

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 990

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

(Public)

Sponsors: Senator Berger of Franklin.

Referred to: Judiciary I (Civil).

March 20, 2007

1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE A PRESUMPTION THAT CERTAIN INFECTIOUS  
3 DISEASES, RESPIRATORY DISEASE, HYPERTENSION OR HEART  
4 DISEASE, AND CERTAIN CANCERS ARE OCCUPATIONAL DISEASES FOR  
5 FIREFIGHTERS EMPLOYED BY LOCAL GOVERNMENTS THAT ARE  
6 COVERED BY THE WORKERS' COMPENSATION ACT.

7 The General Assembly of North Carolina enacts:

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

10 "§ 97-53.1. Presumption as to death or disability of firefighters from certain  
11 infectious diseases.

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

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

25 (1) Blood or body fluids. – Blood and body fluids containing visible blood  
26 and other body fluids to which universal precautions for prevention of  
27 occupational transmission of blood-borne pathogens, as established by  
28 the Centers for Disease Control, apply. For purposes of potential  
29 transmission of hepatitis, meningococcal meningitis, tuberculosis, or

1           HIV, the term "blood or body fluids" includes respiratory, salivary,  
2           and sinus fluids, including droplets, sputum, saliva, mucous, and any  
3           other fluid through which infectious airborne or blood-borne  
4           organisms can be transmitted between persons.

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

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

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

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

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

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

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

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

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

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

43           (f) The presumptions described in subsection (a) of this section shall not be  
44           effective until six months following the examination under subsection (e) of this section

1 unless the firefighter can demonstrate a documented exposure during the six-month  
2 period.

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

6 (1) Is conducted by a physician selected by the governing body employing  
7 the firefighter.

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

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

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

15 **"§ 97-53.2. Presumption as to death or disability of firefighters from respiratory**  
16 **disease, hypertension or heart disease, cancer.**

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

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

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

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

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

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

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

3           (4) Found the firefighter free of respiratory diseases, hypertension, cancer,  
4           or heart disease at the time of the examination.

5           (e) A firefighter making a claim under this Article who relies on a presumption  
6 under this section shall, upon the request of 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          (f) A qualified physician, selected and compensated by the firefighter, may, at  
13 the election of the firefighter, be present at the examination under subsection (e) of this  
14 section.

15          (g) Whenever a claim for death benefits is made under this Article and any  
16 presumption of this section is invoked, any firefighter entitled to make such claim shall,  
17 upon the request of the appropriate governing body that had employed the deceased,  
18 submit the body of the deceased to a postmortem examination as may be directed by the  
19 Commission. A qualified physician, selected and compensated by the person entitled to  
20 make the claim, may, at the election of such claimant, be present at the postmortem  
21 examination.

22          (h) This section applies to any firefighter employed by a unit of local government  
23 only."

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