

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 494
Finance

(Senator McFadden, *et al.*)

**Workers' Compensation - Heart Disease and Hypertension Presumption - State
Correctional Officers**

This bill extends to all State correctional officers an occupational disease presumption for heart disease or hypertension that is more severe than the individual's prior condition and that results in partial or total disability or death. The bill also alters the definition of "public safety employee" to include State correctional officers, making these officers eligible for enhanced workers' compensation benefits.

The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on, or application to, any claims arising before the bill's October 1, 2014 effective date.

Fiscal Summary

State Effect: Department of Public Safety and Correctional Services (DPSCS) general fund expenditures increase significantly due to the designation of State correctional officers as public safety employees who are eligible for enhanced workers' compensation benefits. DPSCS expenditures may further increase – likely minimally in FY 2015 and grow exponentially in future years – to reflect increased workers' compensation benefits paid as a result of the bill's occupational disease presumption. Revenues are not affected. Any additional hearings before the Workers' Compensation Commission (WCC) can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Workers’ compensation law establishes a presumption of compensable occupational disease to certain public employees who are exposed to unusual hazards in the course of their employment. It is assumed that these injuries or diseases are due to the employee’s work and, therefore, require no additional evidence in the filing of a claim for workers’ compensation. As shown below, generally presumptions are based on particular occupations and their associated health risks.

<u>Type of Personnel/Occupation</u>	<u>Type of Disease</u>
Volunteer and career firefighters; firefighting instructors; fire marshals employed by an airport authority, a county, a fire control district, a municipality, or the State; rescue squad members; and advanced life support unit members	Heart disease, hypertension, or lung disease that results in partial or total disability or death Specified cancers under specified conditions
Deputy sheriffs, police officers, and correctional officers of specified counties	Heart disease or hypertension that results in partial or total disability or death
Department of Natural Resources paid law enforcement employees, park police officers of the Maryland-National Capital Park and Planning Commission (M-NCPPC), and certain other employees of M-NCPPC	Lyme disease under specified conditions

Under these circumstances, a covered employee is entitled to workers’ compensation benefits in addition to any benefits that the individual is entitled to receive under the retirement system. The weekly total of workers’ compensation and retirement benefits may not exceed the weekly salary paid to the individual.

Although statute is silent on the issue, occupational disease presumptions have long been considered rebuttable presumptions. Two court decisions address the use of “is presumed” in reference to occupational diseases in current law, specifying that the term “without contrary qualification, should be read to be a presumption, although rebuttable, of fact.” (See *Board of County Commissioners v. Colgan*, 274 Md. 193, 334 A.2d 89 (1975); and *Montgomery County Fire Board v. Fisher*, 53 Md. App. 435, 454 A.2d 394, aff’d, 298 Md. 245, 468 A.2d 625 (1983). However, the Court of Special Appeals has stated that, “after the last injurious exposure to a hazard and the conclusion of employment the nexus between an occupational disease and an occupation becomes increasingly remote.” (See *Montgomery County, Maryland v. Pirrone*, 109 Md. App. 201, 674 A.2d 98 (1996).)

Normally an employee who is awarded compensation for a period less than 75 weeks is eligible to receive weekly benefits of one-third of his or her average weekly wage, not to exceed 16.7% of the State average weekly wage. Public safety employees are eligible for enhanced workers' compensation benefits if they are awarded compensation for fewer than 75 weeks. The employer or its insurer must pay the public safety employee at a compensation rate set for an award period of greater than 75 weeks but less than 250 weeks. In this situation, an employee is eligible to receive weekly benefits of two-thirds of his or her average weekly wage, not to exceed one-third of the State average weekly wage. The State average weekly wage for 2014 is \$998.

Background: Correctional officers are generally responsible for overseeing individuals who have been arrested and are awaiting trial or have been sentenced to serve a term in prison or jail. The Bureau of Labor Statistics (BLS) reports that, in the United States, correctional officers have one of the highest rates of injury and illness when compared to other occupations, due primarily to confrontations with inmates. BLS also reports that, because security must be maintained 24 hours a day, officers work all hours of the day and night, as well as weekends and holidays.

State Expenditures: The Chesapeake Employers' Insurance Company (Chesapeake) administers workers' compensation benefits for State employees, however, all benefits are paid by the State.

DPSCS reports that there are currently 6,800 State correctional officers. The number of State correctional officers who may benefit from the compensable occupational disease presumption established by the bill cannot be reliably estimated at this time; however, considering the prevalence of heart disease and hypertension in society at large and the stressful nature of the correctional officer occupation, it is likely that the State will be responsible for numerous claims annually, and payment of such claims may continue for several years. As such, expenditures increase minimally in fiscal 2015 but grow exponentially in future years as existing claims are paid and new claims are made.

Data on claims for State police officers is instructive as they are also entitled to an occupational disease presumption for heart disease or hypertension under the same provisions as those established by the bill for State correctional officers. Chesapeake reports that the average cost per heart disease or hypertension presumption claim for State police officers is about \$49,000 over multiple years. Chesapeake also reports that there are currently 1,500 State police officers and an average of 13 heart disease or hypertension presumption claims per year. Due to the presumption, a claimant almost always receives benefits. *For illustrative purposes only*, if this ratio and cost is applied to the 6,800 State correctional officers, there may be 59 additional claims per year with a total cost of approximately \$2.9 million (59 claims x \$49,000) spread over multiple years.

State correctional officers are also entitled to enhanced workers' compensation benefits under the bill's provisions, due to their designation as public safety employees. This benefit is for any claim, not just those related to heart disease and hypertension. While the number of claims made subject to enhancement in any given year cannot be reliably estimated, any expenditure increase due to this designation is expected to be significant based on prior year claims data. Chesapeake reports that, in 2013, approximately \$1.1 million was paid for State correctional officers awarded compensation for fewer than 75 weeks. Normally, an employee is entitled to one-third of his or her average weekly wage per week, up to 16.7% of the State weekly wage when awarded compensation for fewer than 75 weeks. A public safety employee is entitled to two-thirds of his or her average weekly wage per week, up to one-third of the State average weekly wage (\$330 in 2013 increasing to \$332 in 2014) when awarded compensation for the same period of time. *For illustrative purposes only*, if State correctional officers were eligible for enhanced compensation benefits in 2013, general fund expenditures would have increased by as much as \$1 million in that year. The compounding effect of this benefit with the new occupational disease presumption further increases costs.

Additional Information

Prior Introductions: None.

Cross File: HB 411 (Delegate K. Kelly, *et al.*) - Economic Matters.

Information Source(s): Department of Public Safety and Correctional Services, Department of Budget and Management, Maryland State Commission on Criminal Sentencing Policy, Injured Workers' Insurance Fund/Chesapeake Employers' Insurance Company, Workers' Compensation Commission, Department of Legislative Services

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