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**HOUSE BILL 2806**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Kuderer, Gregerson, Stambaugh, Griffey, Hayes, Ormsby, Van De Wege, Sawyer, Moeller, Zeiger, Riccelli, Stokesbary, Tarleton, Fitzgibbon, Reykdal, Morris, Pollet, Goodman, and Bergquist

AN ACT Relating to the presumption of occupational diseases for purposes of industrial insurance; amending RCW 51.32.185; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) The number of firefighters stricken with cancer is rising rapidly. This significant increase in occurrences among firefighters increases the urgency for support of these individuals as they suffer career and life-ending illness that is connected to their occupation;

(b) Scientific studies continue to demonstrate that firefighters are more likely than the general public to become afflicted with various cancers as a direct result of workplace exposures suffered while combating fires;

(c) Recent scientific studies provide evidence that cancers not currently covered by Washington's prima facie presumptions should be covered since firefighters are:

(i) 2.29 times more likely to contract mesothelioma and two times more likely to die from mesothelioma;

(ii) 1.58 times more likely to contract stomach cancer and 1.1 times more likely to die from stomach cancer;

(iii) 1.32 times more likely to contract esophageal cancer and 1.39 times more likely to die from esophageal cancer;

(iv) 1.39 times more likely to contract buccal and pharynx cancer and 1.4 times more likely to die from buccal and pharynx cancer;

(v) 1.52 times more likely to contract nonmelanoma skin cancer;

(vi) 1.9 times more likely to contract adenocarcinoma; and

(vii) 1.26 times more likely to contract breast cancer and 1.39 times more likely to die from breast cancer;

(d) Harmful effects caused by exposure to hazardous substances can develop slowly, manifesting themselves years after exposure;

(e) Publicly employed emergency medical technicians (EMTs) working side-by-side with firefighters routinely suffer exposures to products of combustion by responding to fire scenes and providing care to firefighters and victims of fires. Further, these EMTs are at a greater risk than firefighters for exposure to infectious diseases;

(f) Publicly employed fire investigators regularly respond to and investigate fires, spending significantly more time working within fire scenes than the typical firefighter. These prolonged exposures to the same hazardous environments that are the proven cause for firefighters to experience higher incidence of cancers demonstrate that fire investigators are at a greater risk of these same occupational diseases;

(g) Women continue to be underrepresented in the fire service, which makes it difficult to obtain definitive studies of the effect that repeated toxic workplace exposures may have on breast tissue and the reproductive organs of female firefighters. A small scale study is available that indicates significantly higher rates of breast cancer, specifically 1.45 times more likely to contract breast cancer and 1.46 times more likely to die from breast cancer;

(h) Heart problems and stroke continue to be the primary killer of firefighters; and

(i) Firefighters, regardless of gender, who receive diagnoses of cancer due to occupational exposures they have suffered while protecting Washington's communities and citizens should not be faced with proving the cancer is related to a workplace exposure when science has already demonstrated that it is.

(2) The legislature therefore intends to expand the list of cancers contracted by firefighters that are presumed to be occupationally related for industrial insurance purposes.

(3) The legislature further intends that coverage for diseases presumed to be occupationally related should be extended to EMTs meeting the definition of firefighter contained in RCW 41.26.030(16)(h) and publicly employed fire investigators.

**Sec.**  RCW 51.32.185 and 2007 c 490 s 2 are each amended to read as follows:

(1) In the case of firefighters as defined in RCW 41.26.030((~~(4)~~)) (16) (a), (b), ((~~and~~)) (c), and (h) who are covered under Title 51 RCW and 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 fifty such firefighters, and public employee fire investigators, there shall exist a prima facie presumption that: (a) Respiratory disease; (b) any heart problems or stroke, experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion due to firefighting activities; (c) cancer; and (d) infectious diseases are occupational diseases under RCW 51.08.140. This presumption of occupational disease may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

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

(3) The presumption established in subsection (1)(c) of this section shall only apply to any active or former firefighter or fire investigator who has cancer that develops or manifests itself after the firefighter or fire investigator has served at least ten years and who was given a qualifying medical examination upon becoming a firefighter or fire investigator that showed no evidence of cancer. The presumption within subsection (1)(c) of this section shall only apply to prostate cancer diagnosed prior to the age of fifty, primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple myeloma, testicular cancer, ((~~and~~)) kidney cancer, mesothelioma, adenocarcinoma, stomach cancer, esophageal cancer, buccal cancer, pharynx cancer, nonmelanoma skin cancer, and breast cancer.

(4) The presumption established in subsection (1)(d) of this section shall be extended to any firefighter or fire investigator who has contracted any of the following infectious diseases: Human immunodeficiency virus/acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, ((~~or~~)) mycobacterium tuberculosis, or methicillin-resistant staphylococcus aureus.

(5) Beginning July 1, 2003, this section does not apply to a firefighter or fire investigator 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, using existing medical research, shall define in rule the extent of tobacco use that shall exclude a firefighter or fire investigator from the provisions of this section.

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

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

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

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

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