

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 646
Finance

(Senator Klausmeier, *et al.*)

Economic Matters

**Workers' Compensation - Medical Presumptions for Diseases and Cancer -
Eligibility (Firefighter Jesse McCullough's Cancer Protection Law)**

This bill eases the eligibility criteria for a firefighter, firefighting instructor, rescue squad member, or advanced life support unit member to qualify for a cancer or leukemia disease presumption under workers' compensation law. The bill applies prospectively and may not be interpreted to have any effect on or application to any claim filed before its October 1, 2019 effective date.

Fiscal Summary

State Effect: State expenditures (all funds) may increase, likely minimally, beginning in FY 2020 due to the bill's expansion of eligibility for occupational disease presumptions. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures may increase beginning in FY 2020, potentially significantly, to the extent that the bill results in additional workers' compensation benefits payments on behalf of the State and local governments. Revenues increase to the extent that premiums are raised due to claims experience under the expanded eligibility for occupational disease presumptions.

Local Effect: Local government expenditures may increase, potentially significantly, beginning in FY 2020 due to the bill's expansion of eligibility for occupational disease presumptions. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Workers' compensation law establishes a presumption of compensable occupational disease for certain public safety 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; 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 Leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin's lymphoma, brain, testicular, or breast cancer 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 and park police officers of the Maryland-National Capital Park and Planning Commission	Lyme disease under specified conditions

For one of the above cancer and leukemia disease presumptions to apply, an employee or volunteer must:

- have cancer or leukemia that is caused by contact with a toxic substance that the individual has encountered in the line of duty;
- have completed at least 10 years of service as a firefighter, firefighting instructor, rescue squad member, or advanced life support unit member (or a combination of those jobs) in the department where the individual currently is employed or serves;
- be unable to perform the normal duties of his or her position because of the cancer or leukemia disability; and
- for specified volunteer positions, have met a suitable standard of physical examination before becoming a volunteer.

Under the bill, the eligibility criteria for an employee or volunteer to qualify for a cancer or leukemia disease presumption are modified so that more people are likely to qualify for a presumption. Specifically, although 10 years of service are still necessary to qualify for a presumption, the service no longer has to be with the current department; instead, the 10 years may be cumulative years of service across multiple departments within the State.

Further, instead of being unable to perform his or her job duties because of the cancer or leukemia disability in order to qualify for the presumption, the bill specifies that the cancer or leukemia must result in partial or total disability or death in order for an individual to qualify for the presumption. The change ensures that retired employees or volunteers are able to receive a presumption by removing reference to an individual's work performance.

A covered employee who receives a presumption 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: In July 2016, the National Institute for Occupational Safety and Health (NIOSH) released a [fact sheet](#) summarizing findings from a multi-year study on the incidence of cancer in firefighters; the study generally found that firefighters had a greater rate of cancer diagnoses and cancer-related deaths compared to the general population. The most common types of cancer were digestive, oral, respiratory, and urinary. NIOSH also recommends steps that fire service and firefighters could take to mitigate the impact. For fire service, NIOSH recommends raising awareness and preventing exposure through education about safe work practices, including training, use of protective clothing, and use of approved respiratory protection during all phases of firefighting. For firefighters, NIOSH recommends sharing the study with their respective physician to ensure that the physician is aware of possible job-related health concerns.

Jesse McCullough was a firefighter for the Prince George's County Fire/Emergency Medical Services Department. In January 2017, he was diagnosed with an aggressive form of occupational colon cancer. He passed away due to this cancer in October 2018, after serving a total of 10 years as a firefighter for both Baltimore City and Prince George's County.

State/Chesapeake/Local Expenditures: Any increase in expenditures depends on how many affected public safety employees and volunteers qualify for the occupational disease

presumptions in any given year under the modified eligibility criteria and whether any of them would have received workers' compensation for leukemia or one of the covered cancers absent the bill. For example, the Department of Legislative Services (DLS) advises that, even without having a full 10 years of service in the same department, a covered employee may receive workers' compensation for leukemia and the covered cancers under current law. Modifying the criteria for determining eligibility for the occupational disease presumptions means more employees qualify for benefits without providing additional evidence.

State Expenditures

State expenditures (all funds) may increase, likely minimally, beginning in fiscal 2020 due to the bill's expansion of eligibility for the State's occupational disease presumptions. Some State employees, particularly those within the Office of the Fire Marshal and the Baltimore/Washington International Thurgood Marshall Airport Fire and Rescue Department (which employs 92 personnel), may be able to qualify for the occupational disease presumptions under the modified eligibility criteria. Even so, DLS advises that the number of State employees likely eligible for presumptions under the bill is relatively small; thus, any increase in State expenditures due to additional claims benefits is likely to be minimal.

Chesapeake Expenditures

As the administrator of workers' compensation claims for the State and the workers' compensation insurer for many local governments, Chesapeake anticipates more claims to be paid out due to the modified eligibility criteria beginning as early as fiscal 2020. *For illustrative purposes only*, Chesapeake advises that, over the 10-year period from 2009 through 2018, Chesapeake has incurred approximately \$24.7 million on about 580 occupational disease presumption cases for the State and the local governments it insures. About 60% of those cases were for local government public safety employees, but local government claims accounted for more than two-thirds of the claims payments. This amounts to an average of \$42,586 per case and \$2.47 million per year.

Local Expenditures

Local governments are disproportionately affected by the bill because counties and municipalities, most of which are self-insured, employ the majority of the public safety personnel who may be affected by the bill. Accordingly, local expenditures may increase beginning in fiscal 2020. DLS advises that, although the amount of any such increase in expenditures cannot be reliably estimated at this time, it could (given the high per claim cost for these types of cases) be significant.

Additional Information

Prior Introductions: None.

Cross File: HB 604 (Delegate D.E. Davis, *et al.*) - Economic Matters.

Information Source(s): Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Workers' Compensation Commission; Calvert County; Cities of Bowie and Takoma Park; Maryland Municipal League; Department of Legislative Services

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