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SENATE BILL 17-214

BY SENATOR(S) Smallwood and Garcia, Aguilar, Crowder, Donovan, Fenberg, Gardner, Guzman, Jones, Kagan, Kefalas, Kerr, Martinez Humenik, Merrifield, Moreno, Scott, Tate, Todd, Williams A., Zenzinger, Grantham;

also REPRESENTATIVE(S) Exum and Pettersen, Esgar, Pabon, Arndt, Becker K., Benavidez, Bridges, Buck, Buckner, Carver, Catlin, Coleman, Covarrubias, Danielson, Foote, Garnett, Ginal, Gray, Hamner, Hansen, Herod, Hooton, Humphrey, Jackson, Kennedy, Kraft-Tharp, Landgraf, Lawrence, Lebsock, Lee, Lewis, Lontine, McLachlan, Melton, Michaelson Jenet, Mitsch Bush, Navarro, Nordberg, Rankin, Ransom, Rosenthal, Saine, Salazar, Sias, Singer, Valdez, Van Winkle, Weissman, Williams D., Wilson, Winter, Wist, Young, Duran.

CONCERNING THE CREATION OF THE VOLUNTARY FIREFIGHTER CANCER BENEFITS PROGRAM.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 4 to article 5 of title 29 as follows:

PART 4
VOLUNTARY FIREFIGHTER CANCER

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

BENEFITS PROGRAM

29-5-401. Legislative declaration. (1) HOUSE BILL 07-1008, ENACTED IN 2007, ESTABLISHED A REBUTTABLE PRESUMPTION IN THE STATE WORKERS' COMPENSATION SYSTEM THAT CERTAIN TYPES OF CANCER, WHEN CONTRACTED BY FIREFIGHTERS, ARE OCCUPATIONAL DISEASES CAUSED BY EMPLOYMENT AS A FIREFIGHTER.

(2) NINE YEARS OF EXPERIENCE HAS SHOWN THAT THE REBUTTABLE PRESUMPTION ESTABLISHED BY HOUSE BILL 07-1008 HAS PRODUCED NO DEMONSTRABLE BENEFIT TO FIREFIGHTERS BUT HAS LED TO SIGNIFICANTLY GREATER COSTS TO EMPLOYERS OF FIREFIGHTERS.

(3) THE PURPOSE OF THIS PART 4 IS TO PROVIDE SUPPLEMENTAL INCOME AND REIMBURSEMENT FOR OUT-OF-POCKET COSTS NOT OTHERWISE PAID FOR BY INSURANCE COVERAGE TO FIREFIGHTERS WHO CONTRACT COVERED CANCERS AND TO REDUCE THE COST OF WORKERS' COMPENSATION INSURANCE FOR EMPLOYERS OF FIREFIGHTERS. THIS PART 4 IS NOT A REPLACEMENT FOR WORKERS' COMPENSATION COVERAGE OR ANY OTHER KIND OF MEDICAL INSURANCE.

(4) THIS PART 4 DOES NOT ELIMINATE OR CURTAIL THE OBLIGATION OF AN EMPLOYER OF FIREFIGHTERS TO PARTICIPATE IN THE STATE WORKERS' COMPENSATION SYSTEM, NOR DOES IT ELIMINATE OR CURTAIL THE RIGHT OF A FIREFIGHTER TO PURSUE BENEFITS UNDER THE STATE WORKERS' COMPENSATION SYSTEM. RATHER, IT PROVIDES A PRACTICAL ALTERNATIVE FOR FIREFIGHTERS TO PURSUE IN DEALING WITH THE COSTS AND BURDENS OF COVERED CANCERS WITHOUT BEING FORCED TO RELY ON RECOVERING COMPENSATION UNDER THE REBUTTABLE PRESUMPTION CREATED BY HOUSE BILL 07-1008.

29-5-402. Definitions. AS USED IN THIS PART 4, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CANCER" MEANS CANCER THAT ORIGINATES AS A CANCER OF THE BRAIN, SKIN, DIGESTIVE SYSTEM, HEMATOLOGICAL SYSTEM, OR GENITOURINARY SYSTEM OR AS DEFINED BY THE TRUST.

(2) "COVERED INDIVIDUAL" MEANS A FIREFIGHTER, PART-TIME FIREFIGHTER, OR VOLUNTEER FIREFIGHTER WHO MEETS THE COVERAGE

REQUIREMENTS IN SECTION 29-5-403 (12).

(3) "EMPLOYER" MEANS A MUNICIPALITY, SPECIAL DISTRICT, FIRE AUTHORITY, OR COUNTY IMPROVEMENT DISTRICT THAT EMPLOYS ONE OR MORE FIREFIGHTERS, PART-TIME FIREFIGHTERS, OR VOLUNTEER FIREFIGHTERS. "EMPLOYER" DOES NOT INCLUDE A POWER AUTHORITY CREATED PURSUANT TO SECTION 29-1-204 OR A MUNICIPALLY OWNED UTILITY.

(4) "FIREFIGHTER" MEANS A FULL-TIME, ACTIVE EMPLOYEE OF AN EMPLOYER WHO REGULARLY WORKS AT LEAST ONE THOUSAND SIX HUNDRED HOURS IN ANY CALENDAR YEAR AND WHOSE DUTIES ARE DIRECTLY INVOLVED WITH THE PROVISION OF FIRE PROTECTION SERVICES, AND WHO IS NOT A VOLUNTEER FIREFIGHTER.

(5) "PART-TIME FIREFIGHTER" MEANS AN ACTIVE EMPLOYEE OF AN EMPLOYER WHO REGULARLY WORKS LESS THAN ONE THOUSAND SIX HUNDRED HOURS IN ANY CALENDAR YEAR, WHOSE DUTIES ARE DIRECTLY INVOLVED WITH THE PROVISION OF FIRE PROTECTION SERVICES, AND WHO IS NOT A VOLUNTEER FIREFIGHTER.

(6) "TRUST" MEANS A MULTIPLE EMPLOYER HEALTH TRUST DESCRIBED IN SECTION 10-3-903.5 (7)(b)(I), ESTABLISHED FOR THE PURPOSES OF THIS PART 4.

(7) "VOLUNTEER FIREFIGHTER" MEANS A VOLUNTEER FIREFIGHTER AS DEFINED IN SECTION 31-30-1102, INCLUDING A PERSON MEETING THIS DEFINITION WHO PROVIDES VOLUNTEER SERVICES TO A FIRE AUTHORITY CREATED BY AN INTERGOVERNMENTAL AGREEMENT PROVIDING FIRE PROTECTION.

29-5-403. Required benefits - conditions of receiving benefits.

(1) AN EMPLOYER MAY PARTICIPATE IN THE VOLUNTARY FIREFIGHTER CANCER BENEFITS PROGRAM BY PAYING CONTRIBUTIONS INTO A MULTIPLE EMPLOYER HEALTH TRUST AS SET FORTH IN SECTION 10-3-903.5 (7)(b)(I), ESTABLISHED FOR THE PURPOSES OF THIS PART 4. THE CONTRIBUTION LEVELS AND AWARD LEVEL DEFINITIONS WILL BE SET BY THE TRUST.

(2) FOR AN EMPLOYER CHOOSING TO PARTICIPATE IN THE VOLUNTARY FIREFIGHTER CANCER BENEFITS PROGRAM, THE TRUST SHALL

PROVIDE THE MINIMUM BENEFITS SPECIFIED IN SUBSECTION (3) OF THIS SECTION TO COVERED INDIVIDUALS DIAGNOSED WITH CANCER, BASED ON THE AWARD LEVEL OF THE CANCER AT THE TIME OF DIAGNOSIS, AFTER THE EMPLOYER BECOMES A PARTICIPANT.

(3) AWARD LEVELS WILL BE ESTABLISHED BY THE TRUST BASED ON THE CATEGORY AND STAGE OF THE CANCER AS FOLLOWS:

(a) AWARD LEVEL ZERO, ONE HUNDRED DOLLARS UP TO TWO THOUSAND DOLLARS;

(b) AWARD LEVEL ONE, FOUR THOUSAND DOLLARS, WHICH SHALL BE PAID IN ADDITION TO THE AMOUNTS PAID FOR AN AWARD LEVEL TWO OR HIGHER DIAGNOSIS;

(c) AWARD LEVEL TWO, FIVE THOUSAND DOLLARS;

(d) AWARD LEVEL THREE, FIFTEEN THOUSAND DOLLARS;

(e) AWARD LEVEL FOUR, TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS;

(f) AWARD LEVEL FIVE, TWENTY-EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE DOLLARS;

(g) AWARD LEVEL SIX, THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS;

(h) AWARD LEVEL SEVEN, SIXTY-FIVE THOUSAND SIX HUNDRED TWENTY-FIVE DOLLARS;

(i) AWARD LEVEL EIGHT, EIGHTY-FOUR THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS;

(j) AWARD LEVEL NINE, ONE HUNDRED SIXTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS; OR

(k) AWARD LEVEL TEN, TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS.

(4) IN ADDITION TO AN AWARD PURSUANT TO SUBSECTION (3) OF THIS SECTION:

(a) A PAYMENT IS MADE TO THE COVERED INDIVIDUAL FOR THE ACTUAL COST, UP TO TWENTY-FIVE THOUSAND DOLLARS, FOR REHABILITATIVE OR VOCATIONAL TRAINING EMPLOYMENT SERVICES AND EDUCATIONAL TRAINING RELATING TO THE CANCER DIAGNOSIS;

(b) A PAYMENT IS MADE TO THE COVERED INDIVIDUAL OF UP TO TEN THOUSAND DOLLARS IF A COVERED INDIVIDUAL INCURS COSMETIC DISFIGUREMENT COSTS RESULTING FROM CANCER.

(5) IF THE CANCER IS DIAGNOSED AS TERMINAL CANCER, THE COVERED INDIVIDUAL WILL RECEIVE A LUMP-SUM PAYMENT OF TWENTY-FIVE THOUSAND DOLLARS AS AN ACCELERATED PAYMENT TOWARD THE BENEFITS DUE IN SUBSECTION (3) OF THIS SECTION.

(6) THE COVERED INDIVIDUAL IS ENTITLED TO ADDITIONAL AWARDS IF THE CANCER INCREASES IN AWARD LEVEL, BUT THE AMOUNT OF ANY AWARD PAID EARLIER FOR THE SAME CANCER WILL BE SUBTRACTED FROM THE NEW AWARD.

(7) IF A COVERED INDIVIDUAL DIES WHILE OWED BENEFITS PURSUANT TO THIS SECTION, THE BENEFITS WILL BE PAID TO THE SURVIVING SPOUSE OR DOMESTIC PARTNER, IF ANY, AT THE TIME OF DEATH, AND IF THERE IS NO SURVIVING SPOUSE OR DOMESTIC PARTNER, ANY SURVIVING CHILDREN EQUALLY. IF THERE IS NO SURVIVING SPOUSE, DOMESTIC PARTNER, OR CHILD, THE OBLIGATION OF THE TRUST TO PAY BENEFITS WILL CEASE.

(8) IF A COVERED INDIVIDUAL RETURNS TO THE SAME POSITION OF EMPLOYMENT AFTER A CANCER DIAGNOSIS, THE COVERED INDIVIDUAL IS ENTITLED TO THE BENEFITS IN THIS SECTION FOR ANY SUBSEQUENT NEW TYPE OF COVERED CANCER DIAGNOSIS.

(9) THE MAXIMUM AMOUNT THAT MAY BE PAID TO A COVERED INDIVIDUAL FOR EACH CANCER DIAGNOSIS IS TWO HUNDRED FORTY-NINE THOUSAND DOLLARS.

(10) UNLESS THE OFFSET PROVISIONS OF SECTION 8-42-103 (1)(h)

HAVE ALREADY BEEN TAKEN, THE BENEFITS PAID PURSUANT TO THIS SECTION MUST BE OFFSET BY ANY PAYMENTS MADE UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO", ARTICLES 40 TO 47 OF TITLE 8, REGARDLESS OF WHEN THE PAYMENTS ARE MADE. THE TRUST MAY DETERMINE HOW AND WHEN THE OFFSETS ARE IMPLEMENTED.

(11) THE BENEFITS IN THIS SECTION ARE REDUCED BY TWENTY-FIVE PERCENT IF A COVERED INDIVIDUAL USED A TOBACCO PRODUCT WITHIN THE FIVE YEARS IMMEDIATELY PRECEDING THE CANCER DIAGNOSIS.

(12) (a) IN ORDER FOR A COVERED INDIVIDUAL TO BE ELIGIBLE FOR THE BENEFITS IN THIS SECTION, PRIOR TO THE DIAGNOSIS OF CANCER AND NO MORE THAN FIVE YEARS FOR A FIREFIGHTER OR NO MORE THAN TEN YEARS FOR A VOLUNTEER FIREFIGHTER OR PART-TIME FIREFIGHTER AFTER THE FIREFIGHTER, VOLUNTEER FIREFIGHTER, OR PART-TIME FIREFIGHTER BECAME EMPLOYED BY AN EMPLOYER, THE FIREFIGHTER, VOLUNTEER FIREFIGHTER, OR PART-TIME FIREFIGHTER MUST HAVE HAD A MEDICAL EXAMINATION THAT WOULD REASONABLY HAVE FOUND AN ILLNESS OR INJURY THAT COULD HAVE CAUSED THE CANCER AND NO ILLNESS OR INJURY WAS FOUND.

(b) IN ADDITION TO SUBSECTION (12)(a) OF THIS SECTION, IN ORDER FOR A COVERED INDIVIDUAL TO BE ELIGIBLE FOR THE BENEFITS IN THIS SECTION, THE FOLLOWING CONDITIONS MUST BE MET:

(I) THE FIREFIGHTER:

(A) HAS AT LEAST FIVE YEARS OF CONTINUOUS, FULL-TIME EMPLOYMENT WITH AN EMPLOYER; AND

(B) IS DIAGNOSED WITH CANCER WITHIN TEN YEARS AFTER CEASING EMPLOYMENT AS A FIREFIGHTER; OR

(II) THE VOLUNTEER FIREFIGHTER:

(A) HAS AT LEAST TEN YEARS OF ACTIVE SERVICE, AS USED IN SECTION 31-30-1122, AND HAS MAINTAINED A MINIMUM TRAINING PARTICIPATION IN THE FIRE DEPARTMENT OF THIRTY-SIX HOURS EACH YEAR; AND

(B) IS DIAGNOSED WITH CANCER WITHIN TEN YEARS AFTER CEASING EMPLOYMENT AS A VOLUNTEER FIREFIGHTER; OR

(III) THE PART-TIME FIREFIGHTER:

(A) HAS AT LEAST TEN YEARS OF ACTIVE SERVICE; AND

(B) IS DIAGNOSED WITH CANCER WITHIN TEN YEARS AFTER CEASING EMPLOYMENT AS A PART-TIME FIREFIGHTER.

(c) THE TRUST SHALL DEVELOP A FORMULA TO ALLOW THE COMBINING OF VOLUNTEER, PART-TIME, AND FULL-TIME FIREFIGHTER SERVICE TO ESTABLISH ELIGIBILITY.

(d) THE CLAIM FOR BENEFITS MUST BE FILED NO LATER THAN TWO YEARS AFTER THE DIAGNOSIS OF THE CANCER. THE CLAIM FOR EACH TYPE OF CANCER NEEDS TO BE FILED ONLY ONCE TO ALLOW THE TRUST TO INCREASE THE AWARD LEVEL PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(13) FOR THE PURPOSE OF EMPLOYER POLICIES AND BENEFITS, A CANCER DIAGNOSIS IS TREATED AS AN ON-THE-JOB INJURY OR ILLNESS. THIS SUBSECTION (13) DOES NOT AFFECT ANY DETERMINATION AS TO WHETHER THE CANCER IS COVERED UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO", ARTICLES 40 TO 47 OF TITLE 8.

29-5-404. Authority of the trust - rules. (1) IN ADDITION TO ANY AUTHORITY GIVEN TO THE TRUST, THE TRUST HAS THE AUTHORITY TO:

(a) CREATE A PROGRAM DESCRIPTION TO FURTHER DEFINE OR MODIFY, BUT NOT DECREASE, THE BENEFITS OF THIS PART 4;

(b) MODIFY THE CONTRIBUTION RATES, BENEFIT LEVELS, INCLUDING THE MAXIMUM AMOUNT, CONSISTENT WITH SUBSECTION (1)(a) OF THIS SECTION, AND STRUCTURE OF THE BENEFITS BASED ON ACTUARIAL RECOMMENDATIONS AND WITH INPUT FROM A COMMITTEE OF THE TRUST CONSISTING OF REPRESENTATIVES FROM LABOR, MANAGEMENT, VOLUNTEER, AND TRUST ADMINISTRATION; AND

(c) ADOPT RULES AND PROCEDURES FOR THE ADMINISTRATION OF

THE TRUST.

29-5-405. Exclusion from coverage. AN EMPLOYER WHO PARTICIPATES IN THE VOLUNTARY FIREFIGHTER CANCER BENEFITS PROGRAM CREATED IN THIS PART 4 IS NOT SUBJECT TO SECTION 8-41-209 (1) AND (2) UNLESS THE EMPLOYER ENDS PARTICIPATION IN THE PROGRAM.

SECTION 2. In Colorado Revised Statutes, 8-41-209, **add** (4) as follows:

8-41-209. Coverage for occupational diseases contracted by firefighters. (4) AN EMPLOYER WHO PARTICIPATES IN THE VOLUNTARY FIREFIGHTER CANCER BENEFITS PROGRAM CREATED IN PART 4 OF ARTICLE 5 OF TITLE 29 IS NOT SUBJECT TO THIS SECTION UNLESS THE EMPLOYER ENDS PARTICIPATION IN THAT PROGRAM.

SECTION 3. In Colorado Revised Statutes, 8-42-103, **add** (1)(h) as follows:

8-42-103. Disability indemnity payable as wages - period of disability. (1) If the injury or occupational disease causes disability, a disability indemnity shall be payable as wages pursuant to section 8-42-105 (2)(a) subject to the following limitations:

(h) UNLESS THE OFFSET PROVISIONS OF SECTION 29-5-403 (10) HAVE ALREADY BEEN TAKEN, IN CASES WHERE IT IS DETERMINED THAT A FIREFIGHTER HAS RECEIVED AN AWARD OF BENEFITS FOR A CANCER DIAGNOSIS PURSUANT TO SECTION 29-5-403 (3)(b) TO (3)(k), THE AGGREGATE BENEFITS PAYABLE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY, PERMANENT PARTIAL DISABILITY, AND PERMANENT TOTAL DISABILITY SHALL BE REDUCED, BUT NOT BELOW ZERO, BY AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF SUCH CANCER DIAGNOSIS BENEFITS. IN CASES WHERE IT IS DETERMINED THAT A COVERED INDIVIDUAL HAS RECEIVED COSMETIC DISFIGUREMENT BENEFITS PURSUANT TO SECTION 29-5-403 (4)(b), BENEFITS FOR DISFIGUREMENT PAYABLE PURSUANT TO SECTION 8-42-108 SHALL BE REDUCED, BUT NOT BELOW ZERO, BY AN AMOUNT EQUAL TO SUCH COSMETIC DISFIGUREMENT BENEFITS.

SECTION 4. In Colorado Revised Statutes, 10-3-903.5, **amend** (7)(b)(I) as follows:

10-3-903.5. Jurisdiction over providers of health care benefits.

(7) (b) A multiple employer health trust is any trust that is:

(I) Sponsored, maintained, and funded by one or more entities of state government or political subdivisions of the state organized pursuant to state law and is for the benefit of the entity's employees, including a multiple employer health trust established for the purposes of ~~part 3~~ PART 3 OR 4 of article 5 of title 29; ~~C.R.S.~~; or

SECTION 5. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO