

SENATE BILL REPORT

SB 5741

As of February 19, 2007

Title: An act relating to occupational diseases affecting firefighters.

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

Sponsors: Senators Franklin, Tom, Keiser, Hobbs, Hargrove, Kohl-Welles, Poulsen, Kline, Shin and Rasmussen.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 2/15/07.

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Staff: Kathleen Buchli (786-7488)

Background: A worker who, in the course of employment, is injured or suffers a disability from an occupational disease is entitled to benefits under Washington's industrial insurance act. To prove an occupational disease, the injured worker must show that the disease arose naturally and proximately out of employment.

In 1987, the Legislature created a rebuttable presumption that respiratory diseases in fire fighters are occupationally related. In 2002, the Legislature extended this presumption to include: heart problems if they are experienced within 72 hours of exposure to smoke, fumes, and toxic or chemical substances; certain types of cancer if the worker has served as a fire fighter for ten or more years and showed no evidence of cancer upon becoming a fire fighter; and certain infectious diseases, including HIV/AIDS, hepatitis, meningitis, and tuberculosis.

Summary of Bill: The presumption that, for fire fighters, certain diseases are occupationally related is extended to include: an 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, and toxic or chemical substances, or strenuous physical exertion; and stomach cancer, intestinal cancer, multiple myeloma, testicular cancer, and prostate cancer if the worker has served as a fire fighter for ten or more years and showed no evidence of cancer upon becoming a fire fighter.

The standard for rebutting the presumption of occupational disease is raised to clear, cogent, and convincing evidence. When the presumption is upheld, the employee must be awarded full benefits, attorneys' fees, expert witness costs, and other costs incurred from the date of the employee's initial application for benefits.

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.

Appropriation: None.

Fiscal Note: Requested on January 30, 2007.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The language including health conditions that occur within 72 hours of exposure to smoke, fumes, toxic substances, or strenuous physical exertion should be removed and replaced with language dealing with injuries to the heart causing death. The standard to rebut the presumption of occupational disease or injury should be changed from preponderance of the evidence to clear, cogent, and convincing evidence. The preponderance of the evidence standard encourages frivolous appeals by employers. Reimbursing the claimant for costs when the presumption is upheld will also help prevent frivolous appeals. There are links between chemical exposure and disease and there are high levels of chemicals found in fires, including many cancer causing chemicals. Firefighters are at risk for heart problems because of the strenuous physical exertion they undergo during their work and are at risk for a cardiac event within 72 hours.

CON: The standard of clear, cogent, and convincing evidence is an impossible standard to meet and greatly expands the scope of what will be included as an occupational disease or injury. Having the strenuous physical exertion criteria in the claim will make it harder for employers to provide fitness standards; there can be different interpretations of what strenuous physical exertion can mean. Medical evidence does not show that all the diseases added by this bill are occupational diseases. It will be impossible for employers to prove that these diseases did not occur on the job.

OTHER: The standard of clear, cogent, and convincing evidence is a very high standard that Labor and Industries uses for cases involving fraud and is not traditionally used in claims statutes. The section in the bill dealing with awarding costs to prevailing employees is vague. Costs will be paid by the department regardless of who the appealing party is.

Persons Testifying: PRO: Kelly Fox, Washington State Council of Fire Fighters; Dennis Lawson, Puyallup Fire Department; Dr. Erika Olson, International Association of Fire Fighters.

CON: Dan Heid, City of Auburn; Kathleen Collins, Washington Self-Insurer's Association; Ryan Spiller, Washington Fire Commissioners; Jim Justin, Association of Washington Cities.

OTHER: Vicki Kennedy, Department of Labor and Industries.