

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 595
Economic Matters

(Delegate Rogers, *et al.*)

Workers' Compensation - Medical Presumptions

This bill establishes additional occupational disease presumptions for specified public safety employees (generally firefighters) who contract bladder cancer or kidney or renal cell cancer that is caused by contact with a toxic substance encountered in the line of duty.

Fiscal Summary

State Effect: State expenditures (all funds) may increase, likely minimally, beginning in FY 2020 due to the bill's expansion of occupational disease presumptions. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures may increase beginning in FY 2020, potentially significantly, to the extent that the bill results in additional workers' compensation benefits payments on behalf of the State and local governments. Revenues increase to the extent that premiums are raised due to claims experience under the expanded occupational disease presumptions.

Local Effect: Local government expenditures may increase, potentially significantly, beginning in FY 2020 due to the bill's expansion of occupational disease presumptions. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill's occupational disease presumptions apply only to (1) volunteer and career firefighters; (2) firefighting instructors; (3) rescue squad members; (4) advanced

life support unit members; and (5) fire marshals employed by an airport authority, a county, a fire control district, a municipality, or the State. Further, the presumptions only apply when the covered employee or volunteer meets other eligibility criteria established under current law for the existing cancer or leukemia disability presumptions.

Current Law: Workers' compensation law establishes a presumption of compensable occupational disease for certain public safety employees who are exposed to unusual hazards in the course of their employment. It is assumed that these injuries or diseases are due to the employees' work and, therefore, require no *additional* evidence in the filing of a claim for workers' compensation. As shown below, generally presumptions are based on particular occupations and their associated health risks.

Type of Personnel/Occupation	Type of Disease
Volunteer and career firefighters, firefighting instructors, rescue squad members, and advanced life support unit members; fire marshals employed by an airport authority, a county, a fire control district, a municipality, or the State	Heart disease, hypertension, or lung disease that results in partial or total disability or death Leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin's lymphoma, brain, testicular, or breast cancer under specified conditions
Deputy sheriffs, police officers, and correctional officers of specified counties	Heart disease or hypertension that results in partial or total disability or death
Department of Natural Resources paid law enforcement employees and park police officers of the Maryland-National Capital Park and Planning Commission	Lyme disease under specified conditions

For one of the above cancer or leukemia disability presumptions to apply, an employee or volunteer must:

- have a cancer or leukemia disability that is caused by contact with a toxic substance that the individual has encountered in the line of duty;
- have completed at least 10 years of service as a firefighter, firefighting instructor, rescue squad member, or advanced life support unit member (or a combination of those jobs) in the department where the individual currently is employed or serves;
- be unable to perform the normal duties of his or her position because of the cancer or leukemia disability; and
- for specified volunteer positions, have met a suitable standard of physical examination before becoming a volunteer.

Under these circumstances, a covered employee is entitled to workers' compensation benefits in addition to any benefits that the individual is entitled to receive under the retirement system. The weekly total of workers' compensation and retirement benefits may not exceed the weekly salary paid to the individual.

Although statute is silent on the issue, occupational disease presumptions have long been considered rebuttable presumptions. Two court decisions address the use of "is presumed" in reference to occupational diseases in current law, specifying that the term "without contrary qualification, should be read to be a presumption, although rebuttable, of fact." (See *Board of County Commissioners v. Colgan*, 274 Md. 193, 334 A.2d 89 (1975); and *Montgomery County Fire Board v. Fisher*, 53 Md. App. 435, 454 A.2d 394, aff'd, 298 Md. 245, 468 A.2d 625 (1983).) However, the Court of Special Appeals has stated that, "after the last injurious exposure to a hazard and the conclusion of employment the nexus between an occupational disease and an occupation becomes increasingly remote." (See *Montgomery County, Maryland v. Pirrone*, 109 Md. App. 201, 674 A.2d 98 (1996).)

Background: The U.S. Centers for Disease Control and Prevention (CDC) defines [bladder cancer](#) as any cancer that starts in the bladder. CDC estimates that each year in the United States, about 55,000 men and 17,000 women get bladder cancer and about 11,000 men and 5,000 women die from the disease. The most important risk factor for bladder cancer is smoking, but other risk factors include drinking water contaminated with arsenic and being exposed to workplace chemicals used in processing paint, dye, metal, and petroleum products.

CDC defines [kidney and renal pelvis cancer \(which is also called renal cell cancer\)](#) as any cancer that starts in the kidneys. CDC estimates that each year in the United States, about 37,000 men and 21,000 women get kidney cancer and about 9,000 men and 4,000 women die from the disease. The most important risk factor for kidney cancer is smoking, but other

risk factors include being obese, taking certain pain medicines for an extended period of time, or being exposed to a chemical called trichloroethylene, which is used to remove grease from metal.

A study published in the [Journal of Environmental and Public Health in 2013](#) evaluated the association of bladder cancer risk and fire scene investigation among male criminal investigators with the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives. The study found that these individuals were at a greater risk of developing bladder cancer, likely due to exposure to dangerous chemicals during fire scene investigations.

In July 2016, the National Institute for Occupational Safety and Health (NIOSH) released a [fact sheet](#) summarizing findings from a multi-year study on the incidence of cancer among firefighters; the study generally found that firefighters had a greater rate of cancer diagnoses and cancer-related deaths compared to the general population. The most common types of cancer among firefighters were digestive, oral, respiratory, and urinary.

State/Chesapeake/Local Expenditures: Any increase in expenditures depends on how many affected public safety employees qualify for the occupational disease presumptions in any given year and whether any of those employees would have received workers' compensation for bladder cancer or kidney or renal cell cancer absent the bill. DLS advises that a covered employee may still receive workers' compensation for those cancers under current law; the presumptions established under the bill ensure no additional evidence is required to qualify for benefits.

State Expenditures

State expenditures (all funds) may increase, likely minimally, beginning in fiscal 2020 due to the bill's expansion of the State's occupational disease presumptions. Some State employees, particularly those within the Office of the Fire Marshal and the Baltimore/Washington International Thurgood Marshall Airport Fire and Rescue Department (which employs 92 personnel who may be eligible under the bill), may be able to qualify for the occupational disease presumptions established by the bill. Even so, DLS advises that the number of State employees likely eligible for presumptions under the bill is relatively small; thus, any increase in State expenditures due to additional claims benefits is likely to be minimal.

Chesapeake Expenditures

As the administrator of workers' compensation claims for the State and the workers' compensation insurer for many local governments, Chesapeake anticipates more claims to be paid out due to the additional occupational disease presumptions beginning as early as fiscal 2020. *For illustrative purposes only*, Chesapeake advises that, over the

10-year period from 2009 through 2018, Chesapeake has incurred approximately \$24.7 million on about 580 occupational disease presumption cases for the State and for local governments it insures. About 60% of those cases were for local government public safety employees, but local government claims accounted for more than two-thirds of the claims payments. This amounts to an average of \$42,586 per case and \$2.47 million per year.

Local Expenditures

Local governments are disproportionately affected by the bill because counties and municipalities, most of which are self-insured, employ the majority of the public safety personnel who may be affected by the bill. Accordingly, local expenditures may increase beginning in fiscal 2020. DLS advises that, although the amount of any such increase in expenditures cannot be reliably estimated at this time, it could (given the high per claim cost for these types of cases) be significant.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles County; City of Havre de Grace; Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Workers' Compensation Commission; U.S. Centers for Disease Control and Prevention; National Institute for Occupational Safety and Health; *Journal of Environmental and Public Health*; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2019
mag/ljm

Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510