

SHB 1833 - H AMD 291

By Representative Conway

ADOPTED 3/13/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds and declares:

4 (1) By reason of their employment, firefighters are required to
5 work in the midst of, and are subject to, smoke, fumes, infectious
6 diseases, and toxic and hazardous substances;

7 (2) Firefighters enter uncontrolled environments to save lives,
8 provide emergency medical services, and reduce property damage and
9 are frequently not aware of the potential toxic and carcinogenic
10 substances, and infectious diseases that they may be exposed to;

11 (3) Harmful effects caused by firefighters' exposure to
12 hazardous substances, whether cancer, infectious disease, heart or
13 respiratory disease, may develop very slowly, manifesting
14 themselves years after exposure;

15 (4) Firefighters frequently and at unpredictable intervals
16 perform job duties under strenuous physical conditions unique to
17 their employment when engaged in firefighting activities; and

18 (5) Cardiovascular disease is exacerbated by firefighting
19 duties and firefighting increases the incidence of cardiovascular
20 disease and heart injuries in firefighters.

21 **Sec. 2.** RCW 51.32.185 and 2002 c 337 s 2 are each amended to
22 read as follows:

23 (1) In the case of firefighters as defined in RCW 41.26.030(4)
24 (a), (b), and (c) who are covered under Title 51 RCW and
25 firefighters, including supervisors, employed on a full-time, fully
26 compensated basis as a firefighter of a private sector employer's
27 fire department that includes over fifty such firefighters, there
28 shall exist a prima facie presumption that: (a) Respiratory
29 disease; (b) (~~heart problems that are experienced within seventy=~~

1 ~~two hours of exposure to smoke, fumes, or toxic substances))~~ any
2 heart problems, experienced within seventy-two hours of exposure to
3 smoke, fumes, or toxic substances, or experienced within twenty-
4 four hours of strenuous physical exertion due to firefighting
5 activities; (c) cancer; and (d) infectious diseases are
6 occupational diseases under RCW 51.08.140. This presumption of
7 occupational disease may be rebutted by a preponderance of the
8 evidence. Such evidence may include, but is not limited to, use of
9 tobacco products, physical fitness and weight, lifestyle,
10 hereditary factors, and exposure from other employment or
11 nonemployment activities.

12 (2) The presumptions established in subsection (1) of this
13 section shall be extended to an applicable member following
14 termination of service for a period of three calendar months for
15 each year of requisite service, but may not extend more than sixty
16 months following the last date of employment.

17 (3) The presumption established in subsection (1)(c) of this
18 section shall only apply to any active or former firefighter who
19 has cancer that develops or manifests itself after the firefighter
20 has served at least ten years and who was given a qualifying
21 medical examination upon becoming a firefighter that showed no
22 evidence of cancer. The presumption within subsection (1)(c) of
23 this section shall only apply to prostate cancer diagnosed prior to
24 the age of fifty, primary brain cancer, malignant melanoma,
25 leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer,
26 colorectal cancer, multiple myeloma, testicular cancer, and kidney
27 cancer.

28 (4) The presumption established in subsection (1)(d) of this
29 section shall be extended to any firefighter who has contracted any
30 of the following infectious diseases: Human immunodeficiency
31 virus/acquired immunodeficiency syndrome, all strains of hepatitis,
32 meningococcal meningitis, or mycobacterium tuberculosis.

33 (5) Beginning July 1, 2003, this section does not apply to a
34 firefighter who develops a heart or lung condition and who is a
35 regular user of tobacco products or who has a history of tobacco
36 use. The department, using existing medical research, shall define
37 in rule the extent of tobacco use that shall exclude a firefighter
38 from the provisions of this section.

1 (6) For purposes of this section, "firefighting activities"
2 means fire suppression, fire prevention, emergency medical
3 services, rescue operations, hazardous materials response, aircraft
4 rescue, and training and other assigned duties related to emergency
5 response.

6 (7)(a) When a determination involving the presumption
7 established in this section is appealed to the board of industrial
8 insurance appeals and the final decision allows the claim for
9 benefits, the board of industrial insurance appeals shall order
10 that all reasonable costs of the appeal, including attorney fees
11 and witness fees, be paid to the firefighter or his or her
12 beneficiary by the opposing party.

13 (b) When a determination involving the presumption established
14 in this section is appealed to any court and the final decision
15 allows the claim for benefits, the court shall order that all
16 reasonable costs of the appeal, including attorney fees and witness
17 fees, be paid to the firefighter or his or her beneficiary by the
18 opposing party.

19 (c) When reasonable costs of the appeal must be paid by the
20 department under this section in a state fund case, the costs shall
21 be paid from the accident fund and charged to the costs of the
22 claim.

23 (8) (a) If an employer requests reconsideration of a department
24 order allowing benefits under this section and the firefighter's
25 medical provider has made a determination that the firefighter is
26 terminally ill, temporary total disability compensation or medical
27 aid benefits granted to the firefighter by the order under
28 reconsideration must continue while the reconsideration is pending,
29 subject to the requirements of RCW 51.32.240(4).

30 (b) If an employer appeals to the board of industrial insurance
31 appeals a department order allowing benefits under this section and
32 the firefighter's medical provider has made a determination that
33 the firefighter is terminally ill, temporary total disability
34 compensation or medical aid benefits granted to the firefighter by
35 the order under appeal must continue while the appeal is pending,
36 subject to the requirements of RCW 51.32.240(4).

1 **Sec. 3.** RCW 51.52.120 and 2003 c 53 s 285 are each amended to
2 read as follows:

3 (1) It shall be unlawful for an attorney engaged in the
4 representation of any worker or beneficiary to charge for services
5 in the department any fee in excess of a reasonable fee, of not
6 more than thirty percent of the increase in the award secured by
7 the attorney's services. Such reasonable fee shall be fixed by the
8 director or the director's designee for services performed by an
9 attorney for such worker or beneficiary, if written application
10 therefor is made by the attorney, worker, or beneficiary within one
11 year from the date the final decision and order of the department
12 is communicated to the party making the application.

13 (2) If, on appeal to the board, the order, decision, or award
14 of the department is reversed or modified and additional relief is
15 granted to a worker or beneficiary, or in cases where a party other
16 than the worker or beneficiary is the appealing party and the
17 worker's or beneficiary's right to relief is sustained by the
18 board, the board shall fix a reasonable fee for the services of his
19 or her attorney in proceedings before the board if written
20 application therefor is made by the attorney, worker, or
21 beneficiary within one year from the date the final decision and
22 order of the board is communicated to the party making the
23 application. In fixing the amount of such attorney's fee, the
24 board shall take into consideration the fee allowed, if any, by the
25 director, for services before the department, and the board may
26 review the fee fixed by the director. Any attorney's fee set by
27 the department or the board may be reviewed by the superior court
28 upon application of such attorney, worker, or beneficiary. The
29 department or self-insured employer, as the case may be, shall be
30 served a copy of the application and shall be entitled to appear
31 and take part in the proceedings. Where the board, pursuant to
32 this section, fixes the attorney's fee, it shall be unlawful for an
33 attorney to charge or receive any fee for services before the board
34 in excess of that fee fixed by the board.

35 (3) In an appeal to the board involving the presumption
36 established under RCW 51.32.185, the attorney's fee shall be
37 payable as set forth under RCW 51.32.185.

38 (4) Any person who violates this section is guilty of a
39 misdemeanor.

1 **Sec. 4.** RCW 51.52.130 and 1993 c 122 s 1 are each amended to
2 read as follows:

3 (1) If, on appeal to the superior or appellate court from the
4 decision and order of the board, said decision and order is
5 reversed or modified and additional relief is granted to a worker
6 or beneficiary, or in cases where a party other than the worker or
7 beneficiary is the appealing party and the worker's or
8 beneficiary's right to relief is sustained, a reasonable fee for
9 the services of the worker's or beneficiary's attorney shall be
10 fixed by the court. In fixing the fee the court shall take into
11 consideration the fee or fees, if any, fixed by the director and
12 the board for such attorney's services before the department and
13 the board. If the court finds that the fee fixed by the director
14 or by the board is inadequate for services performed before the
15 department or board, or if the director or the board has fixed no
16 fee for such services, then the court shall fix a fee for the
17 attorney's services before the department, or the board, as the
18 case may be, in addition to the fee fixed for the services in the
19 court. If in a worker or beneficiary appeal the decision and order
20 of the board is reversed or modified and if the accident fund or
21 medical aid fund is affected by the litigation, or if in an appeal
22 by the department or employer the worker or beneficiary's right to
23 relief is sustained, or in an appeal by a worker involving a state
24 fund employer with twenty-five employees or less, in which the
25 department does not appear and defend, and the board order in favor
26 of the employer is sustained, the attorney's fee fixed by the
27 court, for services before the court only, and the fees of medical
28 and other witnesses and the costs shall be payable out of the
29 administrative fund of the department. In the case of self-insured
30 employers, the attorney fees fixed by the court, for services
31 before the court only, and the fees of medical and other witnesses
32 and the costs shall be payable directly by the self-insured
33 employer.

34 (2) In an appeal to the superior or appellate court involving
35 the presumption established under RCW 51.32.185, the attorney's fee
36 shall be payable as set forth under RCW 51.32.185."

37 Correct the title.

EFFECT: (1) Narrows the intent section.

(2) Modifies the presumption for heart conditions, heart impairments, and injury to the heart causing death to state specifically that the presumption of occupational disease applies to "heart problems" that are experienced within 72 hours of exposure to smoke, fumes, or toxic substances, or within 24 hours (instead of 72 hours) of exposure to strenuous physical exertion. Clarifies that the strenuous physical exertion must be due to firefighting activities and defines firefighting activities.

(3) Narrows the cancers added to the list of cancers granted the presumption of occupational disease by eliminating stomach cancer, clarifying colorectal cancer (instead of intestinal), and limiting prostate cancer to prostate cancer diagnosed prior to the age of fifty.

(4) Restores the burden for rebutting a presumption of occupational disease for firefighters to preponderance of the evidence (instead of clear, cogent, and convincing evidence).

(5) Clarifies that, when the reasonable costs of litigation are ordered to be paid, they must be paid by the opposing party. Clarifies that, in a state fund case, if the Department must pay the reasonable costs of litigation, the fees will be paid from the accident fund and charged to the costs of the claim.

(6) Requires payment of time loss and medical aid benefits when an employer protests or appeals an order related to the presumption of occupational disease and the order grants benefits for a firefighter determined to be terminally ill by his or her medical provider.