

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1280
Economic Matters

(Delegate Feldman, *et al.*)

Finance

Workers' Compensation - Medical Presumptions

This bill alters the occupational disease presumption related to firefighters and other similar personnel under the State's workers' compensation law.

The bill applies prospectively to any claims arising on or after October 1, 2010.

Fiscal Summary

State Effect: Potential minimal increase in general and special fund expenditures resulting from increased claims due to the bill's expansion of the list of presumed occupational diseases. Revenues are not affected.

Injured Workers' Insurance Fund (IWIF) Effect: Potential increase in IWIF expenditures resulting from increased claims due to the bill's expansion of the list of presumed occupational diseases. IWIF revenues are not affected.

Local Effect: Potential significant increase in local government expenditures resulting from claims due to the bill's expansion of the list of presumed occupational diseases. Local government revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Paid or volunteer firefighters or firefighting instructors, volunteer rescue squad members, advanced life support unit members, or sworn members of the Office of the State Fire Marshal who are employed by specified units of government are presumed

to have an occupational disease if they have brain, esophageal, or lung cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty.

The bill expresses legislative intent that workers' compensation presumptions related to occupational diseases and cancers should be considered rebuttable.

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. In general, the employees specified by the bill may be presumed to have an occupational disease that was incurred in the line of duty if:

- the employee has heart disease, hypertension, or lung disease that results in partial or total disability or death; or
- the employee suffers from leukemia or pancreatic, prostate, rectal, or throat cancer (caused by contact with a toxic substance encountered in the line of duty) and the disease prevents the employee from performing normal job duties.

In some cases employees are required (1) to have met a suitable standard of physical examination before beginning employment; and (2) to have completed at least five years of service with their current employers.

Occupational disease presumptions are considered rebuttable presumptions under current law. Two court decisions clarify that the use of "is presumed" in reference to occupational diseases in current law, "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).)

Background: A 2007 study conducted by the University of Cincinnati analyzed information on 110,000 firefighters from around the nation and found that firefighters are at a greater risk of developing several types of cancer than the general population. According to the study, firefighters are exposed to many compounds that the International Agency for Research on Cancer has designated as carcinogens; these include benzene, diesel engine exhaust, chloroform, soot, styrene, and formaldehyde. The substances can be inhaled or absorbed through the skin and occur both at the scene of a fire and in the firehouse. The study found that firefighters are at increased risk of developing various types of cancers.

State/IWIF Fiscal Effect: Expenditures increase as a result of an increase in the number of claims relating to the additional occupational disease presumptions in the bill. IWIF

advises that cases involving occupational disease presumptions are difficult to contest as the presumptions are not easily overcome. IWIF advises that over the past 10 years it has received 653 presumption cases resulting in approximately \$6.8 million in paid claims. It is unknown how many new claims arise due to the bill. Legislative Services anticipates that any increase in State expenditures due to the bill is minimal.

Some State employees of the Office of the Fire Marshal and the Baltimore/Washington International Thurgood Marshall Airport Fire and Rescue Department are eligible for the expanded occupational disease presumption under the bill. However, the Office of the Fire Marshal advises that the number of State employees affected by the bill is minimal.

The Workers' Compensation Commission (WCC) advises that the bill may result in an increase in the number of cases requiring adjudication. Legislative Services advises that there is no basis for determining the extent to which the increase in hearings results in an increase in WCC expenditures. Nonetheless, while it is expected that the impact of the bill can be handled with existing resources, any increase in WCC expenditures may result in an increased WCC assessment on insurers in the State.

Local Fiscal Effect: Local governments in the State may be affected disproportionately by the bill because counties and municipalities, most of which are self-insured, employ the majority of the emergency personnel affected by the bill. Montgomery County, for example, employs about 1,850 firefighters (including paid and volunteer firefighters) and currently receives between five and seven occupational disease presumption claims each year from firefighters who have developed cancer. Montgomery County advises that it pays an average of about \$1 million per claim in these cases. To the extent that expanding the list of cancers that may be presumed occupational diseases results in more claims from firefighters, local government expenditures for workers' compensation costs may increase in future years due to the bill. Legislative Services cannot reliably estimate the extent of such an increase; however, given the high per-claim cost for these types of claims, it may be significant.

Additional Information

Prior Introductions: None.

Cross File: SB 646 is designated as a cross file; however, it is not identical.

Information Source(s): University of Cincinnati, International Association of Fire Fighters, National Council on Compensation Insurance, Frederick and Montgomery counties, City of Frederick, Injured Workers' Insurance Fund, Department of State

Police, Subsequent Injury Fund, Uninsured Employers' Fund, Workers' Compensation Commission, Department of Legislative Services

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Analysis by: Michael T. Vorgetts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510