

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 957 (Delegates Folden and Cluster)
Economic Matters

**Workers' Compensation - Occupational Disease Presumption - Duty Belt Worn
by Law Enforcement**

This bill establishes that specified paid police officers and deputy sheriffs are presumed to be suffering from an occupational disease for a lower back impairment under workers' compensation law if (1) the police officer or deputy sheriff was required to wear a duty belt as a condition of employment and (2) other specified requirements are met.

Fiscal Summary

State Effect: Potential significant increase in State expenditures (all funds) due to the bill's expansion of the State's occupational disease presumptions. Potential increase in hearings before the Workers' Compensation Commission (WCC) due to the expansion. WCC may not be able to handle the additional workload with existing resources. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Potential significant increase in Chesapeake expenditures due to the bill's expansion of the State's occupational disease presumptions to Chesapeake-insured local government entities.

Local Effect: Potential significant increase in local government expenditures due to the bill's expansion of the State's occupational disease presumptions. Local government revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The presumption established by the bill applies to an individual who has been employed for at least 15 years as either (1) a police officer on a regular, full-time salary by an airport authority, a county, the Maryland-National Capital Park and Planning Commission (M-NCPPC), a municipality, or the State or (2) a deputy sheriff on a regular, full-time salary by Baltimore City or Allegany, Anne Arundel, Montgomery, or Prince George’s counties. Such an individual is presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under workers’ compensation law if (1) the individual is suffering from a lower back impairment resulting in partial or total disability and (2) as a condition of employment as a police officer or deputy sheriff, the individual was required to wear a duty belt (*i.e.*, a belt used to hold a gun, handcuffs, baton, and other items related to law enforcement).

The presumption must be extended to an individual following the termination of service as a police officer or deputy sheriff for 60 months, commencing with the last date the individual worked as a police officer or deputy sheriff.

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 and firefighting instructors; rescue squad members and advanced life support unit members; and 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 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).)

Background: Chesapeake advises that, in 2013, 37% of its (then known as the Injured Workers' Insurance Fund) open claims (including both State and private claims) were related to back injuries. According to the American Academy of Orthopaedic Surgeons (AAOS), almost everyone will at some point experience lower back pain as a result of the normal wear and tear on the spine that is due to aging. Other causes include overactivity and disk injury. To prevent lower back problems, AAOS recommends exercise, proper lifting, weight maintenance, smoking avoidance, and proper posture.

State/Chesapeake/Local Expenditures: Most counties and municipalities are, like the State, self-insured, and Chesapeake insures many other local government entities. Thus, the State, Chesapeake, and local governments are affected in a similar manner. Expenditures increase beginning in fiscal 2016 due to the bill's expansion of the occupational disease presumptions. Chesapeake advises that cases involving occupational disease presumptions are difficult to contest as the presumptions are not easily overcome. Chesapeake further advises that, over the past 10 years, it has received 391 presumption cases resulting in approximately \$15 million in paid claims.

Local jurisdictions generally estimate their annual costs, under the bill, to be significant. (Anne Arundel County advises that back claims have cost \$1.5 million over the last five years.) The Department of Legislative Services (DLS) advises that the number of new claims that arise as a result of the bill cannot be reliably estimated at this time. However, given the prevalence of back injuries and the range of individuals affected, DLS anticipates that the extent to which expenditures increase under the bill may be significant.

WCC advises that the bill may result in an increase in the number of cases requiring adjudication. Although the number of new claims that arise as a result of the bill cannot be reliably estimated at this time, DLS advises that any increase in WCC expenditures may result in an increased WCC assessment on insurers in the State.

Additional Information

Prior Introductions: HB 416 of 2013, a bill with similar provisions, received an unfavorable report from the House Economic Matters Committee. HB 615 of 2012, a bill with similar provisions, received a hearing in the House Economic Matters Committee and was subsequently withdrawn.

Cross File: None.

Information Source(s): Workers' Compensation Commission; Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Anne Arundel, Baltimore, Carroll, Harford, Montgomery, and St. Mary's counties; City of Takoma Park; Department of Natural Resources; Department of Labor, Licensing, and Regulation; Department of General Services; Department of State Police; National Council on Compensation Insurance; American Academy of Orthopaedic Surgeons; Department of Legislative Services

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