

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 681

(Senator Klausmeier, *et al.*)

Finance

**Workers' Compensation - Medical Presumptions - Statute of Limitations on
Claims**

This bill extends by two years – from December 1, 2012, to December 1, 2014 – the date by which a medical expert must conduct a specified study and report the findings of the study to the Department of Legislative Services (DLS). In addition, the bill delays by two years – from June 1, 2013, to June 1, 2015 – the effective date of recent alterations to occupational disease presumptions for firefighters and related personnel under Chapter 445 of 2012 (HB 1101). The bill also tolls, until June 1, 2015, the statute of limitations for a covered employee who files an occupational disease claim for one of the cancers added by Chapter 445 to the list of compensable occupational diseases covered under the presumption.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: Any effect on State expenditures is expected to be minimal, as discussed below. Revenues are not affected.

Injured Workers' Insurance Fund (IWIF) Effect: Any effect on IWIF expenditures is expected to be minimal, as discussed below. Revenues are not affected.

Local Effect: Local government expenditures may increase due to the bill's provision that *delays*, by two years, the *removal* of pancreatic cancer from the list of compensable occupational diseases covered under the presumption. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law/Background:

Occupational Disease Presumptions Generally

Workers' compensation law establishes a presumption of compensable occupational disease for certain public employees who are exposed to unusual hazards in the course of their employment. For example, an individual who has heart disease, hypertension, or lung disease resulting in disability or death is presumed to have a compensable occupational disease if the individual is a paid firefighter or firefighting instructor; a sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State; or a volunteer firefighter, firefighting instructor, rescue squad member, or advanced life support unit member. (For a volunteer to qualify for the presumption, the individual must have met a suitable standard of physical examination before becoming a volunteer.)

Under current law, any one of the individuals specified above may also be presumed to have a compensable occupational disease if the individual (1) has one of several specified cancers that is caused by contact with a toxic substance that the individual has encountered in the line of duty; (2) has completed a specified period of service as a firefighter, firefighting instructor, rescue squad member, or advanced life support unit member (or in a combination of those jobs) in the department where the individual currently serves; (3) is unable to perform the normal duties of a firefighter, firefighting instructor, rescue squad member, or advanced life support unit member in the department where the individual currently serves; and (4) in the case of a volunteer, has met a suitable standard of physical examination before becoming a volunteer.

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).)

IWIF advises that cases involving occupational disease presumptions are difficult to contest as the presumptions are nearly impossible to overcome in practice. IWIF

estimates (based on a recent review of its claims records) that, over the last 10 years, it has received 413 presumption cases resulting in approximately \$24 million in paid claims.

A number of studies have attempted to characterize the cancer risk associated with exposures related to firefighting operations, and several other studies (including a major study by the National Institute for Occupational Safety and Health) are ongoing.

Recent Expansion of Occupational Disease Presumptions for Firefighters and Related Personnel

Chapter 445 of 2012 (HB 1101) added, to the list of compensable occupational diseases under the presumption, the following: multiple myeloma, non-Hodgkin's lymphoma, brain cancer, testicular cancer, and breast cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty. However, Chapter 445 also removed pancreatic cancer from the list of compensable occupational diseases and increased the minimum service requirement from 5 to 10 years. All provisions established by Chapter 445 that are related to coverage take effect June 1, 2013.

Required Study of Types of Cancers that Firefighters and Related Personnel May Contract in the Line of Duty

Chapter 445 also required DLS to contract with a medical expert to conduct a study of types of cancers that firefighters and related personnel may contract in the line of duty. The stated purpose of the study was to provide guidance to the General Assembly in order for the General Assembly to determine which types of cancers should be included in the workers' compensation cancer presumption law. The medical expert was required to, by December 1, 2012, report the study's findings to DLS, and the department was required, in turn, to forward the report to specified committees of the General Assembly. Any necessary funding for the study was required to be from sources other than DLS; in the event that adequate funding was not available to pay for the study, DLS was required to notify the Governor, affected stakeholders, and specified committees of the General Assembly and request whether additional funding may be secured in order to proceed.

In the fiscal and policy note for HB 1101, DLS assumed that the department would be able to contract with a medical expert at no cost or that, otherwise, interested stakeholders would provide any funding necessary to contract with the expert. DLS is still in the process of contracting with a medical expert and securing the necessary funding. In its discussions with potential medical experts, DLS has been advised that the study could be completed by the end of calendar 2013 – but not within the originally specified timeframe.

State/IWIF Fiscal Effect: In the fiscal and policy note for HB 1101, DLS estimated that expenditures could increase beginning in fiscal 2013 due to that bill's alteration of the State's occupational disease presumptions. (Although Chapter 445 added five cancers and removed only one, the incidence of each cancer among firefighters and related personnel in these types of cases was and is unknown.) Most of the employees who are eligible for the presumptions affected by Chapter 445 are employed by local governments rather than by the State; thus, DLS advised that any increase in the amount of State expenditures for increased benefits paid was likely to be minimal. DLS further advised that any increase in State expenditures was offset by a minimal decrease in expenditures due to the increased minimum service requirement.

Under the present bill, the effects described above are generally delayed by two years and, therefore, begin in fiscal 2015 rather than in fiscal 2013. Due to the bill's provisions related to tolling the statute of limitations, it is assumed the bill will not result in fewer claims paid for the five cancers that were added by Chapter 445. Although the incidence of pancreatic cancer in these types of cases is unknown, delaying by two years the removal of pancreatic cancer from the presumption is not expected to significantly increase State expenditures.

Any costs associated with the required study stem not from the present bill but, rather, from Chapter 445.

Local Fiscal Effect: In the fiscal and policy note for HB 1101, DLS noted that local governments in the State were likely to be affected disproportionately by that bill because counties and municipalities (most of which are self-insured) employ the majority of emergency personnel affected. DLS advised that, although the amount of any such increase in expenditures could not be reliably estimated, it could – given the high per-claim cost for these types of cases – be significant. That bill's provisions related to minimum service requirements were expected to affect local governments in a similar manner to the State and IWIF.

Under the present bill, the effects described above are generally delayed by two years and, therefore, begin in fiscal 2015 rather than in fiscal 2013. Due to the bill's provisions related to tolling the statute of limitations, it is assumed the bill will not result in fewer claims paid for the five cancers that were added by Chapter 445. However, those provisions may result in slightly higher expenditures in the first year or two of expanded coverage (fiscal 2015 and 2016) than in subsequent years if claimants postpone filing to benefit from the presumption. Moreover, DLS advises that local expenditures may increase in fiscal 2013, 2014, and 2015 due to the bill's provision that delays by two years the removal of pancreatic cancer from the presumption. Because it is unclear how many eligible employees bring claims for pancreatic cancer under the presumption

annually, any increase in local expenditures due to the delayed removal of that cancer cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: HB 1314 (Delegate Jameson, *et al.*) - Economic Matters.

Information Source(s): Carroll, Cecil, Montgomery, Queen Anne's, and St. Mary's counties; City of Laurel; Town of Sykesville; Injured Workers' Insurance Fund; National Council on Compensation Insurance; Subsequent Injury Fund; Uninsured Employers' Fund; Workers' Compensation Commission; Department of Legislative Services

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