

Chapter 445

(House Bill 1101)

AN ACT concerning

Workers' Compensation – Medical Presumptions *and Study*

FOR the purpose of ~~providing that certain occupational disease presumptions under the workers' compensation law apply only for a certain number of years after an individual separates from service; providing that certain~~ *altering the* diseases and cancers *that* are considered occupational diseases suffered in the line of duty and are compensable in a certain manner; *requiring the Department of Legislative Services, in consultation with and as agreed by certain stakeholders, to contract with a certain individual to conduct a certain study of certain types of cancers that certain individuals may contract in the line of duty; providing for the purpose of the study; providing that any funding needed to pay for the study shall be from sources other than the Department; requiring the Department to give certain notice to certain persons and entities under certain circumstances; requiring a certain individual to identify and review certain studies and other medical evidence, prepare a certain summary table, determine whether there is a certain benchmark, and consider certain matters; requiring the individual to consult with certain persons or entities under certain circumstances; requiring the individual to report to the Department on or before a certain date; requiring the Department to forward a certain report to certain committees of the General Assembly; requiring a certain organization, in consultation with certain persons and entities, to determine the statistics relating to certain individuals that should be kept for a certain purpose; providing for a delayed effective date for certain provisions of this Act; providing for the application and construction of certain provisions of this Act; limiting a jurisdiction's total benefit payout for certain workers' compensation benefits to a certain amount; and generally relating to the occupational disease presumption for certain diseases and cancers under the workers' compensation law.*

BY repealing and reenacting, with amendments,
 Article – Labor and Employment
 Section 9–503
 Annotated Code of Maryland
 (2008 Replacement Volume and 2011 Supplement)

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

Article – Labor and Employment

9-503.

(a) ~~(1)~~ A paid firefighter, paid fire fighting instructor, or sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State or a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member who is a covered employee under § 9-234 of this title is presumed to have an occupational disease that was suffered in the line of duty and is compensable under this title if:

~~{(1)}~~ ~~(I)~~ the individual has heart disease, hypertension, or lung disease;

~~{(2)}~~ ~~(II)~~ the heart disease, hypertension, or lung disease results in partial or total disability or death; and

~~{(3)}~~ ~~(III)~~ in the case of a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member, the individual has met a suitable standard of physical examination before becoming a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member.

~~(2) THE PRESUMPTION UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL APPLY ONLY FOR 15 YEARS AFTER THE DATE THAT THE INDIVIDUAL SEPARATED FROM PAID OR VOLUNTEER FIRE SERVICE.~~

(b) (1) A paid police officer employed by an airport authority, a county, the Maryland-National Capital Park and Planning Commission, a municipality, or the State, a deputy sheriff of Montgomery County, or, subject to paragraph (2) of this subsection, a deputy sheriff of Anne Arundel County, deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George's County deputy sheriff, Prince George's County correctional officer, or deputy sheriff of Allegany County is presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under this title if:

(i) the police officer, deputy sheriff, or correctional officer is suffering from heart disease or hypertension; and

(ii) the heart disease or hypertension results in partial or total disability or death.

(2) (i) A deputy sheriff of Anne Arundel County, a deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George's County deputy sheriff, or Prince George's County correctional officer is entitled to the presumption under this subsection only to the extent that the individual suffers from

heart disease or hypertension that is more severe than the individual's heart disease or hypertension condition existing prior to the individual's employment as a deputy sheriff of Anne Arundel County, deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George's County deputy sheriff, or Prince George's County correctional officer.

(ii) To be eligible for the presumption under this subsection, a deputy sheriff of Anne Arundel County, a deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George's County deputy sheriff, or Prince George's County correctional officer, as a condition of employment, shall submit to a medical examination to determine any heart disease or hypertension condition existing prior to the individual's employment as a deputy sheriff of Anne Arundel County, deputy sheriff of Baltimore City, Montgomery County correctional officer, Prince George's County deputy sheriff, or Prince George's County correctional officer.

(c) ~~(1)~~ A paid firefighter, paid fire fighting instructor, or a sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State or a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member who is a covered employee under § 9-234 of this title is presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under this title if the individual:

~~[(1)]~~ ~~(I)~~ has leukemia or ~~pancreatic~~, prostate, rectal, [or] throat, ~~ESOPHAGEAL MULTIPLE MYELOMA, NON-HODGKIN'S LYMPHOMA, BRAIN, TESTICULAR, BLADDER, BREAST, URETHRAL, OR DIGESTIVE OR BREAST~~ cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty;

~~[(2)]~~ ~~(II)~~ has completed at least ~~[5]~~ 10 years of service as a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member or in a combination of those jobs in the department where the individual currently is employed or serves;

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

~~[(4)]~~ ~~(IV)~~ in the case of a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member, has met a suitable standard of physical examination before becoming a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member.

~~(2) THE PRESUMPTION UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL APPLY ONLY FOR 20 YEARS AFTER THE DATE THAT THE INDIVIDUAL SEPARATED FROM PAID OR VOLUNTEER FIRE SERVICE.~~

~~(3) ON AN ANNUAL BASIS, A JURISDICTION'S TOTAL BENEFIT PAYOUT UNDER THIS SUBSECTION FOR TEMPORARY TOTAL DISABILITY BENEFITS, TEMPORARY PARTIAL DISABILITY BENEFITS, PERMANENT PARTIAL DISABILITY BENEFITS, PERMANENT TOTAL DISABILITY BENEFITS, AND DEPENDENCY BENEFITS MAY NOT EXCEED 110% OF THE JURISDICTION'S HIGHEST ANNUAL PAYOUT FOR SUCH BENEFITS.~~

(d) (1) (i) A paid law enforcement employee of the Department of Natural Resources who is a covered employee under § 9-207 of this title and a park police officer of the Maryland–National Capital Park and Planning Commission is presumed to have an occupational disease that was suffered in the line of duty and is compensable under this title if the employee:

1. is suffering from Lyme disease; and
2. was not suffering from Lyme disease before assignment to a position that regularly places the employee in an outdoor wooded environment.

(ii) The presumption under this subsection for a park police officer of the Maryland–National Capital Park and Planning Commission shall only apply:

1. during the time that the park police officer is assigned to a position that regularly places the park police officer in an outdoor wooded environment; and
2. for 3 years after the last date that the park police officer was assigned by the Maryland–National Capital Park and Planning Commission to a position that regularly placed the officer in an outdoor wooded environment.

(2) (i) An employee of the Maryland–National Capital Park and Planning Commission other than a park police officer is presumed to have an occupational disease that was suffered in the line of duty and is compensable under this title if the employee:

1. is suffering from Lyme disease; and

2. was not suffering from Lyme disease before assignment to a position that regularly places the employee in an outdoor wooded environment.

(ii) The presumption under this paragraph shall apply only if:

1. for the 12-month period before the filing of the claim for workers' compensation under this section, the employee:

A. has not been employed by the Maryland-National Capital Park and Planning Commission as a seasonal or intermittent employee; and

B. has been employed by the Maryland-National Capital Park and Planning Commission on a full-time basis;

2. the employee's assignment to a position that regularly places the employee in an outdoor wooded environment lasted for at least 1 year; and

3. the employee files the claim for workers' compensation on or before the third anniversary of the last date that the employee was assigned to a position that regularly placed the employee in an outdoor wooded environment.

(e) (1) Except as provided in paragraph (2) of this subsection, any paid firefighter, paid fire fighting instructor, sworn member of the Office of the State Fire Marshal, paid police officer, paid law enforcement employee of the Department of Natural Resources, deputy sheriff of Anne Arundel County, park police officer or employee of the Maryland-National Capital Park and Planning Commission, deputy sheriff of Montgomery County, deputy sheriff of Baltimore City, Montgomery County correctional officer, deputy sheriff of Prince George's County, or Prince George's County correctional officer who is eligible for benefits under subsection (a), (b), (c), or (d) of this section or the dependents of those individuals shall receive the benefits in addition to any benefits that the individual or the dependents of the individual are entitled to receive under the retirement system in which the individual was a participant at the time of the claim.

(2) The benefits received under this title shall be adjusted so that the weekly total of those benefits and retirement benefits does not exceed the weekly salary that was paid to the paid law enforcement employee of the Department of Natural Resources, a park police officer or employee of the Maryland-National Capital Park and Planning Commission, firefighter, fire fighting instructor, sworn member of the Office of the State Fire Marshal, police officer, deputy sheriff, or Prince George's County or Montgomery County correctional officer.

SECTION 2. AND BE IT FURTHER ENACTED, That:

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. AND BE IT FURTHER ENACTED, That the Maryland Association of Counties, in consultation with the Professional Firefighters of Maryland and any other entity or person the Association determines appropriate, shall determine the statistics that, as practicable, should be kept relating to firefighters and others who have contracted cancer in order to evaluate the impact of the workers' compensation cancer presumption law.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act:

(1) shall apply to claims filed for an occupational disease on or after June 1, 2013; and

(2) may not be construed to apply to any claim filed before June 1, 2013.

SECTION 5. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect June 1, 2013.

SECTION ~~2~~ 6. AND BE IT FURTHER ENACTED, That, except as provided in Section 5 of this Act, this Act shall take effect ~~July~~ June 1, 2012.

Approved by the Governor, May 22, 2012.