

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1833

Chapter 490, Laws of 2007

(partial veto)

60th Legislature
2007 Regular Session

FIREFIGHTERS--OCCUPATIONAL DISEASES

EFFECTIVE DATE: 07/22/07

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

FRANK CHOPP

Speaker of the House of Representatives

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

BRAD OWEN

President of the Senate

Approved May 15, 2007, 2:27 p.m., with
the exception of section 1 which is
vetoed.

CHRISTINE GREGOIRE

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.

RICHARD NAFZIGER

Chief Clerk

FILED

May 16, 2007

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1833

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.**

**Sec. 1 was vetoed. See message at end of chapter.*

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.

Passed by the House April 18, 2007.

Passed by the Senate April 10, 2007.

Approved by the Governor May 15, 2007, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 16, 2007.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 1, Engrossed
Substitute House Bill 1833 entitled:

"AN ACT Relating to occupational diseases affecting firefighters."
Engrossed Substitute House Bill 1833 creates a rebuttable presumption
that certain heart problems, cancer and infectious diseases are
occupational diseases for firefighters that are covered by industrial
insurance. I strongly support this law. The legislature's statement
of intent in Section 1, however, makes broad generalizations about
the incidence of cardiovascular disease. In an effort to avoid the
unintended interpretations of broad generalizations, Section 2 of the

bill has been carefully crafted to define specific "firefighting activities" that are related to occupational diseases.

For these reasons, I have vetoed Section 1 Engrossed Substitute House Bill 1833.

With the exception of Section 1, Engrossed Substitute House Bill 1833 is approved."