

SENATE BILL NO. 160

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE FIREFIGHTER PROTECTION ACT BY
 CREATING PRESUMPTIVE COVERAGE UNDER WORKERS' COMPENSATION FOR CERTAIN DISEASES
 ASSOCIATED WITH FIREFIGHTING ACTIVITIES; PROVIDING CONDITIONS; PROVIDING A REBUTTAL
 OPTION FOR INSURERS; PROVIDING OPT-IN CHOICE FOR VOLUNTEER FIREFIGHTING ENTITIES;
 INCLUDING PRESUMPTIVE OCCUPATIONAL DISEASE WITHIN THE STATE'S PUBLIC POLICY
 PROVISIONS FOR WORKERS' COMPENSATION; PROVIDING DEFINITIONS; AMENDING SECTIONS
 39-71-105, 39-71-124, AND 39-71-407, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN
 APPLICABILITY DATE."

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

NEW SECTION. Section 1. Presumptive occupational disease for firefighters -- rebuttal -- applicability -- definitions. (1) (a) A firefighter for whom coverage is required under the Workers' Compensation Act is presumed to have a claim for a presumptive occupational disease under the Workers' Compensation Act if the firefighter meets the requirements of [section 2] and is diagnosed with one or more of the diseases listed in subsection (2) within the period listed.

(b) Coverage under [section 2] and this section is optional for the employer of a firefighter for whom coverage under the Workers' Compensation Act is voluntary. An employer of a volunteer firefighter under 7-33-4109 or 7-33-4510 may elect as part of providing coverage under the Workers' Compensation Act to

1 additionally obtain the presumptive occupational disease coverage, subject to the insurer agreeing to provide
2 presumptive coverage.

3 (2) The following diseases are presumptive occupational diseases proximately caused by firefighting
4 activities, provided that the evidence of the presumptive occupational disease becomes manifest after the number
5 of years of the firefighter's employment as listed for each occupational disease ~~or~~ AND within 10 years of the last
6 date on which the firefighter was engaged in firefighting activities for an employer:

7 (a) bladder cancer after 12 years;

8 (b) brain cancer of any type after 10 years;

9 (c) breast cancer after 5 years if the diagnosis occurs before the firefighter is 40 years old and is not
10 known to be associated with a genetic predisposition to breast cancer;

11 (d) cardiovascular disease after ~~4~~ 10 years;

12 (e) colorectal cancer after 10 years;

13 (e) esophageal cancer after 10 years;

14 (f) kidney cancer after 15 years;

15 (g) leukemia after 5 years;

16 (h) mesothelioma after 10 years;

17 (i) multiple myeloma after 15 years;

18 (j) non-Hodgkin's lymphoma after 15 years; AND

19 ~~(k) posttraumatic stress disorder related to experiences encountered during firefighting activities; or~~

20 ~~(h)(k)~~ pulmonary or respiratory disease after 4 years.

21 (3) FOR PURPOSES OF CALCULATING THE NUMBER OF YEARS OF A FIREFIGHTER'S EMPLOYMENT HISTORY UNDER
22 SUBSECTION (2), A FIREFIGHTER'S EMPLOYMENT HISTORY AFTER JULY 1, 2014, MAY BE CALCULATED.

23 ~~(3)~~(4) The beneficiaries of a firefighter who otherwise would be eligible for presumptive occupational
24 disease benefits under this section but who dies prior to filing a claim, as provided in [section 2], are eligible for
25 death benefits in the same manner as for a death from an injury, as provided in 39-71-407. The beneficiaries
26 under this subsection ~~(3)~~ (4) are similarly bound by the provisions of exclusive remedy as provided in 39-71-411
27 and subject to the filing requirements in 39-71-601.

28 ~~(4)~~(5) (a) An insurer is liable for the payment of compensation for presumptive occupational disease
29 benefits under this chapter in the same manner as provided in 39-71-407, including objective medical findings
30 of a disease listed in subsection (2) but excluding the requirement in 39-71-407(10) that the objective medical

1 findings trace a relationship between the presumptive occupational disease and the claimant's job history. FOR
 2 PULMONARY OR RESPIRATORY DISEASES UNDER SUBSECTION (2), THE DISEASES MUST BE THE TYPE THAT CAN
 3 REASONABLY BE CAUSED BY FIREFIGHTING ACTIVITIES.

4 (b) An insurer under plan 1, 2, or 3 that disputes a presumptive occupational disease claim has the
 5 burden of proof in establishing by ~~substantial~~ A PREPONDERANCE OF THE evidence that the firefighter is not
 6 suffering from a compensable presumptive occupational disease. An insurer that disputes the claim may pay
 7 benefits under 39-71-608 or 39-71-615 and may pursue dispute mechanisms established in Title 39, chapter 71,
 8 part 24. NOTHING IN THIS SECTION LIMITS AN INSURER'S ABILITY TO ASSERT THAT THE OCCUPATIONAL DISEASE WAS NOT
 9 CAUSED BY THE FIREFIGHTER'S EMPLOYMENT HISTORY AS A FIREFIGHTER.

10 (c) A firefighter or the firefighter's beneficiaries may pursue the dispute remedies as provided in Title 39,
 11 chapter 71, part 24, if an insurer disputes a claim.

12 ~~(5)~~(6) The use of the term "occupational disease" includes a presumptive occupational disease when
 13 used in the definitions in 39-71-116 for "claims examiner", "permanent partial disability", "primary medical
 14 services", and "treating physician" and when used in 39-71-107, 39-71-307, 39-71-412, 39-71-503, 39-71-601,
 15 39-71-604, 39-71-606, 39-71-615, 39-71-703, 39-71-704, 39-71-713, 39-71-714, 39-71-717, 39-71-1011,
 16 39-71-1036, 39-71-1041, 39-71-1042, 39-71-1101, 39-71-1110, 39-71-1504, 39-71-2311, 39-71-2312,
 17 39-71-2313, 39-71-2316, and 39-71-4003.

18 (7) [SECTION 2] AND THIS SECTION:

19 (A) APPLY ONLY TO PRESUMPTIVE OCCUPATIONAL DISEASES FOR FIREFIGHTERS; AND

20 (B) DO NOT APPLY TO ANY OTHER ISSUE RELATING TO WORKERS' COMPENSATION AND MAY NOT BE USED OR
 21 CITED AS GUIDANCE IN THE ADMINISTRATION OF TITLE 33 OR 37.

22 ~~(6)~~(8) For the purposes of [section 2] and this section, the following definitions apply:

23 (a) "Firefighter" means an individual whose primary duties involve extinguishing or investigating fires,
 24 WITH AT LEAST 1 YEAR OF FIREFIGHTING OPERATIONS IN MONTANA BEGINNING ON OR AFTER JULY 1, 2019, as:

25 (i) a firefighter defined in 19-13-104;

26 (ii) a volunteer firefighter defined in 7-33-4510, but only if the volunteer firefighter's employer has elected
 27 coverage under Title 39, chapter 71, with an insurer that allows an election and the employer has opted
 28 separately to include presumptive occupational disease coverage under [section 2] and this section; or

29 (iii) a volunteer described in 7-33-4109 for a firefighting entity that has elected coverage under Title 39,
 30 chapter 71, with an insurer that allows an election and that has opted separately to include presumptive

1 occupational disease coverage.

2 (b) "Firefighting activities" means actions required of a firefighter that expose the firefighter to extreme
3 heat or inhalation or physical exposure to chemical fumes, smoke, particles, or other toxic gases arising directly
4 out of employment as a firefighter.

5 (c) "~~Posttraumatic stress disorder~~" has the meaning provided in the American psychiatric association's
6 ~~fifth edition of its Diagnostic and Statistical Manual of Mental Disorders.~~

7 (d)(c) "Presumptive occupational disease" means harm or damage from one or more of the diseases
8 listed under subsection (2) that is established by objective medical findings and that is contracted in the course
9 and scope of employment as a firefighter from either a single day or work shift or for more than a single day or
10 work shift but that is not specific to an accident. ~~The term may include a physical or mental condition arising from
11 posttraumatic stress disorder associated with firefighting activities.~~

12 (e) "Substantial evidence" means:

13 (i) ~~the conditions of [section 2] have not been met; or~~

14 (ii) ~~the presumptive occupational disease occurred without the firefighter having had firefighting duties
15 that involved close proximity to fires and smoke or did not have exposure to smoke or particles in sufficient
16 quantities to have reasonably caused a presumptive occupational disease.~~

17
18 **NEW SECTION. Section 2. Conditions for claiming presumptive occupational disease.** (1) Except
19 as provided in subsection (4), the following must be satisfied for the presumption in [section 1] to apply:

20 (a) the firefighter must timely file a claim for a presumptive occupational disease under Title 39, chapter
21 71, as soon as the firefighter knows or should have known that the firefighter's condition resulted from a
22 presumptive occupational disease; and

23 (b) (i) the firefighter must have undergone, within 90 days of hiring, a medical examination that did not
24 reveal ~~substantial~~ OBJECTIVE MEDICAL evidence of the presumptive occupational disease for which the
25 presumption under [section 1] is sought; and

26 (ii) the firefighter must have undergone subsequent periodic medical examinations at least once every
27 2 years.

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

30 (b) If the employer of a firefighter does not provide or pay for a medical examination under subsection

1 (1)(b), the firefighter may satisfy the requirements of subsection (1)(b) by obtaining the medical examination at
2 the firefighter's expense or at the expense of another party.

3 (3) To qualify for a ~~noncancer-respiratory~~ presumptive occupational disease, a firefighter may not:

4 (a) be a regular user of tobacco products;

5 (b) have a history of regular tobacco use in the 5 10 years preceding the filing of the claim under
6 subsection (1)(a); or

7 (c) have been exposed by a cohabitant who regularly and habitually used tobacco products within the
8 home for a period of 10 or more years prior to the diagnosis.

9 (4) A firefighter who, prior to [the effective date of this act], did not receive a medical examination as
10 frequently as the intervals set forth in subsection (1)(b) is not ineligible on that basis for a presumptive
11 occupational disease claim under [section 1] and this section.

12

13 **Section 3.** Section 39-71-105, MCA, is amended to read:

14 **"39-71-105. Declaration of public policy.** For the purposes of interpreting and applying this chapter,
15 the following is the public policy of this state:

16 (1) An objective of the Montana workers' compensation system is to provide, without regard to fault,
17 wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits
18 are not intended to make an injured worker whole but are intended to provide assistance to a worker at a
19 reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable
20 relationship to actual wages lost as a result of a work-related injury or disease.

21 (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that
22 a holder of a current, valid independent contractor exemption certificate issued by the department is an
23 independent contractor if the person is working under the independent contractor exemption certificate. The
24 holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this
25 chapter unless the person has elected to be bound personally and individually by the provisions of compensation
26 plan No. 1, 2, or 3.

27 (3) A worker's removal from the workforce because of a work-related injury or disease has a negative
28 impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the
29 workers' compensation system is to return a worker to work as soon as possible after the worker has suffered
30 a work-related injury or disease.

1 (4) Montana's workers' compensation and occupational disease insurance systems are intended to be
 2 primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able
 3 to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to
 4 minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

5 (5) This chapter must be construed according to its terms and not liberally in favor of any party.

6 (6) It is the intent of the legislature that:

7 (a) except as provided in [sections 1 and 2] for firefighters' presumptive occupational disease claims,
 8 a stress claims claim, often referred to as a "mental-mental claims claim" and or a "mental-physical claims claim",
 9 are is not compensable under Montana's workers' compensation and occupational disease laws. The legislature
 10 recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an
 11 economic burden on the workers' compensation and occupational disease system. The legislature also
 12 recognizes that there are other states that do not provide compensation for various categories of stress claims
 13 and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all
 14 injuries are compensable under the present system, and it is within the legislature's authority to define the limits
 15 of the workers' compensation and occupational disease system. However, it is also within the legislature's
 16 authority to recognize the public service provided by firefighters and to join with other states that have extended
 17 a presumptive occupational disease recognition to firefighters.

18 (b) for occupational disease or presumptive occupational disease claims, because of the nature of
 19 exposure, workers should not be required to provide notice to employers of the disease as required of injuries
 20 and that the requirements for filing of claims reflect consideration of when the worker knew or should have known
 21 that the worker's condition resulted from an occupational disease or a presumptive occupational disease. The
 22 legislature recognizes that occupational diseases in the workplace are caused by events occurring on more than
 23 a single day or work shift and that ~~it is within the legislature's~~ the legislature has the authority to define an
 24 occupational disease or a presumptive occupational disease and establish the causal connection to the
 25 workplace."

26

27 **Section 4.** Section 39-71-124, MCA, is amended to read:

28 **"39-71-124. Applicability of Workers' Compensation Act -- exceptions.** Except as provided in
 29 39-71-407, 39-71-601, and 39-71-603 and as specified in [section 1], this chapter applies to injuries and
 30 occupational diseases."

1

2 **Section 5.** Section 39-71-407, MCA, is amended to read:

3 **"39-71-407. Liability of insurers -- limitations.** (1) For workers' compensation injuries, each insurer
4 is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee
5 of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who
6 receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the
7 employee's beneficiaries, if any.

8 (2) An injury does not arise out of and in the course of employment when the employee is:

9 (a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific
10 tasks for the employer during the break; or

11 (b) engaged in a social or recreational activity, regardless of whether the employer pays for any portion
12 of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the
13 time of injury, is on paid time while participating in a social or recreational activity or whose presence at the
14 activity is required or requested by the employer. For the purposes of this subsection (2)(b), "requested" means
15 the employer asked the employee to assume duties for the activity so that the employee's presence is not
16 completely voluntary and optional and the injury occurred in the performance of those duties.

17 (3) (a) ~~An~~ Subject to subsection (3)(c), an insurer is liable for an injury, as defined in 39-71-119, only if
18 the injury is established by objective medical findings and if the claimant establishes that it is more probable than
19 not that:

20 (i) a claimed injury has occurred; or

21 (ii) a claimed injury has occurred and aggravated a preexisting condition.

22 (b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury
23 aggravated a preexisting condition is not sufficient to establish liability.

24 (c) Objective medical findings are sufficient for a presumptive occupational disease as defined in
25 [section 1] but may be overcome by substantial evidence, as defined in [section 1] A PREPONDERANCE OF THE
26 EVIDENCE.

27 (4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

28 (i) the employer furnishes the transportation or the employee receives reimbursement from the employer
29 for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the
30 travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

1 (ii) the travel is required by the employer as part of the employee's job duties.

2 (b) A payment made to an employee under a collective bargaining agreement, personnel policy manual,
3 or employee handbook or any other document provided to the employee that is not wages but is designated as
4 an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and
5 the employee is not covered under this chapter while traveling.

6 (5) Except as provided in subsection (6), an employee is not eligible for benefits otherwise payable under
7 this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause
8 of the accident.

9 (6) (a) An employee who has received written certification, as defined in 50-46-302, from a physician for
10 the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable under
11 this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

12 (b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use
13 of marijuana for a debilitating medical condition, as defined in 50-46-302, is the major contributing cause of the
14 injury or occupational disease.

15 (c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs
16 associated with the use of marijuana for a debilitating medical condition, as defined in 50-46-302.

17 (d) In an accepted liability claim, the benefits payable under this chapter may not be increased or
18 enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 50-46-302. An
19 insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana
20 for a debilitating medical condition.

21 (7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to attempt
22 to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does not apply
23 to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed drug.

24 (8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two
25 or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that
26 another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later
27 proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must
28 receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

29 (9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the
30 same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits

1 caused by the subsequent nonwork-related injury.

2 (10) ~~An~~ Except for cases of presumptive occupational disease as provided in [sections 1 and 2], an
 3 employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established
 4 by objective medical findings that contain sufficient factual and historical information concerning the relationship
 5 of the worker's condition to the original injury.

6 (11) (a) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan
 7 No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the
 8 extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state
 9 fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease.

10 (b) The provisions of subsection (11)(a) apply to presumptive occupational disease if the employee is
 11 diagnosed and meets the conditions of [sections 1 and 2].

12 (12) An insurer is liable for an occupational disease only if the occupational disease:

13 (a) is established by objective medical findings; and

14 (b) arises out of or is contracted in the course and scope of employment. An occupational disease is
 15 considered to arise out of or be contracted in the course and scope of employment if the events occurring on
 16 more than a single day or work shift are the major contributing cause of the occupational disease in relation to
 17 other factors contributing to the occupational disease. For the purposes of this subsection (12), an occupational
 18 disease is not the same as a presumptive occupational disease.

19 (13) When compensation is payable for an occupational disease or a presumptive occupational disease,
 20 the only employer liable is the employer in whose employment the employee was last injuriously exposed to the
 21 hazard of the disease.

22 (14) When there is more than one insurer and only one employer at the time that the employee was
 23 injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the
 24 earlier of:

25 (a) the time that the occupational disease or presumptive occupational disease was first diagnosed by
 26 a health care provider; or

27 (b) the time that the employee knew or should have known that the condition was the result of an
 28 occupational disease or a presumptive occupational disease.

29 (15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or
 30 substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30,

1 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with
2 respect to miners previously employed in the mine if acquisition had not occurred and that person had continued
3 to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

4 (16) As used in this section, "major contributing cause" means a cause that is the leading cause
5 contributing to the result when compared to all other contributing causes."
6

7 NEW SECTION. Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified
8 as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 and 2].
9

10 NEW SECTION. SECTION 7. CONTINGENT VOIDNESS. IF A COURT FINDS ANY PART OF [THIS ACT] TO BE IN
11 VIOLATION OF THE EQUAL PROTECTION CLAUSES OF THE U.S. OR MONTANA CONSTITUTIONS RELATING TO WORKERS'
12 COMPENSATION CLAIMS OR A COURT APPLIES THE PRESUMPTION IN [SECTIONS 1 AND 2] TO ANOTHER CLASS OF
13 OCCUPATION OTHER THAN FIREFIGHTERS, THEN [THIS ACT] IS VOID.
14

15 NEW SECTION. Section 8. Effective date -- applicability. [This act] is effective July 1, 2019, and
16 applies to presumptive occupational diseases diagnosed on or after July 1, 2019.
17

- END -