

HOUSE BILL NO. 408

INTRODUCED BY POMNICHOWSKI, MCALPIN, HENDRICK

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A PRESUMPTIVE DISEASE FOR WORKERS' COMPENSATION CLAIMS FOR CERTAIN DISEASES EXPERIENCED BY FIREFIGHTERS, ~~VOLUNTEER FIREFIGHTERS, EMERGENCY MEDICAL TECHNICIANS, AND PEACE OFFICERS;~~ PROVIDING CONDITIONS; AMENDING SECTIONS 39-71-116 AND 39-71-119, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, ~~firefighters, volunteer firefighters, emergency medical technicians, and peace officers~~ who respond to emergencies, including hazardous material incidents and fires involving toxic substances, wear protective gear and take precautions but often have less than adequate information about the dangers they may encounter; and

WHEREAS, in testimony before a congressional subcommittee in 2005, a vice president of the International Association of Fire Fighters reported that heart disease, lung disease, cancer, and infectious disease are among the leading causes of death and disability for firefighters, with studies having linked these diseases to the occupational hazards of firefighting; and

WHEREAS, at least 40 states have recognized the potential relationship between certain diseases and firefighting and other emergency situations by enacting presumptive disability laws so that ~~firefighters and peace officers~~ can file claims under workers' compensation or disability retirement without lengthy and medically invasive efforts to prove a connection between a disease and an accident or occupational hazard.

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

**Section 1.** Section 39-71-116, MCA, is amended to read:

**"39-71-116. Definitions.** Unless the context otherwise requires, in this chapter, the following definitions apply:

- (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.
- (2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act



1 necessary to:

2 (a) investigation, review, and settlement of claims;

3 (b) payment of benefits;

4 (c) setting of reserves;

5 (d) furnishing of services and facilities; and

6 (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

7 (3) "Aid or sustenance" means a public or private subsidy made to provide a means of support,  
8 maintenance, or subsistence for the recipient.

9 (4) "Beneficiary" means:

10 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

11 (b) an unmarried child under 18 years of age;

12 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is  
13 enrolled in an accredited apprenticeship program;

14 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the  
15 decedent for support at the time of injury;

16 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time  
17 of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

18 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent  
19 for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in  
20 subsections (4)(a) through (4)(e), does not exist.

21 (5) "Business partner" means the community, governmental entity, or business organization that provides  
22 the premises for work-based learning activities for students.

23 (6) "Casual employment" means employment not in the usual course of the trade, business, profession,  
24 or occupation of the employer.

25 (7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the  
26 injury.

27 (8) (a) "Construction industry" means the major group of general contractors and operative builders,  
28 heavy construction (other than building construction) contractors, and special trade contractors listed in major  
29 group 23 in the North American Industry Classification System Manual.

30 (b) The term does not include office workers, design professionals, salespersons, estimators, or any

1 other related employment that is not directly involved on a regular basis in the provision of physical labor at a  
2 construction or renovation site.

3 (9) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan No.  
4 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71  
5 to:

- 6 (i) determine liability;
- 7 (ii) apply the requirements of this title;
- 8 (iii) settle workers' compensation or occupational disease claims; or
- 9 (iv) determine survivor benefits.

10 (b) The term does not include an adjuster as defined in 33-17-102.

11 (10) "Days" means calendar days, unless otherwise specified.

12 (11) "Department" means the department of labor and industry.

13 ~~———— (12) "Emergency medical technician" means a person who holds a certificate issued by the board of~~  
14 ~~medical examiners as provided in Title 50, chapter 6, part 2, and is employed as an emergency responder.~~

15 ~~(12)(13)(12)~~ "Fiscal year" means the period of time between July 1 and the succeeding June 30.

16 ~~(13)(14)(13)~~ (a) "Household or domestic employment" means employment of persons other than  
17 members of the household for the purpose of tending to the aid and comfort of the employer or members of the  
18 employer's family, including but not limited to housecleaning and yard work.

19 (b) The term does not include employment beyond the scope of normal household or domestic duties,  
20 such as home health care or domiciliary care.

21 ~~(14)(15)(14)~~ "Insurer" means an employer bound by compensation plan No. 1, an insurance company  
22 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

23 ~~(15)(16)(15)~~ "Invalid" means one who is physically or mentally incapacitated.

24 ~~(16)(17)(16)~~ "Limited liability company" has the meaning provided in 35-8-102.

25 ~~(17)(18)(17)~~ "Maintenance care" means treatment designed to provide the optimum state of health while  
26 minimizing recurrence of the clinical status.

27 ~~(18)(19)(18)~~ "Medical stability", "maximum healing", or "maximum medical healing" means a point in the  
28 healing process when further material improvement would not be reasonably expected from primary medical  
29 treatment.

30 ~~(19)(20)(19)~~ "Objective medical findings" means medical evidence, including range of motion, atrophy,

1 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

2 ~~(20)(21)(20)~~ (a) "Occupational disease" means harm, damage, or death arising out of or contracted in  
3 the course and scope of employment caused by events occurring on more than a single day or work shift or, for  
4 a presumptive disease, on a single day or more than a single day.

5 (b) The term does not include a physical or mental condition arising from emotional or mental stress or  
6 from a nonphysical stimulus or activity.

7 ~~(21)(22)(21)~~ "Order" means any decision, rule, direction, requirement, or standard of the department or  
8 any other determination arrived at by the department.

9 ~~(22)(23)(22)~~ "Palliative care" means treatment designed to reduce or ease symptoms without curing the  
10 underlying cause of the symptoms.

11 ~~(23)(24)(23)~~ "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average  
12 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient  
13 or any length of time during the calendar year, 12 times the average monthly payroll for the current year.  
14 However, an estimate may be made by the department for any employer starting in business if average payrolls  
15 are not available. This estimate must be adjusted by additional payment by the employer or refund by the  
16 department, as the case may actually be, on December 31 of the current year. An employer's payroll must be  
17 computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

18 ~~———(25) "Peace officer" has the meaning provided in 7-32-303.~~

19 ~~(24)(26)(24)~~ "Permanent partial disability" means a physical condition in which a worker, after reaching  
20 maximum medical healing:

21 (a) has a permanent impairment established by objective medical findings;

22 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability  
23 to work; and

24 (c) has an actual wage loss as a result of the injury.

25 ~~(25)(27)(25)~~ "Permanent total disability" means a physical condition resulting from injury as defined in  
26 this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable  
27 prospect of physically performing regular employment. Regular employment means work on a recurring basis  
28 performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate  
29 job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

30 ~~(28)(26) "Presumptive disease" means an occupational disease affecting a firefighter, volunteer~~

1 firefighter, emergency medical technician, or peace officer who has met the criteria in [section 2] and who through  
 2 exposure to hazardous substances on the job has contracted a disease, including heart disease, lung disease,  
 3 bladder cancer, brain cancer, breast cancer, cancer of the blood or lymphatic systems, leukemia, non-Hodgkin's  
 4 lymphoma, multiple myeloma, malignant melanoma, cervical cancer, colorectal cancer, cancer of the digestive  
 5 system, kidney cancer, liver cancer, lung cancer, ovarian cancer, prostate cancer, skin cancer, testicular cancer,  
 6 ureter cancer, tuberculosis, hepatitis A, B, C, or D, human immunodeficiency virus, diphtheria, hemorrhagic fever,  
 7 meningococcal disease, or rabies.

8 ~~(26)(29)(27)~~ "Primary medical services" means treatment prescribed by a treating physician, for  
 9 conditions resulting from the injury, necessary for achieving medical stability.

10 ~~(27)(30)(28)~~ "Public corporation" means the state or a county, municipal corporation, school district, city,  
 11 city under a commission form of government or special charter, town, or village.

12 ~~(28)(31)(29)~~ "Reasonably safe place to work" means that the place of employment has been made as  
 13 free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

14 ~~(29)(32)(30)~~ "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that  
 15 are reasonably safe for use for the particular purpose for which they are furnished.

16 ~~(30)(33)(31)~~ (a) "Secondary medical services" means those medical services or appliances that are  
 17 considered not medically necessary for medical stability. The services and appliances include but are not limited  
 18 to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to  
 19 address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or  
 20 rehabilitation facilities.

21 (b) (i) As used in this subsection ~~(30) (33) (31)~~, "disability" means a condition in which a worker's ability  
 22 to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The  
 23 restrictions may be combined with factors, such as the worker's age, education, work history, and other factors  
 24 that affect the worker's ability to engage in gainful employment.

25 (ii) Disability does not mean a purely medical condition.

26 ~~(31)(34)(32)~~ "Sole proprietor" means the person who has the exclusive legal right or title to or ownership  
 27 of a business enterprise.

28 ~~(32)(35)(33)~~ "State's average weekly wage" means the mean weekly earnings of all employees under  
 29 covered employment, as defined and established annually by the department before July 1 and rounded to the  
 30 nearest whole dollar number.

1 ~~(33)(36)~~(34) "Temporary partial disability" means a physical condition resulting from an injury, as defined  
 2 in 39-71-119, in which a worker, prior to maximum healing:

3 (a) is temporarily unable to return to the position held at the time of injury because of a medically  
 4 determined physical restriction;

5 (b) returns to work in a modified or alternative employment; and

6 (c) suffers a partial wage loss.

7 ~~(34)(37)~~(35) "Temporary service contractor" means a person, firm, association, partnership, limited  
 8 liability company, or corporation conducting business that hires its own employees and assigns them to clients  
 9 to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations  
 10 resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

11 ~~(35)(38)~~(36) "Temporary total disability" means a physical condition resulting from an injury, as defined  
 12 in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical  
 13 healing.

14 ~~(36)(39)~~(37) "Temporary worker" means a worker whose services are furnished to another on a part-time  
 15 or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in  
 16 situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and  
 17 projects.

18 ~~(37)(40)~~(38) "Treating physician" means a person who is primarily responsible for the treatment of a  
 19 worker's compensable injury and is:

20 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges  
 21 to practice in one or more hospitals, if any, in the area where the physician is located;

22 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

23 (c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a  
 24 treating physician, as provided for in subsection ~~(37)(a)~~ ~~(40)(a)~~ (38)(A), in the area where the physician assistant  
 25 is located;

26 (d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

27 (e) a dentist licensed by the state of Montana under Title 37, chapter 4;

28 (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in  
 29 subsections ~~(37)(a)~~ ~~(40)(a)~~ (38)(A) through ~~(37)(e)~~ ~~(40)(e)~~ (38)(E) who is licensed or certified in another state; or

30 (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.

1           ~~(38)(41)(39)~~ "Work-based learning activities" means job training and work experience conducted on the  
 2 premises of a business partner as a component of school-based learning activities authorized by an elementary,  
 3 secondary, or postsecondary educational institution.

4           ~~(39)(42)(40)~~ "Year", unless otherwise specified, means calendar year."  
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6           **NEW SECTION.**   **Section 2. Conditions for claiming presumptive disease -- rebuttable**  
 7 **presumption.** (1) A firefighter, ~~volunteer firefighter, emergency medical technician, or peace officer~~ may file a  
 8 claim under this chapter for a presumptive disease under the following conditions:

9           (a) having undertaken a physical examination by a physician, physician assistant, or nurse practitioner  
 10 as a condition of employment, which physical examination:

11           (i) must include tests for presumptive diseases as applicable for each gender; and

12           (ii) did not reveal any evidence of the existence of a presumptive disease prior to employment; and

13           (b) having experienced the presumptive disease while on the job or within 60 months of the last day of  
 14 employment, except as provided in subsection (2).

15           (2) Subsection (1)(b) does not apply to the following:

16           (a) myocardial infarction, except if experienced within 72 hours of an incident qualifying as an accident  
 17 as described in 39-71-119(2);

18           (b) heart or lung disease if the firefighter, ~~volunteer firefighter, emergency medical technician, or peace~~  
 19 ~~officer~~ is a regular user of tobacco products or has a history in the past year of regular tobacco use;

20           (c) prostate cancer diagnosed after 50 years of age; or

21           (d) malignant melanoma, multiple myeloma, leukemia, non-Hodgkin's lymphoma, bladder cancer,  
 22 primary brain cancer, colorectal cancer, testicular cancer, and ureter cancer, which may not be considered  
 23 presumptive diseases unless manifested in a firefighter, ~~volunteer firefighter, emergency medical technician, or~~  
 24 ~~peace officer~~ who has served less than 10 years.

25           (3) (a) An insurer may rebut a presumptive disease claim by showing that the conditions of subsection  
 26 (1) were not met or that through a preponderance of medical evidence the primary cause of the presumptive  
 27 disease was not related to exposure from employment. The medical evidence may include but is not limited to  
 28 use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from  
 29 nonemployment activities.

30           (b) For the purposes of subsection (3)(a), "primary cause" has the meaning provided in 39-71-119.

1 (4) A presumptive disease applies only to benefits obtained under this chapter and not to claims filed  
2 under Title 19.

3

4 **Section 3.** Section 39-71-119, MCA, is amended to read:

5 **"39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:

6 (a) internal or external physical harm to the body that is established by objective medical findings;

7 (b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses,  
8 dentures, or hearing aids; or

9 (c) death.

10 (2) An injury is caused by an accident. An accident is:

11 (a) an unexpected traumatic incident or unusual strain;

12 (b) identifiable by time and place of occurrence;

13 (c) identifiable by member or part of the body affected; and

14 (d) caused by a specific event on a single day or during a single work shift.

15 (3) "Injury" or "injured" does not mean a physical or mental condition arising from:

16 (a) emotional or mental stress; or

17 (b) a nonphysical stimulus or activity.

18 (4) "Injury" or "injured" does not include a disease that is not caused by an accident.

19 (5) (a) ~~Except as provided in subsection (5)(c), a~~ cardiovascular, pulmonary, respiratory, or other  
20 disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident  
21 is the primary cause of the physical condition in relation to other factors contributing to the physical condition.

22 (b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of  
23 medical certainty, is responsible for more than 50% of the physical condition.

24 ~~(c) For firefighters, volunteer firefighters, emergency medical technicians, and peace officers applying~~  
25 ~~for benefits under this chapter, accidents may include incidents to which they respond that involve exposure to~~  
26 ~~a hazardous substance and to which the conditions of [section 2] apply."~~

27

28 **NEW SECTION. Section 4. Codification instruction.** [Section 2] is intended to be codified as an  
29 integral part of Title 39, chapter 71, part 1, and the provisions of Title 39, chapter 71, part 1, apply to [section 2].

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