

By Mr. Fresolo of Worcester, petition of John P. Fresolo and another for legislation to create a rebuttable presumption of job relatedness for certain public employees in the Commonwealth suffering from certain disabling conditions caused by exposure to an infectious disease. Public Service.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT CREATING A REBUTTABLE PRESUMPTION OF JOB RELATEDNESS FOR CERTAIN PUBLIC EMPLOYEES IN THE COMMONWEALTH SUFFERING FROM CERTAIN DISABLING CONDITIONS CAUSED BY EXPOSURE TO AN INFECTIOUS DISEASE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 26 of chapter 31 of the General Laws, as
2 appearing in the 2000 Official Edition, is hereby amended by
3 striking out, in line eight-seven, the words "and ninety-four B" and
4 inserting in place thereof the following words:— ninety-four B and
5 ninety-four C.

1 SECTION 2. Section 1 of Chapter 32 of the General Laws, as
2 appearing in the 1992 Official Edition, is hereby amended by
3 including after the words "permanent employees", in line 242, the
4 following:—
5 For the purposes of the presumption provided in Section 94C of
6 this chapter, "employees" shall include and mean, but not be limited
7 to, the following:—uniformed members of paid fire departments
8 and permanent members of police departments, members of the
9 police force of the Massachusetts Bay Transportation Authority or
10 the Department of State Police, corrections officers and personnel
11 whose regular or incidental duties require the care, supervision, or
12 custody of prisoners, crash crewmen, crash boatmen, fire con-
13 trolmen and assistant fire controlmen at the General Edward
14 Lawrence Logan International Airport, emergency medical techni-
15 cians, paramedics, physicians, assistant physicians, dentists, dental

16 assistants and hygienists, nurses, nurse practitioners, unlicensed
17 nurse assistants and technicians, social workers, employees of clin-
18 ical and/or diagnostic laboratories, employees of facilities for the
19 disabled or mentally ill, or any other public safety officials or public
20 health care professionals whose regular, incidental, or assigned
21 duties to protect the health and safety of the public may lead to or
22 involve an occupational exposure to blood or other infectious mate-
23 rial.

1 SECTION 3. Chapter 32 of the General Laws is hereby amended
2 by inserting after section ninety-four B, as so appearing, the
3 following section:—

4 Section 94C. (1) Notwithstanding the provisions of any general or
5 special law to the contrary, any condition of hepatitis B, human
6 immunodeficiency virus and tuberculosis, resulting in total disability
7 or death to an employee, as defined in Section 1 of this chapter, shall
8 be presumed to have been suffered in the line of duty, unless it is
9 shown by a preponderance of the evidence that non-service con-
10 nected risk factors or non-service connected accidents or hazards
11 undergone, or any combination thereof, caused such incapacity; pro-
12 vided, however, that the appointing authority of the Commonwealth
13 or one of its political subdivisions may require any new hire to be
14 tested for such infectious disease in order to be eligible for the ben-
15 efit provided by this section. If such new hire refuses to be tested,
16 said new hire shall be ineligible for the benefit provided by this
17 section; provided, further, that such testing shall be conducted in
18 accordance with Section 70F of Chapter 111 of the General Laws.
19 The provisions of this section shall only apply if the disabling or
20 fatal condition is a type of infectious disease which may, in general,
21 result from occupational exposure to blood and other body fluids or
22 to infectious tuberculosis. If the appointing authority provides an
23 inoculation, which has been approved by the commissioner of public
24 health, which may prevent the acquiring of an infectious disease
25 defined by this section and the employee refuses to receive such
26 inoculation said employee shall be ineligible for the benefit provided
27 by this section.

28 (2) The provisions of this section shall not apply to any person
29 serving in such position for fewer than six months at the time that
30 such condition is first discovered, or should have been discovered.

31 Any person first discovering any such condition within six
32 months of the last date on which such person actively so served shall
33 be eligible to apply for benefits hereunder, and such benefits, if
34 granted, shall be payable as of the date on which the employee last
35 received regular compensation. The provisions of this section shall
36 not apply to any person serving in such position unless such person
37 shall first establish that he has responded to a call where he may
38 have been exposed.

39 (3) The provisions of this section shall also apply to other infec-
40 tious diseases, other than those listed in subdivision (1), which, in
41 general, may result from an occupational exposure, as determined by
42 the commissioner of the department of public health and designated
43 by regulation with the provisions provided in section one of this
44 chapter.

45 (4) Nothing herein shall preclude a member from applying for and
46 receiving benefits under section seven or section nine, subject to the
47 provisions of said sections.

48 (5) The appointing authority may require employees who have
49 been exposed to blood or other infectious material to file an incident
50 report with the appointing authority detailing the possible exposure.

1 SECTION 4. Section 100 of said Chapter 32, as so appearing, is
2 hereby amended by striking out, in line eighty-one, the words “and
3 ninety-four B” and inserting in place thereof the following words:—
4 ninety-four B and ninety-four C.

1 SECTION 5. The provisions of this act shall apply only to a
2 person actively employed, as provided in Section 1 of Chapter 32,
3 on or after the effective date of this act.

1 SECTION 6. The provisions of Section three shall not be con-
2 strued to affect the interpretation of the provisions of said Sections
3 ninety-four, ninety-four A or ninety-four B of Chapter thirty-two of
4 the General Laws.

1 SECTION 7. The provisions of this act shall be effective in every
2 retirement system established by or operating under the provisions
3 of Chapter thirty-two of the General Laws or under the similar pro-
4 visions of any other general or special law, and for every

5 governmental unit which is a member of such retirement system,
6 notwithstanding the provisions of Section twenty-seven C of the
7 General Laws.