

# SENATE BILL REPORT

## SB 5477

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As of June 27, 2017

**Title:** An act relating to adding medical conditions to the presumption of occupational diseases and extending the presumption to certain publicly employed firefighters and investigators and law enforcement.

**Brief Description:** Adding medical conditions to the presumption of occupational diseases and extending the presumption to certain publicly employed firefighters and investigators and law enforcement officers.

**Sponsors:** Senators Zeiger, Keiser, Miloscia, Kuderer, Fortunato, Palumbo, Hasegawa, Rivers, Pearson, Ranker, Van De Wege and Conway.

**Brief History:**

**Committee Activity:** Commerce, Labor & Sports: 2/09/17.

**Brief Summary of Bill**

- Provides occupational disease presumptions for fire investigators.
- Adds strokes and additional types of cancers to the presumptions.
- Provides heart problems, strokes, and infectious diseases as occupational disease presumptions for certain law enforcement officers.

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### SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

**Staff:** Susan Jones (786-7404)

**Background:** In the case of certain firefighters, there is a prima facie presumption that the following are occupational diseases under workers' compensation:

- respiratory disease;
- any heart problems, 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;
- cancer; and
- infectious diseases.

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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.*

For purposes of occupational disease presumptions, firefighter includes:

- any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for firefighter, and who is actively employed as such;
- anyone who is actively employed as a full time firefighter where the fire department does not have a civil service examination; and
- supervisory firefighter personnel.

It also includes 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 50 firefighters.

This presumption of occupational disease may be rebutted by a preponderance of the evidence, which may include the use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities. The presumptions are extended following termination of service for a period of 3 calendar months for each year of requisite service, but not extending more than 60 months.

The presumption only applies 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 only applies to prostate cancer diagnosed prior to the age of 50, primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple myeloma, testicular cancer, and kidney cancer.

Generally, 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. The Department of Labor & Industries (L&I), using existing medical research, is required to define in rule the extent of tobacco use exclusion. The presumption never applies to current smokers with heart or lung conditions. The following shows the situations provided in L&I's rule where a presumption shall or shall not apply for firefighters due to tobacco use:

Medical condition	Presumptions shall not apply	Presumption shall apply
Heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substance	Current smoker	Firefighters that never smoked tobacco
	Former smoker who last smoked less than two years prior to the cardiac event	Former smoker who last smoked two years or more prior to the cardiac event
Asthma	Current smoker	Firefighters that never smoked tobacco
	Former smoker who last smoked less than five years before date of manifestation of the disease	Former smoker who last smoked five years or more before date of manifestation of the disease

COPD/emphysema/chronic bronchitis	Current smoker	Firefighters that never smoked tobacco
	Former smoker who last smoked less than fifteen years before date of manifestation of the disease	Former smoker who last smoked fifteen years or more before date of manifestation of the disease
Lung cancer	Current smoker	Firefighters that never smoked
	Former smoker who last smoked less than fifteen years before date of manifestation of the disease	Former smoker who last smoked fifteen years or more before date of manifestation of the disease

The infectious disease presumption is 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.

When a determination involving the presumption is appealed to the Board of Industrial Insurance Appeals (BIIA) and the final decision allows the claim for benefits, the BIIA must order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter by the opposing party. When a determination involving the presumption is appealed to any court and the final decision allows the claim for benefits, the court must order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter by the opposing party. When reasonable costs of the appeal must be paid by L&I in a state fund case, the costs shall be paid from the accident fund and charged to the costs of the claim.

**Summary of Bill:** The same occupational disease presumptions for firefighters are applicable to fire investigators. For purposes of the presumptions, "firefighter" is expanded to include any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician.

Strokes are added to the presumptions. Mesothelioma, adenocarcinoma, stomach cancer, esophageal cancer, buccal cancer, pharynx cancer, nonmelanoma skin cancer, and breast cancer are added as types of presumptive cancers.

For certain law enforcement officers who are covered under workers' compensation, the prima facie presumptive occupational diseases are:

- any heart problems or stroke, experienced within 72 hours of exposure to smoke, fumes, or toxic substances, or experienced within 24 hours of strenuous physical exertion in the line of duty; and
- infectious diseases.

A law enforcement officer includes any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws generally, with the following qualifications:

- deputy sheriffs who have successfully completed a civil service examination for deputy sheriff or the equivalent position, and those persons serving in certain unclassified positions, except a private secretary;
- full time commissioned law enforcement personnel in the police department created or designated by city charter provision or by ordinance enacted by the legislative body of the city; and
- a person employed on or after January 1, 1993, as a public safety officer or director of public safety, with job duties substantially involving only either police or fire duties, or both, and no other duties in a city or town with a population of less than 10,000, and except those receiving a retirement allowance as of May 12, 1993.

**Appropriation:** None.

**Fiscal Note:** Requested on January 27, 2017.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This is a long-standing, running issue. The first firefighter occupational presumption bill was sponsored by Senator Keiser more than ten years ago. The issue of occupational exposure to chemicals and fumes continues to need to be dealt with.

Firefighters are exposed to a wide range of known and suspected carcinogens and they deal with it on a day-to-day basis. The equipment is not vapor proof. They wear their air regulated equipment when they go into fires. They go into superheated events and their pores open up to toxic chemicals which land on their skin. The equipment is not successful in keeping it out. Past legislation has passed on a bi-partisan basis. The bill addresses some of the underrepresented populations, including EMTs, fire investigators, and women. It is harder to get data on these smaller populations but they are exposed to the same chemicals and situations. There are some preliminary studies, but they don't conclusively say female fire fighters suffer more breast cancer than the general population. Indicators are that breast cancer is increased so we included breast cancer. Sample size for the study on female fire fighters getting breast cancer is small, but there are sideboards in the bill. Ultimately, this is about protecting those who protect us.

Law enforcement officers are required to instantaneously engage in life or death actions that require strenuous physical exertion that may last only a few moments or may be extended events. The existence of studies on these diseases occurring in law enforcement populations is limited. Studies for firefighters directly correlates to the nature of law enforcement. The extension of the infectious disease presumption is critical due to law enforcement's regular contact with the public.

CON: Generally we do not quickly support these presumptions because it is a departure from the general rule in workers compensation that the worker bears the burden of showing the cause is job-related. Science hasn't shown a link to them. There is a concern about the fiscal impact to local governments. If these presumptions are made, it is unclear what is offsetting revenue or cost control. Workers compensation premiums are up and cities are concerned about cost increases. Cities do want first responders to be covered if they have a work-related injury.

**Persons Testifying:** PRO: Senator Keiser (on Primary Sponsor's behalf), Michael White, Washington State Council of Fire Fighters; Bud Sizemore, Washington Council of Police & Sheriffs.

CON: Kris Tefft, Washington Self Insurers Association; Candice Bock, Association of Washington Cities; Josh Weiss, Washington State Association of Counties.

**Persons Signed In To Testify But Not Testifying:** No one.