUS DISEASES AND CIRCUMSTANCES**
 5 **RELEVANT TO NOTIFICATION REQUIRE-**
 6 **MENTS.**

7 (a) *IN GENERAL.*—Not later than 180 days after the
 8 date of the enactment of this Act, the Secretary of Health
 9 and Human Services (referred to in this title as the “Sec-
 10 retary”) shall complete the development of—

11 (1) *a list of potentially life-threatening infectious*
 12 *diseases to which emergency response employees may*
 13 *be exposed in responding to emergencies;*

14 (2) *guidelines describing the circumstances in*
 15 *which such employees may be exposed to such dis-*
 16 *eases, taking into account the conditions under which*
 17 *emergency response is provided; and*

18 (3) *guidelines describing the manner in which*
 19 *medical facilities should make determinations for*
 20 *purposes of section 203(d).*

21 (b) *SPECIFICATION OF AIRBORNE INFECTIOUS DIS-*
 22 *EASES.*—The list developed by the Secretary under sub-
 23 section (a)(1) shall include a specification of those infec-
 24 tious diseases on the list that are routinely transmitted
 25 through airborne or aerosolized means.

1 (c) *DISSEMINATION.*—*The Secretary shall—*

2 (1) *transmit to State public health officers copies*
 3 *of the list and guidelines developed by the Secretary*
 4 *under subsection (a) with the request that the officers*
 5 *disseminate such copies as appropriate throughout the*
 6 *States; and*

7 (2) *make such copies available to the public.*

8 **SEC. 202. ROUTINE NOTIFICATIONS WITH RESPECT TO AIR-**
 9 **BORNE INFECTIOUS DISEASES IN VICTIMS AS-**
 10 **SISTED.**

11 (a) *ROUTINE NOTIFICATION OF DESIGNATED OFFI-*
 12 *CER.*—

13 (1) *DETERMINATION BY TREATING FACILITY.*—*If*
 14 *a victim of an emergency is transported by emergency*
 15 *response employees to a medical facility and the med-*
 16 *ical facility makes a determination that the victim*
 17 *has an airborne infectious disease, the medical facil-*
 18 *ity shall notify the designated officer of the emergency*
 19 *response employees who transported the victim to the*
 20 *medical facility of the determination.*

21 (2) *DETERMINATION BY FACILITY ASCERTAINING*
 22 *CAUSE OF DEATH.*—*If a victim of an emergency is*
 23 *transported by emergency response employees to a*
 24 *medical facility and the victim dies at or before*
 25 *reaching the medical facility, the medical facility*

1 *ascertaining the cause of death shall notify the des-*
2 *ignated officer of the emergency response employees*
3 *who transported the victim to the initial medical fa-*
4 *ility of any determination by the medical facility*
5 *that the victim had an airborne infectious disease.*

6 **(b) REQUIREMENT OF PROMPT NOTIFICATION.**—*With*
7 *respect to a determination described in paragraph (1) or*
8 *(2) of subsection (a), the notification required in each of*
9 *such paragraphs shall be made as soon as is practicable,*
10 *but not later than 48 hours after the determination is made.*

11 **SEC. 203. REQUEST FOR NOTIFICATIONS WITH RESPECT TO**
12 **VICTIMS ASSISTED.**

13 **(a) INITIATION OF PROCESS BY EMPLOYEE.**—*If an*
14 *emergency response employee believes that the employee*
15 *may have been exposed to an infectious disease by a victim*
16 *of an emergency who was transported to a medical facility*
17 *as a result of the emergency, and if the employee attended,*
18 *treated, assisted, or transported the victim pursuant to the*
19 *emergency, then the designated officer of the employee shall,*
20 *upon the request of the employee, carry out the duties de-*
21 *scribed in subsection (b) regarding a determination of*
22 *whether the employee may have been exposed to an infec-*
23 *tious disease by the victim.*

24 **(b) INITIAL DETERMINATION BY DESIGNATED OFFI-**
25 **CER.**—*The duties referred to in subsection (a) are that—*

1 (1) *the designated officer involved collect the facts*
 2 *relating to the circumstances under which, for pur-*
 3 *poses of subsection (a), the employee involved may*
 4 *have been exposed to an infectious disease; and*

5 (2) *the designated officer evaluate such facts and*
 6 *make a determination of whether, if the victim in-*
 7 *volved had any infectious disease included on the list*
 8 *issued under paragraph (1) of section 201(a), the em-*
 9 *ployee would have been exposed to the disease under*
 10 *such facts, as indicated by the guidelines issued under*
 11 *paragraph (2) of such section.*

12 (c) *SUBMISSION OF REQUEST TO A MEDICAL FACIL-*
 13 *ITY.—*

14 (1) *IN GENERAL.—If a designated officer makes*
 15 *a determination under subsection (b)(2) that an emer-*
 16 *gency response employee may have been exposed to an*
 17 *infectious disease, the designated officer shall submit*
 18 *to the medical facility to which the victim involved*
 19 *was transported a request for a response under sub-*
 20 *section (d) regarding the victim of the emergency in-*
 21 *volved.*

22 (2) *FORM OF REQUEST.—A request under para-*
 23 *graph (1) shall be in writing and be signed by the*
 24 *designated officer involved, and shall contain a state-*

1 *ment of the facts collected pursuant to subsection*
2 *(b)(1).*

3 *(d) EVALUATION AND RESPONSE REGARDING RE-*
4 *QUEST TO MEDICAL FACILITY.—*

5 *(1) IN GENERAL.—If a medical facility receives*
6 *a request under subsection (c), the medical facility*
7 *shall evaluate the facts submitted in the request and*
8 *make a determination of whether, on the basis of the*
9 *medical information possessed by the facility regard-*
10 *ing the victim involved, the emergency response em-*
11 *ployee was exposed to an infectious disease included*
12 *on the list issued under paragraph (1) of section*
13 *201(a), as indicated by the guidelines issued under*
14 *paragraph (2) of such section.*

15 *(2) NOTIFICATION OF EXPOSURE.—If a medical*
16 *facility makes a determination under paragraph (1)*
17 *that the emergency response employee involved has*
18 *been exposed to an infectious disease, the medical fa-*
19 *cility shall, in writing, notify the designated officer*
20 *who submitted the request under subsection (c) of the*
21 *determination.*

22 *(3) FINDING OF NO EXPOSURE.—If a medical fa-*
23 *cility makes a determination under paragraph (1)*
24 *that the emergency response employee involved has*
25 *not been exposed to an infectious disease, the medical*

1 *facility shall, in writing, inform the designated officer*
2 *who submitted the request under subsection (c) of the*
3 *determination.*

4 (4) *INSUFFICIENT INFORMATION.—*

5 (A) *If a medical facility finds in evaluating*
6 *facts for purposes of paragraph (1) that the facts*
7 *are insufficient to make the determination de-*
8 *scribed in such paragraph, the medical facility*
9 *shall, in writing, inform the designated officer*
10 *who submitted the request under subsection (c) of*
11 *the insufficiency of the facts.*

12 (B)(i) *If a medical facility finds in making*
13 *a determination under paragraph (1) that the*
14 *facility possesses no information on whether the*
15 *victim involved has an infectious disease in-*
16 *cluded on the list under section 201(a), the med-*
17 *ical facility shall, in writing, inform the des-*
18 *ignated officer who submitted the request under*
19 *subsection (c) of the insufficiency of such medical*
20 *information.*

21 (ii) *If after making a response under clause*
22 *(i) a medical facility determines that the victim*
23 *involved has an infectious disease, the medical*
24 *facility shall make the determination described*

1 in paragraph (1) and provide the applicable re-
2 sponse specified in this subsection.

3 (e) *TIME FOR MAKING RESPONSE.*—After receiving a
4 request under subsection (c) (including any such request re-
5 submitted under subsection (g)(2)), a medical facility shall
6 make the applicable response specified in subsection (d) as
7 soon as is practicable, but not later than 48 hours after
8 receiving the request.

9 (f) *DEATH OF VICTIM OF EMERGENCY.*—

10 (1) *FACILITY ASCERTAINING CAUSE OF DEATH.*—

11 If a victim described in subsection (a) dies at or be-
12 fore reaching the medical facility involved, and the
13 medical facility receives a request under subsection
14 (c), the medical facility shall provide a copy of the re-
15 quest to the medical facility ascertaining the cause of
16 death of the victim, if such facility is a different med-
17 ical facility than the facility that received the origi-
18 nal request.

19 (2) *RESPONSIBILITY OF FACILITY.*—Upon the re-
20 ceipt of a copy of a request for purposes of paragraph
21 (1), the duties otherwise established in this title re-
22 garding medical facilities shall apply to the medical
23 facility ascertaining the cause of death of the victim
24 in the same manner and to the same extent as such

1 *duties apply to the medical facility originally receiv-*
2 *ing the request.*

3 *(g) ASSISTANCE OF PUBLIC HEALTH OFFICER.—*

4 *(1) EVALUATION OF RESPONSE OF MEDICAL FA-*
5 *CILITY REGARDING INSUFFICIENT FACTS.—*

6 *(A) In the case of a request under subsection*
7 *(c) to which a medical facility has made the re-*
8 *sponse specified in subsection (d)(4)(A) regard-*
9 *ing the insufficiency of facts, the public health*
10 *officer for the community in which the medical*
11 *facility is located shall evaluate the request and*
12 *the response, if the designated officer involved*
13 *submits such documents to the officer with the*
14 *request that the officer make such an evaluation.*

15 *(B) As soon as is practicable after a public*
16 *health officer receives a request under paragraph*
17 *(1), but not later than 48 hours after receipt of*
18 *the request, the public health officer shall com-*
19 *plete the evaluation required in such paragraph*
20 *and inform the designated officer of the results of*
21 *the evaluation.*

22 *(2) FINDINGS OF EVALUATION.—*

23 *(A) If an evaluation under paragraph*
24 *(1)(A) indicates that the facts provided to the*
25 *medical facility pursuant to subsection (c) were*

1 *sufficient for purposes of determinations under*
2 *subsection (d)(1)—*

3 *(i) the public health officer shall, on*
4 *behalf of the designated officer involved, re-*
5 *submit the request to the medical facility;*
6 *and*

7 *(ii) the medical facility shall provide*
8 *to the designated officer the applicable re-*
9 *sponse specified in subsection (d).*

10 *(B) If an evaluation under paragraph*
11 *(1)(A) indicates that the facts provided in the re-*
12 *quest to the medical facility were insufficient for*
13 *purposes of determinations specified in sub-*
14 *section (c)—*

15 *(i) the public health officer shall pro-*
16 *vide advice to the designated officer regard-*
17 *ing the collection and description of appro-*
18 *priate facts; and*

19 *(ii) if sufficient facts are obtained by*
20 *the designated officer—*

21 *(I) the public health officer shall,*
22 *on behalf of the designated officer in-*
23 *volved, resubmit the request to the med-*
24 *ical facility; and*

1 (II) *the medical facility shall pro-*
2 *vide to the designated officer the appro-*
3 *priate response under subsection (c).*

4 **SEC. 204. PROCEDURES FOR NOTIFICATION OF EXPOSURE.**

5 (a) *CONTENTS OF NOTIFICATION TO OFFICER.—In*
6 *making a notification required under section 202 or*
7 *203(d)(2), a medical facility shall provide—*

8 (1) *the name of the infectious disease involved;*
9 *and*

10 (2) *the date on which the victim of the emer-*
11 *gency involved was transported by emergency re-*
12 *sponse employees to the medical facility involved.*

13 (b) *MANNER OF NOTIFICATION.—If a notification*
14 *under section 202 or 203(d)(2) is mailed or otherwise indi-*
15 *rectly made—*

16 (1) *the medical facility sending the notification*
17 *shall, upon sending the notification, inform the des-*
18 *ignated officer to whom the notification is sent of the*
19 *fact that the notification has been sent; and*

20 (2) *such designated officer shall, not later than*
21 *10 days after being informed by the medical facility*
22 *that the notification has been sent, inform such med-*
23 *ical facility whether the designated officer has re-*
24 *ceived the notification.*

1 **SEC. 205. NOTIFICATION OF EMPLOYEE.**

2 (a) *IN GENERAL.*—After receiving a notification for
3 purposes of section 202 or 203(d)(2), a designated officer
4 of emergency response employees shall, to the extent prac-
5 ticable, immediately notify each of such employees who—

6 (1) responded to the emergency involved; and

7 (2) as indicated by guidelines developed by the
8 Secretary, may have been exposed to an infectious
9 disease.

10 (b) *CERTAIN CONTENTS OF NOTIFICATION TO EM-*
11 *PLOYEE.*—A notification under this subsection to an emer-
12 gency response employee shall inform the employee of—

13 (1) the fact that the employee may have been ex-
14 posed to an infectious disease and the name of the
15 disease involved;

16 (2) any action by the employee that, as indicated
17 by guidelines developed by the Secretary, is medically
18 appropriate; and

19 (3) if medically appropriate under such criteria,
20 the date of such emergency.

21 (c) *RESPONSES OTHER THAN NOTIFICATION OF EXPO-*
22 *SURE.*—After receiving a response under paragraph (3) or
23 (4) of subsection (d) of section 203, or a response under
24 subsection (g)(1) of such section, the designated officer for
25 the employee shall, to the extent practicable, immediately
26 inform the employee of the response.

1 **SEC. 206. SELECTION OF DESIGNATED OFFICERS.**

2 (a) *IN GENERAL.*—*For the purposes of receiving notifi-*
3 *cations and responses and making requests under this title*
4 *on behalf of emergency response employees, the public health*
5 *officer of each State shall designate 1 official or officer of*
6 *each employer of emergency response employees in the State.*

7 (b) *PREFERENCE IN MAKING DESIGNATIONS.*—*In*
8 *making the designations required in subsection (a), a public*
9 *health officer shall give preference to individuals who are*
10 *trained in the provision of health care or in the control*
11 *of infectious diseases.*

12 **SEC. 207. LIMITATIONS WITH RESPECT TO DUTIES OF MED-**
13 **ICAL FACILITIES.**

14 *The duties established in this title for a medical facil-*
15 *ity—*

16 (1) *shall apply only to medical information pos-*
17 *essed by the facility during the period in which the*
18 *facility is treating the victim for conditions arising*
19 *from the emergency, or during the 60-day period be-*
20 *ginning on the date on which the victim is trans-*
21 *ported by emergency response employees to the facil-*
22 *ity, whichever period expires first; and*

23 (2) *shall not apply to any extent after the expi-*
24 *ration of the 30-day period beginning on the expira-*
25 *tion of the applicable period referred to in paragraph*
26 *(1), except that such duties shall apply with respect*

1 to any request under section 203(c) received by a
2 medical facility before the expiration of such 30-day
3 period.

4 **SEC. 208. RULES OF CONSTRUCTION.**

5 (a) *LIABILITY OF MEDICAL FACILITIES AND DES-*
6 *IGNATED OFFICERS.*—*This title may not be construed to*
7 *authorize any cause of action for damages or any civil pen-*
8 *alty against any medical facility, or any designated officer,*
9 *for failure to comply with the duties established in this title.*

10 (b) *TESTING.*—*This title may not, with respect to vic-*
11 *tims of emergencies, be construed to authorize or require*
12 *a medical facility to test any such victim for any infectious*
13 *disease.*

14 (c) *CONFIDENTIALITY.*—*This title may not be con-*
15 *strued to authorize or require any medical facility, any des-*
16 *ignated officer of emergency response employees, or any*
17 *such employee, to disclose identifying information with re-*
18 *spect to a victim of an emergency or with respect to an*
19 *emergency response employee.*

20 (d) *FAILURE TO PROVIDE EMERGENCY SERVICES.*—
21 *This title may not be construed to authorize any emergency*
22 *response employee to fail to respond, or to deny services,*
23 *to any victim of an emergency.*

1 **SEC. 209. INJUNCTIONS REGARDING VIOLATION OF PROHI-**
2 **BITION.**

3 (a) *IN GENERAL.*—*The Secretary may, in any court*
4 *of competent jurisdiction, commence a civil action for the*
5 *purpose of obtaining temporary or permanent injunctive re-*
6 *lief with respect to any violation of this title.*

7 (b) *FACILITATION OF INFORMATION ON VIOLATIONS.*—
8 *The Secretary shall establish an administrative process for*
9 *encouraging emergency response employees to provide infor-*
10 *mation to the Secretary regarding violations of this title.*
11 *As appropriate, the Secretary shall investigate alleged such*
12 *violations and seek appropriate injunctive relief.*

13 **SEC. 210. APPLICABILITY OF TITLE.**

14 *This title shall not apply in a State if the chief execu-*
15 *tive officer of the State certifies to the Secretary that the*
16 *law of the State is in substantial compliance with this title.*

Calendar No. 160

111TH CONGRESS
1ST Session

S. 599

[Report No. 111-75]

A BILL

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