

# HOUSE BILL REPORT

## HB 2663

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**As Reported by House Committee On:**  
Commerce & Labor  
Appropriations

**Title:** An act relating to occupational diseases affecting fire fighters.

**Brief Description:** Changing conditions that are presumed to be occupational diseases of fire fighters.

**Sponsors:** Representatives Conway, Clements, Cooper, Reardon, Sullivan, Delvin, Simpson, Armstrong, Hankins, Benson, Cairnes, Lysen, Kirby, Edwards, Chase, Kenney, Campbell, Barlean, Santos, Talcott, Wood and Rockefeller.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 1/28/02, 2/6/02 [DPS];

Appropriations: 2/9/02, 2/11/02 [DP2S(w/o sub CL)].

**Brief Summary of Second Substitute Bill**

- Adds certain heart problems, specified cancers, and infectious diseases to the list of conditions that are presumed to be occupational diseases for fire fighters covered under the industrial insurance law.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Clements, Ranking Minority Member; Kenney and Lysen.

**Minority Report:** Do not pass. Signed by 1 member: Representative Chandler.

**Staff:** Chris Cordes (786-7103).

**Background:**

A worker who, in the course of employment, is injured or suffers disability from an occupational disease is entitled to benefits under Washington's industrial insurance law.

To prove an occupational disease, the injured worker must show that the disease arose "naturally and proximately" out of employment.

Members of the law enforcement officers' and fire fighters' retirement system plan II (LEOFF II) are covered for workplace injuries and occupational diseases under the industrial insurance law. For LEOFF II supervisory and actively employed full-time fire fighters, the industrial insurance law provides a presumption that respiratory diseases are occupational diseases. This presumption may be rebutted by a preponderance of controverting evidence, including the use of tobacco products, physical fitness, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities. The presumption extends to a covered fire fighter for up to five years after terminating service (three months for each year of service).

A number of states have presumptions to establish that cancer, heart disease, various infectious diseases, or other conditions are work-related under disability or workers' compensation laws.

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### **Summary of Substitute Bill:**

Legislative findings are made concerning the exposure of fire fighters to uncontrolled environments because of their employment. These environments may contain various hazardous substances such as smoke, infectious diseases, carcinogens, and toxic substances.

The industrial insurance law is amended to add three new categories to the list of diseases presumed to be occupational diseases for specified fire fighters:

- Heart problems experienced within 72 hours of exposure to smoke, fumes, or toxic substances.
- Cancer affecting the skin, breasts, central nervous system, or lymphatic, digestive, hematological, urinary, skeletal, oral, or reproductive systems. To be covered, an active or former fire fighter must have cancer that developed or manifested itself after at least 10 years of service and must have had a qualifying medical examination at the time of becoming a fire fighter that showed no evidence of cancer.
- Infectious diseases. "Infectious disease" means acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, and mycobacterium tuberculosis.

These new presumptions apply to supervisory and active full-time fire fighters in public employment who are covered by industrial insurance. In addition, the existing presumption for respiratory disease and the new presumptions apply to full-time, fully

compensated fire fighters, including supervisors, employed by a private sector employer's fire department that has more than 50 fire fighters.

**Substitute Bill Compared to Original Bill:**

The substitute bill adds a definition of "infectious disease" to mean acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, and mycobacterium tuberculosis.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** There are onerous requirements under the industrial insurance law for fire fighters to prove an occupational disease. In some cases, lengthy investigations cannot show any other possible source of exposure, other than work. It is costly for both sides to develop proof that can meet the required standard. There will never be a perfect correlation between the exposure and the disease that develops.

**Testimony Against:** Some scientific evidence is needed to justify covering a condition as an occupational disease. The costs are uncertain and this is not a good time to impose greater costs on local governments when revenues are being dramatically reduced. The bill is too broad because it covers conditions for which no correlation to fire fighting exposure is known. With a liberal construction clause under industrial insurance and other protections, fire fighters are already able to make their case for coverage.

**Testified:** (In support) Kelly Fox, Washington State Council of Fire Fighters; and Jeff Bunnell.

(Opposed) Roger Ferris, Washington Fire Commissioners Association; and Jim Justin, Association of Washington Cities.

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**HOUSE COMMITTEE ON APPROPRIATIONS**

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Labor. Signed by 25 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Sehlin, Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cody, Cox, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, Lisk, Mastin, McIntire, Pearson, Pflug, Ruderman, Schual-Berke, Talcott and Tokuda.

**Staff:** Linda Brooks (786-7153).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:**

The intent section of the original bill is replaced with language that summarizes conclusions from various studies showing the increased risk of specific cancers and other diseases after exposure to conditions under which fire fighters work. The list of cancers subject to the presumption is revised to list the following cancers: Primary brain cancer; malignant melanoma; leukemia; non-Hodgkin's lymphoma; bladder cancer; ureter cancer; and kidney cancer.

The presumption section does not apply, beginning July 1, 2003, to a fire fighter who develops a heart or lung condition if the fire fighter is a regular user of tobacco products. Language specifying that rebutting evidence is evidence that "controverts" the presumption is deleted. Technical corrections are made to clarify the references to private sector fire fighters and to HIV/AIDS.

**Appropriation:** None.

**Fiscal Note:** Requested February 11, 2002 on the substitute bill.

**Effective Date of Second Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill is a work in progress. The cancers will be redefined in a substitute that's being drafted. We have already worked on the list of infectious diseases. We are trying to get to a bill that our employers can support.

(Concerns) The Fire Commissioners' Association has been working to get this bill to a point where we can support it. There has been progress made on infectious diseases, and we're working on the cancers. We have two remaining issues. One, we would like to remove the presumption that heart or lung disease is an occupational disease for firefighters who are regular smokers. Two, we know the state is in a fiscal bind, and that you know the local governments are in a bind as well. We won't say that we have to have money, but every little bit (that may be provided) helps.

**Testimony Against:** We appreciate the work that has been done to narrow the list of infectious diseases. We would like a minor change to the standard for rebuttal so that it reads as, "This presumption of occupational disease may be rebutted by a preponderance of the evidence." We oppose the bill because of the fiscal note. The local government fiscal note indicates that the employers' rates paid to the accident and medical aid funds would double. When you add the cost of the rates doubling to the costs incurred by local governments that are self-insured, you get to the \$4.5 million hit per year on local

governments.

**Testified:** (In support) Kelly Fox, Washington State Council of Fire Fighters.

(Concerns) Ryan Spiller, Washington Fire Commissioners Association.

(Opposed) Jim Justin, Association of Washington Cities; and Ryan Spiller, A Foreign  
Affair.