

By Mrs. Menard of Somerset, petition of Joan M. Menard, Steven C. Panagiotakos and Barry R. Finegold 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 One Thousand Nine Hundred and Ninety-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.

1 *Whereas*, The deferred operation of this act would tend to defeat
2 its purpose, which is to immediately provide for the creation of a
3 rebuttable presumption of job relatedness in the granting of retire-
4 ment benefits to certain employees in the commonwealth suffering
5 from certain disabling conditions, therefore it is hereby declared to
6 be an emergency act, necessary for the immediate preservation of
7 the public convenience.

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 1992 Official Edition, is hereby amended by
3 striking out, in line eighty-nine, the words “and ninety-four B” and
4 inserting in place thereof the following words: — ninety-four B
5 and 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: — For the purposes of the presumption provided in
5 Section 94C of this chapter, “employees” shall include and mean,
6 but not be limited to, the following:— uniformed members of paid
7 fire departments and permanent members of police departments,

8 members of the police force of the Massachusetts Bay Transportation Authority or the Department of State Police, corrections
9 officers and personnel whose regular or incidental duties require
10 the care, supervision, or custody of prisoners, crash crewmen,
11 crash boatmen, fire controlmen and assistant fire controlmen at the
12 General Edward Lawrence Logan International Airport, emergency
13 medical technicians, paramedics, physicians, assistant
14 physicians, dentists, dental assistants and hygienists, nurses, nurse
15 practitioners, unlicensed nurse assistants and technicians, social
16 workers, employees of clinical and/or diagnostic laboratories,
17 employees of facilities for the disabled or mentally ill, or any
18 other public safety officials or public health care professionals
19 whose regular, incidental, or assigned duties to protect the health
20 and safety of the public may lead to or involve an occupational
21 exposure to blood or other infectious material.
22

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
5 or 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
8 chapter, shall be presumed to have been suffered in the line of
9 duty, unless it is shown by a preponderance of the evidence that
10 non-service connected risk factors or non-service connected accidents
11 or hazards undergone, or any combination thereof, caused
12 such incapacity; provided, however, that the appointing authority
13 of the commonwealth or one of its political subdivisions may
14 require any new hire to be tested for such infectious disease in
15 order to be eligible for the benefit provided by this section. If such
16 new hire refuses to be tested, said new hire shall be ineligible for
17 the benefit provided by this section; provided, further, that such
18 testing shall be conducted in accordance with Section 70F of
19 Chapter 111 of the General Laws. The provisions of this section
20 shall only apply if the disabling or fatal condition is a type of infectious
21 disease which may, in general, result from occupational exposure
22 to blood and other body fluids or to infectious tuberculosis.
23 If the appointing authority provides an inoculation, which has been

24 approved by the commissioner of public health, which may prevent
25 the acquiring of an infectious disease defined by this section and
26 the employee refuses to receive such inoculation said employee
27 shall be ineligible for the benefit provided 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 months
32 of the last date on which such person actively so served shall be
33 eligible to apply for benefits hereunder, and such benefits, if
34 granted, shall be payable as of the date on which the employee
35 last received regular compensation. The provisions of this section
36 shall not apply to any person serving in such position unless such
37 person shall first establish that he has responded to a call where he
38 may have been exposed.

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

45 (4) Nothing herein shall preclude a member from applying for
46 and receiving benefits under section seven or section nine, subject
47 to the 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 inci-
50 dent report with the appointing authority detailing the possible
51 exposure.

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

1 SECTION 7. The provisions of this act shall be effective in
2 every retirement system established by or operating under the pro-
3 visions of chapter thirty-two of the General Laws or under the
4 similar provisions of any other general or special law, and for
5 every governmental unit which is a member of such retirement
6 system, notwithstanding the provisions of section twenty-seven C
7 of the General Laws.