

ESHB 1833 - S COMM AMD

By Committee on Labor, Commerce, Research & Development

ADOPTED 04/10/2007

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 are
9 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 hazardous
12 substances may develop very slowly, manifesting themselves years after
13 exposure;

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

17 (5) Firefighting duties exacerbate and increase the incidence of
18 cardiovascular disease in firefighters.

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

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

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

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

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

24 (4) The presumption established in subsection (1)(d) of this
25 section shall be extended to any fire fighter who has contracted any of
26 the following infectious diseases: Human immunodeficiency
27 virus/acquired immunodeficiency syndrome, all strains of hepatitis,
28 meningococcal meningitis, or mycobacterium tuberculosis.

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

35 (6) For purposes of this section, "firefighting activities" means
36 fire suppression, fire prevention, emergency medical services, rescue
37 operations, hazardous materials response, aircraft rescue, and training
38 and other assigned duties related to emergency response.

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

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

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

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

17 (1) It shall be unlawful for an attorney engaged in the
18 representation of any worker or beneficiary to charge for services in
19 the department any fee in excess of a reasonable fee, of not more than
20 thirty percent of the increase in the award secured by the attorney's
21 services. Such reasonable fee shall be fixed by the director or the
22 director's designee for services performed by an attorney for such
23 worker or beneficiary, if written application therefor is made by the
24 attorney, worker, or beneficiary within one year from the date the
25 final decision and order of the department is communicated to the party
26 making the application.

27 (2) If, on appeal to the board, the order, decision, or award of
28 the department is reversed or modified and additional relief is granted
29 to a worker or beneficiary, or in cases where a party other than the
30 worker or beneficiary is the appealing party and the worker's or
31 beneficiary's right to relief is sustained by the board, the board
32 shall fix a reasonable fee for the services of his or her attorney in
33 proceedings before the board if written application therefor is made by
34 the attorney, worker, or beneficiary within one year from the date the
35 final decision and order of the board is communicated to the party
36 making the application. In fixing the amount of such attorney's fee,
37 the board shall take into consideration the fee allowed, if any, by the

1 director, for services before the department, and the board may review
2 the fee fixed by the director. Any attorney's fee set by the
3 department or the board may be reviewed by the superior court upon
4 application of such attorney, worker, or beneficiary. The department
5 or self-insured employer, as the case may be, shall be served a copy of
6 the application and shall be entitled to appear and take part in the
7 proceedings. Where the board, pursuant to this section, fixes the
8 attorney's fee, it shall be unlawful for an attorney to charge or
9 receive any fee for services before the board in excess of that fee
10 fixed by the board.

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

14 (4) Any person who violates this section is guilty of a
15 misdemeanor.

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

18 (1) If, on appeal to the superior or appellate court from the
19 decision and order of the board, said decision and order is reversed or
20 modified and additional relief is granted to a worker or beneficiary,
21 or in cases where a party other than the worker or beneficiary is the
22 appealing party and the worker's or beneficiary's right to relief is
23 sustained, a reasonable fee for the services of the worker's or
24 beneficiary's attorney shall be fixed by the court. In fixing the fee
25 the court shall take into consideration the fee or fees, if any, fixed
26 by the director and the board for such attorney's services before the
27 department and the board. If the court finds that the fee fixed by the
28 director or by the board is inadequate for services performed before
29 the department or board, or if the director or the board has fixed no
30 fee for such services, then the court shall fix a fee for the
31 attorney's services before the department, or the board, as the case
32 may be, in addition to the fee fixed for the services in the court. If
33 in a worker or beneficiary appeal the decision and order of the board
34 is reversed or modified and if the accident fund or medical aid fund is
35 affected by the litigation, or if in an appeal by the department or
36 employer the worker or beneficiary's right to relief is sustained, or
37 in an appeal by a worker involving a state fund employer with twenty-

1 five employees or less, in which the department does not appear and
2 defend, and the board order in favor of the employer is sustained, the
3 attorney's fee fixed by the court, for services before the court only,
4 and the fees of medical and other witnesses and the costs shall be
5 payable out of the administrative fund of the department. In the case
6 of self-insured employers, the attorney fees fixed by the court, for
7 services before the court only, and the fees of medical and other
8 witnesses and the costs shall be payable directly by the self-insured
9 employer.

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

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13 On page 1, line 1 of the title, after "firefighters;" strike the
14 remainder of the title and insert "amending RCW 51.32.185, 51.52.120,
15 and 51.52.130; and creating a new section."

EFFECT: Clarifies language in the intent section. Removes
provisions allowing payment of benefits during an appeal.

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