

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS25022-LD-112 (3/8)

Short Title: Workers' Comp/Firefighter Occupat'al Disease. (Public)

Sponsors: Senator Berger of Franklin.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CREATE A PRESUMPTION THAT CERTAIN INFECTIOUS DISEASES, RESPIRATORY DISEASE, HYPERTENSION OR HEART DISEASE, AND CERTAIN CANCERS ARE OCCUPATIONAL DISEASES FOR FIREFIGHTERS EMPLOYED BY LOCAL GOVERNMENTS THAT ARE COVERED BY THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 97 of the General Statutes is amended by adding two new sections to read:

"§ 97-53.1. Presumption as to death or disability of firefighters from certain infectious diseases.

(a) Hepatitis, meningococcal meningitis, tuberculosis, or HIV causing the death of, or any health condition or impairment resulting in total or partial disability of, a firefighter who has a documented occupational exposure to blood or body fluids shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this Article unless this presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this section, an occupational exposure occurring on or after July 1, 2007, shall be deemed documented if the firefighter gave notice, written or otherwise, of the occupational exposure to the governing body employing the firefighter, and an occupational exposure occurring prior to July 1, 2007, shall be deemed documented without regard to whether the firefighter gave notice, written or otherwise, of the occupational exposure to the governing body employing the firefighter.

(b) As used in this section, the following definitions apply:

(1) Blood or body fluids. – Blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by

1 the Centers for Disease Control, apply. For purposes of potential
2 transmission of hepatitis, meningococcal meningitis, tuberculosis, or
3 HIV, the term "blood or body fluids" includes respiratory, salivary,
4 and sinus fluids, including droplets, sputum, saliva, mucous, and any
5 other fluid through which infectious airborne or blood-borne
6 organisms can be transmitted between persons.

7 (2) Hepatitis. – Hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B,
8 hepatitis C, or any other strain of hepatitis generally recognized by the
9 medical community.

10 (3) HIV. – The medically recognized retrovirus known as human
11 immunodeficiency virus, type I or type II, causing immunodeficiency
12 syndrome.

13 (4) Occupational exposure. – In the case of hepatitis, meningococcal
14 meningitis, tuberculosis, or HIV, means an exposure that occurs during
15 the performance of job duties that places a firefighter at risk of
16 infection.

17 (c) A firefighter who tests positive for exposure to any enumerated occupational
18 disease under subsection (a) of this section, but has not yet incurred the requisite total or
19 partial disability, shall otherwise be entitled to make a claim for medical benefits
20 pursuant to G.S. 97-25, including entitlement to an annual medical examination to
21 measure the progress of the condition, if any, and any other medical treatment,
22 prophylactic or otherwise.

23 (d) Whenever any standard, medically recognized vaccine or other form of
24 immunization or prophylaxis exists for the prevention of a communicable disease for
25 which a presumption is established under this section, if medically indicated by the
26 given circumstances pursuant to immunization policies established by the Advisory
27 Committee on Immunization Practices of the United States Public Health Service, a
28 firefighter may be required by the firefighter's employer to undergo the immunization or
29 prophylaxis unless the firefighter's physician determines in writing that the
30 immunization or prophylaxis would pose a significant risk to the firefighter's health.
31 Absent this written declaration, failure or refusal by a firefighter to undergo such
32 immunization or prophylaxis shall disqualify the firefighter from any presumption
33 established by this section.

34 (e) The presumption described in subsection (a) of this section shall apply only if
35 the firefighter has, if requested by the governing body employing the firefighter,
36 undergone a preemployment physical examination that satisfies all of the following:

37 (1) Was conducted prior to the making of any claim under this Article that
38 relies on such presumption.

39 (2) Was performed by a physician whose qualifications are as prescribed
40 by the governing body employing the firefighter.

41 (3) Included such appropriate laboratory and other diagnostic studies as
42 the governing body employing the firefighter may have prescribed.

43 (4) Found the firefighter free of hepatitis, meningococcal meningitis,
44 tuberculosis, or HIV at the time of the examination.

1 (f) The presumptions described in subsection (a) of this section shall not be
2 effective until six months following the examination under subsection (e) of this section
3 unless the firefighter can demonstrate a documented exposure during the six-month
4 period.

5 (g) A firefighter making a claim under this Article who relies on such
6 presumption shall, upon the request of the governing body employing the firefighter,
7 submit to a physical examination that both:

8 (1) Is conducted by a physician selected by the governing body employing
9 the firefighter.

10 (2) Consists of such tests and studies as may reasonably be required by the
11 physician.

12 (h) A qualified physician, selected and compensated by the firefighter, may, at
13 the election of the firefighter, be present at the examination under subsection (g) of this
14 section.

15 (i) This section applies to any firefighter employed by a unit of local government
16 only.

17 **"§ 97-53.2. Presumption as to death or disability of firefighters from respiratory**
18 **disease, hypertension or heart disease, cancer.**

19 (a) Respiratory diseases that cause the death of, or any health condition or
20 impairment resulting in total or partial disability of, a firefighter shall be presumed to be
21 occupational diseases, suffered in the line of duty, that are covered by this Article unless
22 this presumption is overcome by a preponderance of competent evidence to the
23 contrary.

24 (b) Hypertension or heart disease causing the death of, or any health condition or
25 impairment resulting in total or partial disability of, a firefighter shall be presumed to be
26 an occupational disease, suffered in the line of duty, that is covered by this Article
27 unless this presumption is overcome by a preponderance of competent evidence to the
28 contrary.

29 (c) Leukemia or pancreatic, prostate, rectal, throat, ovarian, or breast cancer
30 causing the death of, or any health condition or impairment resulting in total or partial
31 disability of, any firefighter who has a contact with a toxic substance encountered in the
32 line of duty shall be presumed to be an occupational disease, suffered in the line of duty,
33 that is covered by this Article unless this presumption is overcome by a preponderance
34 of competent evidence to the contrary. For the purposes of this subsection, a "toxic
35 substance" is one which is a known or suspected carcinogen, as defined by the
36 International Agency for Research on Cancer, and which causes, or is suspected to
37 cause, leukemia or pancreatic, prostate, rectal, throat, ovarian, or breast cancer.

38 (d) Any of the presumptions described in subsections (a), (b), and (c) of this
39 section shall apply only if a firefighter has, if requested by the governing body
40 employing the firefighter, undergone a preemployment physical examination that
41 satisfies all of the following:

42 (1) Was conducted prior to the making of any claim under this Article that
43 relies on such presumptions.

- 1 (2) Was performed by a physician whose qualifications are as prescribed
- 2 by the governing body employing the firefighter.
- 3 (3) Included such appropriate laboratory and other diagnostic studies as
- 4 the governing body employing the firefighter may have prescribed.
- 5 (4) Found the firefighter free of respiratory diseases, hypertension, cancer,
- 6 or heart disease at the time of the examination.
- 7 (e) A firefighter making a claim under this Article who relies on a presumption
- 8 under this section shall, upon the request of governing body employing the firefighter,
- 9 submit to a physical examination that both:
- 10 (1) Is conducted by a physician selected by the governing body employing
- 11 the firefighter.
- 12 (2) Consists of such tests and studies as may reasonably be required by the
- 13 physician.
- 14 (f) A qualified physician, selected and compensated by the firefighter, may, at
- 15 the election of the firefighter, be present at the examination under subsection (e) of this
- 16 section.
- 17 (g) Whenever a claim for death benefits is made under this Article and any
- 18 presumption of this section is invoked, any firefighter entitled to make such claim shall,
- 19 upon the request of the appropriate governing body that had employed the deceased,
- 20 submit the body of the deceased to a postmortem examination as may be directed by the
- 21 Commission. A qualified physician, selected and compensated by the person entitled to
- 22 make the claim, may, at the election of such claimant, be present at the postmortem
- 23 examination.
- 24 (h) This section applies to any firefighter employed by a unit of local government
- 25 only."

26 **SECTION 2.** This act is effective when it becomes law and applies to claims
27 for compensation filed on or after that date.