

SSB 5190 - S AMD TO S AMD (S-1355.1/21) 132  
By Senator Braun

NOT ADOPTED 02/25/2021

1 Beginning on page 1, line 3, strike all material through "title."  
2 on page 18, line 6 and insert the following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 51.32  
4 RCW to read as follows:

5 (1) For health care employees who are covered under this title,  
6 there exists a prima facie presumption that any infectious or  
7 contagious diseases that are transmitted through respiratory droplets  
8 or aerosols, or through contact with contaminated surfaces and are  
9 the subject of a public health emergency are occupational diseases  
10 under RCW 51.08.140 during a public health emergency.

11 (2) The health care employee must provide verification, as  
12 required by the department by rule, to the department and the self-  
13 insured employer that the employee has contracted the infectious or  
14 contagious disease that is the subject of the public health  
15 emergency.

16 (3) This presumption of occupational disease may be rebutted by a  
17 preponderance of the evidence that:

18 (a) The exposure to the infectious or contagious disease which is  
19 the subject of the public health emergency occurred from other  
20 employment or nonemployment activities; or

21 (b) The employee was working from the employee's home, on leave  
22 from the employee's employment, or some combination thereof, for the  
23 period of quarantine consistent with recommended guidance from state  
24 and federal health officials for the disease immediately prior to the  
25 employee's injury, occupational disease, or period of incapacity that  
26 resulted from exposure to the disease which is the subject of the  
27 public health emergency.

28 (4) RCW 51.32.090(7) does not apply to an occupational disease  
29 under this section except that no worker shall receive compensation  
30 for or during the day on which the occupational disease was  
31 contracted. For the purposes of this subsection (4), the day on which

1 the occupational disease was contracted is whichever date occurs  
2 first of the following:

3 (a) The date that the worker first missed work due to symptoms of  
4 the infectious or contagious disease;

5 (b) The date the worker was quarantined by a medical provider or  
6 public health official; or

7 (c) The date the worker received a positive test result  
8 confirming contraction of the infectious or contagious disease.

9 (5) If leave or similar benefits are paid to the worker as part  
10 of a federal or state program for these employees during the public  
11 health emergency, total temporary disability benefits are not payable  
12 for the same period of time covered by this federal or state program.

13 (6) (a) When a determination involving the presumption established  
14 in this section is appealed to the board of industrial insurance  
15 appeals and the final decision allows the claim of benefits, the  
16 board of industrial insurance appeals shall order that all reasonable  
17 costs of the appeal, including attorneys' fees and witness fees, be  
18 paid to the worker or the worker's beneficiary by the opposing party.  
19 If the opposing party is a state fund employer, the costs and fees  
20 are paid by the employer.

21 (b) When a determination involving the presumption established in  
22 this section is appealed to any court and the final decision allows  
23 the claim for benefits, the court shall order that all reasonable  
24 costs of appeal, including attorneys' fees and witness fees, be paid  
25 to the worker or the worker's beneficiary by the opposing party.

26 (c) When reasonable costs of the appeal must be paid by the  
27 department under this section in a state fund case, the costs shall  
28 be paid from the accident fund and charged to the costs of the claim.  
29 When calculating assessments due to the department for which total  
30 claim costs are the basis, self-insured employers and self-insurance  
31 hospital groups formed under RCW 51.14.150 and 51.14.160 may deduct  
32 the cost of payments made under this section from the total of all  
33 claim costs reported.

34 (7) Costs of the payments under this section shall not affect the  
35 experience rating of employers insured by the state fund. These costs  
36 shall be paid from the accident fund.

37 (8) As used in this section:

38 (a) "Health care employee" means an employee of any health care  
39 facility or other organization that provides emergency or medical  
40 services who may have direct contact with any person who has been

1 exposed to or tested positive for any infectious or contagious  
2 diseases which are the subject of a public health emergency.

3 (b) "Health care facility" has the same meaning as in RCW  
4 9A.50.010.

5 (c) "Public health emergency" means a declaration or order  
6 concerning any infectious or contagious diseases, including a  
7 pandemic and is issued as follows:

8 (i) The president of the United States has declared a national or  
9 regional emergency that covers every county in the state of  
10 Washington; or

11 (ii) The governor of Washington has declared a state of emergency  
12 under RCW 43.06.010(12).

13 (9) The provisions of RCW 51.28.055 concerning time limits for  
14 filing claims for occupational disease apply to claims covered under  
15 this section.

16 NEW SECTION. **Sec. 2.** This act expires upon the expiration or  
17 termination of proclamation 20-05, and any subsequent orders  
18 extending or amending the proclamation, declaring a state of  
19 emergency on February 29, 2020, for all counties in Washington due to  
20 COVID-19."

21 Renumber the remaining section consecutively and correct any  
22 internal references accordingly.

23 On page 18, line 12, after "insert" strike all material through  
24 "51.52.130;" on line 13

25 On page 18, line 13, after "adding" strike "new sections" and  
26 insert "a new section"

27 On page 18, line 14, after "section;" insert "providing a  
28 contingent expiration date;"

EFFECT: Removes unemployment insurance provisions. For the  
workers' compensation presumption: Limits the presumption to  
infectious or contagious diseases that are transmitted through  
respiratory droplets or aerosols, or through contact with  
contaminated surfaces and are the subject of a public health  
emergency; removes language that presumes the employee contracted the  
disease at the health care facility; provides that the verification  
must be provided to L&I and the self-insurer, rather than on;  
changes the rebuttal evidence standard to a preponderance, rather than clear  
and convincing; changes the work location for the rebuttal; removes  
language providing the timing of temporary total disability benefits;

allows pay during the 3 days after contraction; removes provisions related to retrospective ratings groups; allows self-insurers to deduct costs of payments from costs reported; provides that costs are paid from the accident fund; modifies the definition of public health emergency to one covering all counties; and removes provisions on when the presumption takes effect and ends. Expires the bill upon the expiration of the emergency proclamation declaring a state of emergency due to COVID-19.

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