
Commerce & Labor Committee

HB 1833

Brief Description: Expanding the presumption of occupational disease for firefighters.

Sponsors: Representatives Conway, Pettigrew, Seaquist, Upthegrove, Morrell, Kessler, P. Sullivan, Williams, Kenney, Haler, Ericksen, Moeller, Sells, Dunn, Rolfes, Lantz, McCoy, Lovick, Jarrett, Strow, Hurst, Springer, Campbell, Goodman, Simpson, Pearson, Curtis, Rodne, Schual-Berke, McDermott, Ormsby and Chase.

Brief Summary of Bill

- Modifies the industrial insurance presumption of occupational disease for firefighters to include certain heart injuries and certain cancers.
- Changes the standard for rebutting a presumption of occupational disease for firefighters.
- Allows a firefighter to recover litigation fees and costs in certain cases involving the presumption of occupational disease for firefighters.

Hearing Date: 2/15/07

Staff: Sarah Beznoska (786-7109).

Background:

A worker who, in the course of employment, is injured or suffers disability from an occupational disease may be entitled to benefits under the Industrial Insurance Act (Act). 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 firefighters' retirement system plan are covered for workplace injuries and occupational diseases under the Act. For these firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector fire department with more than 50 firefighters, the Act provides a presumption that certain diseases are occupational diseases. These diseases are:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- respiratory disease;
- heart problems that are experienced within 72 hours of exposure to smoke, fumes, or toxic substances;
- primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, and kidney cancer; and
- infectious diseases, including Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome, hepatitis, meningococcal meningitis, or mycobacterium tuberculosis.

With respect to the cancers presumed to be an occupational disease, an active or former firefighter 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 firefighter that showed no evidence of cancer.

The presumption of occupational disease may be rebutted by a preponderance of evidence, including, but not limited to: use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or non-employment activities.

Since July 1, 2003, the presumption of occupational disease has not applied to a firefighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use.

Summary of Bill:

Legislative Findings

Legislative findings are made related to the following:

- firefighters' exposures, in the course of employment, to uncontrolled environments, hazardous substances, multiple carcinogens, and strenuous physical conditions;
- firefighters exposing co-workers, families, and members of the public to infectious diseases;
- the slow development of harmful effects caused by these exposures;
- firefighting exacerbating cardiovascular disease; and
- firefighters who experience heart injuries during firefighting being assumed to meet unusual exertion standards.

Presumption of Occupational Disease

The presumption of occupational disease for heart problems that are experienced within 72 hours of exposure to smoke, fumes, or toxic substances is modified. A presumption of occupational disease is created for injury to the heart causing death, or any health condition or impairment resulting in total or partial disability experienced within 72 hours of exposure to smoke, fumes, toxic substances, or strenuous physical exertion.

Certain cancers are added to the list of cancers presumed to be occupational diseases. The added cancers are: stomach cancer, intestinal cancer, multiple myeloma, testicular cancer, and prostate cancer.

Rebutting a Presumption of Occupational Disease

The standard for rebutting a presumption of occupational disease is changed. The presumption may be rebutted by clear, cogent, and convincing evidence.

Litigation Costs and Fees

In any Board of Industrial Appeals case or court case where the presumption of occupational disease is upheld, the employee must be awarded full benefits, attorney fees, expert witness costs, and all other costs from the date of the employee's initial application for benefits.

Rules Authority: The bill does not address the rule making authority of an agency.

Appropriation: None.

Fiscal Note: Requested on February 9, 2007.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.