

Department of Legislative Services
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FISCAL AND POLICY NOTE
Revised

Senate Bill 135

(Senator Astle)

Finance

Economic Matters

**Workers' Compensation - Heart Disease and Hypertension Presumption - Anne
Arundel County Detention Officers**

This bill extends to all Anne Arundel County detention 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 Anne Arundel County detention officers, making these officers eligible for enhanced workers' compensation benefits.

Provisions related to designation as a "public safety employee" 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, 2015 effective date.

Fiscal Summary

State Effect: Any additional hearings before the Workers' Compensation Commission (WCC) can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: Anne Arundel County expenditures increase, potentially significantly, due to the designation of county detention officers as public safety employees who are eligible for enhanced workers' compensation benefits. Anne Arundel County expenditures further increase by at least \$100,000 per year due to increased workers' compensation benefits paid as a result of the bill's occupational disease presumption. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

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 employees’ 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, rescue squad members, and advanced life support unit members as well as fire marshals employed by an airport authority, a county, a fire control district, a municipality, or the State	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. A public safety employee is eligible for enhanced workers' compensation benefits if awarded compensation for less 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 2015 is \$1,005.

Background: Correctional officers (who are known as detention officers in Anne Arundel County) 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.

Local Expenditures:

Occupational Disease Presumption Expenditures

Anne Arundel County is self-insured for workers' compensation and reports that there are currently 300 county detention officers. The number of Anne Arundel County detention 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 detention officer occupation, it is likely that the county becomes responsible for numerous claims annually, and payment of such claims may continue for several years.

Data on claims for Anne Arundel County police officers is instructive as police officers and detention officers have similar responsibilities and rates of injury. Furthermore, county police officers are entitled to an occupational disease presumption for heart disease or hypertension under the same provisions as those established by the bill for county detention officers. Anne Arundel County advises that there are about 600 county police officers and it pays an average of \$200,000 per year in claims related to the heart disease or hypertension presumption. Assuming that county detention officers receive the presumption at a similar rate to county police officers, Anne Arundel County expenditures increase by at least \$100,000 per year due to the bill's occupational disease presumption. Expenditures likely increase minimally in fiscal 2016 as new cases arise, but they increase exponentially in future years as new cases arise and compensation from prior year cases continues to pay out.

Enhanced Benefits Presumption

Anne Arundel County detention 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. Normally, an employee is entitled to one-third of his or her average weekly wage per week, up to 16.7% (\$168) of the State weekly wage when awarded compensation for less than 75 weeks; however, 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 (\$332 in 2014 increasing to \$335 in 2015) when awarded compensation for the same period of time.

Anne Arundel County advises that, in 2014, three claims for detention officers had compensation awarded for less than 75 weeks (with an average of 54 weeks of compensation). *For illustrative purposes only*, assuming the maximum weekly benefits had been paid to the three injured detention officers in 2014 (\$168), Anne Arundel County would pay a total of \$27,216 in benefits for the three cases. If the detention officers were eligible for enhanced compensation benefits in 2014, assuming the officers received the maximum weekly benefits possible (\$335), total county expenditures would have been \$54,270 in that year, resulting in an increase of \$27,054. The compounding effect of this benefit with the new occupational disease presumption further increases costs.

Additional Information

Prior Introductions: None.

Cross File: HB 173 (Anne Arundel County Delegation) - Economic Matters.

Information Source(s): Chesapeake Employers Insurance Company, National Council on Compensation Insurance, Workers' Compensation Commission, Anne Arundel County, U.S. Bureau of Labor Statistics, Department of Legislative Services

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