

SENATE BILL NO. 160

INTRODUCED BY N. MCCONNELL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE FIREFIGHTER PROTECTION ACT BY
5 CREATING PRESUMPTIVE COVERAGE UNDER WORKERS' COMPENSATION FOR CERTAIN DISEASES
6 ASSOCIATED WITH FIREFIGHTING ACTIVITIES; PROVIDING CONDITIONS; PROVIDING A REBUTTAL
7 OPTION FOR INSURERS; PROVIDING OPT-IN CHOICE FOR VOLUNTEER FIREFIGHTING ENTITIES;
8 INCLUDING PRESUMPTIVE OCCUPATIONAL DISEASE WITHIN THE STATE'S PUBLIC POLICY
9 PROVISIONS FOR WORKERS' COMPENSATION; PROVIDING DEFINITIONS; AMENDING SECTIONS
10 39-71-105, 39-71-124, AND 39-71-407, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN
11 APPLICABILITY DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 NEW SECTION. **Section 1. Presumptive occupational disease for firefighters -- rebuttal --**
16 **applicability -- definitions.** (1) (a) A firefighter for whom coverage is required under the Workers' Compensation
17 Act is presumed to have a claim for a presumptive occupational disease under the Workers' Compensation Act
18 if the firefighter meets the requirements of [section 2] and is diagnosed with one or more of the diseases listed
19 in subsection (2) within the period listed.

20 (b) Coverage under [section 2] and this section is optional for the employer of a firefighter for whom
21 coverage under the Workers' Compensation Act is voluntary. An employer of a volunteer firefighter under
22 7-33-4109 or 7-33-4510 may elect as part of providing coverage under the Workers' Compensation Act to
23 additionally obtain the presumptive occupational disease coverage, subject to the insurer agreeing to provide
24 presumptive coverage.

25 (2) The following diseases are presumptive occupational diseases proximately caused by firefighting
26 activities, provided that the evidence of the presumptive occupational disease becomes manifest after the number
27 of years of the firefighter's employment as listed for each occupational disease or within 10 years of the last date
28 on which the firefighter was engaged in firefighting activities for an employer:

- 29 (a) bladder cancer after 12 years;
- 30 (b) brain cancer of any type after 10 years;

- 1 (c) breast cancer after 5 years if the diagnosis occurs before the firefighter is 40 years old and is not
2 known to be associated with a genetic predisposition to breast cancer;
- 3 (d) cardiovascular disease after 4 years;
- 4 (e) colorectal cancer after 10 years;
- 5 (e) esophageal cancer after 10 years;
- 6 (f) kidney cancer after 15 years;
- 7 (g) leukemia after 5 years;
- 8 (h) mesothelioma after 10 years;
- 9 (i) multiple myeloma after 15 years;
- 10 (j) non-Hodgkin's lymphoma after 15 years;
- 11 (k) posttraumatic stress disorder related to experiences encountered during firefighting activities; or
- 12 (l) pulmonary or respiratory disease after 4 years.

13 (3) The beneficiaries of a firefighter who otherwise would be eligible for presumptive occupational
14 disease benefits under this section but who dies prior to filing a claim, as provided in [section 2], are eligible for
15 death benefits in the same manner as for a death from an injury, as provided in 39-71-407. The beneficiaries
16 under this subsection (3) are similarly bound by the provisions of exclusive remedy as provided in 39-71-411 and
17 subject to the filing requirements in 39-71-601.

18 (4)(a) An insurer is liable for the payment of compensation for presumptive occupational disease benefits
19 under this chapter in the same manner as provided in 39-71-407, including objective medical findings of a disease
20 listed in subsection (2) but excluding the requirement in 39-71-407(10) that the objective medical findings trace
21 a relationship between the presumptive occupational disease and the claimant's job history.

22 (b) An insurer under plan 1, 2, or 3 that disputes a presumptive occupational disease claim has the
23 burden of proof in establishing by substantial evidence that the firefighter is not suffering from a compensable
24 presumptive occupational disease. An insurer that disputes the claim may pay benefits under 39-71-608 or
25 39-71-615 and may pursue dispute mechanisms established in Title 39, chapter 71, part 24.

26 (c) A firefighter or the firefighter's beneficiaries may pursue the dispute remedies as provided in Title 39,
27 chapter 71, part 24, if an insurer disputes a claim.

28 (5) The use of the term "occupational disease" includes a presumptive occupational disease when used
29 in the definitions in 39-71-116 for "claims examiner", "permanent partial disability", "primary medical services",
30 and "treating physician" and when used in 39-71-107, 39-71-307, 39-71-412, 39-71-503, 39-71-601, 39-71-604,

1 39-71-606, 39-71-615, 39-71-703, 39-71-704, 39-71-713, 39-71-714, 39-71-717, 39-71-1011, 39-71-1036,
2 39-71-1041, 39-71-1042, 39-71-1101, 39-71-1110, 39-71-1504, 39-71-2311, 39-71-2312, 39-71-2313,
3 39-71-2316, and 39-71-4003.

4 (6) For the purposes of [section 2] and this section, the following definitions apply:

5 (a) "Firefighter" means an individual whose primary duties involve extinguishing or investigating fires as:

6 (i) a firefighter defined in 19-13-104;

7 (ii) a volunteer firefighter defined in 7-33-4510, but only if the volunteer firefighter's employer has elected
8 coverage under Title 39, chapter 71, with an insurer that allows an election and the employer has opted
9 separately to include presumptive occupational disease coverage under [section 2] and this section; or

10 (iii) a volunteer described in 7-33-4109 for a firefighting entity that has elected coverage under Title 39,
11 chapter 71, with an insurer that allows an election and that has opted separately to include presumptive
12 occupational disease coverage.

13 (b) "Firefighting activities" means actions required of a firefighter that expose the firefighter to extreme
14 heat or inhalation or physical exposure to chemical fumes, smoke, particles, or other toxic gases arising directly
15 out of employment as a firefighter.

16 (c) "Posttraumatic stress disorder" has the meaning provided in the American psychiatric association's
17 fifth edition of its Diagnostic and Statistical Manual of Mental Disorders.

18 (d) "Presumptive occupational disease" means harm or damage from one or more of the diseases listed
19 under subsection (2) that is established by objective medical findings and that is contracted in the course and
20 scope of employment as a firefighter from either a single day or work shift or for more than a single day or work
21 shift but that is not specific to an accident. The term may include a physical or mental condition arising from
22 posttraumatic stress disorder associated with firefighting activities.

23 (e) "Substantial evidence" means:

24 (i) the conditions of [section 2] have not been met; or

25 (ii) the presumptive occupational disease occurred without the firefighter having had firefighting duties
26 that involved close proximity to fires and smoke or did not have exposure to smoke or particles in sufficient
27 quantities to have reasonably caused a presumptive occupational disease.

28
29 **NEW SECTION. Section 2. Conditions for claiming presumptive occupational disease.** (1) Except
30 as provided in subsection (4), the following must be satisfied for the presumption in [section 1] to apply:

1 (a) the firefighter must timely file a claim for a presumptive occupational disease under Title 39, chapter
2 71, as soon as the firefighter knows or should have known that the firefighter's condition resulted from a
3 presumptive occupational disease; and

4 (b) (i) the firefighter must have undergone, within 90 days of hiring, a medical examination that did not
5 reveal substantial evidence of the presumptive occupational disease for which the presumption under [section
6 1] is sought; and

7 (ii) the firefighter must have undergone subsequent periodic medical examinations at least once every
8 2 years.

9 (2) (a) Subsection (1)(b) does not require the employer of a firefighter to provide or pay for a medical
10 examination, either at the time of hiring or during the subsequent term of employment.

11 (b) If the employer of a firefighter does not provide or pay for a medical examination under subsection
12 (1)(b), the firefighter may satisfy the requirements of subsection (1)(b) by obtaining the medical examination at
13 the firefighter's expense or at the expense of another party.

14 (3) To qualify for a noncancer respiratory presumptive occupational disease, a firefighter may not:

15 (a) be a regular user of tobacco products;

16 (b) have a history of regular tobacco use in the 5 years preceding the filing of the claim under subsection
17 (1)(a); or

18 (c) have been exposed by a cohabitant who regularly and habitually used tobacco products within the
19 home for a period of 10 or more years prior to the diagnosis.

20 (4) A firefighter who, prior to [the effective date of this act], did not receive a medical examination as
21 frequently as the intervals set forth in subsection (1)(b) is not ineligible on that basis for a presumptive
22 occupational disease claim under [section 1] and this section.

23

24 **Section 3.** Section 39-71-105, MCA, is amended to read:

25 **"39-71-105. Declaration of public policy.** For the purposes of interpreting and applying this chapter,
26 the following is the public policy of this state:

27 (1) An objective of the Montana workers' compensation system is to provide, without regard to fault,
28 wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits
29 are not intended to make an injured worker whole but are intended to provide assistance to a worker at a
30 reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable

1 relationship to actual wages lost as a result of a work-related injury or disease.

2 (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that
3 a holder of a current, valid independent contractor exemption certificate issued by the department is an
4 independent contractor if the person is working under the independent contractor exemption certificate. The
5 holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this
6 chapter unless the person has elected to be bound personally and individually by the provisions of compensation
7 plan No. 1, 2, or 3.

8 (3) A worker's removal from the workforce because of a work-related injury or disease has a negative
9 impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the
10 workers' compensation system is to return a worker to work as soon as possible after the worker has suffered
11 a work-related injury or disease.

12 (4) Montana's workers' compensation and occupational disease insurance systems are intended to be
13 primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able
14 to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to
15 minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

16 (5) This chapter must be construed according to its terms and not liberally in favor of any party.

17 (6) It is the intent of the legislature that:

18 (a) except as provided in [sections 1 and 2] for firefighters' presumptive occupational disease claims,
19 a stress claims claim, often referred to as a "mental-mental claims claim" and or a "mental-physical claims claim",
20 are is not compensable under Montana's workers' compensation and occupational disease laws. The legislature
21 recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an
22 economic burden on the workers' compensation and occupational disease system. The legislature also
23 recognizes that there are other states that do not provide compensation for various categories of stress claims
24 and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all
25 injuries are compensable under the present system, and it is within the legislature's authority to define the limits
26 of the workers' compensation and occupational disease system. However, it is also within the legislature's
27 authority to recognize the public service provided by firefighters and to join with other states that have extended
28 a presumptive occupational disease recognition to firefighters.

29 (b) for occupational disease or presumptive occupational disease claims, because of the nature of
30 exposure, workers should not be required to provide notice to employers of the disease as required of injuries

1 and that the requirements for filing of claims reflect consideration of when the worker knew or should have known
 2 that the worker's condition resulted from an occupational disease or a presumptive occupational disease. The
 3 legislature recognizes that occupational diseases in the workplace are caused by events occurring on more than
 4 a single day or work shift and that ~~it is within the legislature's~~ the legislature has the authority to define an
 5 occupational disease or a presumptive occupational disease and establish the causal connection to the
 6 workplace."

7

8 **Section 4.** Section 39-71-124, MCA, is amended to read:

9 **"39-71-124. Applicability of Workers' Compensation Act -- exceptions.** Except as provided in
 10 39-71-407, 39-71-601, and 39-71-603 and as specified in [section 1], this chapter applies to injuries and
 11 occupational diseases."

12

13 **Section 5.** Section 39-71-407, MCA, is amended to read:

14 **"39-71-407. Liability of insurers -- limitations.** (1) For workers' compensation injuries, each insurer
 15 is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee
 16 of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who
 17 receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the
 18 employee's beneficiaries, if any.

19 (2) An injury does not arise out of and in the course of employment when the employee is:

20 (a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific
 21 tasks for the employer during the break; or

22 (b) engaged in a social or recreational activity, regardless of whether the employer pays for any portion
 23 of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the
 24 time of injury, is on paid time while participating in a social or recreational activity or whose presence at the
 25 activity is required or requested by the employer. For the purposes of this subsection (2)(b), "requested" means
 26 the employer asked the employee to assume duties for the activity so that the employee's presence is not
 27 completely voluntary and optional and the injury occurred in the performance of those duties.

28 (3) (a) ~~An~~ Subject to subsection (3)(c), an insurer is liable for an injury, as defined in 39-71-119, only if
 29 the injury is established by objective medical findings and if the claimant establishes that it is more probable than
 30 not that:

- 1 (i) a claimed injury has occurred; or
- 2 (ii) a claimed injury has occurred and aggravated a preexisting condition.
- 3 (b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury
- 4 aggravated a preexisting condition is not sufficient to establish liability.
- 5 (c) Objective medical findings are sufficient for a presumptive occupational disease as defined in
- 6 [section 1] but may be overcome by substantial evidence, as defined in [section 1].
- 7 (4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:
- 8 (i) the employer furnishes the transportation or the employee receives reimbursement from the employer
- 9 for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the
- 10 travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or
- 11 (ii) the travel is required by the employer as part of the employee's job duties.
- 12 (b) A payment made to an employee under a collective bargaining agreement, personnel policy manual,
- 13 or employee handbook or any other document provided to the employee that is not wages but is designated as
- 14 an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and
- 15 the employee is not covered under this chapter while traveling.
- 16 (5) Except as provided in subsection (6), an employee is not eligible for benefits otherwise payable under
- 17 this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause
- 18 of the accident.
- 19 (6) (a) An employee who has received written certification, as defined in 50-46-302, from a physician for
- 20 the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable under
- 21 this chapter is subject to the limitations of subsections (6)(b) through (6)(d).
- 22 (b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use
- 23 of marijuana for a debilitating medical condition, as defined in 50-46-302, is the major contributing cause of the
- 24 injury or occupational disease.
- 25 (c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs
- 26 associated with the use of marijuana for a debilitating medical condition, as defined in 50-46-302.
- 27 (d) In an accepted liability claim, the benefits payable under this chapter may not be increased or
- 28 enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 50-46-302. An
- 29 insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana
- 30 for a debilitating medical condition.

1 (7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to attempt
2 to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does not apply
3 to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed drug.

4 (8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two
5 or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that
6 another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later
7 proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must
8 receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

9 (9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the
10 same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits
11 caused by the subsequent nonwork-related injury.

12 (10) ~~An~~ Except for cases of presumptive occupational disease as provided in [sections 1 and 2], an
13 employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established
14 by objective medical findings that contain sufficient factual and historical information concerning the relationship
15 of the worker's condition to the original injury.

16 (11) (a) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan
17 No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the
18 extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state
19 fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease.

20 (b) The provisions of subsection (11)(a) apply to presumptive occupational disease if the employee is
21 diagnosed and meets the conditions of [sections 1 and 2].

22 (12) An insurer is liable for an occupational disease only if the occupational disease:

23 (a) is established by objective medical findings; and

24 (b) arises out of or is contracted in the course and scope of employment. An occupational disease is
25 considered to arise out of or be contracted in the course and scope of employment if the events occurring on
26 more than a single day or work shift are the major contributing cause of the occupational disease in relation to
27 other factors contributing to the occupational disease. For the purposes of this subsection (12), an occupational
28 disease is not the same as a presumptive occupational disease.

29 (13) When compensation is payable for an occupational disease or a presumptive occupational disease,
30 the only employer liable is the employer in whose employment the employee was last injuriously exposed to the

1 hazard of the disease.

2 (14) When there is more than one insurer and only one employer at the time that the employee was
3 injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the
4 earlier of:

5 (a) the time that the occupational disease or presumptive occupational disease was first diagnosed by
6 a health care provider; or

7 (b) the time that the employee knew or should have known that the condition was the result of an
8 occupational disease or a presumptive occupational disease.

9 (15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or
10 substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30,
11 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with
12 respect to miners previously employed in the mine if acquisition had not occurred and that person had continued
13 to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

14 (16) As used in this section, "major contributing cause" means a cause that is the leading cause
15 contributing to the result when compared to all other contributing causes."
16

17 NEW SECTION. Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified
18 as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 and 2].
19

20 NEW SECTION. Section 7. Effective date -- applicability. [This act] is effective July 1, 2019, and
21 applies to presumptive occupational diseases diagnosed on or after July 1, 2019.
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