

HOUSE BILL 1314

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CF SB 681

By: **Delegates Jameson, Clagett, Haddaway–Riccio, Love, Minnick, and Schulz**

Introduced and read first time: February 8, 2013

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation – Medical Presumptions – Statute of Limitations on**
3 **Claims**

4 FOR the purpose of altering the date by which a medical expert is required to conduct
5 a certain study and report the findings of the study to the Department of
6 Legislative Services; delaying the date by which a claim filed for an
7 occupational disease may be based on alterations to a certain presumption;
8 delaying the date by which alterations to a certain presumption may be
9 construed to apply for a claim filed for an occupational disease; tolling the
10 statute of limitations for a covered employee for a certain period of time under
11 certain circumstances; and generally relating to occupational disease claims.

12 BY repealing and reenacting, without amendments,
13 Article – Labor and Employment
14 Section 9–503(c)
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2012 Supplement)
17 (As enacted by Chapter 445 of the Acts of the General Assembly of 2012)

18 BY repealing and reenacting, without amendments,
19 Article – Labor and Employment
20 Section 9–711
21 Annotated Code of Maryland
22 (2008 Replacement Volume and 2012 Supplement)

23 BY repealing and reenacting, with amendments,
24 Chapter 445 of the Acts of the General Assembly of 2012
25 Section 2, 4, 5, and 6

26 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Chapter 445 of the Acts of the General Assembly of 2012
2 Section 4

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article – Labor and Employment**

6 9–503.

7 (c) A paid firefighter, paid fire fighting instructor, or a sworn member of the
8 Office of the State Fire Marshal employed by an airport authority, a county, a fire
9 control district, a municipality, or the State or a volunteer firefighter, volunteer fire
10 fighting instructor, volunteer rescue squad member, or volunteer advanced life
11 support unit member who is a covered employee under § 9–234 of this title is
12 presumed to be suffering from an occupational disease that was suffered in the line of
13 duty and is compensable under this title if the individual:

14 (1) has leukemia or prostate, rectal, throat, multiple myeloma,
15 non–Hodgkin’s lymphoma, brain, testicular, or breast cancer that is caused by contact
16 with a toxic substance that the individual has encountered in the line of duty;

17 (2) has completed at least 10 years of service as a firefighter, fire
18 fighting instructor, rescue squad member, or advanced life support unit member or in
19 a combination of those jobs in the department where the individual currently is
20 employed or serves;

21 (3) is unable to perform the normal duties of a firefighter, fire fighting
22 instructor, rescue squad member, or advanced life support unit member in the
23 department where the individual currently is employed or serves because of the cancer
24 or leukemia disability; and

25 (4) in the case of a volunteer firefighter, volunteer fire fighting
26 instructor, volunteer rescue squad member, or volunteer advanced life support unit
27 member, has met a suitable standard of physical examination before becoming a
28 firefighter, fire fighting instructor, rescue squad member, or advanced life support unit
29 member.

30 9–711.

31 (a) (1) If a covered employee suffers a disablement or death as a result of
32 an occupational disease, the covered employee or the dependents of the covered
33 employee shall file a claim application form with the Commission within 2 years, or in
34 the case of pulmonary dust disease within 3 years, after the date:

35 (i) of disablement or death; or

1 (ii) when the covered employee or the dependents of the covered
2 employee first had actual knowledge that the disablement was caused by the
3 employment.

4 (2) (i) A claim application form filed under paragraph (1) of this
5 subsection shall include an authorization by the claimant for the release, to the
6 claimant's attorney, the claimant's or covered employee's employer, and the insurer of
7 the claimant's or covered employee's employer, or an agent of the claimant's attorney,
8 the claimant's or covered employee's employer, or the insurer of the claimant's or
9 covered employee's employer, of medical information that is relevant to:

10 1. the member of the body that was injured, as indicated
11 on the claim application form; and

12 2. the description of how the occupational disease
13 occurred, as indicated on the claim application form.

14 (ii) An authorization under subparagraph (i) of this paragraph:

15 1. includes the release of information relating to the
16 history, findings, office and patient charts, files, examination and progress notes, and
17 physical evidence;

18 2. is effective for 1 year from the date the claim is filed;
19 and

20 3. does not restrict the redisclosure of medical
21 information or written material relating to the authorization to a medical manager,
22 health care professional, or certified rehabilitation practitioner.

23 (b) Unless waived under subsection (c) of this section, failure to file a claim
24 in accordance with subsection (a) of this section bars a claim under this title.

25 (c) The defense of failure to file a claim in accordance with subsection (a) of
26 this section is waived if the employer or its insurer:

27 (1) fails to raise the defense of the failure to file the claim at a hearing
28 on the claim before the Commission makes any award or decision;

29 (2) pays compensation for the disability or death resulting from the
30 occupational disease; or

31 (3) by its affirmative conduct leads the covered employee or other
32 claimant to reasonably believe that the requirement of filing a claim has been waived.

33

1 SECTION 2. AND BE IT FURTHER ENACTED, That:

2 (a) (1) The Department of Legislative Services, in consultation with and
3 as agreed by the affected stakeholders, shall contract with a medical expert affiliated
4 with an academic research institution or organization to conduct a study of all types of
5 cancers that firefighters, firefighting instructors, members of the Office of the State
6 Fire Marshal, rescue squad members, and advanced life support unit members, as
7 specified under the workers' compensation cancer presumption law, may contract in
8 the line of duty, as compared to the general population.

9 (2) The purpose of the study is to provide guidance to the General
10 Assembly as to the types of cancers firefighters and others are likely to contract in the
11 line of duty in order for the General Assembly to determine which types of cancers
12 should be included in the workers' compensation cancer presumption law.

13 (3) (i) Funding, if any, that may be needed to pay for the study
14 shall be from sources other than the Department.

15 (ii) If adequate funding is not available to pay for the study, the
16 Department shall notify the Governor, the affected stakeholders, and, in accordance
17 with § 2-1246 of the State Government Article, the Senate Finance Committee and
18 the House Economic Matters Committee, that the Department is unable to contract
19 with a medical expert affiliated with an academic research institution or organization
20 to conduct the study, and requesting whether additional funding may be secured in
21 order for the Department to proceed with contracting with a medical expert.

22 (b) In conducting the study, the medical expert shall:

23 (1) identify and review recent objective and statistically valid studies
24 and other medical evidence relating to all types of cancers firefighters and others may
25 contract in the line of duty;

26 (2) prepare a summary table ranking the likelihood of each type of
27 cancer risk to firefighters and others, as compared to the general public;

28 (3) determine whether there is a benchmark that could be used to
29 determine if a specific type of cancer should be included in the workers' compensation
30 cancer presumption law; and

31 (4) consider other relevant matters that relate to the purpose of the
32 study.

33 (c) In conducting the study, the medical expert shall consult with any person
34 or entity that the medical expert determines appropriate.

1 (d) (1) On or before December 1, [2012] **2014**, the medical expert
2 conducting the study shall report the findings of the study to the Department of
3 Legislative Services.

4 (2) On receipt of the report, the Department of Legislative Services
5 shall forward the report to the Senate Finance Committee and the House Economic
6 Matters Committee, in accordance with § 2-1246 of the State Government Article.

7 **SECTION 4. AND BE IT FURTHER ENACTED, THAT THE 2-YEAR**
8 **STATUTE OF LIMITATIONS FOR FILING A CLAIM UNDER § 9-711 OF THE LABOR**
9 **AND EMPLOYMENT ARTICLE SHALL BE TOLLED UNTIL JUNE 1, 2015, FOR A**
10 **COVERED EMPLOYEE WHO:**

11 (1) **FILES A CLAIM THAT WOULD OTHERWISE BE CONSIDERED**
12 **TIMELY;**

13 (2) **MEETS THE REQUIREMENTS OF § 9-503(C) OF THE LABOR**
14 **AND EMPLOYMENT ARTICLE; AND**

15 (3) **IS FILING AN OCCUPATIONAL DISEASE CLAIM FOR MULTIPLE**
16 **MYELOMA, NON-HODGKIN'S LYMPHOMA, OR BRAIN, TESTICULAR, OR BREAST**
17 **CANCER.**

18 **SECTION [4.] 5. AND BE IT FURTHER ENACTED, That Section 1 of this Act:**

19 (1) shall apply to claims filed for an occupational disease on or after
20 June 1, [2013] **2015**; and

21 (2) may not be construed to apply to any claim filed before June 1,
22 [2013] **2015**.

23 **SECTION [5.] 6. AND BE IT FURTHER ENACTED, That Section 1 of this Act**
24 **shall take effect June 1, [2013] 2015.**

25 **SECTION [6.] 7. AND BE IT FURTHER ENACTED, That, except as provided**
26 **in Section 5 of this Act, this Act shall take effect June 1, 2012.**

27 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
28 **June 1, 2013.**