

SENATE BILL REPORT

SB 5849

As of February 13, 2019

Title: An act relating to the presumption of occupational disease for purposes of workers' compensation by adding medical conditions to the presumption, extending the presumption to certain publicly employed firefighters and investigators and law enforcement, addressing the qualifying medical examination, and creating an advisory committee.

Brief Description: Concerning the presumption of occupational disease for purposes of workers' compensation by adding medical conditions to the presumption, extending the presumption to certain publicly employed firefighters and investigators and law enforcement, addressing the qualifying medical examination, and creating an advisory committee.

Sponsors: Senators Kuderer, Darneille, Conway, Das, Fortunato, Hobbs, Keiser, Palumbo and Van De Wege.

Brief History:

Committee Activity: Labor & Commerce: 2/14/19.

Brief Summary of Bill

- Makes the occupational disease presumptions for firefighters applicable to certain emergency medical technicians and public employee fire investigators.
- 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 director of the Department of Labor and Industries to create an advisory committee on occupational disease presumptions, made up of specified scientists.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: In the case of certain firefighters, there is a prima facie presumption that the following are occupational diseases under workers' compensation:

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- respiratory disease;
- any heart problems, 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;
- cancer; and
- certain infectious diseases.

For purposes of occupational disease presumptions, firefighter includes:

- any person who is serving on a full-time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for firefighter, and who is actively employed as such;
- anyone who is actively employed as a full-time firefighter where the fire department does not have a civil service examination; and
- supervisory firefighter personnel.

It also includes firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department with over 50 firefighters.

This presumption of occupational disease may be rebutted by a preponderance of the evidence, which may include the use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities. The presumptions are extended following termination of service for a period of three calendar months for each year of requisite service, but not extending more than 60 months.

The presumption only applies to any active or former firefighter who has cancer that develops or manifests itself after the firefighter has served at least ten years and who was given a qualifying medical examination upon becoming a firefighter that showed no evidence of cancer. The presumption only applies to prostate cancer diagnosed prior to the age of 50, primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple myeloma, testicular cancer, and kidney cancer.

Generally, 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. The Department of Labor & Industries (L&I), using existing medical research, is required to define in rule the extent of tobacco use exclusion. The presumption never applies to current smokers with heart or lung conditions. The following shows the situations provided in L&I's rule where a presumption shall or shall not apply for firefighters due to tobacco use:

Medical condition	Presumptions shall not apply	Presumption shall apply
Heart problems experienced within 72 hours of exposure to smoke, fumes, or toxic substance	current smoker	firefighters that never smoked tobacco
	former smoker who last smoked less than two years prior to the cardiac event	former smoker who last smoked two years or more prior to the cardiac event
Asthma	current smoker	firefighters that never smoked tobacco
	former smoker who last smoked less than five years before date of manifestation of the disease	former smoker who last smoked five years or more before date of manifestation of the disease
COPD/emphysema/chronic bronchitis	current smoker	firefighters that never smoked tobacco
	former smoker who last smoked less than 15 years before date of manifestation of the disease	former smoker who last smoked 15 years or more before date of manifestation of the disease
Lung cancer	current smoker	firefighters that never smoked
	former smoker who last smoked less than 15 years before date of manifestation of the disease	former smoker who last smoked 15 years or more before date of manifestation of the disease

The infectious disease presumption is extended to any firefighter who has contracted any of the following infectious diseases:

- human immunodeficiency virus/acquired immunodeficiency syndrome;
- all strains of hepatitis;
- meningococcal meningitis; or
- mycobacterium tuberculosis.

When a determination involving the presumption is appealed to the Board of Industrial Insurance Appeals (BIIA) and the final decision allows the claim for benefits, the BIIA must order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter by the opposing party. When a determination involving the presumption is appealed to any court and the final decision allows the claim for benefits, the court must order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter by the opposing party. When reasonable costs of the appeal must be paid by L&I in a state fund case, the costs shall be paid from the accident fund and charged to the costs of the claim.

The Safety and Health Assessment and Research for Prevention program (SHARP) is an occupational safety and health research program with L&I.

Summary of Bill: The same occupational disease presumptions for firefighters are applicable to fire investigators. For purposes of the presumptions, "firefighter" is expanded to include a person employed on a full-time, fully compensated basis emergency medical technician (firefighter EMT).

Mesothelioma, stomach cancer, nonmelanoma skin cancer, breast cancer in women, and cervical cancer are added as types of presumptive cancers.

If workers covered by the presumption were hired before the effective date 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, 2020. 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. In addition, 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.

For certain law enforcement officers, described below, who are covered under workers' compensation, there is a prima facie rebuttable presumptive occupational diseases for:

- any heart problems, experienced within 72 hours of exposure to smoke, fumes, or toxic substances, or experienced within 24 hours of strenuous physical exertion in the line of duty; and
- certain infectious diseases.

A law enforcement officer includes any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws generally, with the following qualifications:

- deputy sheriffs who have successfully completed a civil service examination for deputy sheriff or the equivalent position, and those persons serving in certain unclassified positions, except a private secretary;
- full time commissioned law enforcement personnel in the police department created or designated by city charter provision or by ordinance enacted by the legislative body of the city; and
- a person employed on or after January 1, 1993, as a public safety officer or director of public safety, with job duties substantially involving only either police or fire duties, or both, and no other duties in a city or town with a population of less than 10,000, and except those receiving a retirement allowance as of May 12, 1993.

The director of L&I must create an advisory committee (committee) on occupational disease presumptions composed of two epidemiologists, two preventative medicine physicians, and one industrial hygienist. The research director of SHARP serves as the non-voting chair. SHARP must provide organizational and scientific support to the committee. Conflict of interest provisions apply to all members.

The chair or ranking member of the appropriate legislative committee may initiate a request for the committee to review scientific evidence and make recommendations on specific disorders or diseases or occupations to include in the provisions on presumptions. The committee must conduct a thorough review of the literature on the disease or disorder, relevant exposures, and strength of the association between the occupation and the disease or disorder. The committee may consult nationally recognized experts or subject matter experts.

Within the earlier of 180 days or when the committee reaches a consensus recommendation, the committee must provide a recommendation to the Legislature. Recommendations must be made by a majority of the voting members, and any member may write a dissent. Recommendations must include a description of the scientific evidence and supporting information. Estimates of the number of Washington workers at risk, the prevalence of the disease or disorder, and the medical treatment and disability costs should be included with the recommendation if available.

Appropriation: None.

Fiscal Note: Requested on February 12, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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