

SENATE BILL 723

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2003 Regular Session
3lr2548
CF 3lr2577

By: **Senators Exum, DeGrange, Della, Giannetti, and Klausmeier**
Introduced and read first time: February 24, 2003
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation - Bloodborne Pathogens - Emergency Responders**

3 FOR the purpose of requiring a certain emergency responder who suffers a certain
4 exposure to provide a certain notice to the employer and to submit to a certain
5 laboratory test within a certain period of time; requiring a certain emergency
6 responder to submit to a certain subsequent laboratory test within a certain
7 period of time; requiring a certain emergency responder to file a workers'
8 compensation claim and other information with the Workers' Compensation
9 Commission within a certain period of time; providing that a claim is barred
10 under certain circumstances; specifying which employer and insurer are liable
11 for certain compensation; providing that a certain emergency responder is
12 entitled to certain benefits; allowing a certain emergency responder to activate a
13 claim by filing a certain notice with the Commission; providing that a claimant
14 bears a certain burden of proof; specifying the calculation of compensation and
15 benefits payable for a certain claim; requiring certain claims to be refiled;
16 providing that a modification of a certain claim comply with a certain provision
17 of law; prohibiting payment of accident leave from barring an employer or its
18 insurer from asserting a certain defense; defining certain terms; and generally
19 relating to workers' compensation and exposure that may lead to an infection of
20 an emergency responder, caused by a bloodborne pathogen.

21 BY repealing and reenacting, with amendments,
22 Article - Labor and Employment
23 Section 9-101
24 Annotated Code of Maryland
25 (1999 Replacement Volume and 2002 Supplement)

26 BY adding to
27 Article - Labor and Employment
28 Section 9-713(g), 9-751, and 9-752
29 Annotated Code of Maryland
30 (1999 Replacement Volume and 2002 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Labor and Employment**

4 9-101.

5 (a) In this title the following words have the meanings indicated.

6 (b) "Accidental personal injury" means:

7 (1) an accidental injury that arises out of and in the course of
8 employment;

9 (2) an injury caused by a willful or negligent act of a third person
10 directed against a covered employee in the course of the employment of the covered
11 employee; or

12 (3) a disease or infection that naturally results from an accidental injury
13 that arises out of and in the course of employment, including:

14 (i) an occupational disease; and

15 (ii) frostbite or sunstroke caused by a weather condition.

16 (C) "BLOODBORNE PATHOGEN" MEANS HEPATITIS B VIRUS (HBV), HEPATITIS
17 C VIRUS (HCV), OR HUMAN IMMUNODEFICIENCY VIRUS (HIV).

18 [(c)] (D) "Child" includes:

19 (1) an adopted child;

20 (2) an illegitimate child;

21 (3) a posthumous child; and

22 (4) a stepchild.

23 [(d)] (E) "Commission" means the State Workers' Compensation Commission.

24 [(e)] (F) (1) "Compensation" means the money payable under this title to a
25 covered employee or the dependents of a covered employee.

26 (2) "Compensation" includes funeral benefits payable under this title.

27 [(f)] (G) "Covered employee" means an individual listed in Subtitle 2 of this
28 title for whom a person, a governmental unit, or a quasi-public corporation is
29 required by law to provide coverage under this title.

30 (H) "EMERGENCY RESPONDER" MEANS:

1 (1) A PAID FIREFIGHTER, A PAID FIRE FIGHTING INSTRUCTOR, AN
2 INDIVIDUAL ON DUTY FOR A VOLUNTEER FIRE OR RESCUE COMPANY AS DEFINED
3 UNDER § 9-234(A)(2) AND (3) OF THIS TITLE, OR AN EMERGENCY MEDICAL SERVICES
4 (EMS) PROVIDER THAT IS EMPLOYED BY A COUNTY, A MUNICIPALITY, OR THE STATE;

5 (2) A PAID POLICE OFFICER EMPLOYED BY AN AIRPORT AUTHORITY, A
6 COUNTY, THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, A
7 MUNICIPALITY, OR THE STATE; OR

8 (3) A CORRECTIONAL OFFICER AS DEFINED UNDER § 8-201 OF THE
9 CORRECTIONAL SERVICES ARTICLE.

10 (I) "EXPOSURE" MEANS:

11 (1) PERCUTANEOUS CONTACT WITH BLOOD, SEMEN, OR BLOOD
12 CONTAMINATED FLUIDS;

13 (2) MUCOCUTANEOUS CONTACT WITH BLOOD, SEMEN, OR BLOOD
14 CONTAMINATED FLUIDS; AND

15 (3) CONTACT OF AN OPEN WOUND, INCLUDING DERMATITIS,
16 EXUDATIVE LESIONS, OR CHAPPED SKIN, WITH BLOOD, SEMEN, OR BLOOD
17 CONTAMINATED FLUIDS.

18 [(g)] (J) "Occupational disease" means a disease contracted by a covered
19 employee:

20 (1) as the result of and in the course of employment; and

21 (2) that causes the covered employee to become temporarily or
22 permanently, partially or totally incapacitated.

23 9-713.

24 (G) PAYMENT TO AN EMPLOYEE FOR WORK-RELATED ACCIDENT LEAVE
25 UNDER § 9-702 OF THE STATE PERSONNEL AND PENSIONS ARTICLE MAY NOT BAR AN
26 EMPLOYER OR ITS INSURER FROM ASSERTING A FACTUAL OR LEGAL DEFENSE IN
27 CONTESTING THE COMPENSABILITY OF A CLAIM FILED UNDER §§ 9-751 AND 9-752 OF
28 THIS SUBTITLE.

29 9-751.

30 (A) (1) THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE WHO IS AN
31 EMERGENCY RESPONDER THAT SUFFERS AN EXPOSURE ON OR AFTER JULY 1, 2003,
32 THAT:

33 (I) IS REQUIRED TO BE RECORDED BY AN EMPLOYER UNDER 29
34 CFR 1904 "RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES";
35 AND

36 (II) ARISES OUT OF AND IN THE COURSE OF EMPLOYMENT.

1 (2) UNLESS THE EMPLOYER OR ITS INSURER CAN PROVE, BY MEDICAL
2 SCIENCE, THAT ANOTHER EMPLOYER OR INSURER IS LIABLE, COMPENSATION
3 LIABILITY WILL BE ATTRIBUTED TO:

4 (I) THE EMPLOYER IN WHOSE EMPLOYMENT THE EMERGENCY
5 RESPONDER FIRST SUFFERS AN EXPOSURE THAT LEADS TO AN INFECTION CAUSED
6 BY A BLOODBORNE PATHOGEN; AND

7 (II) THE INSURER LIABLE FOR THE RISK WHEN THE EMERGENCY
8 RESPONDER, WHILE EMPLOYED BY THE EMPLOYER, FIRST SUFFERS AN EXPOSURE
9 THAT LEADS TO AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN.

10 (B) (1) IF AN EMERGENCY RESPONDER SUFFERS AN EXPOSURE THAT MAY
11 LEAD TO AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN, THE EMERGENCY
12 RESPONDER SHALL WITHIN 14 DAYS OF THE EXPOSURE:

13 (I) PROVIDE NOTICE TO THE EMPLOYER BY:

14 1. ORAL NOTICE; OR

15 2. SIGNED WRITTEN NOTICE THAT STATES:

16 A. THE NAME AND ADDRESS OF THE EMERGENCY
17 RESPONDER; AND

18 B. IN PLAIN LANGUAGE, THE TIME, PLACE, NATURE, AND
19 CAUSE OF THE EXPOSURE; AND

20 (II) SUBMIT TO A LABORATORY TEST TO CONFIRM THAT THE
21 EMERGENCY RESPONDER WAS NOT INFECTED BY A BLOODBORNE PATHOGEN
22 BEFORE THE EXPOSURE.

23 (2) WITHIN 6 MONTHS OF THE DATE OF THE EXPOSURE, THE
24 EMERGENCY RESPONDER SHALL SUBMIT TO A SUBSEQUENT LABORATORY TEST TO
25 DETERMINE IF THE EMERGENCY RESPONDER HAS BECOME INFECTED BY A
26 BLOODBORNE PATHOGEN.

27 (3) (I) IF THE EMPLOYER OF THE EMERGENCY RESPONDER DOES NOT
28 OFFER THE TEST REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION WITHIN 7
29 DAYS FOLLOWING THE DATE OF THE EXPOSURE, THE EMERGENCY RESPONDER
30 SHALL, WITHIN THE SUBSEQUENT 7 DAYS, INITIATE THE TEST AT AN APPROPRIATE
31 FACILITY AND SUBMIT THE COST TO THE EMPLOYER FOR PROMPT PAYMENT.

32 (II) IF THE EMPLOYER OF THE EMERGENCY RESPONDER DOES NOT
33 OFFER THE TEST REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE
34 EMERGENCY RESPONDER SHALL INITIATE THE TEST AT AN APPROPRIATE FACILITY
35 AND SUBMIT THE COST TO THE EMPLOYER FOR PROMPT PAYMENT.

1 (C) (1) UNLESS EXCUSED BY THE COMMISSION UNDER PARAGRAPH (2) OF
2 THIS SUBSECTION, A CLAIM BY AN EMERGENCY RESPONDER IS BARRED UNDER THIS
3 TITLE IF:

4 (I) THE EMERGENCY RESPONDER FAILS TO COMPLY WITH THE
5 PROVISIONS UNDER SUBSECTION (B) OF THIS SECTION;

6 (II) THE RESULT OF THE LABORATORY TEST UNDER SUBSECTION
7 (B)(2) OF THIS SECTION INDICATES THAT THE EMERGENCY RESPONDER IS NOT
8 INFECTED BY A BLOODBORNE PATHOGEN; OR

9 (III) THE EMPLOYER PROVIDES PROOF THAT THE EXPOSURE THAT
10 LED TO THE INFECTION BY A BLOODBORNE PATHOGEN DID NOT ARISE OUT OF AND
11 IN THE COURSE OF EMPLOYMENT UNDER THE EMPLOYER.

12 (2) IF IT IS ESTABLISHED THAT THE FAILURE TO COMPLY WITH THIS
13 SUBSECTION WAS CAUSED BY FRAUD OR BY FACTS AND CIRCUMSTANCES
14 CONSTITUTING AN ESTOPPEL, AN EMERGENCY RESPONDER SHALL SUBMIT TO A
15 LABORATORY TEST WITHIN 7 DAYS AFTER:

16 (I) THE DATE OF THE DISCOVERY OF THE FRAUD; OR

17 (II) THE DATE WHEN THE FACTS AND CIRCUMSTANCES THAT
18 CONSTITUTE ESTOPPEL CEASED TO OPERATE.

19 (D) IF THE RESULT OF THE LABORATORY TEST UNDER SUBSECTION (B)(2) OF
20 THIS SECTION INDICATES THAT AN EMERGENCY RESPONDER IS INFECTED BY A
21 BLOODBORNE PATHOGEN, THE EMERGENCY RESPONDER SHALL FILE WITH THE
22 COMMISSION, WITHIN 2 YEARS OF RECEIPT OF THE POSITIVE LABORATORY RESULT:

23 (1) A CLAIM FORM THAT:

24 (I) DESCRIBES THE NATURE AND MANNER OF THE EXPOSURE
25 THAT LED TO THE INFECTION CAUSED BY A BLOODBORNE PATHOGEN; AND

26 (II) REPORTS COMPLIANCE WITH SUBSECTION (B) OF THIS
27 SECTION BY THE EMERGENCY RESPONDER;

28 (2) A REPORT OF THE PHYSICIAN ATTENDING TO THE EMERGENCY
29 RESPONDER AS A CONSEQUENCE OF THE EXPOSURE THAT LED TO THE INFECTION
30 CAUSED BY A BLOODBORNE PATHOGEN, IF THE EMERGENCY RESPONDER CHOSE
31 THE PHYSICIAN;

32 (3) AN EXECUTED AUTHORIZATION PREPARED BY THE EMPLOYER OR
33 ITS INSURER FOR THE RELEASE TO THE EMPLOYER AND ITS INSURER OF MEDICAL
34 RECORDS FOR THE TREATMENT OF A CONDITION OF THE EMERGENCY RESPONDER
35 BEFORE OR AFTER THE EXPOSURE; AND

36 (4) AN AFFIDAVIT LISTING THE TREATING PHYSICIANS OF THE
37 EMERGENCY RESPONDER FOR THE PREVIOUS 20 YEARS.

1 (E) (1) UNLESS EXCUSED BY THE COMMISSION UNDER PARAGRAPH (2) OR
2 (3) OF THIS SUBSECTION, FAILURE TO FILE A CLAIM IN ACCORDANCE WITH THE
3 PROVISIONS OF SUBSECTION (D) OF THIS SECTION BARS A CLAIM UNDER THIS TITLE.

4 (2) THE COMMISSION MAY EXCUSE A FAILURE TO FILE A CLAIM IN
5 ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION IF THE COMMISSION FINDS:

6 (I) THAT NEITHER THE EMPLOYER NOR ITS INSURER HAS BEEN
7 PREJUDICED BY THE FAILURE TO FILE THE CLAIM; OR

8 (II) THAT THE FILING COULD NOT REASONABLY HAVE BEEN MADE
9 IN THE EXERCISE OF DUE DILIGENCE.

10 (3) IF IT IS ESTABLISHED THAT A FAILURE TO FILE A CLAIM UNDER THIS
11 SECTION WAS CAUSED BY FRAUD OR BY FACTS AND CIRCUMSTANCES
12 CONSTITUTING AN ESTOPPEL, AN EMERGENCY RESPONDER SHALL FILE A CLAIM
13 WITH THE COMMISSION WITHIN 1 YEAR AFTER:

14 (I) THE DATE OF THE DISCOVERY OF THE FRAUD; OR

15 (II) THE DATE WHEN THE FACTS AND CIRCUMSTANCES THAT
16 CONSTITUTE ESTOPPEL CEASED TO OPERATE.

17 (4) NOTWITHSTANDING PARAGRAPHS (1), (2), AND (3) OF THIS
18 SUBSECTION, A CLAIM IS BARRED UNDER THIS TITLE IF AN EMERGENCY RESPONDER
19 FAILS TO FILE A CLAIM WITHIN 2 YEARS OF RECEIPT OF THE LABORATORY TEST
20 RESULT DOCUMENTING THE INFECTION CAUSED BY A BLOODBORNE PATHOGEN.

21 (F) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS
22 SUBSECTION, AN EMERGENCY RESPONDER WHO SUFFERS AN EXPOSURE THAT LED
23 TO AN INFECTION BY A BLOODBORNE PATHOGEN IS ENTITLED TO MEDICAL
24 SERVICES AND TREATMENT UNDER THIS TITLE.

25 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN
26 EMERGENCY RESPONDER WHO SUFFERS AN EXPOSURE THAT LEADS TO AN
27 INFECTION BY A BLOODBORNE PATHOGEN IS NOT ENTITLED TO MENTAL HEALTH
28 AND PSYCHOLOGICAL SERVICES AND TREATMENT UNDER THIS TITLE UNTIL THE
29 EMERGENCY RESPONDER ACTIVATES A CLAIM FOR COMPENSATION UNDER
30 SUBSECTION (H) OF THIS SECTION.

31 (II) AN AWARD FOR MENTAL HEALTH AND PSYCHOLOGICAL
32 SERVICES AND TREATMENT MAY BE MADE ONLY FOR SERVICES OR TREATMENT
33 RECEIVED AFTER THE DATE A CLAIM IS ACTIVATED UNDER SUBSECTION (H) OF THIS
34 SECTION.

35 (3) AT THE DISCRETION OF THE COMMISSION, COMPENSATION OR
36 MEDICAL SERVICES MAY BE DENIED IF PROPHYLACTIC TREATMENT WAS OFFERED
37 TO AND REFUSED BY AN EMERGENCY RESPONDER.

1 (G) AN EMERGENCY RESPONDER IS NOT ENTITLED TO COMPENSATION FOR A
2 CLAIM FILED UNDER THIS SECTION UNTIL:

3 (1) THE EMERGENCY RESPONDER MANIFESTS PHYSICAL SYMPTOMS OF
4 AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN; AND

5 (2) THE EMERGENCY RESPONDER ACTIVATES A CLAIM FILED UNDER
6 SUBSECTION (D) OF THIS SECTION IN ACCORDANCE WITH SUBSECTION (H) OF THIS
7 SECTION.

8 (H) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, WITHIN 18
9 MONTHS AFTER THE DATE WHEN THE FACTS AND CIRCUMSTANCES ARE SUCH THAT
10 A REASONABLE PERSON KNEW OR SHOULD HAVE KNOWN OF THE MANIFESTATION
11 OF SYMPTOMS OF AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN, AN
12 EMERGENCY RESPONDER MAY ACTIVATE A CLAIM FILED UNDER SUBSECTION (D) OF
13 THIS SECTION.

14 (2) TO ACTIVATE A CLAIM, AN EMERGENCY RESPONDER SHALL:

15 (I) FILE NOTICE TO ACTIVATE THE CLAIM WITH THE COMMISSION
16 IN ACCORDANCE WITH THE PROCEDURES OF THE COMMISSION; AND

17 (II) PROVIDE SIGNED WRITTEN NOTIFICATION TO THE EMPLOYER
18 WITHIN 7 DAYS OF THE NOTICE FILED WITH THE COMMISSION TO ACTIVATE THE
19 CLAIM.

20 (3) A MODIFICATION OF A CLAIM FILED AND ACTIVATED UNDER THIS
21 SECTION SHALL COMPLY WITH § 9-736 OF THIS SUBTITLE.

22 (I) A CLAIMANT BEARS THE BURDEN OF PROOF TO DEMONSTRATE BY A
23 PREPONDERANCE OF THE EVIDENCE THAT THE CLAIMANT SUFFERED AN EXPOSURE
24 THAT LED TO AN INFECTION BY A BLOODBORNE PATHOGEN IN THE COURSE OF
25 EMPLOYMENT.

26 (J) COMPENSATION FOR A CLAIM UNDER THIS SECTION SHALL BE PAID IN
27 ACCORDANCE WITH THE EMERGENCY RESPONDER'S RATE OF PAY IN EFFECT ON THE
28 FIRST DAY THE EMERGENCY RESPONDER IS TEMPORARILY TOTALLY DISABLED FOR
29 A FULL WORKING DAY DUE TO THE EXPOSURE THAT LED TO AN INFECTION BY A
30 BLOODBORNE PATHOGEN.

31 9-752.

32 (A) (1) THIS SECTION APPLIES ONLY TO A COVERED EMPLOYEE WHO IS AN
33 EMERGENCY RESPONDER THAT SUFFERS AN EXPOSURE ON OR AFTER JANUARY 1,
34 1983, AND ON OR BEFORE JUNE 30, 2003, THAT:

35 (I) IS REQUIRED TO BE RECORDED BY AN EMPLOYER UNDER 29
36 CFR 1904 "RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES";
37 AND

1 (II) ARISES OUT OF AND IN THE COURSE OF EMPLOYMENT.

2 (2) UNLESS THE EMPLOYER OR ITS INSURER CAN PROVE, BY MEDICAL
3 SCIENCE, THAT ANOTHER EMPLOYER OR INSURER IS LIABLE, COMPENSATION
4 LIABILITY WILL BE ATTRIBUTED TO:

5 (I) THE EMPLOYER IN WHOSE EMPLOYMENT THE EMERGENCY
6 RESPONDER FIRST SUFFERS AN EXPOSURE THAT LEADS TO AN INFECTION CAUSED
7 BY A BLOODBORNE PATHOGEN; AND

8 (II) THE INSURER LIABLE FOR THE RISK WHEN THE EMERGENCY
9 RESPONDER, WHILE EMPLOYED BY THE EMPLOYER, FIRST SUFFERS AN EXPOSURE
10 THAT LEADS TO AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN.

11 (B) IF AN EMERGENCY RESPONDER SUFFERS AN EXPOSURE THAT LEADS TO
12 AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN, THE EMERGENCY
13 RESPONDER SHALL FILE WITH THE COMMISSION ON OR BEFORE DECEMBER 31, 2004:

14 (1) A CLAIM FORM THAT DESCRIBES:

15 (I) THE NATURE AND MANNER OF THE EXPOSURE THAT LED TO
16 THE INFECTION CAUSED BY A BLOODBORNE PATHOGEN; OR

17 (II) THE NATURE OF THE EMPLOYMENT AND POTENTIAL FOR
18 SUFFERING AN EXPOSURE THAT LED TO AN INFECTION BY A BLOODBORNE
19 PATHOGEN;

20 (2) A REPORT BY THE PHYSICIAN ATTENDING TO THE EMERGENCY
21 RESPONDER AS A CONSEQUENCE OF THE EXPOSURE THAT LED TO THE INFECTION
22 BY A BLOODBORNE PATHOGEN, IF THE EMERGENCY RESPONDER CHOSE THE
23 PHYSICIAN;

24 (3) AN EXECUTED AUTHORIZATION PREPARED BY THE EMPLOYER OR
25 ITS INSURER FOR THE RELEASE TO THE EMPLOYER AND ITS INSURER OF MEDICAL
26 RECORDS FOR THE TREATMENT OF A CONDITION OF THE EMERGENCY RESPONDER
27 BEFORE OR AFTER THE EXPOSURE;

28 (4) AN AFFIDAVIT LISTING THE TREATING PHYSICIANS OF THE
29 EMERGENCY RESPONDER FOR THE PREVIOUS 20 YEARS; AND

30 (5) A TEST RESULT DEMONSTRATING THAT THE EMERGENCY
31 RESPONDER HAS AN INFECTION CAUSED BY A BLOODBORNE PATHOGEN.

32 (C) (1) ANY PENDING CLAIM FOR EXPOSURE THAT LED TO AN INFECTION
33 CAUSED BY A BLOODBORNE PATHOGEN THAT HAS NOT BEEN FINALLY
34 ADJUDICATED AND WAS FILED WITH THE COMMISSION PRIOR TO JULY 1, 2003, SHALL
35 BE REFILED, WITHOUT PREJUDICE, UNDER THIS SECTION.

36 (2) THE COMMISSION MAY ADOPT REGULATIONS TO FACILITATE
37 REFILEING UNDER THIS SUBSECTION.

1 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS
2 SUBSECTION, AN EMERGENCY RESPONDER WHO SUFFERS AN EXPOSURE THAT LED
3 TO AN INFECTION BY A BLOODBORNE PATHOGEN IS ENTITLED TO MEDICAL
4 SERVICES AND TREATMENT UNDER THIS TITLE.

5 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN
6 EMERGENCY RESPONDER WHO SUFFERS AN EXPOSURE THAT LED TO AN INFECTION
7 BY A BLOODBORNE PATHOGEN IS NOT ENTITLED TO MENTAL HEALTH AND
8 PSYCHOLOGICAL SERVICES AND TREATMENT UNDER THIS TITLE UNTIL THE
9 EMERGENCY RESPONDER ACTIVATES A CLAIM FOR COMPENSATION UNDER
10 SUBSECTION (F) OF THIS SECTION.

11 (II) AN AWARD FOR MENTAL HEALTH AND PSYCHOLOGICAL
12 SERVICES AND TREATMENT MAY BE MADE ONLY FOR SERVICES OR TREATMENT
13 RECEIVED AFTER THE DATE A CLAIM IS ACTIVATED UNDER SUBSECTION (F) OF THIS
14 SECTION.

15 (3) AT THE DISCRETION OF THE COMMISSION, COMPENSATION OR
16 MEDICAL SERVICES MAY BE DENIED IF PROPHYLACTIC TREATMENT WAS OFFERED
17 TO AND REFUSED BY AN EMERGENCY RESPONDER.

18 (E) AN EMERGENCY RESPONDER IS NOT ENTITLED TO COMPENSATION FOR A
19 CLAIM FILED UNDER THIS SECTION UNTIL:

20 (1) THE EMERGENCY RESPONDER MANIFESTS PHYSICAL SYMPTOMS OF
21 AN INFECTION THAT IS CAUSED BY A BLOODBORNE PATHOGEN; AND

22 (2) THE EMERGENCY RESPONDER ACTIVATES A CLAIM FILED UNDER
23 SUBSECTION (B) OF THIS SECTION IN ACCORDANCE WITH SUBSECTION (F) OF THIS
24 SECTION.

25 (F) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, WITHIN 18
26 MONTHS AFTER THE DATE WHEN THE FACTS AND CIRCUMSTANCES ARE SUCH THAT
27 A REASONABLE PERSON KNEW OR SHOULD HAVE KNOWN OF THE MANIFESTATION
28 OF SYMPTOMS OF AN INFECTION THAT MAY BE CAUSED BY A BLOODBORNE
29 PATHOGEN, AN EMERGENCY RESPONDER MAY ACTIVATE A CLAIM FILED UNDER
30 SUBSECTION (B) OF THIS SECTION.

31 (2) TO ACTIVATE A CLAIM, AN EMERGENCY RESPONDER SHALL:

32 (I) FILE NOTICE TO ACTIVATE THE CLAIM WITH THE COMMISSION
33 IN ACCORDANCE WITH THE PROCEDURES OF THE COMMISSION; AND

34 (II) PROVIDE SIGNED WRITTEN NOTIFICATION TO THE EMPLOYER
35 WITHIN 7 DAYS OF THE NOTICE FILED WITH THE COMMISSION TO ACTIVATE THE
36 CLAIM.

37 (3) A MODIFICATION OF A CLAIM FILED AND ACTIVATED UNDER THIS
38 SECTION SHALL COMPLY WITH § 9-736 OF THIS SUBTITLE.

1 (4) FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBSECTION
2 BARS A CLAIM UNDER THIS TITLE.

3 (G) (1) IN ACCORDANCE WITH THIS SUBSECTION, A CLAIMANT BEARS THE
4 BURDEN OF PROOF TO DEMONSTRATE BY A PREPONDERANCE OF THE EVIDENCE
5 THAT THE CLAIMANT SUFFERED AN EXPOSURE THAT LED TO AN INFECTION CAUSED
6 BY A BLOODBORNE PATHOGEN IN THE COURSE OF EMPLOYMENT.

7 (2) A CLAIMANT SHALL SATISFY THE BURDEN OF PROOF BY PROVIDING:

8 (I) WRITTEN EVIDENCE THAT THE EMERGENCY RESPONDER
9 NOTIFIED THE EMERGENCY RESPONDER'S HEALTH CARE PROVIDER OF THE
10 EXPOSURE THAT LED TO AN INFECTION BY A BLOODBORNE PATHOGEN
11 CONTEMPORANEOUSLY WITH THE TIME OF THE EXPOSURE;

12 (II) WRITTEN OR ORAL EVIDENCE THAT THE EMERGENCY
13 RESPONDER NOTIFIED THE EMERGENCY RESPONDER'S EMPLOYER OF THE
14 EXPOSURE THAT LED TO AN INFECTION BY A BLOODBORNE PATHOGEN
15 CONTEMPORANEOUSLY WITH THE TIME OF THE EXPOSURE; OR

16 (III) EVIDENCE FROM A PERSON WHO WITNESSED THE EXPOSURE
17 THAT LED TO AN INFECTION BY A BLOODBORNE PATHOGEN TO DEMONSTRATE THAT
18 THE EMERGENCY RESPONDER'S INFECTION AROSE OUT OF AND IN THE COURSE OF
19 EMPLOYMENT.

20 (3) A CLAIMANT MAY NOT SATISFY THE BURDEN OF PROOF SOLELY BY:

21 (I) DESCRIBING THE NATURE OF THE EMPLOYMENT AND
22 POTENTIAL OF SUFFERING AN EXPOSURE THAT MAY LEAD TO A BLOODBORNE
23 PATHOGEN; OR

24 (II) DENYING OTHER POTENTIAL NONOCCUPATIONAL CAUSES OF
25 THE INFECTION.

26 (H) (1) ALL BENEFITS PAYABLE UNDER THIS TITLE ARE PROSPECTIVE
27 ONLY.

28 (2) A CLAIM MAY NOT BE MADE BY A THIRD PARTY AGAINST THE
29 EMPLOYER OR ITS INSURER FOR PAYMENTS MADE TO OR ON BEHALF OF AN
30 EMERGENCY RESPONDER PRIOR TO A FILING OF A CLAIM.

31 (I) COMPENSATION FOR A CLAIM UNDER THIS SECTION SHALL BE PAID IN
32 ACCORDANCE WITH THE EMERGENCY RESPONDER'S RATE OF PAY IN EFFECT ON THE
33 FIRST DAY THE EMERGENCY RESPONDER IS TEMPORARILY TOTALLY DISABLED FOR
34 A FULL WORKING DAY DUE TO THE EXPOSURE THAT LED TO AN INFECTION BY A
35 BLOODBORNE PATHOGEN.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 July 1, 2003.