

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH60241-LD-112B* (3/8)

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

Sponsors: Representatives Glazier, Alexander, Adams, and Setzer (Primary Sponsors).

Referred to:

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (g) A firefighter making a claim under this Article who relies on such
8 presumption shall, upon the request of the 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 (h) A qualified physician, selected and compensated by the firefighter, may, at
15 the election of the firefighter, be present at the examination under subsection (g) of this
16 section.

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

19 **"§ 97-53.2. Presumption as to death or disability of firefighters from respiratory**
20 **disease, hypertension or heart disease, cancer.**

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

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

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

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

- 1 (1) Was conducted prior to the making of any claim under this Article that
2 relies on such presumptions.
3 (2) Was performed by a physician whose qualifications are as prescribed
4 by the governing body employing the firefighter.
5 (3) Included such appropriate laboratory and other diagnostic studies as
6 the governing body employing the firefighter may have prescribed.
7 (4) Found the firefighter free of respiratory diseases, hypertension, cancer,
8 or heart disease at the time of the examination.

9 (e) A firefighter making a claim under this Article who relies on a presumption
10 under this section shall, upon the request of governing body employing the firefighter,
11 submit to a physical examination that both:

- 12 (1) Is conducted by a physician selected by the governing body employing
13 the firefighter.
14 (2) Consists of such tests and studies as may reasonably be required by the
15 physician.

16 (f) A qualified physician, selected and compensated by the firefighter, may, at
17 the election of the firefighter, be present at the examination under subsection (e) of this
18 section.

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

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

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