
SENATE BILL 5354

State of Washington

62nd Legislature

2011 Regular Session

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

Read first time 01/21/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to presumptions of occupational disease for law
2 enforcement officers and firefighters; amending RCW 51.32.185; adding
3 a new section to chapter 51.32 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.32 RCW
6 to read as follows:

7 (1) For purposes of this section, "law enforcement officer" means
8 either a law enforcement officer as defined in RCW 41.26.030 or a
9 member of the Washington state patrol retirement system under chapter
10 43.43 RCW.

11 (2) If a law enforcement officer, who is covered under Title 51
12 RCW, dies as the direct and proximate result of a heart attack or
13 stroke, that law enforcement officer shall be presumed to have died as
14 the direct and proximate result of a personal injury sustained in the
15 course of employment, if:

16 (a) That law enforcement officer, while on duty:

17 (i) Engaged in a situation, and such engagement involved nonroutine
18 stressful or strenuous physical law enforcement, fire suppression,

1 rescue, hazardous material response, emergency medical services, prison
2 security, disaster relief, or other emergency response activity;

3 (ii) Participated in a training exercise, and such participation
4 involved nonroutine stressful or strenuous physical activity; or

5 (iii) Responded to, or was in the course of responding to, a fire,
6 rescue, or police emergency; and

7 (b) That officer died as a result of a heart attack or stroke
8 suffered:

9 (i) While engaging or participating or responding as described
10 under (a) of this subsection;

11 (ii) While still on duty after so engaging or participating or
12 responding; or

13 (iii) Not later than twenty-four hours after so engaging or
14 participating or responding; and

15 (c) This presumption is not overcome by competent medical evidence
16 to the contrary.

17 (3) Nonroutine stressful physical activity means line of duty
18 activity that:

19 (a) Is not performed as a matter of routine. Routine means that
20 the level of stress is routine and not simply that the activity itself
21 is performed with some regularity;

22 (b) Entails nonnegligible physical exertion; and

23 (c) Occurs with respect to a situation in which a law enforcement
24 officer is engaged, under circumstances that objectively and
25 reasonably:

26 (i) Pose, or appear to pose, significant dangers, threats, or
27 hazards, or reasonably foreseeable risks thereof, not faced by
28 similarly situated members of the public in the ordinary course; and
29 provoke, cause, or occasion an unusually high level of alarm, fear, or
30 anxiety; or

31 (ii) With respect to a training exercise in which a law enforcement
32 officer participates, under circumstances that objectively and
33 reasonably simulate in realistic fashion situations that pose
34 significant dangers, threats, or hazards; and provoke, cause, or
35 occasion an unusually high level of alarm, fear, or anxiety.

36 (4)(a) Nonroutine strenuous physical activity means line of duty
37 activity that:

1 (i) Is not performed as a matter of routine. Routine means that
2 the level of physical exertion is routine and not simply that the
3 activity itself is performed with some regularity; and

4 (ii) Entails an unusually high level of physical exertion.

5 (b) Nonroutine stressful or strenuous physical activity excludes
6 actions of a clerical, administrative, or nonmanual nature.

7 **Sec. 2.** RCW 51.32.185 and 2007 c 490 s 2 are each amended to read
8 as follows:

9 (1) In the case of firefighters as defined in RCW 41.26.030(~~(+4)~~)
10 (16) (a), (b), and (c) who are covered under Title 51 RCW and
11 firefighters, including supervisors, employed on a full-time, fully
12 compensated basis as a firefighter of a private sector employer's fire
13 department that includes over fifty such firefighters, there shall
14 exist a prima facie presumption that: (a) Respiratory disease; (b) any
15 heart problems or strokes, experienced within seventy-two hours of
16 exposure to smoke, fumes, or toxic substances, or experienced within
17 twenty-four hours of strenuous physical exertion due to firefighting
18 activities; (c) cancer; and (d) infectious diseases are occupational
19 diseases under RCW 51.08.140. This presumption of occupational disease
20 may be rebutted by a preponderance of the evidence. Such evidence may
21 include, but is not limited to, use of tobacco products, physical
22 fitness and weight, lifestyle, hereditary factors, and exposure from
23 other employment or nonemployment activities.

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

29 (3) The presumption established in subsection (1)(c) of this
30 section shall only apply to any active or former firefighter who has
31 cancer that develops or manifests itself after the firefighter has
32 served at least ten years and who was given a qualifying medical
33 examination upon becoming a firefighter that showed no evidence of
34 cancer. The presumption within subsection (1)(c) of this section shall
35 only apply to prostate cancer diagnosed prior to the age of fifty,
36 primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's

1 lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple
2 myeloma, testicular cancer, and kidney cancer.

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

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

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

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

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

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

32 NEW SECTION. **Sec. 3.** This act applies retroactively to January 1,
33 2010.

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