

trust and by providing in the trust agreement that the property is community property.<sup>13</sup> The Act requires for a valid Alaska Community Property Trust that:

1. One or both spouses transfer property to a trust;

2. The trust expressly declares that some or all the property transferred is community property under Chapter 75 of Title 34 of the Laws of the State of Alaska;

3. At least one trustee of the trust is a "qualified person" whose powers include or are limited to a. maintaining records of the trust and b. preparing or arranging for the preparation of any income tax returns that must be filed by the trust. A "qualified person" is an individual Alaska domiciliary, Alaska trust company or Alaska bank as described in AS 34.75.100(a) (Michie 1998). The powers to maintain trust records and prepare or arrange for the preparation of trust income tax returns may be

given either to the Alaska trustee alone or to the Alaska trustee and one or more other trustees;

4. The Trust must contain the following language (in capital letters) at the beginning of the trust agreement:

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE.<sup>14</sup>

5. Both spouses must sign the trust, even if only one transfers property to the trust;

6. The trustees must maintain records that identify which property held by the trust is community property and which property held by the trust is not community property.

An Alaska Community Property Trust that meets these requirements will allow the conversion of the trust assets from separate or joint property into community property. Furthermore, it allows the spouses to enter into enforceable agreements regarding:

1. Their rights and obligations in the property transferred to the trust;

2. The management and control of the property transferred to the trust;

3. The disposition of the property transferred to the trust in the event of the dissolution of the marriage or of the trust, death of either or both spouses or the occurrence or nonoccurrence of another event;

4. The choice of law governing the interpretation of the trust; and

5. Any other matter that affects the property transferred to the trust and does not violate public policy or a statute imposing a criminal penalty.

An Alaska Community Property Trust may not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of a particular event or unless the agreement is amended or revoked by a later community property trust. To amend or revoke the trust, the later community property trust is not required to declare any property held by the trustee as community property. This means that the spouses may amend the trust to transmute property back from community property to separate property. Both an Alaska Community Property Trust and a later (amending) Community Property Trust are enforceable without consideration,

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has a substantial relation to a trust if the settlor designates that the trust is to be administered there, if any trustee has its principal place of business or domicile in that state when the trust is created, if the trust is administered in that state or if it is the domicile of the beneficiaries.

As to trusts of interests in land, however, the law of the situs of the land becomes more important. The administration and validity of a trust in land is determined according to the law of the state in which the land is situated, even if the trustees are situated elsewhere.<sup>19</sup> A court of a state other than that in which the property is situated may still exercise jurisdiction over the administration of the trust, if this does not unduly interfere with the control by the courts of the situs.<sup>20</sup>

Issues of construction of the trust instrument, however, have not always been construed according to the situs. Some courts apply the law of the situs,<sup>21</sup> but a few others have applied the law designated by the settlor in constructing a trust on real estate.<sup>22</sup> The law of the situs almost certainly controls issues of construction only in the absence of a designation in the instrument of the governing law.

Therefore, it appears very likely that an Alaska Community Property Trust holding personal property will be respected in matters of administration, construction and trust validity, as long as it meets the basic rules set forth by Alaska law. On the other hand, it is quite possible that a court would view an Alaska Community Property Trust as not creating community property interests in real estate, the title to which is held by the trust but the location of which is in another state that has no community property rules, or that has significantly different rules from those adopted in Alaska. A practitioner who wishes to create an Alaska Community Property Trust to hold out-of-state real estate should, therefore, arrange for the transfer of the real estate to an Alaska corporation or partnership or limited liability

**The administration and validity of a trust in land is determined according to the law of the state in which the land is situated, even if the trustees are situated elsewhere.**



company if that is otherwise compatible with the client's wishes, since stock, partnership interests and LLC interests are themselves personal property, even if the underlying assets are real property. The stock or partnership or LLC interests may then be transferred to an Alaska Community Property Trust, the terms of which would be governed more clearly by Alaska law.

### **Gift Tax Consequences Of Creating An Alaska Community Property Trust**

Although an Alaska Community Property Trust could be irrevocable, the grantor or grantors should ensure that neither spouse will be deemed to make a completed gift for Federal gift tax purposes to any third party upon the transfer of property to the trust or thereafter unless that is what he, she or they wish. Because both spouses must sign the trust, even if only one of them transfers assets to it, one spouse cannot create the trust, make the assets community property and unilaterally control what the disposition of those assets will be. If the other spouse does not agree to the proposed disposition, he or she presumably will not sign the trust.

The gift tax marital deduction would appear to be a simple protection against adverse gift tax consequences on the creation of an Alaska Community Property Trust, but the law does not clearly establish that granting one's

spouse the immediate, unilateral and continuing right until death to withdraw one-half of any property transferred to and which becomes a community property asset should qualify such one-half interest for the gift marital deduction. In other words, the fact that the donee-spouse's interest in the community property under the Alaska Community Property Trust will terminate at his or her death (if the right to withdraw that interest from the trust is not exercised) may mean it is a terminable interest.<sup>23</sup>

With reasonable planning and drafting, a transfer to an Alaska Community Property Trust should be capable of qualifying for the marital deduction.<sup>24</sup> One way is to create an interest which constitutes an "estate trust," that terminates in favor of the donee-spouse's own probate estate, making it thereby disposable by that spouse's Will.<sup>25</sup> Alternatively, the transfer may be made to qualify by falling under the life estate general power of appointment exception.<sup>26</sup> The donee-spouse must be entitled to all of the income for life payable at least annually and be granted a lifetime and/or testamentary general power of appointment exercisable by the donee-spouse alone and in all events in favor of that spouse and/or his or her estate. These are known as general powers of appointment marital deduction trusts.

Although the statute relating to such general power of appointment marital deduction trusts states that the income must be payable to the spouse at least annually, the regulations promulgated under the gift tax regulations relating to such trusts clarify that the income does not, in fact, have to be paid to the donee-spouse but merely be subject to withdraw by that spouse.<sup>27</sup>

The interest created for the donee-spouse in the Alaska Community Property Trust could be made to qualify alternatively for QTIP treatment under Code Sec. 2523(f) by structuring the donee-spouse's interest that way and by election on a timely filed United

al right to withdraw none, some (e.g., half) or all of property so contributed if the income from the property contributed or the property itself may be distributed, without the consent of an adverse party, to either or both spouse.<sup>32</sup> As a result, during the spouses' joint lifetimes, each spouse will be treated as owning for income tax purposes the assets he or she contributed. That probably will be the case even if the spouses are treated as exchanging interests in assets contributed. For example, the wife contributes Asset X worth \$2 million to the trust which became community property (and, therefore, treated as owned under Alaska law as one-half by the husband) and the husband contributes Asset Y worth \$1 million which became community property (and, therefore, treated as owned under Alaska law as one-half by the wife). Even if the wife is treated as exchanging a 25 percent interest of Asset X for a 50 percent interest in Asset Y and the

husband is treated as exchanging a 50 percent interest in Asset Y for a 25 percent interest in Asset X, the wife probably will be treated as owning all of Asset X and the husband probably will be treated as owning all of Asset Y for Federal income tax purposes. The reason is that for income tax purposes (of which the grantor trust rules are a part), that exchange normally would be treated as a gift rather than as an exchange.<sup>33</sup> Hence, the spouse who contributed the property presumably will be treated as the sole grantor of that asset for income tax purposes.

To the extent of the property contributed by him or her, the surviving spouse will continue to be treated as the property owner for income tax purposes under the grantor trust rules to the extent the property or its income may be distributed to that spouse, without the consent of any adverse party,<sup>34</sup> after (as well as before) the other spouse dies. In addition, the surviving spouse may become to

be treated as the owner under Code Sec. 678 of property contributed by the first spouse to die upon that spouse's death to the extent the survivor has a unilateral right to withdraw the property after the death of the first spouse to die.

### Basis Adjustment At Death

One major tax advantage of creating an Alaska Community Property Trust is that it enables residents of non-community property states to take advantage of Sec. 1014(b)(6), which states that, upon the death of either spouse, the basis of the entire community property asset (and not just one-half of the asset) becomes equal to the value of the asset at the death of that spouse (or, if applicable, on the alternate valuation date determined under Code Sec. 2032). Sec. 1014(b)(6) does not distinguish between property that is held as community property under automatic (opt out) state laws or under elective (opt in) state laws. Furthermore, significant authority strongly suggests that community property under an opt in law, such as that adopted in Alaska, would be eligible for the basis adjustment at death under Sec. 1014(b)(6).<sup>35</sup>

However, it is appropriate to note that Code Sec. 1014(b)(6) only requires that the property is community property under the laws of any State (or possession or foreign country). If a non-Alaska married person or persons transfers property to an Alaska Community Property Trust, the property will be community property under the law of Alaska. Therefore, it seems literally to fall under the section.

Although it seems the asset which is community property under Alaska law is "community property ... under the community property laws of [a] State," it is possible the courts will hold otherwise.<sup>36</sup> Accordingly, married couples should elect into the Alaska community property system only if that form of ownership reflects their wishes regardless of whether the basis of the surviving spouse's interest in the property

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4. Alaska Stat. 34.75.030 (Michie 1998).
5. See, e.g. Alaska Stat. 34.75.1101(c) (Michie 1998).
6. See, e.g., Alaska Stat. 34.75.30(c) (Michie 1998).
7. See, e.g., Alaska Stat. 34.75.040 and 34.75.909(d) (Michie 1998).
8. Alaska Stat. 34.75.010 (Michie 1998)
9. Alaska Stat. 34.75.050 (Michie 1998).
10. Alaska Stat. 25.24.160(d) (Michie 1998).
11. Alaska Stat. 13.12.208(d) (Michie 1998).
12. Alaska Stat. 34.75.090(g) and (h) (Michie 1998).
13. Alaska Stat. 34.75.060(b) (Michie 1998).
14. A similar requirement exists in an Alaska Community Property Agreement. See, Alaska Stat. 34.75.090(b) (Michie 1998).
15. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).
16. Restatement (2d) Conflicts of Law, Sec. 268.
17. *Hughes v. Commissioner of Internal Revenue*, 104 F.2d 144 (9th Cir. 1939); *Noble v. Rogan*, 49 F.Supp. 370 (S.D.Cal.1943); *Application of Eyre*, 133 N.Y.S.2d 511 (1954); *Matter of Grant-Suttie*, 205 Misc. 940, 129 N.Y.S.2d 572 (1954); *Matter of Carter*, 13 Misc.2d 1040, 178 N.Y.S.2d 509 (1958).
18. Restatement (2d) Conflicts of Law, Sec. 270.
19. Restatement (2d) Conflicts of Law, Sec. 276.
20. *Fuller v. McKim*, 187 Mich. 667, 154 N.W. 55 (1915); *Knox v. Jones*, 47 N.Y. 389 (1872); *Matter of Osborn*, 151 Misc. 52,270 N.Y.S. 616 (1934); *In re Sandford's Will*, 81 N.Y.S.2d 377 (1948); *In re Pagan's Estate*, 84 N.Y.S.2d 558 (1948); *In re Piazza's Estate*, 130 N.Y.S.2d 244 (1954); *In re Master's Will*, 136 N.Y.S.2d 907 (1954); *In re Warburg's Estate*, 237 N.Y.S.2d 557 (1963).
21. *Bowen v. Frank*, 179 Ark. 1004, 18 S.W.2d 1037 (1929); *Veach v. Veach*, 205 Ga. 185, 53 S.E.2d 98 (1949); *Peet v. Peet*, 229 Ill. 341, 82 N.E. 376 (1907); *Scotfield v. Hadden*, 206 Iowa 597, 220 N.W. 1 (1928); *Thompson v. Penn*, 149 Ky. 158, 148 S.W. 33 (1912); *In re Estate of Hencke*, 220 Minn. 414, 19 N.W.2d 718 (1945); *Minot v. Minot*, 17 App.Div. 521, 45 N.Y.S. 554 (1st Dep't 1897); *Matter of Good*, 304 N.Y. 110, 106 N.E.2d 36 (1952), *aff'g* 278 App.Div. 806, 127, 104 N.Y.S.2d 804 (1st Dep't 1951), *aff'g* 278 App.Div. 806, 927, 104 N.Y.S.2d 804 (1st Dep't 1951), *aff'g* 96 N.Y.S.2d 798 (1950).
22. *Greenwood v. Page*, 138 F.2d 921 (D.C.Cir.1943); *Guerard v. Guerard*, 73 Ga. 506 (1884); *Brown v. Ramsey*, 74 Ga. 210 (1884) (*inter vivos trust*); *Keith v. Eaton*, 58 Kan. 732, 51 P. 271 (1897); *Houghton v. Hughes*, 108 Me. 233, 79 A. 909 (1911); *Martin v. Eslick*, 229 Miss. 234, 90 So.2d 635 (1956); *Zombro v. Moffett*, 329 Mo. 137, 44 S.W.2d 149 (1931); *Applegate v. Brown*, 344 S.W.2d 13 (Mo. 1961); *Cary v. Carman*, 116 Misc. 463, 190 N.Y.S. 193 (1921).
23. As a general rule, a terminable interest does not qualify for the marital deduction. Code Sec. 2523(b)(1). Certain terminable interests may so qualify. See, e.g., Code Sec. 2523(e), 2523(f).
24. As a general rule, no marital deduction is allowed if the transferee's spouse is not a citizen of the United States. Code Sec. 2523(i).
25. See, e.g., Reg. Sec. 20.2056(c)-2(b)(1)(i). Cf. Rev. Rul. 72-33, 1972-2 C.B. 530.
26. Code Sec. 2523(e).
27. Reg. Sec. 25.2523(e)-1(f)(8). See, also, Reg. Sec. 25.2523(f)-1(f), *Example 2 and Example 3*.
28. See, generally, Reg. Sec. 25.2511-2.
29. Code Secs. 672(e), 673, 676 and 677. The trust may be a grantor trust for income tax purposes for other reasons as well. See, Code Sec. 674 (control of beneficial interests in the trust) and 675 (administrative powers).
30. See, generally, Blattmachr & Sembler, "Crummey Powers and Income Taxation", *The Chase Review* (July 1995).
31. See PLR 9321050, essentially reversing PLR 9026036.
32. As mentioned above, the trust may be a grantor trust for other or additional reasons.
33. Code Sec. 1041.
34. As mentioned above, it may be a grantor trust for other or additional reasons.
35. On the validity of a consensual community property law for this purpose, see *Comm'r v. Harmon*, 323 US 44 (1944); and *McCollum v. United States*, 58-2 USTC ¶ 9957 (USDC ND Ok. 1958); and also see Rev. Rul. 77-359, 1977-2 C.B. 24.
36. The IRS seems to accept that separate property converted to community property by agreement is community property for Federal income tax purposes, at least under an opt-out system. See Rev. Rul. 77-359, *supra*.
37. If, as suggested by Rev. Rul. 77-359, *supra*, the transmutation of separate to community property is a gift, Code Sec. 1014(e) may control notwithstanding Code Sec. 1014(b)(6).
38. See, Code Sec. 2523(i)(2).
39. Caution should be exercised in converting certain assets to community property, for instance, if one spouse owns a policy of insurance on the life of the other, the conversion presumably will cause the insured spouse to hold an incident of ownership in the policy potentially causing proceeds paid at death to be included in his or her estate. Cf. *Estate of Cervon v. Commissioner*, 111 F.3d 1252 (5th Cir. 1997). It may be inappropriate also for one spouse to convert qualified plan and similar interests into community property. Generally, such interests represent income in respect of a decedent under Code Sec. 691(a) which, under Code Sec. 1014(c), do not receive the income tax-free step-up in basis under Code Sec. 1014(a), but complications of such ownership can arise in the non-participant spouse dies first.
40. See, Alaska Stat. 34.75.110(c) (Michie 1998).
41. See, e.g., *Harvey v. United States*, 185 F.2d 463 (7th Cir. 1950).

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**HB**

**2000**

# ALASKA STATE LEGISLATURE

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## REPRESENTATIVE NANCY DAHLSTROM

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### Sponsor Statement House Bill 200, "Worker's Comp: Disease Presumption"

House Bill 200, "An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations," establishes a presumption in the Worker's Compensation program for professional and volunteer firefighters who have had a qualifying medical exam and have been on the job at least seven years.

It grants benefits to firefighters stricken with certain types of cancer and heart disease due to their exposure to toxic chemicals, and high levels of carbon monoxide. Silent killers like asbestos and benzene can appear after they leave the job. The requirements of this bill are that the claims must be made within five years after the last day of employment.

In addition to firefighters, first responders deserve protection for the health and safety risks they live with in order to keep us safe. HB 200 also includes a presumption that compensation for certain disabilities resulting from blood born pathogens be covered.

Arguments have been made that this coverage would be exorbitantly expensive; however this has not been the case in other states. For example, the state of California has over 30,000 paid firefighters and more than 30,000 volunteers, but the addition of cancer presumptive benefits has had no impact on the actuarial assumptions system for its retirement system.

Firefighters and first responders take great risks every day to protect our lives and the lives of our loved ones. They are regularly exposed to dangerous elements such as carcinogenic substances, carbon monoxide and contaminated blood that can lead to chronic and debilitating illnesses later in their life.

A great deal of thought has been put into this legislation in order to create defined parameters of who qualifies for these benefits. I ask for the committee's favorable consideration for House Bill 200.

**CS FOR HOUSE BILL NO. 200(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): REPRESENTATIVES DAHLSTROM, Doll, Buch, Kerttula, Crawford, Gatto, Lynn, Hawker, Holmes, Johnson, LeDoux, Ramras, Roses, Gruenberg, Stoltze, Gardner**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the presumption of coverage for a workers' compensation claim for  
2 disability as a result of certain diseases for certain occupations."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 23.30 is amended by adding a new section to read:

5 **Sec. 23.30.121. Presumption of coverage for disability from diseases for**  
6 **certain occupations.** (a) There is a presumption that a claim for compensation for  
7 disability as a result of the diseases described in (b) and (c) of this section for the  
8 occupations listed under (b) and (c) of this section is within the provisions of this  
9 chapter. This presumption of coverage may be rebutted by a preponderance of the  
10 evidence. The evidence may include the use of tobacco products, physical fitness and  
11 weight, lifestyle, hereditary factors, and exposure from other employment or  
12 nonemployment activities.

13 (b) For a fire fighter covered under AS 23.30.243,

14 (1) there is a presumption that a claim for compensation for disability

1 as a result of the following diseases is within the provisions of this chapter:

2 (A) respiratory disease;

3 (B) cardiovascular events that are experienced within 72 hours  
4 after exposure to smoke, fumes, or toxic substances; and

5 (C) the following cancers:

6 (i) primary brain cancer;

7 (ii) malignant melanoma;

8 (iii) leukemia;

9 (iv) non-Hodgkin's lymphoma;

10 (v) bladder cancer;

11 (vi) ureter cancer;

12 (vii) kidney cancer; and

13 (viii) prostate cancer;

14 (2) notwithstanding AS 23.30.100(a), following termination of service,  
15 the presumption established in (1) of this subsection extends to the fire fighter for a  
16 period of three calendar months for each year of requisite service but may not extend  
17 more than 60 calendar months following the last date of employment;

18 (3) the presumption established in (1) of this subsection applies only to  
19 an active or former fire fighter who has a disease described in (1) of this subsection  
20 that develops or manifests itself after the fire fighter has served at least seven years  
21 and who

22 (A) was given a qualifying medical examination upon  
23 becoming a fire fighter or during employment as a fire fighter that did not  
24 show evidence of the disease; and

25 (B) with regard to diseases described in (1)(C) of this  
26 subsection, demonstrates that, while in the course of employment as a fire  
27 fighter, the fire fighter was exposed to a known carcinogen, as defined by the  
28 International Agency for Research on Cancer or the National Toxicology  
29 Program, and the carcinogen is associated with a disabling cancer.

30 (c) The presumption in this subsection applies to fire fighters who are covered  
31 under AS 23.30.243, peace officers, and emergency medical and rescue personnel. In

1 organization that uses volunteers, to provide a qualifying medical examination. If an  
2 employer or volunteer organization does not provide a qualifying medical  
3 examination, an employee may independently obtain a qualifying medical  
4 examination at the employee's expense.

5 (g) The department shall, by regulation, define

6 (1) for purposes of (b)(1) - (3) and (c)(1) - (2) of this section, the type  
7 and extent of the medical examination that is needed to eliminate evidence of the  
8 disease in an active or former fire fighter; and

9 (2) for purposes of (e) of this section, the nature and quantity of a  
10 person's tobacco product use; the standards adopted under this paragraph shall use or  
11 be based on existing medical research.

12 (h) In this section, "fire fighter" has the meaning given in AS 09.65.295.

13 \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
14 read:

15 **APPLICABILITY.** The presumption of coverage established by this Act applies to  
16 claims made on or after the effective date of this Act, even if the exposure leading to the  
17 occupational disease occurred before the effective date of this Act.

ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras  
Chairman  
(907) 465-3004  
Fax: (907) 465-2070  
Representative\_Jay\_Ramras@legis.state.ak.us  
  
1292 Sadler Way, Suite 324  
Fairbanks, AK 99701



**Committee Members:**  
Representative Nancy Dahlstrom,  
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Representative John Coghill  
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Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes

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Fax #: 2029

Number of pages including cover: 1

From: Jane Pierson

Date: May 4, 2007

Re: CSHB200 VE

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Would you please go final on a HJUD CS for the above-referenced bill? There were no amendments.

*ADOPTED*

25-LS0748VE  
Bailey  
5/4/07

**CS FOR HOUSE BILL NO. 200( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIFTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES DAHLSTROM, Doll, Buch, Kerttula, Crawford, Gatto, Lynn, Hawker, Holmes, Johnson, LeDoux, Ramras, Roses, Gruenoerg, Stoltze, Gardner**

**A BILL**

**FOR AN ACT ENTITLED**

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7       disability as a result of the diseases described in (b) and (c) of this section for the  
8       occupations listed under (b) and (c) of this section is within the provisions of this  
9       chapter. This presumption of coverage may be rebutted by a preponderance of the  
10      evidence. The evidence may include the use of tobacco products, physical fitness and  
11      weight, lifestyle, hereditary factors, and exposure from other employment or  
12      nonemployment activities.

13               (b) For a fire fighter covered under AS 23.30.243,

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2 (A) respiratory disease;

3 (B) cardiovascular events that are experienced within 72 hours  
4 after exposure to smoke, fumes, or toxic substances; and

5 (C) the following cancers:

6 (i) primary brain cancer;

7 (ii) malignant melanoma;

8 (iii) leukemia;

9 (iv) non-Hodgkin's lymphoma;

10 (v) bladder cancer;

11 (vi) ureter cancer;

12 (vii) kidney cancer; and

13 (viii) prostate cancer;

14 (2) notwithstanding AS 23.30.100(a), following termination of service,  
15 the presumption established in (1) of this subsection extends to the fire fighter for a  
16 period of three calendar months for each year of requisite service but may not extend  
17 more than 60 calendar months following the last date of employment;

18 (3) the presumption established in (1) of this subsection applies only to  
19 an active or former fire fighter who has a disease described in (1) of this subsection  
20 that develops or manifests itself after the fire fighter has served at least seven years  
21 and who

22 (A) was given a qualifying medical examination upon  
23 becoming a fire fighter or during employment as a fire fighter that did not  
24 show evidence of the disease; and

25 (B) with regard to diseases described in (1)(C) of this  
26 subsection, demonstrates that, while in the course of employment as a fire  
27 fighter, the fire fighter was exposed to a known carcinogen, as defined by the  
28 International Agency for Research on Cancer or the National Toxicology  
29 Program, and the carcinogen is associated with a disabling cancer.

30 (c) The presumption in this subsection applies to fire fighters who are covered  
31 under AS 23.30.243, peace officers, and emergency medical and rescue personnel. In

1 this subsection, "emergency medical and rescue personnel" means a trauma  
2 technician, emergency medical technician, rescuer, or mobile intensive care paramedic  
3 who is a paid employee of a first responder service, a rescue service, an ambulance  
4 service, or a fire department that provides emergency medical or rescue services as  
5 part of its duties; under this subsection,

6 (1) there is a presumption that a claim for compensation for disability  
7 as a result of the following contagious diseases is within the provisions of this chapter:

8 (A) human immunodeficiency virus;

9 (B) acquired immunodeficiency syndrome;

10 (C) all strains of hepatitis;

11 (D) meningococcal meningitis;

12 (E) mycobacterium tuberculosis; and

13 (F) any uncommon infectious disease the contraction of which  
14 the United States Secretary of Labor determines to be related to the hazards to  
15 which an employee in fire protection activities may be subject

16 (2) the presumption established in (1) of this subsection applies only to  
17 fire fighters covered under AS 23.30.243, peace officers, and emergency medical and  
18 rescue personnel who were given a qualifying medical examination upon becoming or  
19 during service as a fire fighter, peace officer, or provider of emergency medical or  
20 rescue services who did not show evidence of the disease.

21 (d) As it applies to a fire fighter, the presumption set out in this section applies  
22 only to a fire fighter who, at a minimum, holds a certificate as a Firefighter I by the  
23 Department of Public Safety under fire fighter testing and certification standards  
24 established by the department under authority of AS 18.70.350(1) or other applicable  
25 statutory authority.

26 (e) The provisions of (b)(1)(A) and (B) of this section do not apply to a fire  
27 fighter who develops a cardiovascular or lung condition and who has a history of  
28 tobacco product use as established under (g)(2) of this section.

29 (f) The provisions of (c)(2) of this section may not be interpreted to require a  
30 municipality or other employer of fire fighters covered under AS 23.30.243, peace  
31 officers, or emergency medical and rescue personnel, including a municipality or other

1 organization that uses volunteers, to provide a qualifying medical examination. If an  
2 employer or volunteer organization does not provide a qualifying medical  
3 examination, an employee may independently obtain a qualifying medical  
4 examination at the employee's expense.

5 (g) The department shall, by regulation, define

6 (1) for purposes of (b)(1) - (3) and (c)(1) - (2) of this section, the type  
7 and extent of the medical examination that is needed to eliminate evidence of the  
8 disease in an active or former fire fighter; and

9 (2) for purposes of (e) of this section, the nature and quantity of a  
10 person's tobacco product use; the standards adopted under this paragraph shall use or  
11 be based on existing medical research.

12 (h) In this section, "fire fighter" has the meaning given in AS 09.65.295.

13 \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
14 read:

15 **APPLICABILITY.** The presumption of coverage established by this Act applies to  
16 claims made on or after the effective date of this Act, even if the exposure leading to the  
17 occupational disease occurred before the effective date of this Act.

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note: HB200-DOLWD-WC-04-20-07  
 Bill Version: HB 200  
 () Publish Date: \_\_\_\_\_

Revision: Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
 Title: Workers' Comp: Disease Presumption RDU: Workers' Compensation  
 Component: Workers' Compensation  
 Sponsor: Representative Dahlstrom  
 Requester: House Labor and Commerce Component Number: 344

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2007) cost: None  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The broadly applicable presumptions included in the bill could result in numerous claims. The seriousness of the covered conditions would involve large amounts of benefits, and those factors coupled with the broad scope of defenses (like heredity and other life exposures) could lead to extensive, complicated hearings.

\* The costs of this proposed legislation cannot be determined in advance as there are no comparable Workers' Compensation Act provisions at present. Increased costs, if any, would consist of additional personnel needed to resolve disputed claims for benefits based upon the new presumptions.

Prepared by: Paul F. Lisankie, Director Phone: 465-6059  
 Division: Workers' Compensation Date/Time: 4/20/07 9:11 AM  
 Approved by: Cllick Bishop, Commissioner Date: 4/20/2007  
 Agency: Department of Labor and Workforce Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HB200-DOA-RM-4-19-07  
 Bill Version: HB 200  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 3/14/2007 Dept. Affected: Administration  
 Title An act relating to presumption of coverage RDU Risk Management  
for w/c claims for certain occupations Component Risk Management  
 Sponsor Representative Dahlstrom et al  
 Requester Labor and Commerce Component No. 71

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2007) cost:

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Risk Management (RM) will be financially impacted by the changes in this legislation. RM administers the self insurance program providing workers' compensation protection for all State employees, including illness claims filed by occupations affected by this legislation.

The self insured workers' compensation claims will realize increased litigation and benefit costs. As the number of reported exposures will vary by year, it is difficult to present accurate projections.

Future Risk Management's workers' compensation assessments to those agencies with employee occupations affected will reflect actual costs incurred as premiums charged each agency are developed from actual claims expenses incurred.

Prepared by: J. Brad Thompson, Director  
 Division: Risk Management  
 Approved by: Kevin Brooks, Deputy Commissioner  
 Agency: Department of Administration

Phone: 465-5723  
 Date/Time: 4/19/2007 4:00 P.M.  
 Date: 4/19/2007

**Public Safety Employees Association, Inc.**  
***“Representing Alaska’s Finest”***

**Position Paper**  
**HB 200 and SB 117**  
**Presumption of Coverage – Workers’ Compensation**

By the nature of their work, public safety employees from time to time are exposed to dangerous viruses and diseases and to unhealthy and life threatening smoke, chemicals and other hazardous materials. If exposure leads to acquisition of a disease or disability, the employee faces lengthy treatment and recovery time and expense.

Currently, contagious diseases such as human immunodeficiency virus; acquired immunodeficiency syndrome; all strains of hepatitis; meningococcal meningitis, and mycobacterium tuberculosis are not covered as a disability under workers’ compensation. In addition, respiratory disease; heart problems that are experienced 72 hours after exposure to smoke, fumes, or toxic substances; and the following cancers: primary brain cancer; malignant melanoma; leukemia; non-Hodgkin’s lymphoma; bladder cancer; urethra cancer, and kidney cancer are not covered by workers’ compensation.

Passage of HB 200 or SB 117 will provide our public safety employees who are exposed to these potentially dangerous diseases or viruses valuable workers’ compensation coverage should they contract a disease or disability as a result.

The Public Safety Employees Association recommends the passage of this legislation and furthermore, expresses its thanks to the sponsors of this important legislation.

# LEGISLATIVE RESEARCH REPORT

FEBRUARY 26, 2007



REPORT NUMBER 07.125

## PRESUMPTIVE DISABILITY LAWS

PREPARED FOR SENATOR HOLLIS FRENCH

BY PATRICIA YOUNG, MANAGER

You asked for information on presumptive disability laws in other states. As you may know, such laws link certain occupations with the occurrence of diseases and conditions known to be associated with those occupations. These laws establish a presumption that, for example, the death or disability of a firefighter from a cardiovascular disease, certain cancers, or certain infectious diseases is job-related for purposes of worker's compensation and disability retirement. The presumption shifts the burden of proof from the employee to the employer, who must attempt to prove that the disease or condition arose from causes other than the occupation.

Lawmakers in 41 states have enacted some form of presumptive disability law according to the International Association of Fire Fighters (IAFF).<sup>1</sup> We attach a chart, provided by the IAFF, which gives some detail on coverage among states.<sup>2</sup> The statutes vary widely, but as you will see, most of these laws cover heart and lung diseases; laws in only ten states cover certain cancers and certain infectious diseases as well as the cardiovascular diseases.<sup>3</sup>

Many states' laws allow for pre-employment screening. Nevada law, for example, requires that police officers, firefighters and emergency medical attendants submit to a blood test to screen for hepatitis C upon employment, upon the commencement of coverage, and annually thereafter during employment. Also, unless such individuals have been vaccinated, they must submit to similar testing for hepatitis A and B.

<sup>1</sup> The following ten jurisdictions have no presumptive disability law: Alaska, Arkansas, Delaware, District of Columbia, Mississippi, Montana, New Mexico, North Carolina, West Virginia, and Wyoming.

<sup>2</sup> Attachment A: International Association of Fire Fighters, "State Presumptive Disability Laws." The International Association of Fire Fighters represents more than 280,000 professional fire fighters and emergency medical responders across the U.S. and Canada.

<sup>3</sup> States covering some form of each category of disease or condition are Alabama, Illinois, Indiana, Minnesota, Nevada, North Dakota, Oklahoma, Texas, Virginia, and Washington. According to the National Volunteer Fire Council, all Pennsylvania provides worker's compensation benefits to volunteer emergency service responders as well as to career responders who contract hepatitis C while on the job. We attach copies of statutes from Minnesota, Nevada, Virginia, and Washington as Attachments B through E, respectively. Preceding each set of statutes, we include the IAFF description from that organization's website, <http://www.iaff.org/safe/content/presumptive/in/select.asp>

In some states, factors that can be used to rebut the presumption are explicit in statute or regulation. Washington law, for example, specifies that the presumption of occupational disease may be rebutted by a preponderance of the evidence. Evidence may include factors such as use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

As Attachment F we include copies of model presumptive disability laws provided by the International Association of Fire Fighters. As you will see, these model laws include coverage for cardiovascular diseases, cancer, and infectious diseases related to the line of duty for fire fighters and emergency medical providers. Also included is an IAFF model law relating to death benefits for the dependents of public safety officers who die while or from acting in line of duty. For the purpose of this law, *public safety officer* includes individuals serving in a public agency in an official capacity, with or without compensation, as a law enforcement officer, fire fighter, or member of a public rescue squad or ambulance crew.

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We hope this information is useful. Please let us know if you have questions or need additional information.

## **Attachment A**

International Association of Fire Fighters  
"State Presumptive Disability Laws"

## State Presumptive Disability Laws

The following states have presumptive disability laws which recognize that fire fighters are at increased risk for certain illnesses. The laws create a presumption that the specified diseases are job related. Because the laws vary greatly from state to state, readers should review the specific state laws to determine the law's application.

State	Heart Disease	Lung Disease	* Cancer	Infectious Diseases
Alabama	✓	✓	✓	✓*
Alaska				
Arizona			✓*	✓*
Arkansas				
California	✓		✓	✓
Colorado	✓	✓		✓
Connecticut	✓			
Delaware				
District of Columbia				
Florida	✓	✓*		✓*
Georgia	✓	✓		
Hawaii	✓	✓		
Idaho	✓	✓		
Illinois	✓	✓	✓	✓*
Indiana	✓	✓	✓	✓*
Iowa	✓	✓		
Kansas	✓	✓	✓	
Kentucky	✓	✓		
Louisiana	✓	✓	✓*	
Maine	✓	✓		✓
Maryland	✓	✓	✓*	
Massachusetts	✓	✓	✓	
Michigan	✓	✓		
Minnesota	✓	✓	✓	✓
Mississippi				

State	Heart Disease	Lung Disease	Cancer	Infectious Diseases
Missouri	✓	✓		
Montana				
Nebraska			✓	
Nevada	✓	✓	✓	✓*
New Hampshire	✓	✓		
New Jersey		✓		
New Mexico				
New York			✓*	
North Carolina				
North Dakota	✓	✓	✓	✓*
Ohio	✓	✓		
Oklahoma	✓	✓	✓	✓*
Oregon	✓	✓		
Pennsylvania	✓	✓		✓*
Rhode Island		✓	✓	✓
South Carolina	✓	✓		
South Dakota	✓	✓	✓	
Tennessee	✓**	✓**	✓**	
Texas	✓	✓	✓	✓*
Utah	✓	✓		✓*
Vermont	✓*			
Virginia	✓	✓	✓*	✓*
Washington	✓	✓	✓	✓
West Virginia				
Wisconsin	✓	✓	✓*	
Wyoming				

\* Indicate that only specified diseases in these categories are covered

\*\* Applies only to certain localities

**Attachment B**

IAFF Description  
Minnesota Annotated Statutes § 176.011

**Minnesota**

**Coverage:** Heart Disease, Infectious disease, Cancer

**Code Part:** Minnesota Statutes Chapter 176: Worker's Compensation, Workers' compensation- definitions § 176.011 Subd. 15 (c)Chapter 299A.465

**Description:** § 176.011 Subd. 15 (a) "Occupational disease" means a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where the diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes the disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the worker would have been equally exposed outside of the employment. (b) If immediately preceding the date of disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota State Patrol, conservation officer service, state crime bureau, as a forest officer by the Department of Natural Resources, state correctional officer, or sheriff or full-time deputy sheriff of any county, and the disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department, with the Minnesota State Patrol, conservation officer service, state crime bureau, Department of Natural Resources, Department of Corrections, or sheriff's department of any county, which examination and report negatived any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment. If immediately preceding the date of disablement or death, any individual who by nature of their position provides emergency medical care, or an employee who was employed as a licensed police officer under section 626.84, subdivision 1; firefighter; paramedic; state correctional officer; emergency medical technician; or licensed nurse providing emergency medical care; and who contracts an infectious or communicable disease to which the employee was exposed in the course of employment outside of a hospital, then the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment, and the presumption may be rebutted by substantial factors brought by the employer or insurer. Any substantial factors which shall be used to rebut this presumption and which are known to the employer or insurer at the time of the denial of liability shall be communicated to the employee on the denial of liability. (c) A firefighter on active duty with an organized fire department who is unable to perform duties in the department by reason of a disabling cancer of a type caused by exposure to heat, radiation, or a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and the carcinogen is reasonably linked to the disabling cancer, is presumed to have an occupational disease under paragraph (a). If a firefighter who enters the service after August 1, 1988, is examined by a physician prior to being hired and the examination discloses the existence of a cancer of a type described in this paragraph, the firefighter is not entitled to the presumption unless a subsequent medical determination is made that the firefighter no longer has the cancer

MINNESOTA ANNOTATED STATUTES  
Labor, Industry  
CHAPTER 176 WORKERS' COMPENSATION

Minn. Stat. § 176.011 (2005)

176.011 Definitions

Subdivision 1. Terms. For the purposes of this chapter the terms described in this section have the meanings ascribed to them.

Subd. 15. Occupational disease. (a) "Occupational disease" means a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where the diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes the disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the worker would have been equally exposed outside of the employment.

(b) If immediately preceding the date of disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota State Patrol, conservation officer service, state crime bureau, as a forest officer by the Department of Natural Resources, state correctional officer, or sheriff or full-time deputy sheriff of any county, and the disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department, with the Minnesota State Patrol, conservation officer service, state crime bureau, Department of Natural Resources, Department of Corrections, or sheriff's department of any county, which examination and report negated any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment. If immediately preceding the date of disablement or death, any individual who by nature of their position provides emergency medical care, or an employee who was employed as a licensed police officer under section 626.84, subdivision 1; firefighter; paramedic; state correctional officer; emergency medical technician; or licensed nurse providing emergency medical care; and who contracts an infectious or communicable disease to which the employee was exposed in the course of employment outside of a hospital, then the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment and the presumption may be rebutted by substantial factors brought by the employer or insurer. Any substantial factors which shall be used to rebut this presumption and which are known to the employer or insurer at the time of the denial of liability shall be communicated to the employee on the denial of liability.

(c) A firefighter on active duty with an organized fire department who is unable to perform duties in the department by reason of a disabling cancer of a type caused by exposure to heat, radiation, or a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and the carcinogen is reasonably linked to the disabling cancer, is presumed to have an occupational disease under paragraph (a). If a firefighter who enters the service after August 1, 1988, is examined by a physician prior to being hired and the examination discloses the existence of a cancer of a type described in this paragraph, the firefighter is not entitled to the presumption unless a subsequent medical determination is made that the firefighter no longer has the cancer.

## Attachment C

IAFF Description  
Nevada Revised Statutes Annotated  
§ 617.453 - .455  
§ 617.457  
§ 617.459 - .460  
§ 617.470  
§ 617.485  
§ 617.487  
§ 286.031  
§ 286.225  
§ 286.510

**Nevada**

**Coverage: Cancer, Lung Disease, Heart Disease**

**Code Part:** Nevada Revised Statutes, Chapter 617, Occupational Disease Cancer as occupational disease of firemen (NRS §617.453), Lung disease as occupational diseases of firemen and police officers (NRS §617.455), Heart diseases as occupational diseases of firemen and police officers (NRS §617.457), Bill 451 adopted on April 15, 2003, Silicosis and diseases related to asbestos as occupational diseases (NRS 617.460), "Disability retirement allowance" defined (NRS 286.031), "Firefighter" defined (NRS 286.042), Police and Firefighters' Retirement Fund (NRS 286.225), Eligibility: Age and service of police officers, firefighters and other employees; reduction of benefit for retirement before required age (NRS 286.510)

**Description:** NRS 617.453 Cancer as occupational disease of firemen. 1. Notwithstanding any other provision of this chapter, cancer, resulting in either temporary or permanent disability, or death, is an occupational disease and compensable as such under the provisions of this chapter if: (a) The cancer develops or manifests itself out of and in the course of the employment of a person who, for 5 years or more, has been: (1) Employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public; or (2) Acting as a volunteer fireman in this state and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; and (b) It is demonstrated that: (1) He was exposed, while in the course of the employment, to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program; and (2) The carcinogen is reasonably associated with the disabling cancer. 2. With respect to a person who, for 5 years or more, has been employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public, the following substances shall be deemed, for the purposes of paragraph (b) of subsection 1, to be known carcinogens that are reasonably associated with the following disabling cancers: (a) Diesel exhaust, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with bladder cancer. (b) Acrylonitrile, formaldehyde and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with brain cancer. (c) Diesel exhaust and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with colon cancer. (d) Formaldehyde shall be deemed to be a known carcinogen that is reasonably associated with Hodgkin's lymphoma. (e) Formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with kidney cancer. (f) Chloroform, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with liver cancer. (g) Acrylonitrile, benzene, formaldehyde, polycyclic aromatic hydrocarbon, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with lymphatic or haematopoietic cancer. 3. The provisions of subsection 2 do not create an exclusive list and do not preclude any person from demonstrating, on a case-by-case basis for the purposes of paragraph (b) of subsection 1, that a substance is a known carcinogen that is reasonably associated with a disabling cancer. 4. Compensation awarded to the employee or his dependents for disabling cancer pursuant to this section must include: (a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization in accordance with the schedule of fees and charges established pursuant to NRS 616C.260 or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract; and (b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death. 5. Disabling cancer is presumed to have developed or manifested itself out of and in the course of the employment of any fireman described in this section. This rebuttable presumption applies to disabling cancer diagnosed after the termination of the person's employment if the diagnosis occurs within a period, not to exceed 60 months, which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying 3 months by the number of full years of his employment. This rebuttable presumption must control the awarding of benefits pursuant to this section unless evidence to rebut the presumption is presented. 6. The provisions of this section do not create a conclusive presumption. NRS 617.455 Lung diseases as occupational diseases of firemen and police officers. 1. Notwithstanding any other provision of this chapter, diseases of the lungs, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by exposure to heat, smoke, fumes, tear gas or any other noxious gases, arising out of and in the course of the employment of a person who, for 2 years or more, has been: (a) Employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the

public; (b) Acting as a volunteer fireman in this state and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; 2. Except as provided in subsection 3, each employee who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to a physical examination, including a thorough test of the functioning of his lungs and the making of an X-ray film of his lungs, upon employment, upon commencement of the coverage, once every even-numbered year until he is 40 years of age or older and thereafter on an annual basis during his employment. 3. A thorough test of the functioning of the lungs is not required for a volunteer fireman. 4. All physical examinations required pursuant to subsection 2 must be paid for by the employer. 5. A disease of the lungs is conclusively presumed to have arisen out of and in the course of the employment of a person who has been employed in a full-time continuous, uninterrupted and salaried occupation as a police officer or fireman for 5 years or more before the date of disablement. 6. Failure to correct predisposing conditions which lead to lung disease when so ordered in writing by the examining physician after the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee. 7. A person who is determined to be: (a) Partially disabled from an occupational disease pursuant to the provisions of this section; and (b) Incapable of performing, with or without remuneration, work as a fireman or police officer, may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability. NRS 617.457 Heart diseases as occupational diseases of firemen and police officers. 1. Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a fireman or police officer in this state before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment. 2. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer fireman by a person entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145 and who, for 5 years or more, has served continuously as a volunteer fireman in this state and who has not reached the age of 55 years before the onset of the disease. 3. Except as otherwise provided in subsection 4, each employee who is to be covered for diseases of the heart pursuant to the provisions of this section shall submit to a physical examination, including an examination of the heart, upon employment, upon commencement of coverage and thereafter on an annual basis during his employment. 4. A physical examination is not required for a volunteer fireman more than once every 3 years after an initial examination. 5. All physical examinations required pursuant to subsection 3 must be paid for by the employer. 6. Failure to correct predisposing conditions which lead to heart disease when so ordered in writing by the examining physician subsequent to the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee. 7. A person who is determined to be: (a) Partially disabled from an occupational disease pursuant to the provisions of this section; and (b) Incapable of performing, with or without remuneration, work as a fireman or police officer, may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability. 8. Claims filed under this section may be reopened at any time during the life of the claimant for further examination and treatment of the claimant upon certification by a physician of a change of circumstances related to the occupational disease which would warrant an increase or rearrangement of compensation

NEVADA REVISED STATUTES ANNOTATED  
TITLE 53. Labor And Industrial Relations.  
CHAPTER 617. Occupational Diseases.  
Compensation for Disability and Death

Nev. Rev. Stat. Ann. § 617.453 (2006)

**617.453. Cancer as occupational disease of firefighters.**

1. Notwithstanding any other provision of this chapter, cancer, resulting in either temporary or permanent disability, or death, is an occupational disease and compensable as such under the provisions of this chapter if:

(a) The cancer develops or manifests itself out of and in the course of the employment of a person who, for 5 years or more, has been:

(1) Employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public; or

(2) Acting as a volunteer firefighter in this state and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; and

(b) It is demonstrated that:

(1) He was exposed, while in the course of the employment, to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program; and

(2) The carcinogen is reasonably associated with the disabling cancer.

2. With respect to a person who, for 5 years or more, has been employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public, the following substances shall be deemed, for the purposes of paragraph (b) of subsection 1, to be known carcinogens that are reasonably associated with the following disabling cancers:

(a) Diesel exhaust, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with bladder cancer

(b) Acrylonitrile, formaldehyde and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with brain cancer

(c) Diesel exhaust and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with colon cancer.

(d) Formaldehyde shall be deemed to be a known carcinogen that is reasonably associated with Hodgkin's lymphoma.

(e) Formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with kidney cancer.

(f) Chloroform, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with liver cancer.

(g) Acrylonitrile, benzene, formaldehyde, polycyclic aromatic hydrocarbon, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with lymphatic or haematopoietic cancer.

3. The provisions of subsection 2 do not create an exclusive list and do not preclude any person from demonstrating, on a case-by-case basis for the purposes of paragraph (b) of subsection 1, that a substance is a known carcinogen that is reasonably associated with a disabling cancer.

4. Compensation awarded to the employee or his dependents for disabling cancer pursuant to this section must include:

## Nev. Rev. Stat. Ann. § 286.031

(a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization in accordance with the schedule of fees and charges established pursuant to NRS 616C 260 or, if the insurer has contracted with an organization for managed care or with providers of health care pursuant to NRS 616B.527, the amount that is allowed for the treatment or other services under that contract; and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

5. Disabling cancer is presumed to have developed or manifested itself out of and in the course of the employment of any firefighter described in this section. This rebuttable presumption applies to disabling cancer diagnosed after the termination of the person's employment if the diagnosis occurs within a period, not to exceed 60 months, which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying 3 months by the number of full years of his employment. This rebuttable presumption must control the awarding of benefits pursuant to this section unless evidence to rebut the presumption is presented.

6. The provisions of this section do not create a conclusive presumption.

**HISTORY:** 1987, ch. 481, § 1, p. 1109; 2003, ch. 316, § 1, p. 1739; 2005, ch. 118, § 52, p. 344.

## Nev. Rev. Stat. Ann. § 617.454 (2006)

**617.454. Physical examinations: Required tests.**

1. Any physical examination administered pursuant to NRS 617.455; or 617.457 must include:

- (a) A thorough test of the functioning of the hearing of the employee; and
- (b) A purified protein derivative skin test to screen for exposure to tuberculosis.

2. The tests required by this section must be paid for by the employer.

**HISTORY:** 1991, ch. 367, § 1, p. 959; 2001, ch. 228, § 5, p. 1017.

## ev. Rev. Stat. Ann. § 617.455 (2006)

**617.455. Lung diseases as occupational diseases of firefighters and police officers.**

1. Notwithstanding any other provision of this chapter, diseases of the lungs, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by exposure to heat, smoke, fumes, tear gas or any other noxious gases, arising out of and in the course of the employment of a person who, for 2 years or more, has been:

- (a) Employed in this state in a full-time salaried occupation of fire fighting for the benefit or safety of the public;
- (b) Acting as a volunteer firefighter in this state and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; or
- (c) Employed in a full-time salaried occupation as a police officer in this state.

2. Except as otherwise provided in subsection 3, each employee who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to a physical examination, including a thorough test of the functioning of his lungs and the making of an X-ray film of his lungs, upon employment, upon commencement of the coverage, once every even-numbered year until he is 40 years of age or older and thereafter on an annual basis during his employment.

3. A thorough test of the functioning of the lungs is not required for a volunteer firefighter.

4. All physical examinations required pursuant to subsection 2 must be paid for by the employer.

5. A disease of the lungs is conclusively presumed to have arisen out of and in the course of the employment of a person who has been employed in a full-time continuous, uninterrupted and salaried occupation as a police officer or firefighter for 5 years or more before the date of disablement.

6. Failure to correct predisposing conditions which lead to lung disease when so ordered in writing by the examining physician after the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee.

7. A person who is determined to be:

- (a) Partially disabled from an occupational disease pursuant to the provisions of this section; and
  - (b) Incapable of performing, with or without remuneration, work as a firefighter or police officer,
- may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

**HISTORY:** 1965, p. 368; 1975, p. 1195; 1981, pp. 623, 851; 1983, p. 458; 1987, ch. 256, § 1, p. 553; 1989, ch. 480, § 1, p. 1020; 2005, ch. 118, § 53, p. 345.

## Nev. Rev. Stat. Ann. § 617.457 (2006)

**617.457. Heart diseases as occupational diseases of firefighters and police officers.**

1. Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter or police officer in this state before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment.

2. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer firefighter by a person entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145 and who, for 5 years or more, has served continuously as a volunteer firefighter in this state and who has not reached the age of 55 years before the onset of the disease.

3. Except as otherwise provided in subsection 4, each employee who is to be covered for diseases of the heart pursuant to the provisions of this section shall submit to a physical examination, including an examination of the heart, upon employment, upon commencement of coverage and thereafter on an annual basis during his employment.

4. A physical examination is not required for a volunteer firefighter more than once every 3 years after an initial examination.

5. All physical examinations required pursuant to subsection 3 must be paid for by the employer.

6. Failure to correct predisposing conditions which lead to heart disease when so ordered in writing by the examining physician subsequent to the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee.

7. A person who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a firefighter or police officer,

may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

8. Claims filed under this section may be reopened at any time during the life of the claimant for further examination and treatment of the claimant upon certification by a physician of a change of circumstances related to the occupational disease which would warrant an increase or rearrangement of compensation.

**HISTORY:** 1969, p. 592; 1973, p. 768; 1981, pp. 623, 851; 1983, p. 459; 1987, ch. 587, § 1, p. 1424, 1989, ch. 480, § 2, p. 1021; 2005, ch. 118, § 54, p. 346.

## Nev. Rev. Stat. Ann. § 286.031

## Nev. Rev. Stat. Ann. § 617.459 (2006)

**617.459. Determination of percentage of disability resulting from heart or lung diseases.**

1. The percentage of disability resulting from an occupational disease of the heart or lungs must be determined jointly by the claimant's attending physician and the examining physician designated by the insurer, in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110.

2. If the claimant's attending physician and the designated examining physician do not agree upon the percentage of disability, they shall designate a physician specializing in the branch of medicine which pertains to the disease in question to make the determination. If they do not agree upon the designation of such a physician, each shall choose one physician so specializing, and two physicians so chosen shall choose a third specialist in that branch. The resulting panel of three physicians shall, by majority vote, determine the percentage of disability in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the division pursuant to NRS 616C.110.

**HISTORY:** 1981, pp. 850, 1538; 1987, ch. 554, § 52, p. 1313; 1991, ch. 228, § 64, p. 494; 1991, ch. 723, § 100, p. 2431; 1993, ch. 466, § 1179, p. 1879; 1995, ch. 587, § 117, p. 2162.

## Nev. Rev. Stat. Ann. § 617.460 (2006)

**617.460. Silicosis and diseases related to asbestos as occupational diseases; compensation and claims.**

1. Except as otherwise provided in NRS 617.366, silicosis and diseases related to asbestos are occupational diseases and are compensable as such when contracted by an employee and when arising out of and in the course of the employment.

2. Claims for compensation on account of silicosis or a disease related to asbestos are forever barred unless application is made to the insurer within 1 year after the date of disability or death and within 1 year after the claimant knew or should have known of the relationship between the disease and the employment.

3. Nothing in this chapter entitles an employee or his dependents to compensation, medical, hospital and nursing expenses or payment of funeral expenses for disability or death because of silicosis or a disease related to asbestos in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration and nature of previous employment in answer to an inquiry made by the employer.

4. No compensation may be paid in case of silicosis or a disease related to asbestos unless the injured employee has been exposed to harmful quantities of silicon dioxide dust or fibers of asbestos for not less than 1 year in employment in this state covered by this chapter and chapters 616A to 616D, inclusive, of NRS.

5. Compensation on account of silicosis or a disease related to asbestos is payable only in the event of a temporary or permanent disability, or death, in accordance with the provisions of chapters 616A to 616D, inclusive, of NRS. Except as otherwise provided in NRS 616C.505, the insurer shall not allow the conversion of the compensation benefits provided for in this section into the payment of a lump sum. Payment of benefits and compensation is limited to the claimant and his dependents.

6. Any claimant who has been disabled by silicosis or a disease related to asbestos before July 1, 1973, or his dependents, upon receiving the maximum sum payable, \$14,250, to which they are entitled, are not entitled to compensation from the insurer, but are entitled to continue to receive the same amount of compensation from the account for pensions for silicosis, diseases related to asbestos and other disabilities.

**HISTORY:** 1947, p. 66; 1949, p. 365; 1953, p. 297; 1957, p. 307; 1959, p. 250; 1961, p. 449; 1963, p. 84; 1965, p. 980; 1967, p. 206; 1969, p. 898; 1971, pp. 326, 1083; 1973, pp. 539, 1406; 1975, pp. 259, 510, 823; 1979, p. 1064; 1981, p. 1504; 1983, p. 460; 1985, p. 724; 1987, ch. 270, § 8, p. 590; 1991, ch. 556, § 179, p. 1803; 1993, ch. 265, § 235, p. 771; 1995, ch. 580, § 118, p. 2036.

## Nev. Rev. Stat. Ann. § 286.031

## Nev. Rev. Stat. Ann. § 617.470 (2006)

**617.470. Occupational diseases of respiratory tract resulting from exposure to dusts.**

All conditions, restrictions, limitations and other provisions of NRS 617.460 with reference to the payment of compensation or benefits on account of silicosis or a disease related to asbestos are applicable to the payment of compensation or benefits on account of any other occupational disease of the respiratory tract resulting from injurious exposure to dusts.

**HISTORY:** 1947, p. 70; CL 1929 (1949 Supp.), § 2800.28; 1987, ch. 270, § 9, p. 591.

## Nev. Rev. Stat. Ann. § 617.481 (2006)

**617.481. Certain contagious diseases as occupational diseases.**

1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, if a person employed in this state contracts a contagious disease during the course and scope of his employment that results in a temporary or permanent disability or death, the disease is an occupational disease and compensable as such under the provisions of this chapter if:

(a) It is demonstrated that the employee was exposed to the contagious disease during the course and scope of his employment;

(b) The employee reported the exposure to his employer in compliance with the reporting requirements adopted by the employer; and

(c) A test to screen for the contagious disease that is approved by the state board of health is administered to the employee:

(1) Within 72 hours after the date of the exposure and the employee tests negative for exposure to the contagious disease; and

(2) After the incubation period for the contagious disease, as determined by the state board of health, but not later than 12 months after the date of the exposure, and the employee tests positive for exposure to the contagious disease.

2. Such an employee and his dependents are excluded from the benefits of this section if:

(a) The employee refuses to be tested for exposure to the contagious disease as required by subsection 1;

(b) The employee or his dependents are eligible to receive compensation pursuant to paragraph (b) of subsection 2 of NRS 616A 265 or NRS 616C.052; or

(c) It is proven by clear and convincing evidence that the contagious disease did not arise out of and in the course of the employment.

3. All tests for exposure to the contagious disease that are required pursuant to subsection 1 must be paid for by the employer.

4. Compensation awarded to an employee or his dependents pursuant to this section must include:

(a) Full reimbursement for related expenses incurred for:

(1) Preventive treatment administered as a precaution to the employee; and

(2) Other medical treatments, surgery and hospitalization; and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

5. As used in this section:

(a) "Contagious disease" means hepatitis A, hepatitis B, hepatitis C, tuberculosis, the human immunodeficiency virus or acquired immune deficiency syndrome.

(b) "Exposed" or "exposure" means the introduction of blood or other infectious materials into the body of an employee during the performance of his official duties through the skin, eye, mucous membrane or parenteral contact. The term includes contact with airborne materials carrying tuberculosis.

(c) "Preventive treatment" includes, without limitation, tests to determine if an employee has contracted the contagious disease to which he was exposed.

**HISTORY:** 2001, ch. 161, § 1, p. 827.

Nev. Rev. Stat. Ann. § 617.485 (2006)

**617.485. Hepatitis as occupational disease of police officers, firefighters and emergency medical attendants.**

1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, if an employee has hepatitis, the disease is conclusively presumed to have arisen out of and in the course of his employment if the employee has been continuously employed for 5 years or more as a police officer, full-time salaried firefighter or emergency medical attendant in this state before the date of any temporary or permanent disability or death resulting from the hepatitis.

2. Compensation awarded to a police officer, firefighter or emergency medical attendant, or to the dependents of such a person, for hepatitis pursuant to this section must include:

- (a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization, and
- (b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

3. A police officer, salaried firefighter or emergency medical attendant shall:

(a) Submit to a blood test to screen for hepatitis C upon employment, upon the commencement of coverage and thereafter on an annual basis during his employment.

(b) Submit to a blood test to screen for hepatitis A and hepatitis B upon employment, upon the commencement of coverage and thereafter on an annual basis during his employment, except that a police officer, salaried firefighter or emergency medical attendant is not required to submit to a blood test to screen for hepatitis A and hepatitis B on an annual basis during his employment if he has been vaccinated for hepatitis A and hepatitis B upon employment or at other medically appropriate times during his employment. Each employer shall provide a police officer, salaried firefighter or emergency medical attendant with the opportunity to be vaccinated for hepatitis A and hepatitis B upon employment and at other medically appropriate times during his employment.

4. All blood tests required pursuant to this section and all vaccinations provided pursuant to this section must be paid for by the employer.

5. The provisions of this section:

(a) Except as otherwise provided in paragraph (b), do not apply to a police officer, firefighter or emergency medical attendant who is diagnosed with hepatitis upon employment.

(b) Apply to a police officer, firefighter or emergency medical attendant who is diagnosed with hepatitis upon employment if, during the employment or within 1 year after the last day of the employment, he is diagnosed with a different strain of hepatitis.

(c) Apply to a police officer, firefighter or emergency medical attendant who is diagnosed with hepatitis after the termination of the employment if the diagnosis is made within 1 year after the last day of the employment.

6. A police officer, firefighter or emergency medical attendant who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a police officer, firefighter or emergency medical attendant,

may elect to receive the benefits provided pursuant to NRS 616C.440 for a permanent total disability.

7. As used in this section:

(a) "Emergency medical attendant" means a person licensed as an attendant or certified as an emergency medical technician, intermediate emergency medical technician or advanced emergency medical technician pursuant to chapter 450B of NRS, whose primary duties of employment are the provision of emergency medical services.

(b) "Hepatitis" includes hepatitis A, hepatitis B, hepatitis C and any additional disease or conditions that are associated with or result from hepatitis A, hepatitis B or hepatitis C.

(c) "Police officer" means a sheriff, deputy sheriff, officer of a metropolitan police department or city policeman.

**HISTORY:** 2001, ch. 388, § 4, p. 1874; 2003, ch. 506, § 2, p. 3413; 2005, ch. 118, § 55, p. 346.

Nev. Rev. Stat. Ann. § 617.487 (2006)

**617.487. Hepatitis as occupational disease of certain other police officers.**

1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, if an employee has hepatitis, the disease is conclusively presumed to have arisen out of and in the course of his employment if the employee has been continuously employed for 5 years or more as a police officer or a sheriff, deputy sheriff, officer of a metropolitan police department or city policeman in this State before the date of any temporary or permanent disability or death resulting from the hepatitis.

2. Compensation awarded to a police officer, or to the dependents of a police officer, for hepatitis pursuant to this section must include:

(a) Full reimbursement for related expenses incurred for medical treatments, surgery and hospitalization; and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

3. A police officer shall:

(a) Submit to a blood test to screen for hepatitis C upon employment and upon the commencement of coverage.

(b) If the employer of the police officer provides screening for hepatitis C for police officers on an annual basis, submit to a blood test to screen for hepatitis C thereafter on an annual basis during his employment.

(c) If the employer of the police officer provides screening for hepatitis A and hepatitis B for police officers, submit to a blood test to screen for hepatitis A and hepatitis B upon employment, upon the commencement of coverage and thereafter on an annual basis during his employment, except that a police officer is not required to submit to a blood test to screen for hepatitis A and hepatitis B on an annual basis during his employment if he has been vaccinated for hepatitis A and hepatitis B upon employment or at other medically appropriate times during his employment. Each employer shall provide a police officer with the opportunity to be vaccinated for hepatitis A and hepatitis B upon employment and at other medically appropriate times during his employment.

4. All blood tests required pursuant to this section and all vaccinations provided pursuant to this section must be paid for by the employer.

5. The provisions of this section:

## Nev. Rev. Stat. Ann. § 286.031

(a) Except as otherwise provided in paragraph (b), do not apply to a police officer who is diagnosed with hepatitis upon employment.

(b) Apply to a police officer who is diagnosed with hepatitis upon employment if, during the employment or within 1 year after the last day of the employment, he is diagnosed with a different strain of hepatitis.

(c) Apply to a police officer who is diagnosed with hepatitis after the termination of the employment if the diagnosis is made within 1 year after the last day of the employment.

6. A police officer who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a police officer, may elect to receive the benefits provided pursuant to NRS 616C.440 for a permanent total disability.

7. As used in this section:

(a) "Hepatitis" includes hepatitis A, hepatitis B, hepatitis C and any additional diseases or conditions that are associated with or result from hepatitis A, hepatitis B or hepatitis C.

(b) "Police officer" means any police officer other than a sheriff, deputy sheriff, officer of a metropolitan police department or city policeman.

**HISTORY:** 2005, ch. 465, § 4, p. 2239.

## Nev. Rev. Stat. Ann. § 286.031 (2006)

**286.031. "Disability retirement allowance" defined.**

"Disability retirement allowance" means monthly payments from the Public Employees' Retirement Fund or the Police and Firefighters' Retirement Fund paid to disabled retired employees.

**HISTORY:** 1975, p. 1028; 1979, p. 255; 2003, ch. 363, § 1, p. 2051.

**NOTES:****Effect of amendment.**

The 2003 amendment, effective July 1, 2003, substituted "Firefighters" for "Firemen's".

## Nev. Rev. Stat. Ann. § 286.042 (2006)

**286.042. "Firefighter" defined.**

"Firefighter" means a member who is:

1. Filling a full-time position with a participating public employer, the principal duties of which require emotional stability and physical capacity in protecting the public and controlling and extinguishing fires.

2. The former holder of a position defined in subsection 1 who has:

(a) Earned at least 2 years of creditable service in that position; and

(b) Been promoted or transferred within the chain of command by the same public employer to a position related to protecting the public and controlling and extinguishing fires.

3. The former holder of a position defined in subsection 1 who:

(a) Has earned at least 2 years of creditable service in that position; and

(b) Is employed by a different public employer in a position that would have been eligible under paragraph (b) of subsection 2 had he remained with his former employer.

**HISTORY:** 1975, p. 1028; 1977, p. 1574; 1981, p. 444; 1987, ch. 155, § 2, p. 370; 2003, ch. 363, § 2, p. 2051.

Nev. Rev. Stat. Ann. § 286.225 (2006)

**286.225. Police and Firefighters' Retirement Fund.**

1. The Board shall establish a separate retirement fund known as the Police and Firefighters' Retirement Fund.

2. All refunds, disability retirement allowances, benefits for survivors, and service retirement allowances paid to police officers and firefighters and their beneficiaries must be paid from the Police and Firefighters' Retirement Fund.

3. All contributions paid by and for police officers and firefighters must be credited to the Police and Firefighters' Retirement Fund.

4. The Police and Firefighters' Retirement Fund must be administered by the Board and is subject to all restrictions and regulations applicable to the Board.

5. Any postretirement increase appropriated by the Legislature in accordance with this chapter must be paid to eligible retired police officers and firefighters and their beneficiaries from any such appropriation.

6. Investment return on moneys in the Police and Firefighters' Retirement Fund must be deposited in that Fund at the end of each fiscal year based on annual average yield of the System.

7. The Board shall transfer appropriate employee and employer contributions made by and for members who transfer to and from the Public Employees' Retirement Fund and the Police and Firefighters' Retirement Fund.

**HISTORY:** 1975, p. 1033; 1977, p. 1579; 1979, p. 257; 2003, ch. 363, § 8, p. 2054

**286.510. Eligibility: Age and service of police officers, firefighters and other employees; reduction of benefit for retirement before required age.**

1. Except as otherwise provided in subsections 2 and 3, a member of the System is eligible to retire at age 65 if he has at least 5 years of service, at age 60 if he has at least 10 years of service and at any age if he has at least 30 years of service.

2. A police officer or firefighter is eligible to retire at age 65 if he has at least 5 years of service, at age 55 if he has at least 10 years of service, at age 50 if he has at least 20 years of service and at any age if he has at least 25 years of service. Only service performed in a position as a police officer or firefighter, established as such by statute or regulation, service performed pursuant to subsection 3 and credit for military service, may be counted toward eligibility for retirement pursuant to this subsection.

3. Except as otherwise provided in subsection 4, a police officer or firefighter who has at least 5 years of service as a police officer or firefighter and is otherwise eligible to apply for disability retirement pursuant to NRS 286.620 because of an injury arising out of and in the course of his employment remains eligible for retirement pursuant to subsection 2 if:

(a) He applies to the Board for disability retirement and the Board approves his application;

(b) In lieu of a disability retirement allowance, he accepts another position with the public employer with which he was employed when he became disabled as soon as practicable but not later than 90 days after the Board approves his application for disability retirement;

(c) He remains continuously employed by that public employer until he becomes eligible for retirement pursuant to subsection 2; and

(d) After he accepts a position pursuant to paragraph (b), his contributions are paid at the rate that is actuarially determined for police officers and firefighters until he becomes eligible for retirement pursuant to subsection 2.

4. If a police officer or firefighter who accepted another position with the public employer with which he was employed when he became disabled pursuant to subsection 3 ceases to work for that public employer before becoming eligible to retire pursuant to subsection 2, he may begin to receive a disability retirement allowance without further approval by the Board by notifying the Board on a form prescribed by the Board.

5. Eligibility for retirement as provided in this section, does not require the member to have been a participant in the System at the beginning of his credited service.

6. Any member who has the years of creditable service necessary to retire but has not attained the required age, if any, may retire at any age with a benefit actuarially reduced to the required retirement age. Except as otherwise required as a result of NRS 286.537, a retirement benefit pursuant to this subsection must be reduced by 4 percent of the unmodified benefit for each full year that the member is under the appropriate retirement age, and an additional 0.33 percent for each additional month that the member is under the appropriate retirement age. Any option selected pursuant to this subsection must be reduced by an amount proportionate to the reduction provided in this subsection for the unmodified benefit. The Board may adjust the actuarial reduction based upon an experience study of the System and recommendation by the actuary.

**HISTORY:** 1947, p. 632; 1949, p. 174; 1951, p. 269; 1971, p. 623; 1975, p. 1048; 1981, p. 453; 1989, ch. 481, § 2 p. 1024; 1991, ch. 711, § 22, p. 2364; 1999, ch. 215, § 1, p. 972; 2001, ch. 281, § 7, p. 1288; 2003, ch. 363, § 18, p. 2060

## Attachment D

IAFF Description  
Virginia Code Annotated

§ 65.2-402

§ 65.2-402.1

§65.2-406 - §65.2-407

§65.2-400

§9.1-300

§65.2-401

§ 65.2-101

## Virginia

Coverage: Lung disease, Heart disease, Cancer, Infectious disease

**Code Part:** Virginia Code, Title 65.2, Virginia Occupational Disease Act, Chapter 4, Occupational Diseases Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer. § 65.2-402 Presumption as to death or disability from infectious disease. § 65.2-402.1, §65.2-401, §9.1-300, §65.2-101

**Description:** § 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer. A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of Emergency Management hazardous materials officers or (ii) any health condition or impairment of such firefighters or Department of Emergency Management hazardous materials officers resulting in total or partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. B. Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of (i) salaried or volunteer firefighters, (ii) members of the State Police Officers' Retirement System, (iii) members of county, city or town police departments, (iv) sheriffs and deputy sheriffs, (v) Department of Emergency Management hazardous materials officers, (vi) city sergeants or deputy city sergeants of the City of Richmond, (vii) Virginia Marine Police officers, (viii) game wardens who are full-time sworn members of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officers, (x) special agents of the Department of Alcoholic Beverage Control appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, and (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officers of the police force established and maintained by the Metropolitan Washington Airports Authority shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. C. Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter, Department of Emergency Management hazardous materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by the Department of State Police, or full-time sworn member of the enforcement division of the Department of Motor Vehicles having completed twelve years of continuous service who has a contact with a toxic substance encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer. D. The presumptions described in subsections A, B, and C of this section shall only apply if persons entitled to invoke them have, if requested by the private employer, appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as prescribed by the private employer, appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such examinations. E. Persons making claims under this title who rely on such presumptions shall, upon the request of private employers, appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such employers, authorities, bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination. F. Whenever a claim for death benefits is made under this title and the presumptions of this section are invoked, any person entitled to make such claim shall, upon the request of the appropriate private employer, appointing authority or governing body that had employed the deceased, submit the body of the deceased to a postmortem examination as may be directed by the Commission. A qualified physician, selected and compensated by the person entitled to make the claim, may, at the election of such claimant, be present at such postmortem examination. G. Volunteer lifesaving

and rescue squad members, volunteer law-enforcement chaplains, auxiliary and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this section. H. For purposes of this section, the term "firefighter" shall include special forest wardens designated pursuant to § 10.1-1135 and any persons who are employed by or contract with private employers primarily to perform firefighting services. § 65.2-402.1. Presumption as to death or disability from infectious disease. A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health condition or impairment resulting in total or partial disability of any (i) salaried or volunteer firefighter, paramedic or emergency medical technician, (ii) member of the State Police Officers' Retirement System, (iii) member of county, city or town police departments, (iv) sheriff or deputy sheriff, (v) Department of Emergency Management hazardous materials officer, (vi) city sergeant or deputy city sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) game warden who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officer, or (x) special agent of the Department of Alcoholic Beverage Control appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1 who has a documented occupational exposure to blood or body fluid shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this section, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this section gave notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to whether the person gave notice, written or otherwise, of the occupational exposure to his employer.

CODE OF VIRGINIA  
TITLE 65.2. WORKERS' COMPENSATION  
CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

Va. Code Ann. § 65.2-402 (2006)

§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer

A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of Emergency Management hazardous materials officers or (ii) any health condition or impairment of such firefighters or Department of Emergency Management hazardous materials officers resulting in total or partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

B. Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of (i) salaried or volunteer firefighters, (ii) members of the State Police Officers' Retirement System, (iii) members of county, city or town police departments, (iv) sheriffs and deputy sheriffs, (v) Department of Emergency Management hazardous materials officers, (vi) city sergeants or deputy city sergeants of the City of Richmond, (vii) Virginia Marine Police officers, (viii) game wardens who are full-time sworn members of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officers, (x) special agents of the Department of Alcoholic Beverage Control appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, and (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officers of the police force established and maintained by the Metropolitan Washington Airports Authority shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

C. Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter, Department of Emergency Management hazardous materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by the Department of State Police, or full-time sworn member of the enforcement division of the Department of Motor Vehicles having completed twelve years of continuous service who has a contact with a toxic substance encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.

D. The presumptions described in subsections A, B, and C of this section shall only apply if persons entitled to invoke them have, if requested by the private employer, appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as prescribed by the private employer, appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such examinations.

E. Persons making claims under this title who rely on such presumptions shall, upon the request of private employers, appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such employers, authorities, bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

F. Whenever a claim for death benefits is made under this title and the presumptions of this section are invoked, any person entitled to make such claim shall, upon the request of the appropriate private employer, appointing authority or governing body that had employed the deceased, submit the body of the deceased to a postmortem examination as

## Va. Code Ann. § 65.2-402

may be directed by the Commission. A qualified physician, selected and compensated by the person entitled to make the claim, may, at the election of such claimant, be present at such postmortem examination.

G. Volunteer lifesaving and rescue squad members, volunteer law-enforcement chaplains, auxiliary and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this section.

H. For purposes of this section, the term "firefighter" shall include special forest wardens designated pursuant to § 10.1-1135 and any persons who are employed by or contract with private employers primarily to perform firefighting services.

**HISTORY:** 1975, c. 330, § 65.1-4.1; 1976, cc. 187, 772, § 65.1-47.1; 1977, cc. 326, 620; 1978, c. 761; 1983, c. 357; 1987, c. 308; 1991, cc. 354, 355; 1994, cc. 791, 960; 1997, c. 714; 1999, cc. 581, 597, 602, 604, 607; 2000, c. 1013; 2001, cc. 330, 581; 2002, cc. 309, 737, 789.

## Va. Code Ann. § 65.2-402.1 (2006)

## § 65.2-402.1. Presumption as to death or disability from infectious disease

A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health condition or impairment resulting in total or partial disability of any (i) salaried or volunteer firefighter, paramedic or emergency medical technician, (ii) member of the State Police Officers' Retirement System, (iii) member of county, city or town police departments, (iv) sheriff or deputy sheriff, (v) Department of Emergency Management hazardous materials officer, (vi) city sergeant or deputy city sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) game warden who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officer, or (x) special agent of the Department of Alcoholic Beverage Control appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1 who has a documented occupational exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this section, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this section gave notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to whether the person gave notice, written or otherwise, of the occupational exposure to his employer.

B. As used in this section:

*"Blood or body fluids"* means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis, meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which infectious airborne or blood-borne organisms can be transmitted between persons.

*"Hepatitis"* means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C or any other strain of hepatitis generally recognized by the medical community.

*"HIV"* means the medically recognized retrovirus known as human immunodeficiency virus, type I or type II, causing immunodeficiency syndrome.

*"Occupational exposure,"* in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV, means an exposure that occurs during the performance of job duties that places a covered employee at risk of infection.

C. Persons covered under this section who test positive for exposure to the enumerated occupational diseases, but have not yet incurred the requisite total or partial disability, shall otherwise be entitled to make a claim for medical benefits pursuant to § 65.2-603, including entitlement to an annual medical examination to measure the progress of the condition, if any, and any other medical treatment, prophylactic or otherwise.

## Va. Code Ann. § 65.2-402.1

D. Whenever any standard, medically-recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is established under this section, if medically indicated by the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the United States Public Health Service, a person subject to the provisions of this section may be required by such person's employer to undergo the immunization or prophylaxis unless the person's physician determines in writing that the immunization or prophylaxis would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization or prophylaxis shall disqualify the person from any presumption established by this section.

E. The presumptions described in subsection A of this section shall only apply if persons entitled to invoke them have, if requested by the appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as prescribed by the appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of hepatitis, meningococcal meningitis, tuberculosis or HIV at the time of such examinations. The presumptions described in subsection A of this section shall not be effective until six months following such examinations, unless such persons entitled to invoke such presumption can demonstrate a documented exposure during the six-month period.

F. Persons making claims under this title who rely on such presumption shall, upon the request of appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such appointing authorities or governing bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

**HISTORY:** 2002, c. 820; 2003, c. 842.

## Va. Code Ann. § 65.2-406 (2006)

## § 65.2-406. Limitation upon claim; diseases covered by limitation

A. The right to compensation under this chapter shall be forever barred unless a claim is filed with the Commission within one of the following time periods:

1. For coal miners' pneumoconiosis, three years after a diagnosis of the disease, as category 1/0 or greater as classified under the International Labour Office Classification of Radiographs of the Pneumoconiosis (1980), is first communicated to the employee or the legal representative of his estate or within five years from the date of the last injurious exposure in employment, whichever first occurs;

2. For byssinosis, two years after a diagnosis of the disease is first communicated to the employee or within seven years from the date of the last injurious exposure in employment, whichever first occurs;

3. For asbestosis, two years after a diagnosis of the disease is first communicated to the employee;

4. For symptomatic or asymptomatic infection with human immunodeficiency virus including acquired immunodeficiency syndrome, two years after a positive test for infection with human immunodeficiency virus;

5. For diseases directly attributable to the rescue and relief efforts at the Pentagon following the terrorist attack of September 11, 2001, two years after a diagnosis of the disease is first communicated to the employee; or

6. For all other occupational diseases, two years after a diagnosis of the disease is first communicated to the employee or within five years from the date of the last injurious exposure in employment, whichever first occurs.

B. If death results from an occupational disease within any of such periods, the right to compensation under this chapter shall be barred, unless a claim therefor is filed with the Commission within three years after such death. The

## Va. Code Ann. § 65.2-406

limitations imposed by this section as amended shall be applicable to occupational diseases contracted before and after July 1, 1962, and § 65.2-601 shall not apply to pneumoconiosis. The limitation on time of filing will cover all occupational diseases except:

1. Cataract of the eyes due to exposure to the heat and glare of molten glass or to radiant rays such as infrared;
2. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to pitch, tar, soot, bitumen, anthracene, paraffin, mineral oil, or their compounds, products or residues;
3. Radium disability or disability due to exposure to radioactive substances and X-rays;
4. Ulceration due to chrome compound or to caustic chemical acids or alkalis and undulant fever caused by the industrial slaughtering and processing of livestock and handling of hides;
5. Mesothelioma due to exposure to asbestos; and
6. Angiosarcoma of the liver due to vinyl chloride exposure.

C. When a claim is made for benefits for a change of condition in an occupational disease, such as advance from one stage or category to another, a claim for change in condition must be filed with the Commission within three years from the date for which compensation was last paid for an earlier stage of the disease, except that a claim for benefits for a change in condition in asbestosis must be filed within two years from the date when diagnosis of the advanced stage is first communicated to the employee and no claim for benefits for an advanced stage of asbestosis shall be denied on the ground that there has been no subsequent accident. For a first or an advanced stage of asbestosis or mesothelioma, if the employee is still employed in the employment in which he was injuriously exposed, the weekly compensation rate shall be based upon the employee's weekly wage as of the date of communication of the first or advanced stage of the disease, as the case may be. If the employee is unemployed, or employed in another employment, the weekly compensation rate shall be based upon the average weekly wage of a person of the same or similar grade and character in the same class of employment in which the employee was injuriously exposed and preferably in the same locality or community on the date of communication to the employee of the advanced stage of the disease or mesothelioma. The weekly compensation rates herein provided shall be subject to the same maximums and minimums as provided in § 65.2-500.

**HISTORY:** Code 1950, § 65-49; 1952, c. 205; 1960, c. 297; 1962, c. 588; 1968, c. 660, § 65.1-52; 1970, c. 470; 1972, c. 612; 1974, c. 201; 1975, cc. 27, 471; 1979, cc. 80, 201; 1982, c. 82; 1983, c. 469; 1984, c. 411; 1985, c. 191; 1989, c. 502; 1990, c. 417; 1991, c. 355; 1992, c. 475; 1995, c. 324; 2005, c. 433.

## Va. Code Ann. § 65.2-407 (2006)

## § 65.2-407. Waiver

A. When an employee or prospective employee, though not incapacitated for work, is found to be affected by, or susceptible to, a specific occupational disease he may, subject to the approval of the Commission, be permitted to waive in writing compensation for any aggravation of his condition that may result from his working or continuing to work in the same or similar occupation for the same employer.

B. The Commission shall approve a waiver for coal worker's pneumoconiosis and silicosis only when presented with X-ray evidence from a physician qualified in the opinion of the Commission to make the determination and which demonstrates a positive diagnosis of the pneumoconiosis or the existence of a lung condition which makes the employee or prospective employee significantly more susceptible to the pneumoconiosis.

C. In considering approval of a waiver, the Commission may supply any medical evidence to a disinterested physician for his opinion as to whether the employee is affected by the disease or has the preexisting condition.

**HISTORY:** Code 1950, § 65-50; 1968, c. 660, § 65.1-53; 1970, c. 517; 1979, c. 201; 1991, c. 355.

## Va. Code Ann. § 65.2-400 (2006)

## § 65.2-400. "Occupational disease" defined

A. As used in this title, unless the context clearly indicates otherwise, the term "*occupational disease*" means a disease arising out of and in the course of employment, but not an ordinary disease of life to which the general public is exposed outside of the employment.

B. A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances:

1. A direct causal connection between the conditions under which work is performed and the occupational disease;

2. It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

3. It can be fairly traced to the employment as the proximate cause;

4. It is neither a disease to which an employee may have had substantial exposure outside of the employment, nor any condition of the neck, back or spinal column;

5. It is incidental to the character of the business and not independent of the relation of employer and employee; and

6. It had its origin in a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

C. Hearing loss and the condition of carpal tunnel syndrome are not occupational diseases but are ordinary diseases of life as defined in § 65.2-401.

**HISTORY:** Code 1950, § 65-42; 1952, c. 603; 1968, c. 660, § 65.1-46; 1970, c. 470; 1986, c. 378; 1991, c. 355; 1997, cc. 15, 405.

## Va. Code Ann. § 9.1-300

## Va. Code Ann. § 9.1-300 (2006)

## § 9.1-300. Definitions

As used in this chapter, unless the context requires a different meaning:

*"Emergency medical technician"* means any person who is employed solely within the fire department or public safety department of an employing agency as a full-time emergency medical technician whose primary responsibility is the provision of emergency care to the sick and injured, using either basic or advanced techniques. Emergency medical technicians may also provide fire protection services and assist in the enforcement of the fire prevention code.

*"Employing agency"* means any municipality of the Commonwealth or any political subdivision thereof, including authorities and special districts, which employs firefighters and emergency medical technicians.

*"Firefighter"* means any person who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires, the protection of life and property, and the enforcement of local and state fire prevention codes and laws pertaining to the prevention and control of fires.

*"Interrogation"* means any questioning of a formal nature as used in Chapter 4 (§ 9.1-500 et seq.) of this title that could lead to dismissal, demotion, or suspension for punitive reasons of a firefighter or emergency medical technician.

**HISTORY:** 1987, c. 509, § 2.1-116.9:1; 2001, c. 844.

**NOTES:**

**EFFECTIVE DATE** --This chapter became effective October 1, 2001.

## Va. Code Ann. § 65.2-401 (2006)

## § 65.2-401. "Ordinary disease of life" coverage

An ordinary disease of life to which the general public is exposed outside of the employment may be treated as an occupational disease for purposes of this title if each of the following elements is established by clear and convincing evidence, (not a mere probability):

1. That the disease exists and arose out of and in the course of employment as provided in § 65.2-400 with respect to occupational diseases and did not result from causes outside of the employment, and
2. That one of the following exists:
  - a. It follows as an incident of occupational disease as defined in this title; or
  - b. It is an infectious or contagious disease contracted in the course of one's employment in a hospital or sanitarium or laboratory or nursing home as defined in § 32.1-123, or while otherwise engaged in the direct delivery of health care, or in the course of employment as emergency rescue personnel and those volunteer emergency rescue personnel referred to in § 65.2-101; or
  - c. It is characteristic of the employment and was caused by conditions peculiar to such employment.

**HISTORY:** 1986, c. 378, § 65.1-46.1; 1989, c. 502; 1991, c. 355; 1997, cc. 15, 405.

§ 65.2-101. Definitions

As used in this title:

*"Average weekly wage"* means:

1. a. The earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, divided by 52; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided that results fair and just to both parties will be thereby obtained. When, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

b. When for exceptional reasons the foregoing would be unfair either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

2. Whenever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings. For the purpose of this title, the average weekly wage of the members of the Virginia National Guard, the Virginia Naval Militia and the Virginia State Defense Force, registered members on duty or in training of the United States Civil Defense Corps of this Commonwealth, volunteer firefighters engaged in firefighting activities under the supervision and control of the Department of Forestry, and forest wardens shall be deemed to be such amount as will entitle them to the maximum compensation payable under this title; however, any award entered under the provisions of this title on behalf of members of the National Guard, the Virginia Naval Militia or their dependents, or registered members on duty or in training of the United States Civil Defense Corps of this Commonwealth or their dependents, shall be subject to credit for benefits paid them under existing or future federal law on account of injury or occupational disease covered by the provisions of this title.

3. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations, volunteer members of community emergency response teams, and volunteer members of medical reserve corps are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this title for injured workers or their dependents. For the purposes of workers' compensation insurance premium calculations, the monthly payroll for each volunteer firefighter or volunteer lifesaving or volunteer rescue squad member shall be deemed to be \$ 300.

4. The average weekly wage of persons, other than those covered in subdivision 3 of this definition, who respond to a hazardous materials incident at the request of the Department of Emergency Management shall be based upon the earnings of such persons from their primary employers.

*"Award"* means the grant or denial of benefits or other relief under this title or any rule adopted pursuant thereto.

*"Change in condition"* means a change in physical condition of the employee as well as any change in the conditions under which compensation was awarded, suspended, or terminated which would affect the right to, amount of, or duration of compensation.

*"Client company"* means any person that enters into an agreement for professional employer services with a professional employer organization.

*"Coemployee"* means an employee performing services pursuant to an agreement for professional employer services between a client company and a professional employer organization.

"Commission" means the Virginia Workers' Compensation Commission as well as its former designation as the Virginia Industrial Commission.

"Employee" means:

1. a. Every person, including aliens and minors, in the service of another under any contract of hire or apprenticeship, written or implied, whether lawfully or unlawfully employed, except (i) one whose employment is not in the usual course of the trade, business, occupation or profession of the employer or (ii) as otherwise provided in subdivision 2 of this definition.

b. Any apprentice, trainee, or retrainee who is regularly employed while receiving training or instruction outside of regular working hours and off the job, so long as the training or instruction is related to his employment and is authorized by his employer.

c. Members of the Virginia National Guard and the Virginia Naval Militia, whether on duty in a paid or unpaid status or when performing voluntary service to their unit in a nonduty status at the request of their commander.

Income benefits for members of the National Guard or Naval Militia shall be terminated when they are able to return to their customary civilian employment or self-employment. If they are neither employed nor self-employed, those benefits shall terminate when they are able to return to their military duties. If a member of the National Guard or Naval Militia who is fit to return to his customary civilian employment or self-employment remains unable to perform his military duties and thereby suffers loss of military pay which he would otherwise have earned, he shall be entitled to one day of income benefits for each unit training assembly or day of paid training which he is unable to attend.

d. Members of the Virginia State Defense Force.

e. Registered members of the United States Civil Defense Corps of this Commonwealth, whether on duty or in training.

f. Except as provided in subdivision 2 of this definition, all officers and employees of the Commonwealth, including (i) forest wardens; (ii) judges, clerks, deputy clerks and employees of juvenile and domestic relations district courts and general district courts; and (iii) secretaries and administrative assistants for officers and members of the General Assembly employed pursuant to § 30-19.4 and compensated as provided in the general appropriation act, who shall be deemed employees of the Commonwealth.

g. Except as provided in subdivision 2 of this definition, all officers and employees of a municipal corporation or political subdivision of the Commonwealth.

h. Except as provided in subdivision 2 of this definition, (i) every executive officer, including president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation, municipal or otherwise and (ii) every manager of a limited liability company elected or appointed in accordance with the articles of organization or operating agreement of the limited liability company.

i. Policemen and firefighters, sheriffs and their deputies, town sergeants and their deputies, county and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth, clerks of circuit courts and their deputies, officers and employees, and electoral board members appointed in accordance with § 24.2-106, who shall be deemed employees of the respective cities, counties and towns in which their services are employed and by whom their salaries are paid or in which their compensation is payable.

j. Members of the governing body of any county, city or town in the Commonwealth, whenever coverage under this title is extended to such members by resolution or ordinance duly adopted.

k. Volunteers, officers and employees of any commission or board of any authority created or controlled by a local governing body, or any local agency or public service corporation owned, operated or controlled by such local governing body, whenever coverage under this title is authorized by resolution or ordinance duly adopted by the governing board of any county, city, town, or any political subdivision thereof.

l. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations, volunteer members of regional hazardous materials emergency response teams, volunteer members of community emergency response teams, and volunteer members of medical reserve corps, who shall be deemed employees of (i) the political subdivision or state

institution of higher education in which the principal office of such volunteer fire company, volunteer lifesaving or rescue squad, volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve deputy sheriff force, volunteer emergency medical technicians, volunteer search and rescue organization, regional hazardous materials emergency response team, community emergency response team, or medical reserve corps is located if the governing body of such political subdivision or state institution of higher education has adopted a resolution acknowledging those persons as employees for the purposes of this title or (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies or squads for which volunteer services are provided whenever such companies or squads elect to be included as an employer under this title.

m. (1) Volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations and any other persons who respond to an incident upon request of the Department of Emergency Management, who shall be deemed employees of the Department of Emergency Management for the purposes of this title.

(2) Volunteer firefighters when engaged in firefighting activities under the supervision and control of the Department of Forestry, who shall be deemed employees of the Department of Forestry for the purposes of this title.

n. Any sole proprietor, shareholder of a stock corporation having only one shareholder, member of a limited liability company having only one member, or all partners of a business electing to be included as an employee under the workers' compensation coverage of such business if the insurer is notified of this election. Any sole proprietor, shareholder or member or the partners shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this title.

When any partner or sole shareholder, member or proprietor is entitled to receive coverage under this title, such person shall be subject to all provisions of this title as if he were an employee; however, the notices required under §§ 65.2-405 and 65.2-600 of this title shall be given to the insurance carrier, and the panel of physicians required under § 65.2-603 shall be selected by the insurance carrier.

o. The independent contractor of any employer subject to this title at the election of such employer provided (i) the independent contractor agrees to such inclusion and (ii) unless the employer is self-insured, the employer's insurer agrees in writing to such inclusion. All or part of the cost of the insurance coverage of the independent contractor may be borne by the independent contractor.

When any independent contractor is entitled to receive coverage under this section, such person shall be subject to all provisions of this title as if he were an employee, provided that the notices required under §§ 65.2-405 and 65.2-600 are given either to the employer or its insurance carrier.

However, nothing in this title shall be construed to make the employees of any independent contractor the employees of the person or corporation employing or contracting with such independent contractor.

p. The legal representative, dependents and any other persons to whom compensation may be payable when any person covered as an employee under this title shall be deceased.

q. Jail officers and jail superintendents employed by regional jails or jail farm boards or authorities, whether created pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or Article 5 (§ 53.1-105 et seq.) of Chapter 3 of Title 53.1, or an act of assembly

r. AmeriCorps members who receive stipends in return for volunteering in local, state and nonprofit agencies in the Commonwealth, who shall be deemed employees of the Commonwealth for the purposes of this title.

s. Food Stamp recipients participating in the work experience component of the Food Stamp Employment and Training Program, who shall be deemed employees of the Commonwealth for the purposes of this title.

t. Temporary Assistance for Needy Families recipients not eligible for Medicaid participating in the work experience component of the Virginia Initiative for Employment Not Welfare Program, who shall be deemed employees of the Commonwealth for the purposes of this title.

2. "Employee" shall not mean:

a. Officers and employees of the Commonwealth who are elected by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate. This exception shall not apply to any "state employee"

as defined in § 51.1-124.3 nor to Supreme Court Justices, judges of the Court of Appeals, judges of the circuit or district courts, members of the Workers' Compensation Commission and the State Corporation Commission, or the Superintendent of State Police.

b. Officers and employees of municipal corporations and political subdivisions of the Commonwealth who are elected by the people or by the governing bodies, and who act in purely administrative capacities and are to serve for a definite term of office.

c. Any person who is a licensed real estate salesperson, or a licensed real estate broker associated with a real estate broker, if (i) substantially all of the salesperson's or associated broker's remuneration is derived from real estate commissions, (ii) the services of the salesperson or associated broker are performed under a written contract specifying that the salesperson is an independent contractor, and (iii) such contract includes a provision that the salesperson or associated broker will not be treated as an employee for federal income tax purposes.

d. Any taxicab or executive sedan driver, provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act.

e. Casual employees.

f. Domestic servants.

g. Farm and horticultural laborers, unless the employer regularly has in service more than two full-time employees.

h. Employees of any person, firm or private corporation, including any public service corporation, that has regularly in service less than three employees in the same business within this Commonwealth, unless such employees and their employers voluntarily elect to be bound by this title. However, this exemption shall not apply to the operators of underground coal mines or their employees. An executive officer who is not paid salary or wages on a regular basis at an agreed upon amount and who rejects coverage under this title pursuant to § 652-300 shall not be included as an employee for purposes of this subdivision.

i. Employees of any common carrier by railroad engaging in commerce between any of the several states or territories or between the District of Columbia and any of the states or territories and any foreign nation or nations, and any person suffering injury or death while he is employed by such carrier in such commerce. This title shall not be construed to lessen the liability of any such common carrier or to diminish or take away in any respect any right that any person so employed, or the personal representative, kindred or relation, or dependent of such person, may have under the act of Congress relating to the liability of common carriers by railroad to their employees in certain cases, approved April 22, 1908, or under §§ 8.01-57 through 8.01-62 or § 56-441.

j. Employees of common carriers by railroad who are engaged in intrastate trade or commerce. However, this title shall not be construed to lessen the liability of such common carriers or take away or diminish any right that any employee or, in case of his death, the personal representative of such employee of such common carrier may have under §§ 8.01-57 through 8.01-61 or § 56-441.

k. Except as provided in subdivision l of this definition, a member of a volunteer fire-fighting, lifesaving or rescue squad when engaged in activities related principally to participation as a member of such squad whether or not the volunteer continues to receive compensation from his employer for time away from the job.

l. Except as otherwise provided in this title, noncompensated employees and noncompensated directors of corporations exempt from taxation pursuant to § 501 (c) (3) of Title 26 of the United States Code (Internal Revenue Code of 1954)

m. Any person performing services as a sports official for an entity sponsoring an interscholastic or intercollegiate sports event or any person performing services as a sports official for a public entity or a private, nonprofit organization which sponsors an amateur sports event. For the purposes of this subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper or other person who is a neutral participant in a sports event. This shall not include any person, otherwise employed by an organization or entity sponsoring a sports event, who performs services as a sports official as part of his regular employment.

"Employer" includes (1) any person, the Commonwealth or any political subdivision thereof and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased em-

ployer, using the service of another for pay and (ii) any volunteer fire company or volunteer lifesaving or rescue squad electing to be included and maintaining coverage as an employer under this title. If the employer is insured, it includes his insurer so far as applicable.

*"Executive officer"* means (i) the president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers elected or appointed in accordance with the articles of organization or operating agreement of a limited liability company. However, such term does not include noncompensated officers of corporations exempt from taxation pursuant to § 501 (c) (3) of Title 26 of the United States Code (Internal Revenue Code of 1954).

*"Filed"* means hand delivered to the Commission's office in Richmond or any regional office maintained by the Commission; sent by telegraph, electronic mail or facsimile transmission; or posted at any post office of the United States Postal Service by certified or registered mail. Filing by first-class mail, telegraph, electronic mail or facsimile transmission shall be deemed completed only when the application actually reaches a Commission office.

*"Injury"* means only injury by accident arising out of and in the course of the employment or occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) of this title and does not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes. Such term shall not include any injury, disease or condition resulting from an employee's voluntary:

1. Participation in employer-sponsored off-duty recreational activities which are not part of the employee's duties; or
2. Use of a motor vehicle that was provided to the employee by a motor vehicle dealer as defined by § 46.2-1500 and bears a dealer's license plate as defined by § 46.2-1550 for (i) commuting to or from work or (ii) any other nonwork activity.

Such term shall include any injury, disease or condition:

1. Arising out of and in the course of the employment of (a) an employee of a hospital as defined in § 32.1-123; (b) an employee of a health care provider as defined in § 8.01-581.1; (c) an employee of the Department of Health or a local department of health; (d) a member of a search and rescue organization; or (e) any person described in clauses (i) through (iv), (vi), and (ix) of subsection A of § 65.2-402.1 otherwise subject to the provisions of this title; and
2. Resulting from (a) the administration of vaccinia (smallpox) vaccine, Cidofivir and derivatives thereof, or Vaccinia Immune Globulin as part of federally initiated smallpox countermeasures, or (b) transmission of vaccinia in the course of employment from an employee participating in such countermeasures to a coemployee of the same employer.

*"Professional employer organization"* means any person that enters into a written agreement with a client company to provide professional employer services.

*"Professional employer services"* means services provided to a client company pursuant to a written agreement with a professional employer organization whereby the professional employer organization initially employs all or a majority of a client company's workforce and assumes responsibilities as an employer for all coemployees that are assigned, allocated, or shared by the agreement between the professional employer organization and the client company.

*"Staffing service"* means any person, other than a professional employer organization, that hires its own employees and assigns them to a client to support or supplement the client's workforce. It includes temporary staffing services that supply employees to clients in special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

**HISTORY:** Code 1950, §§ 65-2 through 65-7.1, 65-24, 65-25; 1952, c. 551; 1954, c. 246; 1956, cc. 283, 479; 1956, Ex. Sess., c. 53; 1958, c. 187; 1960, c. 149; 1962, c. 530; 1964, c. 603; 1966, c. 200; 1968, c. 660, §§ 65.1-2, 65.1-3, 65.1-4, 65.1-5 through 65.1-8, 65.1-27, 65.1-28; 1970, c. 470; 1971, Ex. Sess., c. 7; 1972, cc. 464, 619; 1973, cc. 297, 542; 1975, c. 330, § 65.1-4.1; 1976, c. 187; 1977, c. 326; 1978, cc. 41, 841; 1979, c. 80, § 65.1-2.1; 1980, c. 421, § 65.1-4.2; 1983, c. 346; 1984, cc. 388, 694, 703, § 65.1-4.3; 1987, cc. 213, 308, § 65.1-4.4; 1988, c. 360; 1989, cc. 312, 319, 437, §§ 65.1-4.5, 65.1-4.6; 1990, c. 838, § 65.1-4.1.1; 1991, cc. 277, 354, 355; 1992, c. 12; 1993, c. 280, 1994, cc. 271, 286, 526; 1995, cc. 4, 168, 272, 288; 1996, cc. 250, 721; 1998, c. 52; 1999, c. 1006; 2000, cc. 301, 624, 718, 1018; 2002, c. 69; 2003, c. 999; 2004, cc. 888, 928, 2005, cc. 354, 368, 374, 472; 2006, c. 629.

## Attachment E

### IAFF Descriptions

#### Revised Code of Washington

§ 51.32.180

§ 51.32.185

§ 51.08.140

§ 41.26.030

#### Washington Administrative Code

§ 296-14-310

§ 296-14-315

§ 296-14-330

## Washington

Coverage: Heart Disease, Lung Disease, Infectious Disease, Cancer

**Code Part:** Revised Code of Washington, Title 51, Industrial Insurance, Chapter 51.32, Compensation - Right to and amount Occupational diseases, presumption of occupational disease for fire fighters- limitations-exception-rules., RCW § 51.32.185, Washington Administrative Code (WAC) Title 296 Labor and Industries, Department of What tobacco use shall exclude a fire fighter from a presumption of coverage? § 296-14-330 When does a presumption of occupational disease for fire fighters apply? § 296-14-310 Definitions § 296-14-315 Title 41 - Public employment, civil service, pensions. Chapter 41.26 - Law enforcement officers' and fire fighters' retirement system, Definitions. § 41.26.030, RCW: § 51.32.180 § 51.08.140

**Description:** RCW 51.32.185 Occupational diseases -- Presumption of occupational disease for fire fighters -- Limitations -- Exception -- Rules. (1) In the case of fire fighters as defined in RCW 41.26.030(4) (a), (b), and (c) who are covered under Title 51 RCW and fire fighters, including supervisors, employed on a full-time, fully compensated basis as a fire fighter of a private sector employer's fire department that includes over fifty such fire fighters, there shall exist a prima facie presumption that: (a) Respiratory disease; (b) heart problems that are experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; (c) cancer; and (d) infectious diseases are occupational diseases under RCW 51.08.140. This presumption of occupational disease may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities. (2) The presumptions established in subsection (1) of this section shall be extended to an applicable member following termination of service for a period of three calendar months for each year of requisite service, but may not extend more than sixty months following the last date of employment. (3) The presumption established in subsection (1)(c) of this section shall only apply to any active or former fire fighter who has cancer that develops or manifests itself after the fire fighter has served at least ten years and who was given a qualifying medical examination upon becoming a fire fighter that showed no evidence of cancer. The presumption within subsection (1)(c) of this section shall only apply to primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, and kidney cancer. (4) The presumption established in subsection (1)(d) of this section shall be extended to any fire fighter who has contracted any of the following infectious diseases: Human immunodeficiency virus/acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, or mycobacterium tuberculosis (5) Beginning July 1, 2003, this section does not apply to a fire fighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use. The department, using existing medical research, shall define in rule the extent of tobacco use that shall exclude a fire fighter from the provisions of this section. [2002 c 337 § 2, 1987 c 515 § 2.] NOTES: Legislative findings - 1987 c 515: "The legislature finds that the employment of fire fighters exposes them to smoke, fumes, and toxic or chemical substances. The legislature recognizes that fire fighters as a class have a higher rate of respiratory disease than the general public. The legislature therefore finds that respiratory disease should be presumed to be occupationally related for industrial insurance purposes for fire fighters." [1987 c 515 § 1.] RCW 41.26.030 Definitions (4) "Fire fighter" means: (a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, and who is actively employed as such; (b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination; (c) Supervisory fire fighter personnel; (d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (4)(d) shall not apply to plan 2 members; (e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (4)(e) shall not apply to plan 2 members; (f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fire fighter; and (g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW. RCW 51.08.140 "Occupational disease." Occupational disease" means such

disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title. WAC 296-14-330 What tobacco use shall exclude a fire fighter from a presumption of coverage? Heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substance - presumption shall apply only to fire fighters that never smoked tobacco or former smokers who last smoked two years or more prior to the cardiac event. Asthma - presumption shall apply only to fire fighters that never smoked tobacco or former smokers who last smoked five years or more before date of manifestation of the disease COPD/emphysema/chronic bronchitis - presumption shall apply only to fire fighters that never smoked tobacco or former smoker who last smoked fifteen years or more before date of manifestation of the disease Lung cancer - presumption shall apply only to fire fighters that never smoked or former smoker who last smoked fifteen years or more before date of manifestation of the disease WAC 296-14-310 When does a presumption of occupational disease for fire fighters apply? RCW 51.32.185 specifies a presumption that certain medical conditions are occupational diseases for fire fighters. Those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; respiratory disease; specific cancers as defined by RCW 51.32.185; and infectious diseases as defined by RCW 51.32.185. For claims filed on or after July 1, 2003, the presumption may not apply to heart or lung conditions if a fire fighter is a user of tobacco products. When the presumption does not apply, the claim is not automatically denied. However, the burden is on the worker to prove that the condition is an occupational disease. WAC 296-14-315 Definitions. (1) Tobacco products: For purposes of this rule, tobacco products are limited to those that are smoked, including cigarettes, pipes and cigars. (2) User of tobacco products: For the purposes of this rule, a user of tobacco products is a "smoker." (3) Current smoker: A current smoker is a regular user of tobacco products, has smoked tobacco products at least one hundred times in his/her lifetime, and as of the date of manifestation did smoke tobacco products at least some days. (4) Former smoker: A former smoker has a history of tobacco use, has smoked tobacco products at least one hundred times in his/her lifetime, but as of the date of manifestation did not smoke tobacco products.

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TITLE 51. INDUSTRIAL INSURANCE  
CHAPTER 51.32. COMPENSATION -- RIGHT TO AND AMOUNT

REVISED CODE OF WASHINGTON

Rev. Code Wash. (ARCW) § 51.32.180 (2007)

§ 51.32.180. Occupational diseases -- Limitation

Every worker who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title, or his or her family and dependents in case of death of the worker from such disease or infection, shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a worker injured or killed in employment under this title, except as follows: (a) This section and RCW 51.16.040 shall not apply where the last exposure to the hazards of the disease or infection occurred prior to January 1, 1937; and (b) for claims filed on or after July 1, 1988, the rate of compensation for occupational diseases shall be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim.

**HISTORY:** 1988 c 161 § 5; 1977 ex.s. c 350 § 53; 1971 ex.s. c 289 § 49; 1961 c 23 § 51.32.180. Prior: 1959 c 308 § 19; prior: 1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.

Rev. Code Wash. (ARCW) § 51.32.185 (2007)

§ 51.32.185. Occupational diseases -- Presumption of occupational disease for fire fighters -- Limitations -- Exception -- Rules

(1) In the case of fire fighters as defined in RCW 41.26.030(4) (a), (b), and (c) who are covered under Title 51 RCW and fire fighters, including supervisors, employed on a full-time, fully compensated basis as a fire fighter of a private sector employer's fire department that includes over fifty such fire fighters, there shall exist a prima facie presumption that: (a) Respiratory disease; (b) heart problems that are experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; (c) cancer; and (d) infectious diseases are occupational diseases under RCW 51.08.140. This presumption of occupational disease may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

(2) The presumptions established in subsection (1) of this section shall be extended to an applicable member following termination of service for a period of three calendar months for each year of requisite service, but may not extend more than sixty months following the last date of employment.

(3) The presumption established in subsection (1)(c) of this section shall only apply to any active or former fire fighter who has cancer that develops or manifests itself after the fire fighter has served at least ten years and who was given a qualifying medical examination upon becoming a fire fighter that showed no evidence of cancer. The presumption within subsection (1)(c) of this section shall only apply to primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, and kidney cancer.

(4) The presumption established in subsection (1)(d) of this section shall be extended to any fire fighter who has contracted any of the following infectious diseases: Human immunodeficiency virus/acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, or mycobacterium tuberculosis.

(5) Beginning July 1, 2003, this section does not apply to a fire fighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use. The department, using existing medical research, shall define in rule the extent of tobacco use that shall exclude a fire fighter from the provisions of this section.

**HISTORY:** 2002 c 337 § 2; 1987 c 515 § 2.

**Rev. Code Wash. (ARCW) § 51.08.140 (2007)**

**§ 51.08.140. "Occupational disease."**

"Occupational disease" means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title.

**Rev. Code Wash. (ARCW) § 41.26.030 (2007)**

**§ 41.26.030. Definitions. (Expires July 1, 2013.)**

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2) (a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or fire fighter:

- (i) The legislative authority of any city, town, county, or district;
- (ii) The elected officials of any municipal corporation;
- (iii) The governing body of any other general authority law enforcement agency; or

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(3) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer,

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2)) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (3)(d) shall not apply to plan 2 members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (3)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(4) "Fire fighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) Supervisory fire fighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (4)(d) shall not apply to plan 2 members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provision of this subsection (4)(e) shall not apply to plan 2 members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fire fighter;

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW; and

(h) Any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician.

(5) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(6) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162.

(7) (a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically handicapped as determined by the department, except a handicapped person in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(9) "Retirement fund" means the "Washington law enforcement officers' and fire fighters' retirement system fund" as provided for herein.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) of this section.

(11) (a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12) (a) "Final average salary" for plan 1 members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan 2 members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(13) (a) "Basic salary" for plan 1 members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan 2 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(14) (a) "Service" for plan 1 members, means all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a fire fighter or law enforcement officer, during which

the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan 2 members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(15) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(16) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(17) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(18) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW 41.26.110.

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan 1 members.

(20) "Disability retirement" for plan 1 members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(21) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(22) "Medical services" for plan 1 members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic X-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors,

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(25) "Director" means the director of the department.

(26) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(27) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(28) "Plan 1" means the law enforcement officers' and fire fighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(29) "Plan 2" means the law enforcement officers' and fire fighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(32) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

**HISTORY:** 2005 c 459 § 1; 2003 c 388 § 2; 2002 c 128 § 3. Prior: 1996 c 178 § 11; 1996 c 38 § 2; prior: 1994 c 264 § 14; 1994 c 197 § 5; prior: 1993 c 502 § 1; 1993 c 322 § 1; 1991 sp.s. c 12 § 1; prior: (1991 sp.s. c 11 § 3 repealed by 1991 sp.s. c 12 § 3); 1991 c 365 § 35; 1991 c 343 § 14; 1991 c 35 § 13; 1987 c 418 § 1; 1985 c 13 § 5; 1984 c 230 § 83; 1981 c 256 § 4; 1979 ex.s. c 249 § 2; 1977 ex.s. c 294 § 17; 1974 ex.s. c 120 § 1; 1972 ex.s. c 131 § 1; 1971 ex.s. c 257 § 6; 1970 ex.s. c 6 § 1; 1969 ex.s. c 209 § 3.

Washington Administrative Code

WAC § 296-14-310 (2007)

**WAC 296-14-310. When does a presumption of occupational disease for fire fighters apply?**

RCW 51.32.185 specifies a presumption that certain medical conditions are occupational diseases for fire fighters. Those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; respiratory disease; specific cancers as defined by RCW 51.32.185; and infectious diseases as defined by RCW 51.32.185.

For claims filed on or after July 1, 2003, the presumption may not apply to heart or lung conditions if a fire fighter is a user of tobacco products.

When the presumption does not apply, the claim is not automatically denied; however, the burden is on the worker to prove that the condition is an occupational disease.

Statutory Authority: RCW 51.04.020, 51.32.185, 03-12-046, § 296-14-310, filed 5/30/03, effective 7/1/03.

WAC § 296-14-315 (2007)

**WAC 296-14-315. Definitions.**

(1) *Tobacco products* For purposes of this rule, tobacco products are limited to those that are smoked, including cigarettes, pipes and cigars.

(2) *User of tobacco products* For the purposes of this rule, a user of tobacco products is a "smoker."

(3) *Current smoker* A current smoker is a regular user of tobacco products, has smoked tobacco products at least one hundred times in his/her lifetime, and as of the date of manifestation did smoke tobacco products at least some days.

(4) *Former smoker* A former smoker has a history of tobacco use, has smoked tobacco products at least one hundred times in his/her lifetime, but as of the date of manifestation did not smoke tobacco products.

Statutory Authority: RCW 51.04.020, 51.32.185, 03-12-046, § 296-14-315, filed 5/30/03, effective 7/1/03.

WAC § 296-14-330 (2007)

**WAC 296-14-330. What tobacco use shall exclude a fire fighter from a presumption of coverage?**

The following table summarizes the situations listed in WAC 296-14-310 through 296-14-325 under which a presumption of coverage shall or shall not apply for fire fighters due to tobacco use.

Medical condition	Presumptions shall not apply	Presumption shall apply
Heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substance	Current smoker	Fire fighters that never smoked tobacco
	Former smoker who last smoked less than two years prior to the	Former smoker who last smoked two years or more prior to the

	cardiac event	cardiac event
Asthma	<p>Current smoker</p> <p>Former smoker who last smoked less than five years before date of manifestation of the disease</p>	<p>Fire fighters that never smoked tobacco</p> <p>Former smoker who last smoked five years or more before date of manifestation of the disease</p>
COPD/emphysema/chronic bronchitis	<p>Current smoker</p> <p>Former smoker who last smoked less than fifteen years before date of manifestation of the disease</p>	<p>Fire fighters that never smoked tobacco</p> <p>Former smoker who last smoked fifteen years or more before date of manifestation of the disease</p>
Lung cancer	<p>Current smoker</p> <p>Former smoker who last smoked less than fifteen years before date of manifestation of the disease</p>	<p>Fire fighters that never smoked</p> <p>Former smoker who last smoked fifteen years or more before date of manifestation of the disease</p>

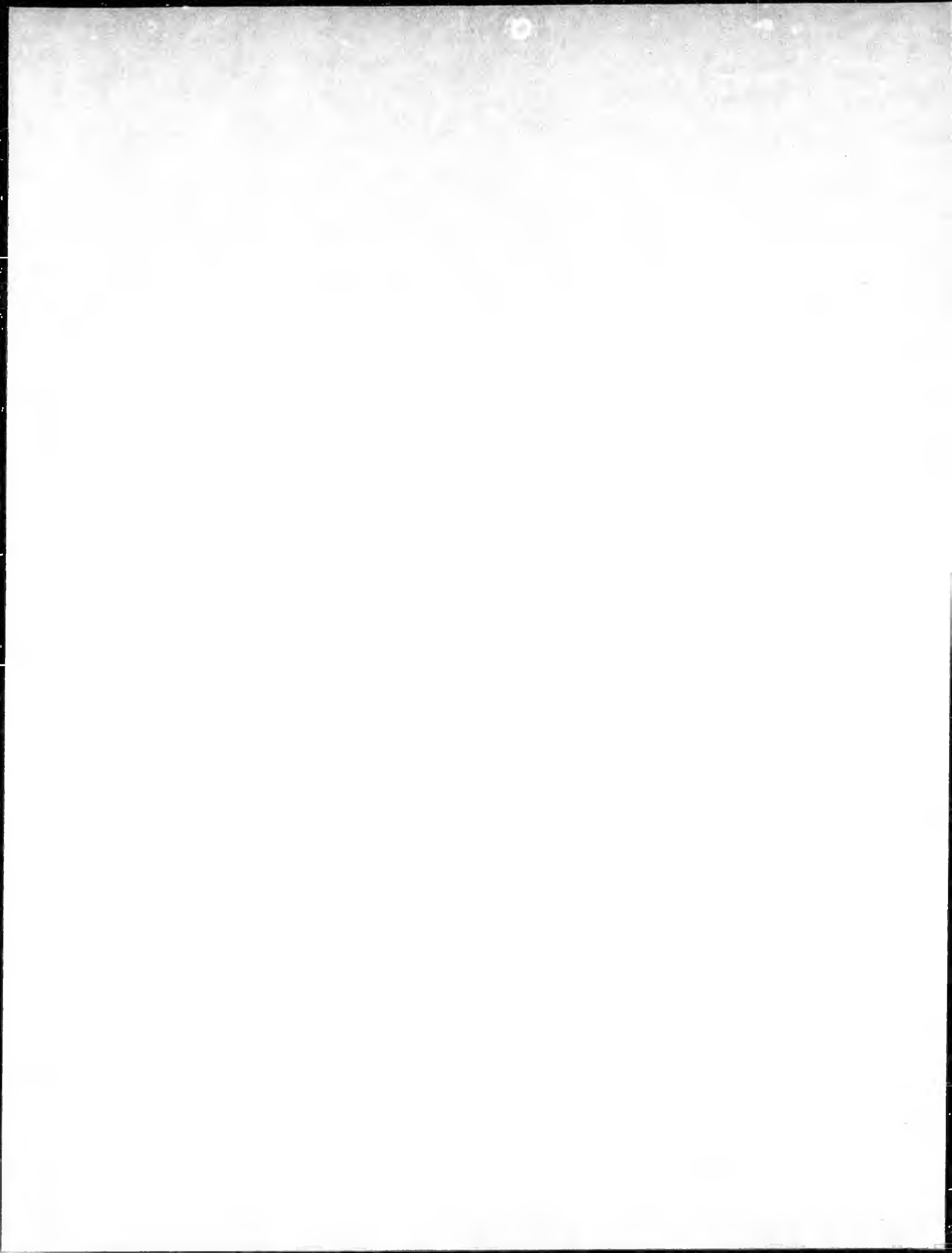
Statutory Authority: RCW 51.04.020, 51.32.185, 03-12-046, § 296 14-330, filed 5/30/03, effective 7/1/03.

## **Attachment F**

International Association of Fire Fighters  
Model Presumptive Disability Laws for Cardiovascular Diseases, Cancer, and  
Infectious Diseases

And

Model Law on Line of Duty Death Benefits for Public Safety Officers



AN ACT

RELATING TO FIRE FIGHTER AND EMERGENCY RESPONSE PROVIDER

OCCUPATIONAL CARDIOVASCULAR DISEASES

Introduced by:

Date Introduced:

Referred To:

It is enacted by the \_\_\_\_\_ as follows:

**SECTION 1.** Title \_\_\_\_\_ of the General Laws is hereby amended by adding thereto the following chapter entitled "Fire Fighter and Emergency Responder's Occupational Cardiovascular Diseases".

**SECTION 2.** Findings.

(a) The \_\_\_\_\_ finds and declares that by reason of their employment fire fighters and emergency medical providers are required to work in the midst of and are subject to exposure to smoke, fumes, poisonous, toxic or chemical substances; that fire fighters, paramedics and emergency medical technicians are not always aware or informed of such exposures; that fire fighters, unlike other workers, are often exposed simultaneously to multiple chemicals that cause cardiovascular disease; that the rise in occupational cardiovascular disease can be related to the fire fighter's work environment. The \_\_\_\_\_ further finds and declares that all the aforementioned conditions exist and arise out of or in the course of such employment.

**SECTION 3.** Definitions. The following terms when used in this Act shall have the meanings herein ascribed:

(a) Cardiovascular Disease - Any disease of the heart, vascular system or hypertension.

(b) Dependent - A person who was substantially reliant for support upon the income of the deceased fire fighter.

(c) Disability - A condition of physical incapacity to perform any assigned duty or duties in the fire department.

(d) Emergency Medical Provider - An individual who is assigned to emergency medical services activity and is required to respond to alarms and perform emergency medical care. For the purposes of this Act, an emergency medical provider includes:

- Emergency Medical Technician/First Responder - Technician provided with not less than 40 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of Enforcement and Emergency Services Guidelines to provide emergency medical care.
- Emergency Medical Technician/Ambulance - Technician provided with not less than 81 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of Enforcement and Emergency Services Guidelines to provide emergency medical care.
- Emergency Medical Technician/Intermediate - Emergency Medical Technician/Ambulance - Technician provided with not less than 400 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of Enforcement and Emergency Services Guidelines to provide emergency medical care.
- Emergency Medical Technician/Paramedic - Technician provided with not less than 600 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of Enforcement and Emergency Services Guidelines to provide emergency medical care.

(e) Fire Department - A public safety agency that is organized and trained for the prevention and control of loss of life and property from fire or other emergency.

(f) Fire Fighter - An individual who is assigned to fire fighting activity and is required to respond to alarms and

perform emergency action at the location of a fire, hazardous materials or other emergency incident.

**SECTION 4. Occupational Disability Benefit for Fire Fighters.**

(a) Any active fire fighter or emergency medical provider, who developed cardiovascular disease during a period while the fire fighter or emergency medical provider was in the service of the department and was unable to perform his/her duties in the fire department, shall be entitled to receive occupational disability benefits as provided by the employer for on-duty injuries, for the duration of the disability.

(b) Any active fire fighter or emergency medical technician, who developed cardiovascular disease during a period while the fire fighter or emergency medical provider was in the service of the department and was unable to perform his duties in the fire department, shall be provided appropriate medical treatment and surveillance, at least equivalent to that provided by the employer for on-duty injury or illness, for the duration of the disability.

**SECTION 5. Occupational Death Benefit to Dependents of Deceased Fire Fighters.**

(a) If an active, inactive or retired fire fighter or emergency medical provider dies from a cardiovascular disease, acquired through an occupational exposure as defined herein, the fire fighter's dependents shall be entitled to receive from the State an Occupational Cardiovascular Disease Death Benefit of \$100,000.

**SECTION 6. Effective Date.** This act shall take effect upon its passage.



AN ACT

RELATING TO FIRE FIGHTER AND EMERGENCY RESPONSE PROVIDER

OCCUPATIONAL CARDIOVASCULAR DISEASES

Introduced by:

Date Introduced:

Referred To:

It is enacted by the \_\_\_\_\_ as follows:

**SECTION 1.** Title \_\_\_\_\_ of the General Laws is hereby amended by adding thereto the following chapter entitled "Fire Fighter and Emergency Responder's Occupational Cardiovascular Diseases".

**SECTION 2.** Findings.

( ) The \_\_\_\_\_ finds and declares that by reason of their employment fire fighters and emergency medical providers are required to work in the midst of and are subject to exposure to smoke, fumes, poisonous, toxic or chemical substances; that fire fighters, paramedics and emergency medical technicians are not always aware or informed of such exposures; that fire fighters, unlike other workers, are often exposed simultaneously to multiple chemicals that cause cancer; that the rise in occupational cancers can be related to the fire fighter's work environment

(b) The \_\_\_\_\_ further finds and declares that all the aforementioned conditions exist and arise out of or in the course of such employment.

**SECTION 3.** Definitions. The following terms when used in this Act shall have the meanings herein ascribed:

(a) Cancer - Any cancer as defined by the International Agency for Research on Cancer, that develops or manifests due to an exposure to a carcinogen while the fire fighter or emergency responder was in the service of the fire department.

(b) Dependent - A person who was substantially reliant for support upon the income of the deceased fire fighter.

(c) Disability - A condition of physical incapacity to perform any assigned duty or duties in the fire department.

(d) Emergency Medical Provider - An individual who is assigned to emergency medical services activity and is required to respond to alarms and perform emergency medical care. For the purposes of this Act, an emergency medical provider includes:

- Emergency Medical Technician/First Responder - Technician provided with not less than 40 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of Enforcement and Emergency Services Guidelines to provide emergency medical care.
- Emergency Medical Technician/Ambulance - Technician provided with not less than 81 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of Enforcement and Emergency Services Guidelines to provide emergency medical care.
- Emergency Medical Technician/Intermediate - Emergency Medical Technician/Ambulance - Technician provided with not less than 400 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of Enforcement and Emergency Services Guidelines to provide emergency medical care.
- Emergency Medical Technician/Paramedic - Technician provided with not less than 600 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of Enforcement and Emergency Services Guidelines to provide emergency medical care.

(e) Fire Department - A public safety agency that is organized and trained for the prevention and control of loss of life and property from fire or other emergency.

(f) Fire Fighter - An individual who is assigned to fire fighting activity and is required to respond to alarms and perform emergency action at the location of a fire, hazardous materials or other emergency incident.

**SECTION 4. Occupational Disability Benefit for Fire Fighters.**

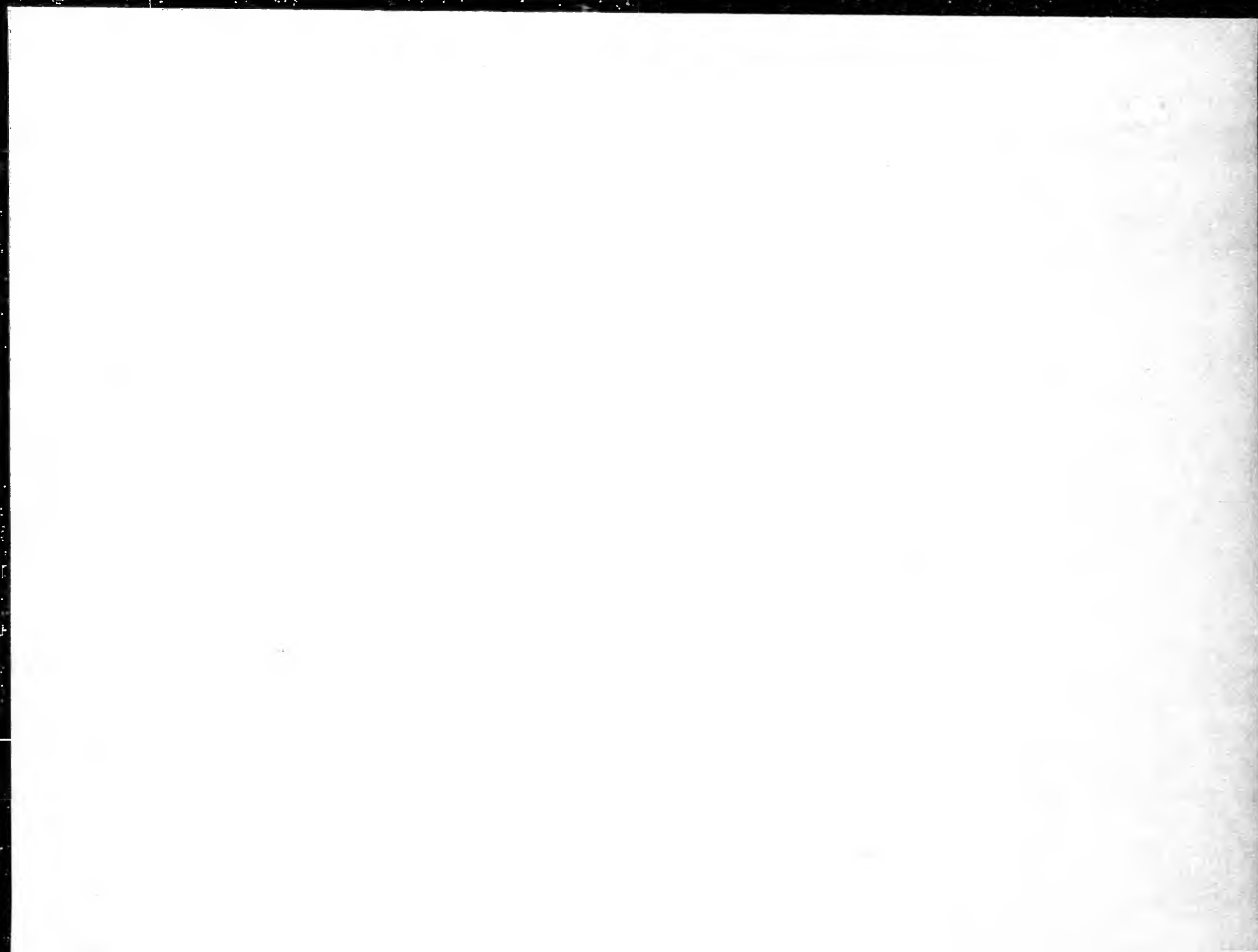
(a) Any active fire fighter or emergency medical provider, who developed cancer during a period while the fire fighter or emergency medical provider was in the service of the department and was unable to perform his/her duties in the fire department, shall be entitled to receive occupational disability benefits as provided by the employer for on-duty injuries, for the duration of the disability.

(b) Any active fire fighter or emergency medical technician, who developed cancer during a period while the fire fighter or emergency medical provider was in the service of the department and was unable to perform his duties in the fire department, shall be provided appropriate medical treatment and surveillance, at least equivalent to that provided by the employer for on-duty injury or illness, for the duration of the disability.

**SECTION 5. Occupational Death Benefit to Dependents of Deceased Fire Fighters.**

(a) If an active, inactive or retired fire fighter or emergency medical provider dies from cancer, acquired through an occupational exposure as defined herein, the fire fighter's dependents shall be entitled to receive from the State an Occupational Cancer Disease Death Benefit of \$100,000.

**SECTION 6. Effective Date.** This act shall take effect upon its passage.



AN ACT

RELATING TO FIRE FIGHTER AND EMERGENCY RESPONSE PROVIDER  
EXPOSURE TO INFECTIOUS DISEASES

Introduced by:

Date Introduced:

Referred To:

It is enacted by the \_\_\_\_\_ as follows:

**SECTION 1.** Title \_\_\_\_\_ of the General Laws is hereby amended by adding thereto the following chapter entitled "Fire Fighter and Emergency Responder's Occupational Exposure to Infectious Diseases".

**SECTION 2.** Findings.

(a) The \_\_\_\_\_ finds and declares that by reason of their employment fire fighters and emergency medical providers are required to work in the midst of and are subject to exposure to infectious diseases; that such exposures to fire fighters, paramedics and emergency medical technicians are not always aware or informed of such exposures; that fire fighters, paramedics and emergency medical technicians so exposed can potentially and unwittingly expose co-workers, families, and members of the public to infectious diseases. The \_\_\_\_\_ further finds and declares that all the aforementioned conditions exist and arise out of or in the course of such employment.

**SECTION 3.** Definitions. The following terms when used in this Act shall have the meanings herein ascribed:

(a) Airborne Infectious Agents - Microbial aerosols produced by coughing, sneezing or talking that can enter a suitable portal of entry, usually the respiratory tract, and cause disease. Airborne infectious agents include, but are not limited to, Mycobacterium tuberculosis and meningococcal meningitis.

(b) Bloodborne Pathogens - Pathogenic microorganisms that are

present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV) and human immunodeficiency virus (HIV).

(c) Contagious Disease - see Infectious Disease

(d) Dependent - A person who was substantially reliant for support upon the income of the deceased fire fighter.

(e) Disability - A condition of physical incapacity to perform any assigned duty or duties in the fire department.

(f) Emergency Medical Provider - An individual who is assigned to emergency medical services activity and is required to respond to alarms and perform emergency medical care. For the purposes of this Act, an emergency medical provider includes:

- Emergency Medical Technician/First Responder - Technician provided with not less than 40 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of Enforcement and Emergency Services Guidelines to provide emergency medical care.
- Emergency Medical Technician/Ambulance - Technician provided with not less than 81 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of Enforcement and Emergency Services Guidelines to provide emergency medical care.
- Emergency Medical Technician/Intermediate - Emergency Medical Technician/Ambulance - Technician provided with not less than 400 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of Enforcement and Emergency Services Guidelines to provide emergency medical care.
- Emergency Medical Technician/Paramedic - Technician provided with not less than 600 hours of appropriate training and certified by the State in accordance with U.S. Department of Transportation, National Highway Transportation Safety Administration, Office of

Enforcement and Emergency Services Guidelines to provide emergency medical care.

(g) EXPOSURE - Contact with infectious agents, such as body fluids, through inhalation, percutaneous inoculation, or contact with an open wound, non-intact skin, or mucous membrane or other potentially infectious materials that may result from the performance of an employee's duties. These exposures include:

- PERCUTANEOUS (through the skin) A percutaneous event occurs when blood or body fluid is introduced through the skin. Examples: needle stick with a bloody needle; sustaining a cut by a sharp object contaminated with blood; entrance of blood or body fluids through an open wound, abrasion, broken cuticle, or chapped skin.
- MUCOCUTANEOUS (in eye, mouth, or nose) A mucocutaneous event occurs when blood or body fluids come in contact with a mucous membrane. Example: blood or body fluid is splashed or sprayed into the eye, nose, or mouth.
- AIRBORNE An airborne exposure means contact with an individual with suspected or confirmed airborne disease or air that may contain aerosolized airborne disease.

(h) Fire Department - A public safety agency that is organized and trained for the prevention and control of loss of life and property from fire or other emergency.

(i) Fire Fighter - An individual who is assigned to fire fighting activity and is required to respond to alarms and perform emergency action at the location of a fire, hazardous materials or other emergency incident.

(j) Infectious disease - Interruption, cessation or disorder of body functions, systems or organs transmissible by association with the sick or their secretions or excretions. For the purposes of this Act, an infectious disease means a communicable disease transmittable through an exposure, including, but not limited to, Acquired Immunodeficiency Syndrome, Hepatitis A, Hepatitis B, Hepatitis C, Meningococcal Meningitis and Mycobacterium Tuberculosis.

#### SECTION 4. Occupational Disability Benefit for Fire Fighters.

(a) Any active fire fighter or emergency medical technician, who was exposed to and acquired an infectious disease during a

period while the fire fighter or emergency medical provider was in the service of the department and was unable to perform his/her duties in the fire department, shall be entitled to receive occupational disability benefits as provided by the employer for on-duty injuries, for the duration of the disability.

(b) Any active fire fighter or emergency medical technician, who was exposed to and acquired an infectious disease during a period while the fire fighter or emergency medical provider was in the service of the department and was unable to perform his duties in the fire department, shall be provided appropriate medical treatment and surveillance, at least equivalent to that provided by the employer for on-duty injury or illness, for the duration of the disability.

(c) Any inactive or retired fire fighter or emergency medical provider, who was exposed to and acquired an infectious disease while in service of the department, shall be provided appropriate medical treatment at least equivalent to that provided by the employer for on-duty injury or illness, for the duration of the disability.

**SECTION 5. Occupational Death Benefit to Dependents of Deceased Fire Fighters.**

(a) If an active, inactive or retired fire fighter or emergency medical provider dies from an infectious disease, acquired through an occupational exposure as defined herein, the fire fighter's dependents shall be entitled to receive from the State an Occupational Infectious Disease Death Benefit of \$100,000.

**SECTION 6. Effective Date.** This act shall take effect upon its passage.

AN ACT

RELATING TO PUBLIC SAFETY OFFICERS

LINE OF DUTY DEATH BENEFITS

STATE [PROVINCE] OF \_\_\_\_\_

Introduced by:

Date Introduced:

Referred To:

It is enacted by the \_\_\_\_\_ as follows:

**SECTION 1.** Title \_\_\_\_\_ of the General Laws is hereby amended by adding thereto the following chapter entitled "Line of Duty Death Benefits for Public Safety Officers."

**SECTION 2.** Findings.

- a. The \_\_\_\_\_ finds and declares that by reason of their \_\_\_\_\_ employment public safety officers, including fire fighters, emergency medical providers and law enforcement officers are required to work in the midst of and are subject to daily hazards that place their lives at risk while performing a public service. Additionally, it is found that the hazards inherent in law enforcement and fire suppression and the current lack of or low level of State and local death benefits might discourage qualified individuals from seeking careers in these fields, thus hampering the ability of communities within the State [Province] of \_\_\_\_\_ to provide for public safety. Accordingly, it is found that the enactment of this legislation will assist in the recruitment and retention of fire fighters and law enforcement officers.
- b. The \_\_\_\_\_ further finds and declares that this legislation provides a strong statement about the value the State [Province] of \_\_\_\_\_ places on the contributions of those who serve their communities in potentially dangerous circumstances.

- c. The \_\_\_\_\_ further finds and declares that all the aforementioned conditions exist and arise out of or in the course of such employment.

**SECTION 3. Definitions.** The following terms when used in this Act shall have the meanings herein ascribed:

- a. **Dependent** - The surviving spouse of such public safety officer, or if there is no surviving spouse, the child or children of such public safety officer, or if there is no surviving child, the parent of such public safety officer
- b. **Fire Department** - A public safety agency that is organized and trained for the prevention and control of loss of life and property from fire or other emergency.
- c. **Fire Fighter** - An individual who is assigned to fire fighting activity and is required to respond to alarms and perform emergency action at the location of a fire, hazardous materials or other emergency incident.
- d. **Law Enforcement Officers** - An individual who is assigned emergency duties as a police, corrections, probation, parole, or judicial officer.
- e. **Line of Duty** - Any action that the public safety officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is authorized or obligated by law, rule, regulation, or condition of employment or service to perform. Other public safety officers, whose primary function is not law enforcement or fire suppression must be engaged in their authorized law enforcement, fire suppression, rescue squad, or ambulance duties to be eligible under this legislation.
- f. **Public Agency** - Any public agency including, United States [Canada]; the State [Province] of \_\_\_\_\_; any unit of local government; any combination of such State [Province] or units; and any department, agency, or instrumentality of the foregoing.
- g. **Public Safety Officer** - An individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, fire fighter, or member of a public rescue squad or ambulance crew.

- h. Volunteer Fire Fighter or Volunteer Rescue Squad/Ambulance Member - An individual that belongs to an officially recognized or is a designated member of a legally organized volunteer fire department, rescue squad, or ambulance crew.

**SECTION 4.** Line of Duty Death Benefit to Dependents of Deceased Public Safety Officers.

- a. If an active, inactive or retired public safety officer dies from a direct and proximate result of a traumatic injury sustained while active and in the line of duty, as defined herein, the public safety officer's dependent shall be entitled to receive from the State [Province] a Line of Duty Death Benefit of \$100,000. Such benefits shall cover deaths from an occupational disease if there is a traumatic injury or single exposure that is a substantial contributing factor in the public safety officer's death.
  - 1) In making determinations under this Section, the State may utilize such administrative and investigative assistance from the local jurisdiction as well as the guidelines established by the US Public Safety Officers Benefits Act (42 U.S.C. 3796, et seq.).
- b. Such benefit shall be adjusted each year on October 1 to reflect the percentage of change in the US [Canadian] Consumer Price Index.
- c. Such benefit shall be in addition to any other benefit due from the State [Province] or local jurisdiction. Further, no other State [Provincial] or local benefit shall be reduced by the benefits provided by this legislation.
- d. Such benefits shall not be taxable by the State [Province] of \_\_\_\_\_.

**SECTION 5.** Effective Date. This act shall take effect upon its passage.



March 23, 2007

The Honorable Kurt Olson, Chair, and  
The Honorable Mark Neuman, Vice Chair  
House Labor and Commerce Committee  
Alaska State Capitol  
Juneau, Alaska 99801

RE: Oppose HB200

Dear Representative Olson and committee members:

The Alaska Municipal League Joint Insurance Association (AMLJIA) opposes HB200.

The AMLJIA is a joint insurance arrangement organized under AS 21.76. With approximately 152 member municipalities and school districts pooling for workers' compensation coverage, these local government entities bear the single largest exposure to changes in workers' compensation law as it applies to employees such as firefighters, EMTs, and police.

HB200 creates a presumption of workers' compensation coverage for firefighters for cardio/respiratory problems, as well as a variety of cancers for firefighters with seven or more years of service. All of these are chronic diseases that often have genetic and lifestyle choices as their cause.

HB200 further appears to add a presumption of workers' compensation coverage for several contagious diseases for these same employees whether or not their jobs include contact with bodily fluids.

The presumptions are unnecessary and potentially very costly. Present fire fighting technology and procedures call for use of personal protective equipment such as respirators and breathing dams. When following best practices and department procedures, the risk of contracting illnesses such as those listed in the bill is greatly reduced.

Currently, if a firefighter contracts a respiratory or heart disease and claims that it is work-related, it is up to the employer to demonstrate that it is not. These claims are covered by workers' compensation already. By creating a strict presumption, the claim will most often be covered by the workers' comp. system, even when it is not work-related.

PROTECT

A service of the ALASKA MUNICIPAL LEAGUE

The communicable disease provisions are also problematic. When EMTs, firefighters and others properly use personal protective equipment, the incidence rate of bloodborne diseases should be lower than the general population, not higher. In addition, exposures to blood and needlesticks are events that are generally indentifiable. There should be no doubt as to what day a firefighter gave mouth-to-mouth resuscitation to a victim or an EMT is accidentally stuck by a syringe. Therefore, the present system covers the work-related events just fine. Providing a presumption is unnecessary and would provide workers' compensation coverage to people who contract hepatitis, TB, HIV, AIDS or meningitis through more conventional means such as poor hygiene, unprotected sex, or even a dirty needle at a tattoo parlor.

These protections are offered once employees are cleared of pre-existing diseases by a medical screening. This presents a two-fold problem. One, the screenings may not be effective for latent diseases such as cancer. Two, depending upon the patient's age, the cost of such screenings approach \$1,000 a piece, according to the Fairbanks Fire Department. Since the municipality would be required to bear the cost of such an exam, the overall costs of initial screenings statewide are estimated at \$8 million, with annual recurring costs after that.

The National Council on Compensation Insurance (NCCI) promulgates the starting rates for all carriers and pools in Alaska. The NCCI estimates the cost to municipalities for the affected job classes to increase 10 to 20 percent, based on the presumptions in the bill. Worse yet, the bill is retroactive in nature, providing coverage for claims "even if the exposure leading to the occupational disease occurred before the effective date of this Act." These claims were never contemplated in the calculation of rates in the past and would be unfunded

There is no more expensive way to pay for an injury or illness that our current workers' compensation system. Health programs are able to control medical costs through negotiated agreements with health care providers. Workers' compensation can not. It is interesting to note that both workers' compensation and the health benefits are generally provided by the employer, at least with respect to the career firefighter.

As you likely know, Alaska's workers' compensation rates are the highest in the nation. This continued crisis in workers' compensation costs contributes to some local governments and businesses closing their doors. Now is the time to fix our workers' comp. problem, not make it worse by expanding benefits. Please consider the negative financial impacts this legislation would have on the State's political subdivisions.

Thank you.



Kevin Smith  
Executive Director

# ALASKA FIRE CHIEF'S ASSOCIATION

2358 Bradway Road, North Pole, AK 99705

EIN #92-0098649

Phone: (907) 488-3400

FAX: (907) 488-6118



March 25, 2007

Representative Nancy Dahlstrom  
Alaska House of Representatives  
State Capital, Room 409  
Juneau, Alaska 99801-1182

Ref: HB 200

Dear Representative Nancy Dahlstrom:

The Alaska Fire Chief's Association is in support of HB 200 which would provide presumption coverage for our fire fighters for respiratory disease, heart attacks and cancers that are occupational hazards in the fire service.

The fire chiefs of Alaska see the need to provide this coverage for our employees that are protecting Alaska, in order to provide for those that have served our communities in their time of need. We encourage the passage of House Bill 200 with the endorsement of the Alaska Fire Chief's Association.

Sincerely,

A handwritten signature in cursive script, appearing to read "Warren B. Cummings".

Warren B. Cummings, Fire Chief  
President AFCA