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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, and Riccelli

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

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

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

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

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

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

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

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

1 (iii) 1.32 times more likely to contract esophageal cancer and  
2 1.39 times more likely to die from esophageal cancer;

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

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

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

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

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

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

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

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

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

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

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

1 (3) The legislature further intends that coverage for diseases  
2 presumed to be occupationally related should be extended to EMTs  
3 meeting the definition of firefighter contained in RCW  
4 41.26.030(16)(h) and publicly employed fire investigators.

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

7 (1) In the case of firefighters as defined in RCW  
8 41.26.030(~~((4))~~) (16) (a), (b), (~~and~~) (c), and (h) who are covered  
9 under Title 51 RCW and firefighters, including supervisors, employed  
10 on a full-time, fully compensated basis as a firefighter of a private  
11 sector employer's fire department that includes over fifty such  
12 firefighters, and public employee fire investigators, there shall  
13 exist a prima facie presumption that: (a) Respiratory disease; (b)  
14 any heart problems or stroke, experienced within seventy-two hours of  
15 exposure to smoke, fumes, or toxic substances, or experienced within  
16 twenty-four hours of strenuous physical exertion due to firefighting  
17 activities; (c) cancer; and (d) infectious diseases are occupational  
18 diseases under RCW 51.08.140. This presumption of occupational  
19 disease may be rebutted by a preponderance of the evidence. Such  
20 evidence may include, but is not limited to, use of tobacco products,  
21 physical fitness and weight, lifestyle, hereditary factors, and  
22 exposure from other employment or nonemployment activities.

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

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

1 adenocarcinoma, stomach cancer, esophageal cancer, buccal cancer,  
2 pharynx cancer, nonmelanoma skin cancer, and breast cancer.

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

9 (5) Beginning July 1, 2003, this section does not apply to a  
10 firefighter or fire investigator who develops a heart or lung  
11 condition and who is a regular user of tobacco products or who has a  
12 history of tobacco use. The department, using existing medical  
13 research, shall define in rule the extent of tobacco use that shall  
14 exclude a firefighter or fire investigator from the provisions of  
15 this section.

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

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

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

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

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