

# SENATE BILL REPORT

## SB 5354

---

---

As of February 23, 2011

**Title:** An act relating to presumptions of occupational disease for law enforcement officers and firefighters.

**Brief Description:** Adding heart attacks and strokes as presumptions of occupational disease for law enforcement officers and firefighters.

**Sponsors:** Senators Hargrove, Roach, Kilmer, Keiser, Kohl-Welles, McAuliffe and Conway; by request of Law Enforcement Officers and Fire Fighters' Plan 2 Retirement Board.

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 1/31/11, 2/07/11, 2/17/11 [DPS-WM, DNP].

Ways & Means: 2/22/11.

---

### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** That Substitute Senate Bill No. 5354 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

**Minority Report:** Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

**Staff:** Mac Nicholson (786-7445)

---

### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Erik Sund (786-7454)

**Background:** Employees who are disabled as a result of a work related injury or occupational disease, and survivors of employees who die as a result of a work related injury or occupational disease are eligible to receive benefits under the state Industrial Insurance Program. The determination of whether the disability or death occurred as a result of an injury sustained or an illness contracted in the course of employment is made by the Department of Labor and Industries (L&I) and is based on relevant statutory and case law. If

---

*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.*

L&I determines the death was work related, the claim will be allowed and the surviving spouse will receive a monthly benefit ranging from 60 to 70 percent of the wages of the deceased worker, which is discontinued upon remarriage.

Disabled employees and the survivors of employees covered by the Law Enforcement Officers and Fire Fighters Retirement System (LEOFF) and Washington State Patrol Retirement System (WSPRS) are also eligible for benefits under the respective retirement plans when a member dies or is disabled as a result of a work related injury. L&I's determination about whether the death or disabling event was caused by a work related injury under industrial insurance is used to establish eligibility for death or disability benefits under the LEOFF 2 and WSPRS plans.

Surviving spouses of employees who meet the federal definition of public safety officers, including some members of LEOFF and WSPRS are eligible under the federal Public Safety Officers Benefit Act of 1976 (PSOB) for a death benefit when the public safety officer died in the line of duty.

An occupational disease is defined in statute as a disease or infection that arises naturally and proximately out of employment. Certain health conditions, when suffered by firefighters, are presumed to be occupational diseases for industrial insurance purposes. These conditions include respiratory disease, heart problems experienced within certain time frames, cancer, and infectious diseases. The presumption of occupational disease may be rebutted by a preponderance of the evidence.

**Summary of Bill (Recommended Substitute):** A presumption is created for law enforcement officers covered by LEOFF or members of WSPRS that any heart problems or a stroke experienced within 24 hours of certain on-duty stressful or strenuous activities is considered a work-related injury for industrial insurance purposes. The presumption can be overcome by a preponderance of the evidence, which can include use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or non-employment activities. Stressful or strenuous activities which can trigger the presumption include training exercises; law enforcement, fire suppression, and rescue activities; hazardous material response; prison security; and other disaster relief or emergency response activities.

The presumption does not apply to law enforcement officers who are regular users of tobacco or have a history of tobacco use.

For firefighters, it is presumed that a stroke is an occupational disease if it experienced within 72 hours of exposure to smoke, fumes, or toxic substances, or within 24 hours of strenuous physical exertion due to firefighting activities.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute):** Generally, the proposed substitute re-drafts the language so that the law enforcement presumption is similar to the existing presumption in state law for firefighters rather than similar to federal law.

The proposed substitute also extends the presumption for law enforcement officers to cover heart problems rather than heart attacks, and applies the presumption regardless of whether the law enforcement officer dies as a result of the heart problems or stroke.

The substitute lists evidence that can be used to rebut the presumption use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or non-employment activities, and provides that the presumption does not apply to law enforcement officers who are regular users of tobacco, or have a history of tobacco use, as defined by L&I using medical research.

The substitute also provides that the legislation is to be known and cited as the Brian Walsh Act.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested for substitute bill on February 16, 2011.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill applies retroactively to January 1, 2010.

**Staff Summary of Public Testimony on Original Bill (Labor, Commerce & Consumer Protection):** PRO: Police officers protect the public, and there are bad people out there. When a family makes that sacrifice, there is no reason they should not get survivor benefits. A nearly identical presumption exists for firefighters and should be extended to law enforcement officers. The language would make state law consistent with federal provisions and protections. This bill supports the family of fallen officers and firefighters. A widow shouldn't have to fight for a benefit. Other states and the federal law government have similar presumptions.

CON: This is a sensitive and emotional issue; however, laws relating presumptions for occupational disease need to be clear and supported by scientific evidence. Those injured and killed on duty should clearly be covered; however, there are many factors that dictate one's predisposition to a heart attack or stroke that are not work related. The firefighter section adds stroke and there isn't clear scientific evidence that higher level stroke occurs in this occupation to justify the presumption. The language in the bill is unclear and contains no clear parameters. This change would add cost to the workers compensation program, particularly for the state and local governments.

**Persons Testifying (Labor, Commerce & Consumer Protection):** PRO: Kelly Fox, WSCFF; Davor Gjurasic, WSP; Brian Wurtz, WACOPS; Renee Maher, COMPAS; Vanessa Walsh; Steve Nelson, LEOFF Plan 2 Board; Chris Martin, Federal Way P.D.

CON: Kathleen Collins, Washington Self Insurer's Association; Candice Bock, AWC; Scott Merriman, Association of Washington Counties.

**Staff Summary of Public Testimony (Ways & Means):** PRO: Brandon Walsh was proud of his service, and it is a slap in his face not to recognize his death as duty-related. Law

enforcement duty involves incredible strains and stresses and they take a toll on the body. When an officer makes that sacrifice, there is no reason their family should not be looked after. A nearly identical presumption already exists for firefighters and should be extended to law enforcement officers. The language would make state law consistent with federal provisions and with laws in many other states. This bill supports the family of fallen officers and firefighters. LEOFF 2 is one of the best-funded retirement systems in the state and can easily absorb the additional costs associated with it.

CON: This is a very emotional issue; however, laws relating presumptions for occupational disease need to be clear and supported by scientific evidence. The cities and counties are sympathetic; those injured and killed on duty should clearly be covered; however, there are many factors that dictate one's predisposition to a heart attack or stroke that are not work related. There isn't enough clear scientific evidence that higher level stroke occurs in this occupation to justify the presumption. The language would be difficult to administer. This change would add cost to the workers compensation program, particularly for the state and local governments. The fiscal note shows only 60 to 70 percent of the actual cost of the bill, since self-insured employers' costs aren't included.

**Persons Testifying (Ways & Means):** PRO: Jamie Daniels, Washington Council of Police and Sheriffs; Kelly Fox, Washington State Council of Fire Fighters; Davor Gjurasic, Washington State Patrol Troopers' Association; Renee Maher, Council of Metropolitan Police and Sheriffs; Chris Martin, Federal Way Police Department; Steve Nelson, LEOFF Plan 2 Board; Vanessa Walsh, citizen.

CON: Candice Bock, Association of Washington Cities; Kathleen Collins, Washington Self Insurer's Association.