

SENATE BILL NO. 310

INTRODUCED BY J. SMALL, E. BUTTREY, D. SALOMON, J. WELBORN, B. MOLNAR, R. LYNCH, M. DUNWELL, K. KELKER, C. KNUDSEN, S. VINTON, E. BOLDMAN, S. MORIGEAU, J. GROSS, D. HARVEY, E. KERR-CARPENTER, K. BOGNER, B. GILLESPIE, P. FLOWERS, M. FOX, B. LER, K. ZOLNIKOV, S. GIST, A. BUCKLEY, K. KORTUM, M. BERTOGLIO, G. FRAZER, C. FRIEDEL, M. YAKAWICH, T. BROCKMAN, E. MATTHEWS, G. NIKOLAKAKOS, D. BAUM, S. HOWELL, J. KARLEN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PRESUMPTIVE OCCUPATIONAL DISEASES; ADDING PRESUMPTIVE OCCUPATIONAL DISEASES PROXIMATELY CAUSED BY FIREFIGHTING ACTIVITIES; AND AMENDING SECTION 39-71-1401, MCA."

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

**Section 1.** Section 39-71-1401, MCA, is amended to read:

**"39-71-1401. (Temporary) Presumptive occupational disease for firefighters -- rebuttal -- applicability -- definitions.** (1) (a) A firefighter for whom coverage is required under the Workers' Compensation Act is presumed to have a claim for a presumptive occupational disease under the Workers' Compensation Act if the firefighter meets the requirements of 39-71-1402 and is diagnosed with one or more of the diseases listed in subsection (2) within the period listed.

(b) Coverage under 39-71-1402 and this section is optional for the employer of a firefighter for whom coverage under the Workers' Compensation Act is voluntary. An employer of a volunteer firefighter under 7-33-4109 or 7-33-4510 may elect as part of providing coverage under the Workers' Compensation Act to additionally obtain the presumptive occupational disease coverage, subject to the insurer agreeing to provide presumptive coverage.

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

- 1 (a) bladder cancer after 12 years;
- 2 (b) brain cancer of any type after 10 years;
- 3 (c) breast cancer after 5 years if the diagnosis occurs before the firefighter is 40 years old and is
- 4 not known to be associated with a genetic predisposition to breast cancer;
- 5 (d) cervical cancer after 15 years;
- 6 ~~(d) myocardial infarction after 10 years;~~
- 7 (e) colorectal cancer after 10 years;
- 8 (f) esophageal cancer after 10 years;
- 9 (g) kidney cancer after 15 years;
- 10 (h) leukemia after 5 years;
- 11 (i) lung cancer after 4 years;
- 12 ~~(j)(i) mesothelioma or asbestosis after 10 years;~~
- 13 ~~(j)(k) multiple myeloma after 15 years;~~
- 14 (l) myocardial infarction after 10 years;
- 15 ~~(k)(m) non-Hodgkin's lymphoma after 15 years; and~~
- 16 ~~(l) lung cancer after 4 years~~
- 17 (n) testicular cancer after 10 years.

18 (3) For purposes of calculating the number of years of a firefighter's employment history under

19 subsection (2), a firefighter's employment history after July 1, 2014, may be calculated.

20 (4) The beneficiaries of a firefighter who otherwise would be eligible for presumptive occupational

21 disease benefits under this section but who dies prior to filing a claim, as provided in 39-71-1402, are eligible

22 for death benefits in the same manner as for a death from an injury, as provided in 39-71-407. The beneficiaries

23 under this subsection are similarly bound by the provisions of exclusive remedy as provided in 39-71-411 and

24 subject to the filing requirements in 39-71-601.

25 (5) (a) Subject to the provisions of subsection (5)(c), an insurer is liable for the payment of

26 compensation for presumptive occupational disease benefits under this chapter in the same manner as

27 provided in 39-71-407, including objective medical findings of a disease listed in subsection (2) but excluding

28 the requirement in 39-71-407(10) that the objective medical findings trace a relationship between the

1 presumptive occupational disease and the claimant's job history. For myocardial infarction or lung cancer under  
2 subsection (2), the diseases must be the type that can reasonably be caused by firefighting activities.

3 (b) (i) An insurer under plan 1, 2, or 3 that disputes a presumptive occupational disease claim has  
4 the burden of proof in establishing by a preponderance of the evidence that the firefighter is not suffering from a  
5 compensable presumptive occupational disease. An insurer that disputes the claim may pay benefits under 39-  
6 71-608 or 39-71-615 and may pursue dispute mechanisms established in Title 39, chapter 71, part 24.

7 (ii) An insurer is not liable for the payment of workers' compensation benefits for presumptive  
8 occupational disease if the insurer establishes by a preponderance of the evidence that the firefighter was not  
9 exposed during the course and scope of the firefighter's duties to smoke or particles in a quantity sufficient to  
10 have reasonably caused the disease claimed.

11 (c) A total claim payment by an insurer under this section is limited to \$5 million for each claim.

12 (6) This section does not limit an insurer's ability to assert that the occupational disease was not  
13 caused by the firefighter's employment history as a firefighter.

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

16 (8) The use of the term "occupational disease" includes a presumptive occupational disease when  
17 used in the definitions in 39-71-116 for "claims examiner", "permanent partial disability", "primary medical  
18 services", and "treating physician" and when used in 39-71-107, 39-71-307, 39-71-412, 39-71-503, 39-71-601,  
19 39-71-604, 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-  
20 71-1036, 39-71-1041, 39-71-1042, 39-71-1101, 39-71-1110, 39-71-1504, 39-71-2311, 39-71-2312, 39-71-2313,  
21 39-71-2316, and 39-71-4003.

22 (9) Section 39-71-1402 and this section:

23 (a) apply only to presumptive occupational diseases for firefighters; and

24 (b) do not apply to any other issue relating to workers' compensation and may not be used or cited  
25 as guidance in the administration of Title 33 or 37.

26 (10) For the purposes of 39-71-1402 and this section, the following definitions apply:

27 (a) "Firefighter" means an individual whose primary duties involve extinguishing or investigating  
28 fires, with at least 1 year of firefighting operations in Montana beginning on or after July 1, 2019, as:

