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ENGROSSED SENATE BILL 6213

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State of Washington

65th Legislature

2018 Regular Session

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

Read first time 01/10/18. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to the presumption of occupational disease for  
2 purposes of workers' compensation by adding medical conditions to the  
3 presumption and extending the presumption to certain publicly  
4 employed firefighters and investigators and law enforcement; and  
5 amending RCW 51.32.185.

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

7 **Sec. 1.** RCW 51.32.185 and 2007 c 490 s 2 are each amended to  
8 read as follows:

9 (1)(a) In the case of firefighters as defined in RCW  
10 41.26.030(~~(+4)~~) (16) (a), (b), (~~and~~) (c), and (h) who are covered  
11 under Title 51 RCW and firefighters, including supervisors, employed  
12 on a full-time, fully compensated basis as a firefighter of a private  
13 sector employer's fire department that includes over fifty such  
14 firefighters, and public employee fire investigators, there shall  
15 exist a prima facie presumption that: (~~(+a)~~) (i) Respiratory  
16 disease; (~~(+b)~~) (ii) any heart problems, experienced within seventy-  
17 two hours of exposure to smoke, fumes, or toxic substances, or  
18 experienced within twenty-four hours of strenuous physical exertion  
19 due to firefighting activities; (~~(+e)~~) (iii) cancer; and (~~(+d)~~)  
20 (iv) infectious diseases are occupational diseases under RCW  
21 51.08.140.

1 (b) In the case of law enforcement officers as defined in RCW  
2 41.26.030(18) (b), (c), and (e) who are covered under Title 51 RCW,  
3 there shall exist a prima facie presumption that: (i) Any heart  
4 problems, experienced within seventy-two hours of exposure to smoke,  
5 fumes, or toxic substances, or experienced within twenty-four hours  
6 of strenuous physical exertion in the line of duty; and (ii)  
7 infectious diseases are occupational diseases under RCW 51.08.140.

8 (c) This presumption of occupational disease established in (a)  
9 and (b) of this subsection may be rebutted by a preponderance of the  
10 evidence. Such evidence may include, but is not limited to, use of  
11 tobacco products, physical fitness and weight, lifestyle, hereditary  
12 factors, and exposure from other employment or nonemployment  
13 activities.

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

19 (3)~~(a)~~ The presumption established in subsection (1)~~((e))~~  
20 (a)(iii) of this section shall only apply to any active or former  
21 firefighter or fire investigator who:

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

25 (ii)(A) Was given a qualifying medical examination upon becoming  
26 a firefighter or fire investigator that showed no evidence of cancer;  
27 or

28 (B)(I) For a firefighter or fire investigator who became a  
29 firefighter or fire investigator on or after the effective date of  
30 this section, the employer did not provide a qualifying medical  
31 examination upon becoming a firefighter or fire investigator; or

32 (II) For a firefighter or fire investigator who became a  
33 firefighter or fire investigator before the effective date of this  
34 section, the employer did not provide a qualifying medical  
35 examination upon becoming a firefighter or fire investigator and the  
36 employer provides a qualifying medical examination on or before July  
37 1, 2019. If a firefighter or fire investigator described in this  
38 subsection (3)(a)(ii)(B)(II) did not receive a qualifying medical  
39 examination before July 1, 2019, or is diagnosed with a cancer listed  
40 in (b) of this subsection at the time of the qualifying medical

1 examination under this subsection (3)(a)(ii)(B)(II) and otherwise  
2 meets the requirements of this section, the presumption established  
3 in subsection (1)(a)(iii) of this section applies. ((The presumption  
4 within subsection (1)(c) of this section shall only apply to))

5 (b) The presumption established in subsection (1)(a)(iii) of this  
6 section shall only apply to the following cancers: Prostate cancer  
7 diagnosed prior to the age of fifty, primary brain cancer, malignant  
8 melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter  
9 cancer, colorectal cancer, multiple myeloma, testicular cancer,  
10 ((and)) kidney cancer, mesothelioma, adenocarcinoma, stomach cancer,  
11 esophageal cancer, buccal cancer, pharynx cancer, nonmelanoma skin  
12 cancer, breast cancer, and cervical cancer.

13 (4) The presumption established in subsection (1)((+d)) (a)(iv)  
14 and (b)(ii) of this section shall be extended to any firefighter,  
15 fire investigator, or law enforcement officer who has contracted any  
16 of the following infectious diseases: Human immunodeficiency virus/  
17 acquired immunodeficiency syndrome, all strains of hepatitis,  
18 meningococcal meningitis, ((or)) mycobacterium tuberculosis, or  
19 methicillin-resistant staphylococcus aureus.

20 (5) Beginning July 1, 2003, this section does not apply to a  
21 firefighter, fire investigator, or law enforcement officer who  
22 develops a heart or lung condition and who is a regular user of  
23 tobacco products or who has a history of tobacco use. The department,  
24 using existing medical research, shall define in rule the extent of  
25 tobacco use that shall exclude a firefighter, fire investigator, or  
26 law enforcement officer from the provisions of this section.

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

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

39 (b) When a determination involving the presumption established in  
40 this section is appealed to any court and the final decision allows

1 the claim for benefits, the court shall order that all reasonable  
2 costs of the appeal, including attorney fees and witness fees, be  
3 paid to the firefighter, fire investigator, or law enforcement  
4 officer or his or her beneficiary by the opposing party.

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

8 (8)(a) By July 1, 2018, the department of labor and industries  
9 must convene a work group to discuss policy and procedural options  
10 for amending the first responder occupations and occupational  
11 diseases included in RCW 51.32.185. The work group must consider the  
12 following list of topics including, but not limited to:

13 (i) The process for adding new first responder occupations and  
14 occupational diseases to RCW 51.32.185; and

15 (ii) The establishment of procedures to gather, evaluate, and  
16 accept or reject data necessary to inform stakeholder recommendations  
17 and policymaker decisions for amending the first responder  
18 occupations and occupational diseases covered in RCW 51.32.185.

19 (b) The work group must include representatives of state fund  
20 employers, self-insured employers, and worker advocates along with  
21 public health professionals in the disciplines of occupational  
22 medicine, epidemiology, and industrial hygiene.

23 (c) By December 1, 2019, the work group must provide a report to  
24 the appropriate committees of the legislature. The report must  
25 include a description of the work group deliberations and any  
26 consensus recommendations for legislation or rule making.

27 (d) The work group expires upon completion of the report to the  
28 legislature.

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