

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

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

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 1992 Official Edition, is hereby amended by  
3 striking out, in line eighty-nine, the words "and ninety-four B"  
4 and inserting in place thereof the following words:— ninety-four  
5 B 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 Transporta-  
9 tion Authority or the Department of State Police, corrections offi-  
10 cers and personnel whose regular or incidental duties require the  
11 care, supervision, or custody of prisoners, crash crewmen, crash  
12 boatmen, fire controlmen and assistant fire controlmen at the  
13 General Edward Lawrence Logan International Airport, emer-  
14 gency medical technicians, paramedics, physicians, assistant

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

1 SECTION 3. Chapter 32 of the General Laws is hereby  
2 amended by inserting after section ninety-four B, as so appearing,  
3 the 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 dis-  
7 ability 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 acci-  
11 dents 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  
21 infectious disease which may, in general, result from occupational  
22 exposure to blood and other body fluids or to infectious tubercu-  
23 losis. If the appointing authority provides an inoculation, which  
24 has been approved by the commissioner of public health, which  
25 may prevent the acquiring of an infectious disease defined by this  
26 section and the employee refuses to receive such inoculation said  
27 employee shall be eligible 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 positions provided in  
44 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, is  
2 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 section  
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  
3 provisions 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.