H-3521.3

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**HOUSE BILL 2633**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Doglio, Sawyer, Griffey, Irwin, Reeves, Fitzgibbon, Stambaugh, Stonier, Stokesbary, Gregerson, Appleton, Valdez, Ortiz-Self, Peterson, Lytton, Wylie, Macri, Fey, Tarleton, Hudgins, Ryu, McBride, Morris, Pollet, Sells, Slatter, Kloba, Bergquist, Goodman, McDonald, Santos, Frame, and Stanford

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; and amending RCW 51.32.185.

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

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

(1)(a) 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)~~)) (i) Respiratory disease; ((~~(b)~~)) (ii) any heart problems or strokes, 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)~~)) (iii) cancer; and ((~~(d)~~)) (iv) infectious diseases are occupational diseases under RCW 51.08.140.

(b) In the case of law enforcement officers as defined in RCW 41.26.030(18) (b), (c), and (e) who are covered under Title 51 RCW, there shall exist a prima facie presumption that: (i) Any heart problems or strokes, experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion in the line of duty; and (ii) infectious diseases are occupational diseases under RCW 51.08.140.

(c) This presumption of occupational disease established in (a) and (b) of this subsection 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)(a) The presumption established in subsection (1)((~~(c)~~)) (a)(iii) of this section shall only apply to any active or former firefighter or fire investigator who:

(i) Has cancer that develops or manifests itself after the firefighter or fire investigator has served at least ten years; and ((~~who~~))

(ii)(A) Subject to (a)(ii)(B) of this subsection, 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~~))

(B) If a firefighter as defined in RCW 41.26.030(16)(h) who became a firefighter before July 1, 2018, or fire investigator who became a fire investigator before July 1, 2018, did not receive a qualifying medical examination upon becoming a firefighter or fire investigator, the firefighter or fire investigator satisfies the qualifying medical examination requirement if the firefighter or fire investigator received a qualifying medical examination on or before July 1, 2019. In addition, if the firefighter or fire investigator is diagnosed with a cancer listed in (b) of this subsection at the time of the qualifying medical examination and otherwise meets the requirements of this section, the presumption established in subsection (1)(a)(iii) of this section applies.

(b) The presumption established in subsection (1)(a)(iii) of this section shall only apply to the following cancers: 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, breast cancer, and cervical cancer.

(4) The presumption established in subsection (1)((~~(d)~~)) (a)(iv) and (b)(ii) of this section shall be extended to any firefighter, fire investigator, or law enforcement officer 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, fire investigator, or law enforcement officer 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, fire investigator, or law enforcement officer 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, fire investigator, or law enforcement officer 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, fire investigator, or law enforcement officer 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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