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By: **Delegates Wood and Krebs**

Introduced and read first time: February 11, 2005

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation - Presumptions**

3 FOR the purpose of providing that the presumption of compensability of certain  
4 occupational diseases under workers' compensation law is rebuttable; providing  
5 that the presumption of compensability shifts the burden of production to an  
6 employer or insurer to overcome the presumption; providing that, if an employer  
7 or insurer presents medical or factual evidence contrary to the presumption of  
8 compensability, the claimant has the burden of production and the burden of  
9 persuasion; limiting the application of certain presumptions of compensability to  
10 an individual who has been retired for a certain period of time; stating the  
11 intent of the General Assembly regarding the ability of an expert witness to  
12 provide certain testimony; and generally relating to presumptions of  
13 compensability under workers' compensation law.

14 BY repealing and reenacting, with amendments,  
15 Article - Labor and Employment  
16 Section 9-503  
17 Annotated Code of Maryland  
18 (1999 Replacement Volume and 2004 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Labor and Employment**

22 9-503.

23 (A) (1) THE PRESUMPTION OF COMPENSABILITY UNDER THIS SECTION IS  
24 REBUTTABLE.

25 (2) THE PRESUMPTION OF COMPENSABILITY UNDER THIS SECTION  
26 SHIFTS THE BURDEN OF PRODUCTION TO AN EMPLOYER OR INSURER TO OVERCOME  
27 THE PRESUMPTION.

1 (3) IF AN EMPLOYER OR INSURER PRESENTS MEDICAL OR FACTUAL  
2 EVIDENCE CONTRARY TO THE PRESUMPTION OF COMPENSABILITY UNDER THIS  
3 SECTION, THE CLAIMANT HAS THE BURDEN OF PRODUCTION AND THE BURDEN OF  
4 PERSUASION.

5 [(a)] (B) A paid firefighter, paid fire fighting instructor, or sworn member of  
6 the Office of the State Fire Marshal employed by an airport authority, a county, a fire  
7 control district, a municipality, or the State or a volunteer firefighter, volunteer fire  
8 fighting instructor, volunteer rescue squad member, or volunteer advanced life  
9 support unit member who is a covered employee under § 9-234 of this title is  
10 presumed to have an occupational disease that was suffered in the line of duty and is  
11 compensable under this title if:

12 (1) the individual has heart disease, hypertension, or lung disease;

13 (2) the heart disease, hypertension, or lung disease results in partial or  
14 total disability or death; and

15 (3) in the case of a volunteer firefighter, volunteer fire fighting  
16 instructor, volunteer rescue squad member, or volunteer advanced life support unit  
17 member, the individual has met a suitable standard of physical examination before  
18 becoming a firefighter, fire fighting instructor, rescue squad member, or advanced life  
19 support unit member.

20 [(b)] (C) (1) A paid police officer employed by an airport authority, a county,  
21 the Maryland-National Capital Park and Planning Commission, a municipality, or  
22 the State, a deputy sheriff of Montgomery County, or, subject to paragraph (2) of this  
23 subsection, a deputy sheriff of Baltimore City, Prince George's County deputy sheriff,  
24 or Prince George's County correctional officer is presumed to be suffering from an  
25 occupational disease that was suffered in the line of duty and is compensable under  
26 this title if:

27 (i) the police officer, deputy sheriff, or correctional officer is  
28 suffering from heart disease or hypertension; and

29 (ii) the heart disease or hypertension results in partial or total  
30 disability or death.

31 (2) (i) A deputy sheriff of Baltimore City, Prince George's County  
32 deputy sheriff, or Prince George's County correctional officer is entitled to the  
33 presumption under this subsection only to the extent that the individual suffers from  
34 heart disease or hypertension that is more severe than the individual's heart disease  
35 or hypertension condition existing prior to the individual's employment as a deputy  
36 sheriff of Baltimore City, Prince George's County deputy sheriff, or Prince George's  
37 County correctional officer.

38 (ii) To be eligible for the presumption under this subsection, a  
39 deputy sheriff of Baltimore City, Prince George's County deputy sheriff, or Prince  
40 George's County correctional officer, as a condition of employment, shall submit to a  
41 medical examination to determine any heart disease or hypertension condition

1 existing prior to the individual's employment as a deputy sheriff of Baltimore City,  
2 Prince George's County deputy sheriff, or Prince George's County correctional officer.

3 [(c)] (D) A paid firefighter, paid fire fighting instructor, or a sworn member of  
4 the Office of the State Fire Marshal employed by an airport authority, a county, a fire  
5 control district, a municipality, or the State or a volunteer firefighter, volunteer fire  
6 fighting instructor, volunteer rescue squad member, or volunteer advanced life  
7 support unit member who is a covered employee under § 9-234 of this title is  
8 presumed to be suffering from an occupational disease that was suffered in the line of  
9 duty and is compensable under this title if the individual:

10 (1) has leukemia or pancreatic, prostate, rectal, or throat cancer that is  
11 caused by contact with a toxic substance that the individual has encountered in the  
12 line of duty;

13 (2) has completed at least 5 years of service as a firefighter, fire fighting  
14 instructor, rescue squad member, or advanced life support unit member or in a  
15 combination of those jobs in the department where the individual currently is  
16 employed or serves;

17 (3) is unable to perform the normal duties of a firefighter, fire fighting  
18 instructor, rescue squad member, or advanced life support unit member in the  
19 department where the individual currently is employed or serves because of the  
20 cancer or leukemia disability; and

21 (4) in the case of a volunteer firefighter, volunteer fire fighting  
22 instructor, volunteer rescue squad member, or volunteer advanced life support unit  
23 member, has met a suitable standard of physical examination before becoming a  
24 firefighter, fire fighting instructor, rescue squad member, or advanced life support  
25 unit member.

26 [(d)] (E) (1) A paid law enforcement employee of the Department of Natural  
27 Resources who is a covered employee under § 9-207 of this title is presumed to have  
28 an occupational disease that was suffered in the line of duty and is compensable  
29 under this title if the employee:

30 (i) is suffering from Lyme disease;

31 (ii) was not suffering from Lyme disease before assignment to a  
32 position that regularly places the employee in an outdoor wooded environment; and

33 (iii) except as provided in paragraph (2) of this subsection,  
34 demonstrates that the employee had any Lyme disease vaccination required or made  
35 available to the employee by the Department of Natural Resources.

36 (2) The requirement imposed by paragraph (1)(iii) of this subsection does  
37 not apply to an individual who objects to immunization because it conflicts with the  
38 individual's bona fide religious beliefs and practices.

1     [(e)]     (F)     (1)     Except as provided in paragraph (2) of this subsection, any paid  
2 firefighter, paid fire fighting instructor, sworn member of the Office of the State Fire  
3 Marshal, paid police officer, paid law enforcement employee of the Department of  
4 Natural Resources, deputy sheriff of Montgomery County, deputy sheriff of Baltimore  
5 City, deputy sheriff of Prince George's County, or Prince George's County correctional  
6 officer who is eligible for benefits under subsection [(a),] (b), (c), [or (d)] (D), OR (E) of  
7 this section shall receive the benefits in addition to any benefits that the individual is  
8 entitled to receive under the retirement system in which the individual was a  
9 participant at the time of the claim.

10                   (2)     The benefits received under this title shall be adjusted so that the  
11 weekly total of those benefits and retirement benefits does not exceed the weekly  
12 salary that was paid to the paid law enforcement employee of the Department of  
13 Natural Resources, firefighter, fire fighting instructor, sworn member of the Office of  
14 the State Fire Marshal, police officer, deputy sheriff, or Prince George's County  
15 correctional officer.

16     (G)     THE PRESUMPTIONS OF COMPENSABILITY UNDER THIS SECTION DO NOT  
17 APPLY TO AN EMPLOYEE WHO HAS BEEN RETIRED FOR MORE THAN 5 YEARS FROM  
18 THE EMPLOYMENT THAT THE EMPLOYEE ALLEGES IS THE CAUSE OF THE DISEASE.

19     SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the  
20 General Assembly that the provisions under § 9-503 of the Labor and Employment  
21 Article concerning workers' compensation presumptions should not be construed to  
22 preclude an expert witness from testifying about the cause of the disease solely  
23 because the expert witness does not accept the basis for the statutory presumption.

24     SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 2005.