

ENROLLED ACT NO. 65, SENATE

SIXTY-FOURTH LEGISLATURE OF THE STATE OF WYOMING
2017 GENERAL SESSION

AN ACT relating to labor and employment; providing for a rebuttable presumption of disabilities for firefighters; listing subject diseases; providing eligibility for specified benefits to which the presumption applies; outlining criteria for presumptions; providing rulemaking authority; specifying applicability; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 27-15-101 through 27-15-103 are created to read:

CHAPTER 15
PRESUMPTIVE DISABILITY FOR CERTAIN DISEASES

27-15-101. Definitions.

(a) As used in this act:

(i) "Firefighter" means a paid fireman defined under W.S. 15-5-201(a)(xi), a firefighter member under W.S. 9-3-402(a)(xxv), an employee under W.S. 15-5-402(a)(viii), a volunteer fireman defined under W.S. 15-5-201(a)(xiv) and a volunteer firefighter or firefighter defined under W.S. 35-9-616(a)(x). "Firefighter" also means an individual employed by a municipal corporation or private organization who devotes the individual's entire time of employment to the provision of fire protection service for a city, town, county or fire protection district;

(ii) "Listed disease" means any of the following:

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(A) Cancer, lymphoma or leukemia that may be caused by exposure to heat, smoke, radiation or a known or suspected carcinogen as determined by the International Agency for Research on Cancer;

(B) Cardiovascular disease;

(C) Acute myocardial infarction or stroke;

(D) A disease, illness, health impairment or disability determined on a case-by-case basis under W.S. 27-15-102(h).

(iii) "Minimum period of employment" means:

(A) Employment as a firefighter for at least ten (10) years; and

(B) For volunteer firefighters, an individual is considered to have been employed for the minimum period of employment if that individual while actively a volunteer participates or participated in a minimum of forty percent (40%) of the drills conducted by the individual's department and a minimum of twenty-five percent (25%) of the emergency calls received during the time the volunteer serves or served on call. Volunteer firefighter departments shall keep individual records that document the criteria in this subparagraph.

(iv) "This act" means W.S. 27-15-101 through 27-15-103.

27-15-102. Presumption of occupational disability; applicability; exceptions.

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(a) A firefighter who suffers from a listed disease is presumed to have developed that listed disease during the course and scope of employment. The listed disease is presumed to be an occupational disease, the dominant cause of which is the employment as a firefighter, unless the contrary is proven.

(b) A presumption established under this act applies to a determination of whether a firefighter's injury, disease, illness, health impairment, disability or death resulted from a listed disease contracted in the course and scope of employment for purposes of benefits or compensation provided under:

(i) Firefighter retirement and disability retirement plans administered by the Wyoming retirement board under W.S. 9-3-401 through 9-3-431, 15-5-201 through 15-5-209, 15-5-401 through 15-5-422 and 35-9-616 through 35-9-628;

(ii) Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of W.S. 27-14-101 through 27-14-806;

(iii) University of Wyoming and Wyoming community college tuition and fees as provided under W.S. 21-16-1501(h) and (j).

(c) The presumption in subsection (a) of this section applies only to a firefighter who:

(i) Is employed for not less than the minimum period of employment and seeks the presumption within:

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(A) Ten (10) years after cessation of employment for a listed disease as defined by W.S. 27-15-101(a)(ii)(A);

(B) One (1) year after cessation of employment for a listed disease as defined by W.S. 27-15-101(a)(ii)(B) or (C);

(C) A period to be determined by the Wyoming worker's compensation medical commission for a listed disease as defined by W.S. 27-15-101(a)(ii)(D).

(ii) Has been exposed to the hazards involved in firefighting during the minimum period of employment; and

(iii) On becoming employed or during employment as a firefighter received a physical examination that failed to reveal evidence of the listed disease for which the presumption is sought.

(d) The presumption in subsection (a) of this section does not apply:

(i) If the listed disease is known to be caused by tobacco use and the firefighter:

(A) Is a regular user of tobacco for five (5) or more years; or

(B) Was a regular user of tobacco for five (5) or more years and it has been fewer than ten (10) years since the firefighter gave up the use of tobacco products.

(ii) In a cause of action brought in a state or federal court except for judicial review of a proceeding in

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which there has been a grant or denial of employment-related benefits or compensation.

(e) This act does not create a cause of action.

(f) This act does not enlarge or establish a right to any benefit or compensation or eligibility for any benefit or compensation.

(g) A firefighter who qualifies for a presumption established under this act is entitled only to the benefits or compensation to which the firefighter would otherwise be entitled to receive at the time the claim for benefits or compensation is filed.

(h) A presumption under this act is not limited to the current listed diseases. A firefighter is not precluded from a case-by-case demonstration before the Wyoming workers' compensation medical commission that the dominant cause of the firefighter's disease, illness, health impairment or disability is or was employment as a firefighter.

(j) Paragraph (d)(i) of this section only prevents the application of the presumption authorized by this chapter and does not affect the right of a firefighter to provide proof, without the use of the presumption, that an injury, disease, illness, health impairment or disability occurred during the course and scope of employment.

27-15-103. Presumption rebuttal.

A person opposed to the award of benefits or compensation listed under W.S. 27-15-102(b) may rebut the presumption under this act through a showing by a preponderance of the

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evidence that a risk factor, accident, hazard or other cause not associated with the firefighter's service was the dominant cause of the listed disease.

Section 2. W.S. 27-14-616(b) by creating a new paragraph (vi) is amended to read:

27-14-616. Medical commission; hearing panels; creation; membership; duties; rulemaking.

(b) One (1) member shall be elected by commission members as chairman and one (1) as vice-chairman. The division shall designate an employee to serve as executive secretary of the commission or contract with an individual to provide executive secretary services to the commission. The governor may appoint no more than eleven (11) additional health care providers as associate members of the commission whose function is limited to serving as members of individual medical hearing panels. Except for initial members, the terms of commission members and associate members shall be three (3) years. Three (3) members of the initial commission and three (3) initial associate members shall be appointed to a one (1) year term and four (4) initial commission members and four (4) initial associate members shall be appointed to a two (2) year term. The duties of the commission shall be:

(vi) To establish by rule and regulation procedures for decisions pursuant to W.S. 27-15-102(h) and for rebuttals pursuant to W.S. 27-15-103 and to adopt other rules as necessary to implement W.S. 27-15-101 through 27-15-103.

ORIGINAL SENATE
FILE NO. SF0089

ENGROSSED

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Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk