

HOUSE BILL REPORT

HB 1445

As Reported by House Committee On:
Labor & Workforce Development

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: Representatives Van De Wege, Rodne, Pettigrew, Upthegrove, Lias, Maxwell, Reykdal, Stanford, Orwall, Sullivan, Sells, Hurst, Fitzgibbon, Kelley and Ormsby; by request of Law Enforcement Officers and Fire Fighters' Plan 2 Retirement Board.

Brief History:

Committee Activity:

Labor & Workforce Development: 1/28/11, 2/1/11 [DPS].

Brief Summary of Substitute Bill

- Adds strokes that occur under certain conditions to the diseases that are presumptive occupational diseases for industrial insurance purposes for most firefighters.
- Creates a presumption that death from a heart problem or stroke that occurs under certain conditions is an occupational injury for industrial insurance purposes for most law enforcement officers.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Sells, Chair; Reykdal, Vice Chair; Fagan, Green, Kenney, Miloscia, Moeller, Ormsby, Roberts and Warnick.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Taylor.

Staff: Joan Elgee (786-7106).

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.

Background:

A worker who, in the course of employment, is injured or suffers disability from an occupational disease is entitled to industrial insurance benefits. To prove an occupational disease, the worker must show that the disease arose "naturally and proximately" out of employment.

Firefighters.

For firefighters who are members of the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF) and certain private sector firefighters, there is a prima facie presumption that the following are occupational diseases: respiratory disease, certain heart problems, specified cancers, and 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.

The presumption of occupational disease may be rebutted by a preponderance of evidence, including, but not limited to: use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and 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.

Law Enforcement Officers.

No industrial insurance presumptions apply to law enforcement personnel.

Under the federal Public Safety Officers' Benefits (PSOB) Act, survivors of a public safety officer who died as a direct and proximate result of a line of duty injury are entitled to certain death benefits. An officer who dies from a heart attack or stroke is presumed to have died as a result of a line-of-duty personal injury under certain circumstances.

With respect to the LEOFF, only members of the LEOFF Plan 2 (those hired on or after October 1, 1997) are covered by industrial insurance.

Summary of Substitute Bill:

Firefighters.

Strokes are added to the presumptive occupational diseases for firefighters for purposes of industrial insurance. The criteria applicable to heart problems apply to strokes; that is, the stroke 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.

Law Enforcement Officers.

An industrial insurance presumption is created for law enforcement members of the LEOFF or a member of the Washington State Patrol Retirement System (WSPRS). A member who dies as the direct and proximate result of a heart problem or stroke is presumed to have died

of an injury sustained in the course of employment under certain circumstances. The presumption applies if the officer, while on duty, was involved in specified activities, and died as a result of a heart problem or stroke suffered no later than 24 hours after being involved in the activities. The law enforcement officer must have:

- engaged in a situation, and the engagement involved nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity;
- participated in a training exercise which involved nonroutine stressful or strenuous physical activity; or
- responded to a fire, rescue, or police emergency.

The presumption may be overcome by competent medical evidence.

Definitions are provided. "Nonroutine stressful physical activity" means activity that is:

1. not performed as a matter of routine;
2. entails nonnegligible physical activity; and
3. occurs with respect to a situation under circumstances that objectively and reasonably:
 - pose significant dangers, threats, or hazards (or reasonably foreseeable risks) not faced by similarly situated members of the public and provoke, cause, or occasion an unusually high level of alarm, fear, or anxiety; or
 - with respect to a training exercise, simulate in realistic fashion situations that pose significant dangers, threats, or hazards, and provoke, cause, or occasion an unusually high level of alarm, fear, or anxiety.

"Nonroutine strenuous physical activity" means activity that is not performed as a matter of routine and that entails an unusually high level of physical exertion. Actions of a clerical, administrative, or nonmanual nature are not included.

"Routine" means that the level of stress is routine and not simply that the activity itself is performed with some regularity.

The criteria are similar to the criteria that must be met for the presumption under the PSOB Act to apply.

The act is named the "Brian Walsh Act." The provisions apply retroactively to January 1, 2010.

Substitute Bill Compared to Original Bill:

The substitute bill changes "heart attack" to "heart problems", and names the act the "Brian Walsh Act."

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 1, 2011.

Effective Date of Substitute Bill: 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 is aimed at a Department of Labor and Industries' (Department) ruling that the death of an officer in Federal Way was not duty-related. The LEOFF 2 Board was asked to look into the situation, and this bill is the solution. The bill models federal law. When officers die of a heart problem while they are on duty, they need to be covered. It is difficult to determine what happens when a heart attack occurs, and benefits are almost always denied. Twenty-two other states have presumptions. The federal government has found the death to be duty-related, and Behind the Badge determined the officer's name should go on the Memorial Wall. Only the Department has denied line-of-duty status.

The "heart problem" language mirrors the language for firefighters in current law and should be extended to law enforcement. The amendments are supported.

Brian Walsh was 34 years old and in good health. While the family was reeling from the death, the family learned that even though he was in the middle of a high adrenaline incident, benefits were denied. The family has made a lot of sacrifices for the state. This was a slap in the face. Brian Walsh's service was valued less than other officers.

Law enforcement officers put themselves in the line of fire in stressful situations to protect us and they just want their families taken care of. Officers' heart rates never go down. Brian Walsh set up a perimeter for an officer-involved shooting. He did a crime scene log and then passed away. Sitting in a car and sitting in a coffee shop are how officers have been killed recently. Nationwide, 11 officers were recently shot in a 24-hour period.

The duty-death determination will also apply to the LEOFF benefits.

(Opposed) This is a very difficult issue and it is hard to oppose it. This bill affects larger cities and counties. The language is confusing, as almost anything could be "nonroutine." It took years to write the federal regulations. There needs to be causation between the on-the-job incident and the disease. The LEOFF 2 Board report shows no study pointing to heart problems caused by the occupation. Heart disease can also be caused by lifestyle, heredity, and smoking. The substitute bill is much broader. Cities are not in a position to pay for more benefits. The language needs to be more parallel with the firefighter language. The fiscal note does not account for all the costs, such as costs for surviving spouses and medical costs.

Persons Testifying: (In support) Representative Van de Wege, prime sponsor; Kelly Fox, Washington State Council of Fire Fighters; Dave Hayes, Washington Council of Police and Sheriffs; Renee Maher, Council of Metropolitan Police and Sheriffs; Davor Gjurasic, Washington State Patrol Troopers Association; Chris Martin, Federal Way Police Department; and Vanessa Walsh.

(Opposed) Kathleen Collins, Washington Self-Insurers Association; and Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.