

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1101

(The Speaker, *et al.*) (By Request - Administration)

Economic Matters

Finance

Workers' Compensation - Medical Presumptions and Study

This Administration bill alters the list of occupational disease presumptions under workers' compensation law for firefighters and related personnel by adding five cancers to the list and removing one. The bill also increases the minimum service requirement for a covered employee to qualify for specified occupational disease presumptions.

In addition, the bill requires the Department of Legislative Services (DLS) to contract with a medical expert in order to complete a study of types of cancers that are likely to be contracted by firefighters and related personnel in the line of duty.

The bill takes effect June 1, 2012, but provisions related to coverage take effect June 1, 2013.

Fiscal Summary

State Effect: State expenditures (all funds) may increase minimally due to the bill's alteration of occupational disease presumptions. Any increase is offset, in part, by a minimal decrease in expenditures due to the increased minimum service requirement established by the bill. The required study is not expected to materially affect State finances, as discussed below.

Injured Workers' Insurance Fund (IWIF) Effect: IWIF expenditures may increase minimally due to the bill's alteration of occupational disease presumptions. Any increase is offset, in part, by a minimal decrease in expenditures due to the increased minimum service requirement established by the bill.

Local Effect: Local government expenditures may increase significantly due to the bill's alteration of occupational disease presumptions. Any increase is offset, in part, by a

minimal decrease in expenditures due to the increased minimum service requirement established by the bill.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). DLS concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law:

Occupational Disease Presumptions

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 fire fighting 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, fire fighting 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 leukemia or pancreatic, prostate, rectal, or throat cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty; (2) has completed at least five years of service as a firefighter, fire fighting 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, fire fighting 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.

The bill adds, to the list of compensable occupational diseases under this 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, the bill removes pancreatic cancer from the list of compensable occupational diseases. The bill also increases the minimum service requirement from 5 to 10 years.

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).)

Required Study and Data Collection

The bill requires 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 purpose of the study is 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 must, by December 1, 2012, report the study’s findings to DLS, which must then forward the report to specified committees of the General Assembly.

The bill specifies that any necessary funding must be from sources other than DLS. If adequate funding is not available to pay for the study, DLS must notify the Governor, affected stakeholders, and specified committees of the General Assembly and request whether additional funding may be secured in order to proceed.

The Maryland Association of Counties must, in consultation with specified stakeholders, determine the statistics that should be kept in order to evaluate the impact of the workers’ compensation cancer presumption law.

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.

A 2005 study conducted by The Johns Hopkins University (JHU) was inconclusive with regard to whether certain chemical exposures were linked to brain cancer among Anne Arundel County firefighters. However, a literature review conducted by JHU for the study led the researchers to conclude that the risk for several types of cancer (including bladder, brain, lymphatic, kidney, pancreatic, prostate, skin, rectal, and testicular cancers) is significantly higher for firefighters than for the general population.

Several other studies, intended to characterize the cancer risk associated with exposures related to firefighting operations, are ongoing.

State/IWIF Fiscal Effect: Expenditures may increase beginning in fiscal 2013 due to the bill's alteration of the State's occupational disease presumptions. (Although the bill adds five new cancers and removes only one, the incidence of each cancer among firefighters and related personnel in these types of cases is unknown.) IWIF advises that cases involving occupational disease presumptions are difficult to contest as the presumptions are nearly impossible to overcome. IWIF further advises that, over the past 10 years, it has received 653 presumption cases resulting in approximately \$6.8 million in paid claims.

Although 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 occupational disease presumptions addressed by the bill, most of the eligible employees are employed by local governments, as discussed below. Thus, DLS advises that the number of State employees eligible for presumptions under the bill – and, correspondingly, the amount of any increase in State expenditures due to increased benefits paid – is likely to be minimal.

The bill's provision that increases the minimum service requirement for a covered employee to qualify for specified presumptions may result in a decrease in the number of claims brought – and, accordingly, in State expenditures. However, it is unclear how many claims are filed under existing presumptions for public safety personnel who have served for between 5 and 10 years. Thus, the exact savings under this provision cannot be reliably estimated at this time.

The bill specifies that any necessary funding for the required study must be from sources other than DLS. Assuming that either the department can contract with a medical expert at no cost or interested stakeholders can provide any funding necessary to contract with the expert, DLS advises that the study is not expected to materially affect State finances.

Local Fiscal Effect: Local governments in the State are likely to 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. 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.

The bill's provision related to minimum service requirements affects local governments in a similar manner to the State and IWIF.

Additional Information

Prior Introductions: SB 646 and HB 1280 of 2010 contained similar provisions. HB 1280 passed the House but did not receive a hearing in the Senate. SB 646 was heard in the Senate Finance Committee but received no further action.

Cross File: SB 949 (The President, *et al.*) (By Request - Administration) - Finance.

Information Source(s): The Johns Hopkins University; University of Cincinnati; Charles, Frederick, and Montgomery counties; Injured Workers' Insurance Fund; Department of State Police; National Council on Compensation Insurance; Subsequent Injury Fund; Maryland Department of Transportation; Uninsured Employers' Fund; Workers' Compensation Commission; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2012
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Workers' Compensation - Medical Presumptions

BILL NUMBER: SB 949/ HB 1101

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS