

1 HB2
2 194976-1
3 By Representative Hanes
4 RFD: Health
5 First Read: 05-MAR-19
6 PFD: 01/10/2019

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8 SYNOPSIS: Under existing workers' compensation law, an
9 occupational disease is not presumed to be the
10 cause of a disablement or death and the person
11 claiming compensation or other benefits has the
12 burden of establishing that he or she is entitled
13 to those benefits.

14 This bill would revise the definition of
15 occupational disease as it pertains to workers'
16 compensation law to include cancer of a
17 firefighter.

18 This bill would establish a rebuttable
19 presumption relating to the workers' compensation
20 benefits of a firefighter who is not a smoker or
21 user of any tobacco products and who is diagnosed
22 with cancer under certain conditions.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To amend Sections 25-5-110 and 25-5-120, Code of
2 Alabama 1975, relating to workers' compensation; to further
3 define terms; to establish a rebuttable presumption relating
4 to the workers' compensation benefits of a firefighter who is
5 not a smoker or user of any tobacco products and who is
6 diagnosed with cancer under certain conditions.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 25-5-110 and 25-5-120, Code of
9 Alabama 1975, are amended to read as follows:

10 "§25-5-110.

11 "For the purposes of this article, the following
12 terms shall have the meanings respectively ascribed to them by
13 this section:

14 "(1) OCCUPATIONAL DISEASE. a. A disease arising out
15 of and in the course of employment, ~~including occupational~~
16 ~~pneumoconiosis and occupational exposure to radiation as~~
17 ~~defined in subdivisions (2) and (3), respectively, of this~~
18 ~~section,~~ which is due to hazards in excess of those ordinarily
19 incident to employment in general and is peculiar to the
20 occupation in which the employee is engaged but without regard
21 to negligence or fault, if any, of the employer. A disease,
22 including, but not limited to, loss of hearing due to noise,
23 shall be deemed an occupational disease only if caused by a
24 hazard recognized as peculiar to a particular trade, process,
25 occupation, or employment as a direct result of exposure, over
26 a period of time, to the normal working conditions of the
27 trade, process, occupation, or employment.

1 "b. An occupational disease shall include all of the
2 following:

3 "1. Occupational pneumoconiosis.

4 "2. Occupational exposure to radiation.

5 "3. Cancer of a firefighter.

6 "(2) OCCUPATIONAL PNEUMOCONIOSIS. A disease of the
7 lungs caused by inhalation of minute particles of dust over a
8 period of time, which dust is due to causes and conditions
9 arising out of and in the course of the employment, without
10 regard to whether the causes or conditions are inherent in the
11 employment or can be eliminated or reduced by due care on the
12 part of the employer. The term "occupational pneumoconiosis"
13 shall include, but without limitation, such diseases as
14 silicosis, siderosis, anthracosis, anthrasilicosis,
15 anthracosilicosis, anthraco-tuberculosis, tuberculosilicosis,
16 silico-tuberculosis, aluminosis, and other diseases of the
17 lungs resulting from causes enumerated in this section.

18 "(3) OCCUPATIONAL EXPOSURE TO RADIATION. Gradual
19 exposure to radiation over a period of time from the use of or
20 direct contact with radium, radioactive substances, roentgen
21 rays (X rays), or ionizing radiation, arising out of and in
22 the course of the employment and resulting from the nature of
23 the employment in which the employee is engaged, without
24 regard to whether the exposure is inherent in the employment
25 or can be eliminated or reduced by due care on the part of the
26 employer.

1 "(4) NATURE OF EMPLOYMENT. With respect to
2 subdivisions (2) and (3) above, this term shall mean that, as
3 to the industry in which the employee is engaged, there is
4 attached a particular hazard of the exposure that
5 distinguishes it from the usual run of occupations and is in
6 excess of the hazards of the exposure attending employment in
7 general.

8 "(5) CONTRACTION OF AN OCCUPATIONAL DISEASE. This
9 term shall include any aggravation of the disease without
10 regard to the employment in which the disease was contracted.

11 "(6) CANCER OF A FIREFIGHTER. Cancer which manifests
12 itself in a paid firefighter during the period in which the
13 firefighter is in service of the employer; provided, the
14 firefighter demonstrates that he or she was exposed, while in
15 the employ of the employer, to a known carcinogen that is
16 reasonably linked to the disabling cancer. The cancer is
17 presumed to arise in the course of the firefighter's
18 employment unless the employer demonstrates by a preponderance
19 of the evidence that the cancer was caused by some other
20 means.

21 "§25-5-120.

22 "(a) There shall not be a presumption that
23 disablement or death from any cause or infirmity is the result
24 of an occupational disease, nor that an occupational disease
25 will result in disablement or death, and any person claiming
26 compensation or other benefits under this article shall have

1 the burden of establishing that he or she is entitled to the
2 benefits.

3 "(b) (1) Notwithstanding subsection (a), a paid
4 firefighter who is not a smoker or user of any tobacco
5 products and who is diagnosed with cancer shall be presumed to
6 have contracted the cancer as a direct result of his or her
7 firefighting duties if the firefighter demonstrates all of the
8 following:

9 "a. The firefighter, upon entering the service,
10 passed a physical examination that did not show evidence of
11 cancer.

12 "b. The firefighter demonstrated that he or she has
13 been exposed to a known carcinogen that causes cancer.

14 "(2) To overcome the presumption in subdivision (1)
15 and to disqualify the firefighter from benefits under this
16 article, the employer must prove by a preponderance of the
17 evidence that the cancer was caused by some means other than
18 the occupation.

19 "(c) Notwithstanding subsection (a), a paid
20 firefighter who smokes or uses any tobacco products and who is
21 diagnosed with cancer, in addition to demonstrating the
22 criteria listed in paragraphs a. and b. of subdivision (1) of
23 subsection (b), may be required by his or her employer to
24 prove by a preponderance of the evidence that the cancer was
25 caused by his or her occupation."

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.