

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 1833**

60th Legislature  
2007 Regular Session

Passed by the House April 18, 2007  
Yeas 91 Nays 6

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**Speaker of the House of Representatives**

Passed by the Senate April 10, 2007  
Yeas 46 Nays 2

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1833** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE HOUSE BILL 1833**

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AS AMENDED BY THE SENATE

Passed Legislature - 2007 Regular Session

**State of Washington                      60th Legislature                      2007 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Pettigrew, Seaquist, Upthegrove, Morrell, Kessler, P. Sullivan, Williams, Kenney, Haler, Ericksen, Moeller, Sells, Dunn, Rolfes, Lantz, McCoy, Lovick, Jarrett, Strow, Hurst, Springer, Campbell, Goodman, Simpson, Pearson, Curtis, Rodne, Schual-Berke, McDermott, Ormsby and Chase)

READ FIRST TIME 2/28/07.

1            AN ACT Relating to occupational diseases affecting firefighters;  
2 amending RCW 51.32.185, 51.52.120, and 51.52.130; and creating a new  
3 section.

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

5            NEW SECTION.    **Sec. 1.** The legislature finds and declares:

6            (1) By reason of their employment, firefighters are required to  
7 work in the midst of, and are subject to, smoke, fumes, infectious  
8 diseases, and toxic and hazardous substances;

9            (2) Firefighters enter uncontrolled environments to save lives,  
10 provide emergency medical services, and reduce property damage and are  
11 frequently not aware of the potential toxic and carcinogenic  
12 substances, and infectious diseases that they may be exposed to;

13            (3) Harmful effects caused by firefighters' exposure to hazardous  
14 substances may develop very slowly, manifesting themselves years after  
15 exposure;

16            (4) Firefighters frequently and at unpredictable intervals perform  
17 job duties under strenuous physical conditions unique to their  
18 employment when engaged in firefighting activities; and

1 (5) Firefighting duties exacerbate and increase the incidence of  
2 cardiovascular disease in firefighters.

3 **Sec. 2.** RCW 51.32.185 and 2002 c 337 s 2 are each amended to read  
4 as follows:

5 (1) In the case of fire fighters as defined in RCW 41.26.030(4)  
6 (a), (b), and (c) who are covered under Title 51 RCW and fire fighters,  
7 including supervisors, employed on a full-time, fully compensated basis  
8 as a fire fighter of a private sector employer's fire department that  
9 includes over fifty such fire fighters, there shall exist a prima facie  
10 presumption that: (a) Respiratory disease; (b) (~~heart problems that~~  
11 ~~are experienced within seventy two hours of exposure to smoke, fumes,~~  
12 ~~or toxic substances)) any heart problems, experienced within seventy-  
13 two hours of exposure to smoke, fumes, or toxic substances, or  
14 experienced within twenty-four hours of strenuous physical exertion due  
15 to firefighting activities; (c) cancer; and (d) infectious diseases are  
16 occupational diseases under RCW 51.08.140. This presumption of  
17 occupational disease may be rebutted by a preponderance of the  
18 evidence. Such evidence may include, but is not limited to, use of  
19 tobacco products, physical fitness and weight, lifestyle, hereditary  
20 factors, and exposure from other employment or nonemployment  
21 activities.~~

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

27 (3) The presumption established in subsection (1)(c) of this  
28 section shall only apply to any active or former fire fighter who has  
29 cancer that develops or manifests itself after the fire fighter has  
30 served at least ten years and who was given a qualifying medical  
31 examination upon becoming a fire fighter that showed no evidence of  
32 cancer. The presumption within subsection (1)(c) of this section shall  
33 only apply to prostate cancer diagnosed prior to the age of fifty,  
34 primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's  
35 lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple  
36 myeloma, testicular cancer, and kidney cancer.

1 (4) The presumption established in subsection (1)(d) of this  
2 section shall be extended to any fire fighter who has contracted any of  
3 the following infectious diseases: Human immunodeficiency  
4 virus/acquired immunodeficiency syndrome, all strains of hepatitis,  
5 meningococcal meningitis, or mycobacterium tuberculosis.

6 (5) Beginning July 1, 2003, this section does not apply to a fire  
7 fighter who develops a heart or lung condition and who is a regular  
8 user of tobacco products or who has a history of tobacco use. The  
9 department, using existing medical research, shall define in rule the  
10 extent of tobacco use that shall exclude a fire fighter from the  
11 provisions of this section.

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

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

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

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

30 **Sec. 3.** RCW 51.52.120 and 2003 c 53 s 285 are each amended to read  
31 as follows:

32 (1) It shall be unlawful for an attorney engaged in the  
33 representation of any worker or beneficiary to charge for services in  
34 the department any fee in excess of a reasonable fee, of not more than  
35 thirty percent of the increase in the award secured by the attorney's  
36 services. Such reasonable fee shall be fixed by the director or the  
37 director's designee for services performed by an attorney for such

1 worker or beneficiary, if written application therefor is made by the  
2 attorney, worker, or beneficiary within one year from the date the  
3 final decision and order of the department is communicated to the party  
4 making the application.

5 (2) If, on appeal to the board, the order, decision, or award of  
6 the department is reversed or modified and additional relief is granted  
7 to a worker or beneficiary, or in cases where a party other than the  
8 worker or beneficiary is the appealing party and the worker's or  
9 beneficiary's right to relief is sustained by the board, the board  
10 shall fix a reasonable fee for the services of his or her attorney in  
11 proceedings before the board if written application therefor is made by  
12 the attorney, worker, or beneficiary within one year from the date the  
13 final decision and order of the board is communicated to the party  
14 making the application. In fixing the amount of such attorney's fee,  
15 the board shall take into consideration the fee allowed, if any, by the  
16 director, for services before the department, and the board may review  
17 the fee fixed by the director. Any attorney's fee set by the  
18 department or the board may be reviewed by the superior court upon  
19 application of such attorney, worker, or beneficiary. The department  
20 or self-insured employer, as the case may be, shall be served a copy of  
21 the application and shall be entitled to appear and take part in the  
22 proceedings. Where the board, pursuant to this section, fixes the  
23 attorney's fee, it shall be unlawful for an attorney to charge or  
24 receive any fee for services before the board in excess of that fee  
25 fixed by the board.

26 (3) In an appeal to the board involving the presumption established  
27 under RCW 51.32.185, the attorney's fee shall be payable as set forth  
28 under RCW 51.32.185.

29 (4) Any person who violates this section is guilty of a  
30 misdemeanor.

31 **Sec. 4.** RCW 51.52.130 and 1993 c 122 s 1 are each amended to read  
32 as follows:

33 (1) If, on appeal to the superior or appellate court from the  
34 decision and order of the board, said decision and order is reversed or  
35 modified and additional relief is granted to a worker or beneficiary,  
36 or in cases where a party other than the worker or beneficiary is the  
37 appealing party and the worker's or beneficiary's right to relief is

1 sustained, a reasonable fee for the services of the worker's or  
2 beneficiary's attorney shall be fixed by the court. In fixing the fee  
3 the court shall take into consideration the fee or fees, if any, fixed  
4 by the director and the board for such attorney's services before the  
5 department and the board. If the court finds that the fee fixed by the  
6 director or by the board is inadequate for services performed before  
7 the department or board, or if the director or the board has fixed no  
8 fee for such services, then the court shall fix a fee for the  
9 attorney's services before the department, or the board, as the case  
10 may be, in addition to the fee fixed for the services in the court. If  
11 in a worker or beneficiary appeal the decision and order of the board  
12 is reversed or modified and if the accident fund or medical aid fund is  
13 affected by the litigation, or if in an appeal by the department or  
14 employer the worker or beneficiary's right to relief is sustained, or  
15 in an appeal by a worker involving a state fund employer with twenty-  
16 five employees or less, in which the department does not appear and  
17 defend, and the board order in favor of the employer is sustained, the  
18 attorney's fee fixed by the court, for services before the court only,  
19 and the fees of medical and other witnesses and the costs shall be  
20 payable out of the administrative fund of the department. In the case  
21 of self-insured employers, the attorney fees fixed by the court, for  
22 services before the court only, and the fees of medical and other  
23 witnesses and the costs shall be payable directly by the self-insured  
24 employer.

25 (2) In an appeal to the superior or appellate court involving the  
26 presumption established under RCW 51.32.185, the attorney's fee shall  
27 be payable as set forth under RCW 51.32.185.

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