
SUBSTITUTE SENATE BILL 5354

State of Washington

62nd Legislature

2011 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored 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 02/21/11.

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 new sections.

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) In the case of law enforcement officers as defined in RCW
8 41.26.030 or members of the Washington state patrol retirement system
9 under chapter 43.43 RCW who are covered under Title 51 RCW, there is a
10 prima facie presumption that any heart problems or stroke experienced
11 within twenty-four hours of the officer, while on duty, having engaged
12 in nonroutine stressful or strenuous physical activity is unusual
13 exertion and is an injury under RCW 51.08.100. This presumption may be
14 rebutted by a preponderance of the evidence. The evidence may include,
15 but is not limited to, use of tobacco products, physical fitness and
16 weight, lifestyle, hereditary factors, and exposure from other
17 employment or nonemployment activities.

18 (2) Nonroutine stressful or strenuous physical activity is limited
19 to situations of stressful or strenuous training exercise, physical law

1 enforcement, fire suppression, rescue, hazardous material response,
2 emergency medical services, prison security, disaster relief, or other
3 emergency response activity.

4 (3) When the heart problem or stroke is an injury as defined by RCW
5 51.08.100, a claim must be filed as provided in RCW 51.28.050.

6 (4) This section does not apply to a law enforcement officer or
7 member of the Washington state patrol retirement system who is a
8 regular user of tobacco products or who has a history of tobacco use.
9 The department, using existing medical research, shall define in rule
10 the extent of tobacco use that excludes a law enforcement officer or
11 member of the Washington state patrol retirement system from the
12 provisions of this section.

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

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

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

35 (3) The presumption established in subsection (1)(c) of this
36 section shall only apply to any active or former firefighter who has
37 cancer that develops or manifests itself after the firefighter has

1 served at least ten years and who was given a qualifying medical
2 examination upon becoming a firefighter that showed no evidence of
3 cancer. The presumption within subsection (1)(c) of this section shall
4 only apply to prostate cancer diagnosed prior to the age of fifty,
5 primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's
6 lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple
7 myeloma, testicular cancer, and kidney cancer.

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

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

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

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

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

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

1 NEW SECTION. **Sec. 3.** This act may be known and cited as the Brian
2 Walsh act.

3 NEW SECTION. **Sec. 4.** This act applies retroactively to January 1,
4 2010.

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