

# HOUSE BILL REPORT

## ESB 6213

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### As Reported by House Committee On: Labor & Workplace Standards

**Title:** An act relating to the presumption of occupational disease for purposes of workers' compensation by adding medical conditions to the presumption and extending the presumption to certain publicly employed firefighters and investigators and law enforcement.

**Brief Description:** Addressing the presumption of occupational disease for purposes of workers' compensation by adding medical conditions to the presumption and extending the presumption to certain publicly employed firefighters and investigators and law enforcement.

**Sponsors:** Senators Ranker, Conway, Hobbs, Keiser, Van De Wege, Palumbo, Hasegawa, Saldaña, Hunt, Walsh, Kuderer, Wellman and Fortunato.

#### **Brief History:**

##### **Committee Activity:**

Labor & Workplace Standards: 2/19/18, 2/20/18 [DP].

#### **Brief Summary of Engrossed Bill**

- Makes the occupational disease presumptions for firefighters applicable to certain emergency medical technicians and public employee fire investigators and adds additional cancers to the cancer occupational disease presumption.
- Creates an occupational disease presumption for heart problems and infectious diseases for law enforcement officers.
- Requires the Department of Labor and Industries to convene a workgroup to recommend options for amending first responder occupations and diseases for application of a presumption.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Doglio and Frame.

**Minority Report:** Do not pass. Signed by 2 members: Representatives McCabe, Ranking Minority Member; Manweller.

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*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.*

**Staff:** Joan Elgee (786-7106).

**Background:**

Under the state's industrial insurance laws, a worker who, in the course of employment, is injured or suffers disability from an occupational disease is entitled to certain benefits. To prove an occupational disease, the worker must show that the disease arose "naturally and proximately" out of employment. Employers must insure through the state fund administered by the Department of Labor and Industries (Department) or may self-insure if qualified.

For firefighters who are members of the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF) and certain private sector firefighters, there is a presumption that certain medical conditions are occupational diseases. Those conditions are: (1) respiratory disease; (2) heart problems; (3) specified cancers; and (4) infectious diseases. With respect to heart problems, the problems must be experienced within 72 hours of exposure to smoke, fumes, or toxic substances; or experienced within 24 hours of strenuous physical exertion due to firefighting activities. For cancers, the firefighter must have served at least 10 years before the cancer develops or manifests itself and received a qualifying medical examination (exam) upon becoming a firefighter that showed no evidence of cancer.

The presumption of occupational disease (presumption) may be rebutted by a preponderance of evidence, including: (1) use of tobacco products; (2) physical fitness and weight; (3) lifestyle; (4) hereditary factors; and (5) exposure from other employment or non-employment activities. In addition, the presumption does not apply 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.

Emergency medical technicians are included in the membership of the LEOFF as "firefighters" if they work on a full-time, fully compensated basis for certain public employers, and their duties include providing emergency medical services.

In an appeal of a presumption case to the Board of Industrial Insurance Appeals, if the claim is allowed, the opposing party must pay the reasonable costs of the appeal to the firefighter. A similar provision applies to appeals to court.

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**Summary of Bill:**

Emergency medical technicians who are in the LEOFF and public employee fire investigators are included in the list of workers covered by the presumptions for firefighters. If workers covered by the presumption were hired before the effective date of the bill and the employer did not provide a medical exam, the exam requirement is satisfied if the firefighter or fire investigator receives an exam on or before July 1, 2019. If the firefighter or fire investigator is diagnosed with a covered cancer at this exam, or the employer does not provide the exam, the presumption applies. Also, the presumption applies if an employer does not provide an exam at the time of hire for those fire investigators and firefighters hired after the effective date of the bill.

The following cancers are added to the presumption:

- mesothelioma;
- adenocarcinoma;
- stomach cancer;
- esophageal cancer;
- buccal cancer;
- pharynx cancer;
- non-melanoma skin cancer;
- breast cancer; and
- cervical cancer.

In addition, methicillin-resistant staphylococcus aureus (MRSA) is added to the list of infectious diseases.

A presumption is established for law enforcement officers that heart problems, under very similar limitations as for heart problems for firefighters, and infectious diseases are occupational diseases. The strenuous physical exertion requirement for heart problems applies to exertion by a law enforcement officer in the line of duty.

The costs of the appeal provisions apply to fire investigators and law enforcement officers.

The Department must convene a work group by July 1, 2018, to recommend the policy and procedural options for amending first responder occupations and occupational diseases for application of a presumption. The work group must have representatives from State Fund employers, self-insured employers, and worker advocates along with public health professionals in the disciplines of occupational medicine, epidemiology, and industrial hygiene. The Department must report to the Legislature by December 1, 2019, on any consensus recommendations for legislation or rule-making.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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

**Staff Summary of Public Testimony:**

(In support) This bill helps protect those who protect us. Firefighters, emergency medical technicians, and others are far more likely to contract cancer than non-firefighters, with female firefighters six times more likely to contract cervical cancer. The newly added workers are also at risk. The Senate changed the bill by removing stroke and creating a study to look at future changes so it is now different from the House version.. The science supports the changes in this bill. Twenty-eight states have law enforcement officer presumptive diseases. The burden of proof should be on employers rather than on sick officers and their

families. Law enforcement officers have a much greater chance of sudden death in pursuit and similar activities compared to when doing routine work. It is wrong that money is being saved by not paying these benefits.

(Opposed) The work of these individuals is supported. Workers are already covered for these diseases. Firefighters are the only occupation with a presumption. Presumptions could be requested for other groups. Local governments are struggling to provide basic services and staffing after reductions. This bill will impair the ability of cities and counties to provide other services. The changes in the Senate did not eliminate the high costs to local government. Presumptions should be based on strong medical evidence, which has not been shown. A medical review panel is preferred.

**Persons Testifying:** (In support) Senator Ranker, prime sponsor; Michael White, Washington State Council of Firefighters; and Bud Sizemore, Washington Council of Police and Sheriffs.

(Opposed) Jennifer Ziegler, Washington State Association of Counties; Logan Bahr, Association of Washington Cities; Christine Brewer, Washington Self-Insurers Association; and Bob Battles, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.