

HOUSE BILL REPORT

HB 1913

As Reported by House Committee On: Labor & Workplace Standards

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: Representatives Doglio, Sells, Bergquist, Griffey, Peterson, Reeves, Lovick, Stonier, Orwall, Irwin, Appleton, Dolan, Leavitt, Ortiz-Self, Shewmake, Stanford, Valdez, Goodman, Pollet, Macri, Santos, Lekanoff, Ormsby, Tharinger, Young and Davis.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/12/19, 2/14/19 [DP].

Brief Summary of Bill

- Makes the occupational disease presumptions for firefighters applicable to certain emergency medical technicians and public employee fire investigators and 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.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 6 members: Representatives Sells, Chair; Chapman, Vice Chair; Mosbrucker, Ranking Minority Member; Gregerson, Hoff and Ormsby.

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.

Minority Report: Do not pass. Signed by 1 member: Representative Chandler, Assistant Ranking Minority Member.

Staff: Joan Elgee (786-7106).

Background:

Under the state's industrial insurance laws, a worker who, in the course of employment, is injured or suffers disability from an occupational disease is entitled to certain benefits. To prove an occupational disease, the worker must show that the disease arose "naturally and proximately" out of employment. Employers insure through the State Fund administered by the Department of Labor and Industries (Department) or may self-insure if qualified.

For firefighters who are members of the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF) and certain private sector firefighters, there is a presumption that certain medical conditions are occupational diseases. Those conditions are: (1) respiratory disease; (2) heart problems; (3) specified cancers; (4) infectious diseases; and (5) posttraumatic stress disorder. 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.

Cancers covered are prostate cancer diagnosed before age 50, primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple myeloma, testicular cancer, and kidney cancer. The firefighter must have served at least 10 years before the cancer develops or manifests itself and received a qualifying medical examination (exam) upon becoming a firefighter that showed no evidence of cancer.

The posttraumatic stress disorder presumption also applies to law enforcement officers and emergency medical technicians who are members of the LEOFF.

The presumption of occupational disease may be rebutted by a preponderance of evidence, including: (1) use of tobacco products; (2) physical fitness and weight; (3) lifestyle; (4) hereditary factors; and (5) 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.

Emergency medical technicians are members of the LEOFF if they work on a full-time, fully compensated basis for certain public employers, and their duties include providing emergency medical services.

In an appeal of a presumption case to the Board of Industrial Insurance Appeals, if the claim is allowed, the opposing party must pay the reasonable costs of the appeal to the firefighter. A similar provision applies to appeals to court.

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

Summary of Bill:

Occupations and Presumptive Diseases.

Emergency medical technicians who are in the LEOFF and public employee fire investigators are included in the list of workers covered by the presumptions for respiratory disease, heart problems, specified cancers, and infectious diseases. The following cancers are added to the presumption:

- mesothelioma;
- stomach cancer;
- non-melanoma skin cancer;
- breast cancer in women; and
- cervical cancer.

If workers covered by the presumption were hired before the effective date of the bill 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 of the bill.

A presumption is established for law enforcement officers that heart problems, under very similar limitations as for heart problems for firefighters, and infectious diseases are occupational diseases. The strenuous physical exertion requirement for heart problems applies to exertion by a law enforcement officer in the line-of-duty.

The costs of the appeal provisions apply to fire investigators and law enforcement officers.

Advisory Committee.

The Director of the Department 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 the SHARP serves as the non-voting chair. 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.

The SHARP provides organizational and scientific support to the committee.

Appropriation: None.

Fiscal Note: Requested on February 6, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) A lot of difficult work went into this bill and it has broad support. Firefighters and law enforcement officers put themselves at risk. Many studies show that firefighters have a higher risk of disease than the general population, and there are five additional cancers that should be added to the presumption. Fire investigators have the same exposure. The bill also recognizes the special risks of law enforcement. Washington has not kept up with other states with respect to law enforcement presumptions. Compared to last year's bill, there is a smaller set of diseases and a scientific panel is added.

(Opposed) None.

(Other) The 10-year requirement to be eligible for the cancer presumption is excessive. Psychologists should be added to the committee.

Persons Testifying: (In support) Representative Doglio, prime sponsor; Teresa Taylor, Washington Council of Police and Sheriffs; Christine Brewer, Washington Self-Insurers Association; Mellani McAleenan, Washington State Association of Counties; A.J. Johnson, Washington State Council of Firefighters; and Logan Bahr, Association of Washington Cities.

(Other) Casey Ward, Washington State Psychological Association.

Persons Signed In To Testify But Not Testifying: None.