

# HOUSE BILL REPORT

## HB 2633

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**As Reported by House Committee On:**  
Labor & Workplace Standards  
Appropriations

**Title:** An act relating to the presumption of occupational disease for purposes of workers' compensation by adding medical conditions to the presumption and extending the presumption to certain publicly employed firefighters and investigators and law enforcement.

**Brief Description:** Addressing the presumption of occupational disease for purposes of workers' compensation by adding medical conditions to the presumption and extending the presumption to certain publicly employed firefighters and investigators and law enforcement.

**Sponsors:** Representatives Doglio, Sawyer, Griffey, Irwin, Reeves, Fitzgibbon, Stambaugh, Stonier, Stokesbary, Gregerson, Appleton, Valdez, Ortiz-Self, Peterson, Lytton, Wylie, Macri, Fey, Tarleton, Hudgins, Ryu, McBride, Morris, Pollet, Sells, Slatter, Kloba, Bergquist, Goodman, McDonald, Santos, Frame and Stanford.

**Brief History:**

**Committee Activity:**

Labor & Workplace Standards: 1/15/18, 1/23/18 [DP];  
Appropriations: 2/3/18, 2/6/18 [DPS].

**Brief Summary of Substitute Bill**

- Makes the occupational disease presumptions available to certain emergency medical technicians and public employee fire investigators.
- Adds additional cancers to the occupational disease presumptions.
- Creates an occupational disease presumption for heart problems and infectious diseases for law enforcement officers.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 5 members: Representatives Sells, Chair; Gregerson, Vice Chair; Pike, Assistant Ranking Minority Member; Doglio and Frame.

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*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 2 members: Representatives McCabe, Ranking Minority Member; Manweller.

**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.

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; and (4) 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. For cancers, the firefighter must have served at least 10 years before the cancer develops or manifests itself and received a qualifying medical examination upon becoming a firefighter that showed no evidence of cancer.

The presumption of occupational disease (presumption) 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 included in the membership 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.

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**Summary of Bill:**

Emergency medical technicians who are in the LEOFF as "firefighters" and public employee fire investigators are included in the list of workers covered by the presumption. If these individuals became a firefighter or fire investigator before July 1, 2018 and did not receive a qualifying medical examination, the qualifying medical examination requirement is satisfied if the firefighter or fire investigator receives an examination on or before July 1, 2019. If the firefighter or fire investigator is diagnosed with a covered cancer at this examination, the presumption applies.

The following cancers are added to the presumption:

- mesothelioma;
- adenocarcinoma;
- stomach cancer;
- esophageal cancer;
- buccal cancer;
- pharynx cancer;
- non-melanoma skin cancer;
- breast cancer; and
- cervical cancer.

In addition, methicillin-resistant staphylococcus aureus (MRSA) is added to the list of infectious diseases, and strokes are included under the same limitations as heart problems.

A presumption is established for law enforcement officers that heart problems and strokes, under very similar limitations as for heart problems for firefighters, and infectious diseases are occupational diseases. The strenuous physical exertion requirement for heart problems and strokes 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.

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**Appropriation:** None.

**Fiscal Note:** Available.

**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) Firefighters put their lives on the line every day. They are exposed just doing their jobs. The incidence of concerns specific to women has increased and they need to be protected. This has been a bipartisan issue. All the bill does is shift the burden of proof.

New research links exposure to some diseases. Emergency Medical Technicians (EMTs) and fire investigators are exposed to the same hazards as firefighters. The issue is whether it is a reasonable policy. The bill clarifies coverage for strokes. Regarding law enforcement officers, 28 jurisdictions have presumptions.

(Opposed) It is very difficult to oppose this bill. Costs are a concern. Counties have no means to create revenue and would have to cut other services, most of which are for health and safety. Firefighters are the only occupation with the presumption. Others may request a presumption. Employees may bring a claim now; the issue is burden-shifting. Medical evidence is needed. Most of the existing conditions under the presumption were supported by evidence. Some sort of medical review panel to review proposed presumptions is needed.

**Persons Testifying:** (In support) Representative Doglio, prime sponsor; Michael White, Washington State Council of Fire Fighters; and Bud Sizemore, Washington Council of Police and Sheriffs.

(Opposed) Christine Brewer, Washington Self Insurers Association; Eric Johnson, Washington State Association of Counties; Bob Battles, Association of Washington Business; and Logan Bahr, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives Ormsby, Chair; Robinson, Vice Chair; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Cody, Fitzgibbon, Graves, Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Stanford, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 11 members: Representatives Chandler, Ranking Minority Member; Buys, Caldier, Condotta, Haler, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Harris.

**Staff:** David Pringle (786-7310).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor & Workplace Standards:**

Strokes experienced within 72 hours of workplace exposure are removed from the list of presumptive occupational diseases.

**Appropriation:** None.

**Fiscal Note:** Available.

**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 will shift the burden of proof in certain circumstances to help take care of sick or deceased firefighters and law enforcement officers, and their families. It is known that these jobs make people sick and cause deaths. Many people with these occupations in their thirties and forties have died. Achieving savings by not paying for these disabilities is wrong. Law enforcement officers have a 30 to 69 percent greater chance of sudden cardiac death during restraints and in certain other conditions than in routine duties. Law

enforcement does not have the specific studies. This bill matches the values of the people of Washington. There is concern about some of the fiscal assumptions.

(Opposed) Counties do not have the revenue and are concerned about the long term fiscal impact and what choices would have to be made if the bill were to pass. Prior presumptive diseases were based on strong medical evidence, which should be the standard. A compromise would be to create a panel of doctors and epidemiologists to review the evidence.

**Persons Testifying:** (In support) Michael White, Washington State Council of Fire Fighters; and Bud Sizemore, Washington Council of Police and Sheriffs.

(Opposed) Jennifer Zeigler, Washington State Association of Counties; and Logan Bahr, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.