

## 1 SENATE BILL NO. 415

2 INTRODUCED BY P. CONNELL, M. CAFERRO

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PRESUMPTION IN FAVOR OF FIREFIGHTERS FOR  
5 CERTAIN DISEASES; ESTABLISHING CONDITIONS, APPLICABLE FACTORS, AND PROCESS FOR  
6 REBUTTAL; FUNDING PRESUMPTIVE DISEASE BENEFITS; PROVIDING RULEMAKING AUTHORITY;  
7 AMENDING SECTION 50-3-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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11 NEW SECTION. **Section 1. Presumptive disease for firefighters -- rebuttal -- definition.** (1) For  
12 purposes of obtaining benefits from the presumptive disease compensation fund in [section 5], a firefighter is  
13 presumed to have a compensable presumptive disease claim if the firefighter meets the requirements of [section  
14 2] and subsection (2) of this section.

15 (2) The presumption in subsection (1) applies only to a presumptive disease contracted:

16 (a) during the term of employment of the firefighter; or

17 (b) during a period following termination of employment that:

18 (i) is the equivalent of 3 months for every year of employment; and

19 (ii) is not more than 60 months after termination.

20 (3) The department may rebut the presumption if it establishes, by a preponderance of evidence:

21 (a) that the conditions of [section 2] or subsection (2) of this section have not been met; or

22 (b) that the presumptive disease was not compensable as demonstrated by medical evidence. Medical  
23 evidence may include use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and  
24 exposure from nonemployment activities.

25 (4) For the purposes of [sections 1 through 6 7]:

26 (a) "department" means the department of labor and industry provided for in 2-15-1701;

27 (b) "firefighter" means a firefighter as defined in 19-13-104, a volunteer firefighter as defined in  
28 7-33-4510, and a volunteer as defined in 7-33-4109; and

29 (c) "presumptive disease" includes:

30 (i) heart disease;

- 1 (ii) respiratory disease; or
- 2 (iii) any of the following cancers:
- 3 (A) brain cancer;
- 4 (B) multiple myeloma;
- 5 (C) nonhodgkins lymphoma;
- 6 (D) prostate cancer; or
- 7 (E) testicular cancer.

8

9 **NEW SECTION. Section 2. Conditions for claiming presumptive disease.** Except as provided in  
 10 [section 6(2)], the following must be satisfied for the presumption in [section 1] to apply:

- 11 (1) (a) The firefighter must timely file a claim for a presumptive disease under Title 39, chapter 71; and
- 12 (b) the claim must be denied as noncompensable.

13 (2) (a) (i) The firefighter must have undergone, within 90 days of hiring, a medical examination that did  
 14 not reveal substantial evidence of the presumptive disease for which the presumption under [section 1] is sought;  
 15 and

16 (ii) the firefighter must have undergone subsequent periodic medical examinations occurring at least once  
 17 every 5 years during the first 10 years of service and once every 3 years after 10 years of service.

18 (b) (i) This subsection does not require the employer of a firefighter to provide or pay for a medical  
 19 examination, either at the time of hiring or during the subsequent term of employment.

20 (ii) If the employer of a firefighter does not provide or pay for a medical examination under this subsection,  
 21 the firefighter may satisfy this subsection by obtaining the medical examination at the firefighter's expense or at  
 22 the expense of another party.

23 (3) To qualify for a heart disease or respiratory disease presumption, a firefighter may not be a regular  
 24 user of tobacco products or have a history of regular tobacco use in the 5 years preceding the filing of the claim  
 25 under subsection (1)(a).

26 (4) To qualify for a cancer presumption, a firefighter must have completed at least 10 years of service  
 27 as a firefighter.

28 (5) To qualify for the heart disease presumption specifically for a myocardial infarction, the myocardial  
 29 infarction must occur within 72 hours of a work-related task involving significant physical exertion or exposure  
 30 to a hazardous substance.

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2           **NEW SECTION. Section 3. Presumption -- procedure.** (1) If a firefighter files a claim under Title 39,  
3 chapter 71, for a presumptive disease and the claim is denied as noncompensable, an insurer shall notify the  
4 department and the firefighter in writing of the denial. The denial must inform the firefighter that the claim has  
5 been forwarded to the department for review.

6           (2) (a) Within 30 days of receiving the denial under subsection (1), the firefighter shall pay the  
7 department a \$5 claim review fee.

8           (b) Fees collected under this subsection must be deposited in the state special revenue fund established  
9 in [section 5(1)].

10           (3) (a) Within 30 days of receiving the notice under subsection (1), the department shall determine if it  
11 intends to rebut the presumption pursuant to [section 1(3)].

12           (b) In making a determination under this subsection, the department may not give deference to the claim  
13 determination of the insurer.

14           (4) The department shall notify the firefighter of its determination under subsection (3)(a) within 1 week  
15 of making the determination.

16           (5) (a) If the department intends to rebut the presumption, it shall hold a contested case hearing in  
17 accordance with the provisions of the Montana Administrative Procedure Act.

18           (b) In a hearing under subsection (5)(a), the department bears the burden of rebuttal under [section 1(3)].

19           (6) Except as provided in subsection (7)(b), if after all administrative remedies are exhausted under  
20 subsection (5)(a) the department successfully rebuts the presumption pursuant to [section 1(3)], the presumptive  
21 disease claim is denied.

22           (7) The administrative remedies under Title 39, chapter 71, are not applicable to a presumptive disease  
23 claim, except that a firefighter may pursue administrative remedies available for denial of a claim under Title 39,  
24 chapter 71, if:

25           (a) a firefighter agrees the requirements of [section 1(3)(a)] are not met and notifies the department that  
26 the firefighter does not intend to pursue a presumption under this section; or

27           (b) the department successfully rebuts the presumption under [section 1(3)(a)].

28           (8) If the department does not intend to rebut or is unsuccessful in rebutting a presumptive disease claim,  
29 a firefighter must receive benefits as specified in [section 4].

30

1            **NEW SECTION. Section 4. Presumptive disease -- benefit payment.** (1) A firefighter who is eligible  
 2 for benefits under [section 3(8)] must receive the same level of benefits and for the same periods as would have  
 3 applied if the insurer had approved the claim under Title 39, chapter 71.

4            (2) The benefits provided under subsection (1) must be paid out of the presumptive disease  
 5 compensation fund in [section 5].

6            (3) The department shall administer benefits under this section.

7            (4) A claim approval under this part does not impose an obligation on the insurer.

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9            **NEW SECTION. Section 5. Presumptive disease compensation fund.** (1) There is an account in the  
 10 state special revenue fund to the credit of the department for payment and administration of presumptive disease  
 11 benefits. This account may be referred to as the "presumptive disease compensation fund" or "fund".

12            (2) The fund consists of revenue from the 4% 0.33% tax provided in 50-3-109(2)(b) and the \$5 claim  
 13 review fee provided in [section 3].

14            (3) The fund may be used by the department to pay and administer presumptive disease benefits under  
 15 [sections 3 and 4].

16            (4) The department's spending authority under this part is limited to the balance of the fund.

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18            **NEW SECTION. Section 6. Presumption applicability.** (1) [Sections 1 through 5] apply to a claim filed  
 19 under this chapter on or after [the effective date of this act], including a claim for a presumptive disease that a  
 20 firefighter contracted prior to [the effective date of this act].

21            (2) A firefighter who, prior to [the effective date of this act], did not receive a medical examination as  
 22 frequently as the intervals set forth in [section 2(2)] is not ineligible for a presumption under [sections 1 through  
 23 5] on that basis.

24            (3) The presumption in [section 1(1)] applies only to benefits under this chapter and is not to be applied  
 25 to a claim for benefits under Title 39, chapter 71.

26            (4) If a firefighter is eligible for benefits as provided in [section 3(8)], the employer is entitled to the  
 27 exclusive remedy set forth in Title 39, chapter 71, part 4.

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29            **NEW SECTION. SECTION 7. DEPARTMENT -- RULEMAKING. THE DEPARTMENT MAY ADOPT RULES TO**  
 30 **IMPLEMENT [SECTIONS 1 THROUGH 5].**

1

2 **Section 8.** Section 50-3-109, MCA, is amended to read:

3 **"50-3-109. Tax on fire insurance premiums.** (1) Each insurer authorized to effect insurance on risks  
4 enumerated in subsection ~~(2)~~ (3) that is doing business in this state shall pay to the state auditor during the month  
5 of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, taxes  
6 on the fire portion of the direct premiums on the enumerated risks received during the previous calendar year  
7 after deducting cancellations and return premiums. A tax of ~~2-1/2%~~ 2.5% must be deposited in the general fund  
8 ~~as provided in 33-2-708~~ as provided in subsection (2).

9 (2) (A) The IF THE BALANCE OF THE PRESUMPTIVE DISEASE COMPENSATION FUND PROVIDED FOR IN [SECTION  
10 5] DOES NOT EXCEED \$1 MILLION, THE 2.5% tax collected under subsection (1) must be deposited as follows:

11 (a)(i) ~~4.5%~~ 2.17% must be deposited in the general fund as provided in 33-2-708; and

12 (b)(ii) ~~1%~~ 0.33% must be deposited in the state special revenue fund as provided in [section 5(2)].

13 (B) IF THE BALANCE OF THE PRESUMPTIVE DISEASE COMPENSATION FUND PROVIDED FOR IN [SECTION 5] EXCEEDS  
14 \$1 MILLION, THE 2.5% TAX COLLECTED UNDER SUBSECTION (1) MUST BE DEPOSITED INTO THE GENERAL FUND.

15 ~~(2)~~(3) The risks referred to in subsection (1) are:

16 (a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other  
17 casualty;

18 (b) all kinds of insurance on goods, merchandise, or other property in the course of transportation,  
19 whether by land, water, or air;

20 (c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and  
21 inland navigation and transportation perils;

22 (d) insurance of growing crops against loss or damage resulting from hail or the elements;

23 (e) insurance against loss or damage by water to any goods or premises arising from the breakage or  
24 leakage of sprinklers, pumps, or other apparatus;

25 (f) insurance against loss or legal liability for loss because of damage to property caused by the use of  
26 teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any  
27 vehicle; and

28 (g) insurance against theft of the whole or any part of a vehicle."  
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30 NEW SECTION. Section 9. Codification instruction. [Sections 1 through 6 7] are intended to be

1 codified as an integral part of Title 7, chapter 33, and the provisions of Title 7, chapter 33, apply to [sections 1  
2 through 6 Z].

3  
4 NEW SECTION. Section 10. Saving clause. [This act] does not affect rights and duties that matured,  
5 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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7 NEW SECTION. Section 11. Effective date. [This act] is effective on passage and approval.

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