

SENATE BILL REPORT

ESB 6213

As Passed Senate, February 13, 2018

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: Senators Ranker, Conway, Hobbs, Keiser, Van De Wege, Palumbo, Hasegawa, Saldaña, Hunt, Walsh, Kuderer, Wellman and Fortunato.

Brief History:

Committee Activity: Labor & Commerce: 1/15/18, 1/17/18, 1/24/18 [DP, w/oRec].

Floor Activity:

Passed Senate: 2/13/18, 46-1.

Brief Summary of Engrossed Bill

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

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Keiser, Chair; Hasegawa, Vice Chair; Conway, Kuderer and Saldaña.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, King and Wilson.

Staff: Susan Jones (786-7404)

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.

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.

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 three 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 72-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 15 years before date of manifestation of the disease	former smoker who last smoked 15 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 15 years before date of manifestation of the disease	former smoker who last smoked 15 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 Engrossed Bill: The same occupational disease presumptions for firefighters are applicable to fire investigators. For purposes of the presumptions, "firefighter" is expanded to include a full-time, fully compensated basis emergency medical technician (firefighter EMT).

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

If an individual became a firefighter or fire investigator on or after the effective date, the presumption applies if the employer did not provide a qualifying medical examination upon the individual becoming a firefighter or fire investigator. For an individual who became a firefighter or fire investigator before the effective date of this section, the presumption also applies if the employer did not provide a qualifying medical examination upon the individual becoming a firefighter or fire investigator and the employer provides a qualifying medical exam on or before July 1, 2019; individual did not receive a qualifying medical examination before July 1, 2019; or is diagnosed with a listed cancer at the time of the qualifying medical exam.

For certain law enforcement officers, described below, who are covered under workers' compensation, there is a prima facie rebuttable presumptive occupational diseases for:

- any heart problems, 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: Available.

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: The bill expands the presumptions to EMTs and law enforcement, recognizing that these people risk their lives not just when they are running into the fire, but years later when they are dealing with cancer from exposure. Female firefighters are five times more likely to contract cervical cancer. There is a long list

showing how many more times firefighters contract cancers. There are a number toxic chemicals coming from fires.

Washington State has been a leader in presumptive diseases. We believe we have additional evidence from peer reviewed research to back that firefighters and EMTs are more likely to contract these diseases. The presumption is about the burden of proof. These are unique illnesses from unique exposures. Therefore, it is reasonable to shift the burden from the worker to the employer.

This bill impacts law enforcement in three categories: heart, stroke, and infectious disease. Currently, 28 states have some form of law enforcement disease presumption. This bill matches some of the firefighter provisions.

CON: We deeply care about county employees. It is tough to afford continued new input into the public safety system. There are 13 counties that do not have full time law enforcement coverage. We have been trying to get additional resources from the Legislature. This is a new input into the cost of the criminal justice system. When there is a new cost, something else has to go away. These are heavy policy choices.

Persons Testifying: PRO: Senator Kevin Ranker, Prime Sponsor; Michael White, Washington Council of Firefighters; Bud Sizemore, Washington Council of Police and Sheriffs.

CON: Eric Johnson, Washington State Association of Counties; Logan Bahr, Association of Washington Cities; Chris Tefft, Washington Self Insurers' Association; Bob Battles, Association of Washington Business.

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