

PRESUMPTIVE ILLNESS FOR FIREFIGHTERS

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting (5-4-105, MCA; [Chapter 309, Laws of 2017](#)). The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: First responders, particularly firefighters, seldom know what hazardous materials may be present at the scene. Almost any fire may result in diverse chemicals going up in smoke, which leads to firefighters' concerns that their breathing apparatus and protective gear may not filter out all the toxins. First responders to the 9/11/2001 attack on New York's Twin Towers reported various illnesses that developed in the following months; a fund formed to assist survivors agreed to cover diseases thought to be related to the smoke and debris from the fallen towers. After the 9/11 attacks, more states began to pass presumptive illness laws; these laws typically provide workers' compensation coverage without requiring specific, traceable connections between the work-related incident and an illness that might develop months later. Some of these illnesses, like heart attacks, might not otherwise be covered by workers' compensation. The presumption means that an illness recognized as related to toxins present at fires or other first responder hazardous sites are automatically considered to cause a work-related injury for which workers' compensation is available without the injured worker having to prove a relationship between the job and the illness. Legislation usually provides an insurer with a rebuttable option to show the disease is not linked to the job. Some bills also require preliminary physical exams and may disallow coverage for those with a history of tobacco use.

Presumptive disease legislation may provide a broad list of illnesses or may narrowly list the diseases (like certain cancers and heart/lung problems) that over time have shown a job-related relationship. Opponents of presumptive illness bills cite higher premiums to cover presumptive disease and also see a slippery slope created with the first list of illnesses (for which a direct relationship is not required) leading to more and more lists.

Legislative Services Division Materials:

2016 presentations at the Economic Affairs Interim Committee included a variety of information not only related to presumptive illness but also to post-traumatic stress disorder and the potential combination of PTSD with physical

injuries experienced while on the job. Information included a [history](#) of what are called “mental-mental claims” and [definitions](#) of PTSD from a diagnostic code manual.

The [final report](#) for the 2011-2012 Economic Affairs Interim Committee paid some attention to presumptive diseases for firefighters in the [House Joint Resolution 38](#) portion of the report that primarily related to coverage of volunteer firefighters.

Presentations at the June 2012 meeting of the Economic Affairs Interim Committee included (see the June 12, 2012, minutes):

- Exhibit 2, a [letter](#) from the International Association of Firefighters’ legal counsel regarding presumptive illness;
- [Exhibit 3](#) a pamphlet from the Montana Professional Fire Fighters and Fire Chiefs Association. This listed the states that offer presumptive illness coverage and the types of diseases that are covered.
- Exhibit 4, a New York Times [article](#) indicating the 9/11 fund could cover certain first-responder exposures; and
- Exhibits 5 and 6, which reflected HB 505 from the 2011 session and [testimony](#) in favor of HB 505.

In 2010 the Economic Affairs Interim Committee received a [report](#) from a workers’ compensation consultant hired by the Department of Labor and Industry on occupational disease presumptions and an accompanying [handout](#).

Other Materials:

2017 [informational testimony](#) on SB 72 from the state epidemiologist on workforce exposures.

2017 [document](#) from the State Auditor’s Office: “Building a Presumptive Illness Benefit That Works for Montana” and [graphic illustration](#) of how insurance taxes are distributed, including to the Volunteer Firefighter Pension Fund.

The National Council on Compensation Insurance, which provides information on workers’ compensation premium pricing related to prospective legislation provided an [analysis](#) of [HB 505](#) in the 2011 session. An [August 2012 email](#) from the NCCI representative serving Montana also reviewed questions related to costs of workers’ compensation coverage for volunteer firefighters.

Introduced Legislation

*Chapter number assigned means bill was passed and approved.

2021

None

2019

[SB 160](#) – Chapter Number Assigned. AN ACT ESTABLISHING THE FIREFIGHTER PROTECTION ACT BY CREATING PRESUMPTIVE COVERAGE UNDER WORKERS' COMPENSATION FOR CERTAIN DISEASES ASSOCIATED WITH FIREFIGHTING ACTIVITIES; PROVIDING CONDITIONS; PROVIDING A REBUTTAL OPTION FOR INSURERS; PROVIDING OPT-IN CHOICE FOR VOLUNTEER FIREFIGHTING ENTITIES; INCLUDING PRESUMPTIVE OCCUPATIONAL DISEASE WITHIN THE STATE'S PUBLIC POLICY PROVISIONS FOR WORKERS' COMPENSATION; PROVIDING DEFINITIONS; AMENDING SECTIONS 39-71-105, 39-71-124, AND 39-71-407, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

2017

[SB 72](#) – Died in Standing Committee. "AN ACT CREATING A PRESUMPTION IN FAVOR OF FIREFIGHTERS FOR CERTAIN DISEASES; ESTABLISHING CONDITIONS, APPLICABLE FACTORS, AND PROCESS FOR REBUTTAL; FUNDING PRESUMPTIVE DISEASE BENEFITS; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR TRANSFERS; AMENDING SECTION 50-3-109, MCA; AND PROVIDING ~~AN IMMEDIATE EFFECTIVE DATE~~ EFFECTIVE DATES."

2015

[SB 103](#) – Missed Deadline for General Bill Transmittal. "AN ACT ESTABLISHING A PRESUMPTION UNDER THE WORKERS' COMPENSATION LAWS IN FAVOR OF PROFESSIONAL FIREFIGHTERS FOR CERTAIN DISEASES; ESTABLISHING CONDITIONS, APPLICABLE FACTORS, AND TERMS FOR INSURER REBUTTAL; PROVIDING FOR A SEPARATE RATING CLASSIFICATION CODE; AMENDING SECTIONS 39-71-116 AND 39-71-2316, MCA; AND PROVIDING EFFECTIVE DATES."

[SB 415](#) – Missed Deadline for Revenue Bill Transmittal. "AN ACT CREATING A PRESUMPTION IN FAVOR OF FIREFIGHTERS FOR CERTAIN DISEASES; ESTABLISHING CONDITIONS, APPLICABLE FACTORS, AND PROCESS FOR REBUTTAL; FUNDING PRESUMPTIVE DISEASE BENEFITS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 50-3-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

2013

[HB 628](#) – Died in Process. "AN ACT REQUIRING THE INSURANCE COMMISSIONER TO CONVENE AN ADVISORY COUNCIL TO STUDY THE CREATION OF A STATEWIDE FIREFIGHTER PRESUMPTIVE ILLNESS PROGRAM; REQUIRING A REPORT; APPROPRIATING AND AUTHORIZING THE USE OF FUNDS FOR CONDUCTING THE STUDY; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

2011

[HB 505](#) – Died in Standing Committee. "AN ACT ESTABLISHING A PRESUMPTIVE DISEASE FOR WORKERS' COMPENSATION CLAIMS FOR CERTAIN DISEASES EXPERIENCED BY FIREFIGHTERS; PROVIDING CONDITIONS AND A REBUTTABLE PRESUMPTION; AMENDING SECTIONS 39-71-116 AND 39-71-119, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

2009

[HB 408](#) – Died in Standing Committee. "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."

Prepared By:

Erin Sullivan, Legislative Research Analyst
Office of Research and Policy Analysis
September 20, 2022