S-4087.2

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**SUBSTITUTE SENATE BILL 6214**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Conway, Hobbs, Keiser, Van De Wege, Palumbo, Hasegawa, Rolfes, Ranker, Mullet, Saldaña, Kuderer, and Wellman)

AN ACT Relating to industrial insurance coverage for posttraumatic stress disorders affecting law enforcement officers and firefighters; amending RCW 51.08.142 and 51.32.185; and adding a new section to chapter 51.08 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 51.08 RCW to read as follows:

"Posttraumatic stress disorder" means a disorder that meets the diagnostic criteria for posttraumatic stress specified by the American psychiatric association in the diagnostic and statistics manual of mental disorders, fifth edition, or in a later edition as adopted by the department in rule.

**Sec.**  RCW 51.08.142 and 1988 c 161 s 16 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the department shall adopt a rule pursuant to chapter 34.05 RCW that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease in RCW 51.08.140.

(2)(a) Except as provided in (b) and (c) of this subsection, the rule adopted under subsection (1) of this section shall not apply to occupational disease claims resulting from posttraumatic stress disorders of firefighters as defined in RCW 41.26.030(16) (a), (b), (c), and (h) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in RCW 41.26.030(18) (b), (c), and (e).

(b) For firefighters as defined in RCW 41.26.030(16) (a), (b), (c), and (h) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in RCW 41.26.030(18) (b), (c), and (e) hired after the effective date of this section, (a) of this subsection only applies if the firefighter or law enforcement officer, as a condition of employment, has submitted to a psychological examination administered by a psychiatrist licensed in the state of Washington under chapter 18.71 RCW or a psychologist licensed in the state of Washington under chapter 18.83 RCW that ruled out the presence of posttraumatic stress disorder from preemployment exposures. If the employer does not provide the psychological examination, (a) of this subsection applies.

(c) Posttraumatic stress disorder for purposes of this subsection (2) is not considered an occupational disease if the disorder is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer.

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

(1)(a) In the case of firefighters as defined in RCW 41.26.030((~~(4)~~)) (16) (a), (b), and (c) who are covered under this title ((~~51 RCW~~)) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, there shall exist a prima facie presumption that: ((~~(a)~~)) (i) Respiratory disease; ((~~(b)~~)) (ii) any heart problems, experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion due to firefighting activities; ((~~(c)~~)) (iii) cancer; and ((~~(d)~~)) (iv) infectious diseases are occupational diseases under RCW 51.08.140.

(b) In the case of firefighters as defined in RCW 41.26.030(16) (a), (b), (c), and (h) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in RCW 41.26.030(18) (b), (c), and (e), who are covered under this title, there shall exist a prima facie presumption that posttraumatic stress disorder is an occupational disease under RCW 51.08.140.

(c) This presumption of occupational disease established in (a) and (b) of this subsection may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

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

(3) The presumption established in subsection (1)((~~(c)~~)) (a)(iii) of this section shall only apply 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 within subsection (1)((~~(c)~~)) (a)(iii) of this section shall only apply to prostate cancer diagnosed prior to the age of fifty, primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple myeloma, testicular cancer, and kidney cancer.

(4) The presumption established in subsection (1)((~~(d)~~)) (a)(iv) of this section shall be 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.

(5) The presumption established in subsection (1)(b) of this section only applies to active or former firefighters as defined in RCW 41.26.030(16) (a), (b), (c), and (h) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in RCW 41.26.030(18) (b), (c), and (e) who have posttraumatic stress disorder that develops or manifests itself after the individual has served at least ten years.

(6) If the employer does not provide the psychological exam as specified in RCW 51.08.142 and the employee otherwise meets the requirements for the presumption established in subsection (1)(b) of this section, the presumption applies.

(7) Beginning July 1, 2003, this section 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, using existing medical research, shall define in rule the extent of tobacco use that shall exclude a firefighter from the provisions of this section.

((~~(6)~~)) (8) For purposes of this section, "firefighting activities" means fire suppression, fire prevention, emergency medical services, rescue operations, hazardous materials response, aircraft rescue, and training and other assigned duties related to emergency response.

((~~(7)~~)) (9)(a) When a determination involving the presumption established in this section is appealed to the board of industrial insurance appeals and the final decision allows the claim for benefits, the board of industrial insurance appeals shall order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter or his or her beneficiary by the opposing party.

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

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

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