

SENATE BILL NO. 72

INTRODUCED BY P. CONNELL

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PRESUMPTION IN FAVOR OF FIREFIGHTERS FOR CERTAIN DISEASES; ESTABLISHING CONDITIONS, APPLICABLE FACTORS, AND PROCESS FOR REBUTTAL; FUNDING PRESUMPTIVE DISEASE BENEFITS; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR TRANSFERS; AMENDING SECTION 50-3-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE EFFECTIVE DATES."

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

NEW SECTION. Section 1. Presumptive disease for firefighters -- rebuttal -- definitions. (1) For purposes of obtaining benefits from the presumptive disease compensation account in [section 5], a firefighter is presumed to have a compensable presumptive disease claim if the firefighter meets the requirements of [section 2] and subsection (2) of this section.

(2) The presumption in subsection (1) applies only to a presumptive disease contracted:

(a) during the term of employment of the firefighter; or

(b) during a period following termination of employment that:

(i) is the equivalent of 3 months for every year of employment; and

(ii) is not more than 60 months after termination.

(3) The department may rebut the presumption if it establishes, by a preponderance of evidence:

(a) that the conditions of [section 2] or subsection (2) of this section have not been met; or

(b) that the presumptive disease was not compensable as demonstrated by medical evidence. Medical evidence may include use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from nonemployment activities.

(4) For the purposes of [sections 1 through 7], the following definitions apply:

(a) "Department" means the department of labor and industry provided for in 2-15-1701.

(b) (i) "Firefighter" means a firefighter as defined in 19-13-104, a volunteer firefighter as defined in 7-33-4510, and a volunteer as described in 7-33-4109; WHO, DURING THE COURSE AND SCOPE OF THE FIREFIGHTER'S DUTIES, INHALED SMOKE OR PARTICLES IN SUFFICIENT QUANTITIES TO HAVE REASONABLY CAUSED A PRESUMPTIVE

1 DISEASE.

2 (ii) THE TERM DOES NOT APPLY TO A FIREFIGHTER WHOSE COURSE AND SCOPE OF FIREFIGHTING DUTIES WERE
3 CLERICAL, DID NOT INVOLVE CLOSE PROXIMITY TO FIRES AND SMOKE, OR OTHERWISE DID NOT INCLUDE INHALING SMOKE
4 OR PARTICLES IN SUFFICIENT QUANTITIES TO HAVE REASONABLY CAUSED A PRESUMPTIVE DISEASE.

5 (c) "Presumptive disease" means diseases affecting the lungs, including but not limited to lung cancer.

7 NEW SECTION. Section 2. Conditions for claiming presumptive disease. (1) Except as provided
8 in [section 6(2)], the following must be satisfied for the presumption in [section 1] to apply:

9 (a) the firefighter must timely file a claim for a presumptive disease under Title 39, chapter 71, and the
10 claim must be denied as noncompensable; and

11 (b) (i) the firefighter must have undergone, within 90 days of hiring, a medical examination that did not
12 reveal substantial evidence of the presumptive disease for which the presumption under [section 1] is sought;
13 and

14 (ii) the firefighter must have undergone subsequent periodic medical examinations occurring at least once
15 every 5 years during the first 10 years of service and once every 3 years after 10 years of service.

16 (2) (a) Subsection (1)(b) does not require the employer of a firefighter to provide or pay for a medical
17 examination, either at the time of hiring or during the subsequent term of employment.

18 (b) If the employer of a firefighter does not provide or pay for a medical examination under subsection
19 (1)(b), the firefighter may satisfy the requirements of subsection (1)(b) by obtaining the medical examination at
20 the firefighter's expense or at the expense of another party.

21 (3) To qualify for a noncancer respiratory disease presumption, a firefighter may not be a regular user
22 of tobacco products or have a history of regular tobacco use in the 5 years preceding the filing of the claim under
23 subsection (1)(a).

24 (4) To qualify for a cancer respiratory disease presumption, a firefighter must have completed at least
25 10 years of service as a firefighter.

27 NEW SECTION. Section 3. Presumption -- procedure. (1) If a firefighter files a claim under Title 39,
28 chapter 71, for a presumptive disease and the claim is denied as noncompensable, an insurer shall notify the
29 department and the firefighter in writing of the denial. The denial must inform the firefighter that the claim has
30 been forwarded to the department for review.

(2) (a) Within 30 days of receiving the notice under subsection (1), the department shall determine if it intends to rebut the presumption pursuant to [section 1(3)].

(b) In making a determination under this subsection (2), the department may not give deference to the claim determination of the insurer.

(3) The department shall notify the firefighter of its determination under subsection (2)(a) within 1 week of making the determination.

(4) (a) If the department intends to rebut the presumption, it shall hold a contested case hearing in accordance with the provisions of the Montana Administrative Procedure Act.

(b) In a hearing under subsection (4)(a), the department bears the burden of rebuttal under [section 1(3)].

(5) Except as provided in subsection (6)(b), if after all administrative remedies are exhausted under subsection (4)(a) the department successfully rebuts the presumption pursuant to [section 1(3)], the presumptive disease claim is denied.

(6) The administrative remedies under Title 39, chapter 71, are not applicable to a presumptive disease claim, except that a firefighter may pursue administrative remedies available for denial of a claim under Title 39, chapter 71, if:

(a) a firefighter agrees the requirements of [section 1(3)(a)] are not met and notifies the department that the firefighter does not intend to pursue a presumption under this section; or

(b) the department successfully rebuts the presumption under [section 1(3)(a)].

(7) If the department does not intend to rebut or is unsuccessful in rebutting a presumptive disease claim, a firefighter must receive benefits as specified in [section 4].

NEW SECTION. Section 4. Presumptive disease -- benefit payment. (1) A firefighter who is eligible for benefits under [section 3(7)] must receive the same level of benefits and for the same periods as would have applied if the insurer had approved the claim under Title 39, chapter 71.

(2) The benefits provided under subsection (1) must be paid out of the presumptive disease compensation account in [section 5].

(3) The department shall administer benefits under this section.

(4) A claim approval under [sections 1 through 7] does not impose an obligation on the insurer.

NEW SECTION. Section 5. Presumptive disease compensation account. (1) There is a presumptive

disease compensation account in the state special revenue fund to the credit of the department for payment and administration of presumptive disease benefits.

(2) The account consists of revenue from the 0.33% tax provided in 50-3-109(2)(a)(ii).

(3) The account may be used by the department to pay and administer presumptive disease benefits under [section 4].

(4) The department's spending authority under [sections 1 through 7] is limited to the balance of the account.

NEW SECTION. Section 6. Presumption applicability. (1) [Sections 1 through 7] apply to a claim filed under this chapter on or after [the effective date of this act], including a claim for a presumptive disease that a firefighter contracted prior to [the effective date of this act].

(2) A firefighter who, prior to [the effective date of this act], did not receive a medical examination as frequently as the intervals set forth in [section 2(1)(b)] is not ineligible for a presumption under [sections 1 through 7] on that basis.

(3) The presumption in [section 1(1)] applies only to benefits under this chapter and is not to be applied to a claim for benefits under Title 39, chapter 71.

(4) If a firefighter is eligible for benefits as provided in [section 3(7)], the employer is entitled to the exclusive remedy set forth in Title 39, chapter 71, part 4.

NEW SECTION. Section 7. Department -- rulemaking. The department may adopt rules to implement [sections 1 through 7].

Section 8. Section 50-3-109, MCA, is amended to read:

"50-3-109. Tax on fire insurance premiums. (1) Each insurer authorized to effect insurance on risks enumerated in subsection ~~(2)~~ (3) that is doing business in this state shall pay to the state auditor during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, taxes on the fire portion of the direct premiums on the enumerated risks received during the previous calendar year after deducting cancellations and return premiums. A tax of ~~2-1/2%~~ 2.5% must be deposited ~~in the general fund as provided in 33-2-708~~ as provided in subsection (2).

(2) (a) If the balance of the presumptive disease compensation account provided for in [section 5] does

not exceed \$1 million, the 2.5% tax collected under subsection (1) must be deposited as follows:

(i) 2.17% must be deposited in the general fund as provided in 33-2-708; and

(ii) 0.33% must be deposited, UP TO A MAXIMUM OF \$250,000 FOR EACH FISCAL YEAR, in the state special revenue account as provided in [section 5(2)].

(b) If the balance of the presumptive disease compensation account provided for in [section 5] exceeds \$1 million, the 2.5% tax collected under subsection (1) must be deposited into the general fund.

~~(2)~~(3) The risks referred to in subsection (1) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of a vehicle."

NEW SECTION. SECTION 9. TRANSFER OF FUNDS. (1) BY JULY 15, 2017, AND JULY 15, 2018, THE STATE TREASURER SHALL TRANSFER \$125,000 FROM THE FUNDS COLLECTED PURSUANT TO 76-13-201 TO THE PRESUMPTIVE DISEASE COMPENSATION ACCOUNT ESTABLISHED IN [SECTION 5].

(2) BY JULY 15, 2017, AND JULY 15, 2018, THE STATE TREASURER SHALL TRANSFER \$125,000 FROM THE TRUST LAND ADMINISTRATION ACCOUNT ESTABLISHED IN 77-1-108 TO THE PRESUMPTIVE DISEASE COMPENSATION ACCOUNT ESTABLISHED IN [SECTION 5].

NEW SECTION. Section 10. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 7, chapter 33, and the provisions of Title 7, chapter 33, apply to [sections 1

through 7].

NEW SECTION. Section 11. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

~~NEW SECTION. Section 11. Effective date. [This act] is effective on passage and approval.~~

NEW SECTION. SECTION 12. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] IS EFFECTIVE JULY 1, 2017.

(2) [SECTION 8] IS EFFECTIVE JULY 1, 2019.

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