

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 491
Finance

(Senator Astle, *et al.*)

Workers' Compensation - Presumptions

This bill provides that presumptions of compensability are rebuttable and specifies that if the employer or insurer presents medical or factual evidence contrary to the presumption of compensability, that claimant has the burden of production and persuasion.

The bill also specifies that presumption of compensability does not apply to employees who have been retired for more than five years from the employment that the employee alleges is the cause of the disease.

Fiscal Summary

State Effect: State payments for workers' compensation claims, all funds, could decrease significantly in FY 2006 due to fewer awards for presumption. Special fund expenditures could increase to the extent that there are additional contested cases before the Workers' Compensation Commission (WCC). Future year savings and WCC expenses would reflect caseload volumes.

Local Effect: Potential significant reduction in workers' compensation claims or premium rates.

Small Business Effect: Potential significant reduction in workers' compensation premiums.

Analysis

Bill Summary: In addition to providing that presumptions are rebuttable, the bill states that it is not the intent of the General Assembly to preclude an expert witness from testifying about the cause of the disease solely because the expert witness does not accept the basis for the statutory presumption.

Current Law: Presumptions of compensable injury exist for heart disease, hypertension, and lung disease for certain public safety employees and first-responders including paid and volunteer firefighters; paid and volunteer firefighting instructors; sworn members of the Office of the Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State; volunteer rescue squad members; volunteer advanced life support unit members; paid police officers employed by an airport authority, a county, the Maryland-National Capital Park and Planning Commission, a municipality, or the State; or a deputy sheriff of Montgomery County. Deputy sheriffs of Baltimore City and Prince George's County deputy sheriffs and correctional officers have presumptions for heart disease and hypertension to the extent that the heart disease and hypertension are more severe than the individual's heart disease or hypertension before employment.

Many occupations also have presumptions of compensability for occupational diseases directly related to contact with toxic agents. For example, paid law enforcement employees in the Department of Natural Resources have a presumption of compensability for Lyme disease.

State Fiscal Effect: The Injured Workers' Insurance Fund (IWIF) advises that it is impossible to reliably estimate the impact of health care panels on workers' compensation insurance medical care costs. IWIF notes 19 total State claims involving prescriptions in 2002 with costs (medical care plus indemnity) of \$933,071. For illustrative purposes, if 50% of presumption cases are decided in the favor of the State under the provisions of this bill, State workers' compensation payments could decrease by \$466,500.

WCC indicates the provisions of this bill could result in an increase in contested issues and the length of contested cases. The Department of Legislative Services notes that a reliable estimate of potential workload increases is not possible.

Local Fiscal Effect: IWIF advises that one case in a local jurisdiction has incurred claims costs exceeding \$112,000. To the extent that local jurisdictions are self-insured, the provisions of this bill could reduce claims paid for presumptions of compensability. To the extent that local jurisdictions have third-party workers' compensation insurance,

the provisions of this bill could significantly reduce workers' compensation premium payments.

Small Business Effect: Businesses could recognize significant savings in workers' compensation premiums if costly presumption awards decrease. That downward pressure on premium growth could be mitigated by insurers requiring additional legal services to produce medical or factual evidence to rebut a claim of presumption.

Additional Information

Prior Introductions: An identical bill, HB 1070 of 2004, was heard by the Economic Matters Committee but no further action was taken.

Cross File: HB 1069 (Delegates Wood and Krebs) – Economic Matters.

Information Source(s): Uninsured Employers' Fund, Workers' Compensation Commission, Injured Workers' Insurance Fund, Subsequent Injury Fund, Department of Legislative Services

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