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ASSEMBLY BILL NO. 173—ASSEMBLYMEN MASTROLUCA,  
OCEGUERA, HORNE, CONKLIN, SMITH; ATKINSON,  
BOBZIEN, BUCKLEY, DENIS, DONDERO LOOP, KIRKPATRICK  
AND PARNELL

FEBRUARY 13, 2009

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Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes relating to occupational diseases. (BDR 53-898)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

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AN ACT relating to occupational diseases; exempting certain claims for occupational diseases from requirements relating to the burden of proof that disease arose out of and in course of employment; providing that certain occupational diseases are occupational diseases of arson investigators; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

- 1 Existing law prohibits the payment of compensation for an occupational disease
  - 2 unless a preponderance of evidence establishes that the disease arose out of and in
  - 3 the course of employment. (NRS 617.358) **Section 4** of this bill exempts claims for
  - 4 certain occupational diseases from this requirement.
  - 5 Existing law establishes diseases of the lung and heart as occupational diseases
  - 6 of firefighters and police officers. (NRS 617.455, 617.457) **Sections 5 and 6** of this
  - 7 bill provide that such diseases are also occupational diseases of an arson
  - 8 investigator. **Sections 1-3** of this bill add arson investigators to provisions relating
  - 9 to such diseases.
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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** NRS 616A.035 is hereby amended to read as follows:

616A.035 1. "Accident benefits" means medical, surgical, hospital or other treatments, nursing, medicine, medical and surgical supplies, crutches and apparatuses, including prosthetic devices.

2. The term includes:

(a) Medical benefits as defined by NRS 617.130;

(b) Preventive treatment administered as a precaution to an employee who is exposed to a contagious disease while providing medical services, including emergency medical care, in the course and scope of his employment;

(c) Preventive treatment administered as a precaution to a police officer, ~~for~~ a salaried or volunteer firefighter *or an arson investigator* who:

(1) Was exposed to a contagious disease:

(I) Upon battery by an offender; or

(II) While performing the duties of a police officer, ~~for~~ firefighter ~~for~~ *or arson investigator*,  
if the exposure is documented by the creation and maintenance of a report concerning the exposure pursuant to subsection 1 of NRS 616C.052; or

(2) Tests positive for exposure to tuberculosis or another contagious disease under the circumstances described in subsection 2 or 3 of NRS 616C.052; and

(d) Preventive treatment for hepatitis administered as a precaution to a police officer, full-time salaried firefighter ~~for~~, *arson investigator or* emergency medical attendant employed in this State.

3. The term does not include:

(a) Exercise equipment, a hot tub or a spa for an employee's home;

(b) Membership in an athletic or health club;

(c) Except as otherwise provided in NRS 616C.245, a motor vehicle; or

(d) The costs of operating a motor vehicle provided pursuant to NRS 616C.245, fees related to the operation or licensing of the motor vehicle or insurance for the motor vehicle.

4. As used in this section:

(a) "Battery" includes, without limitation, the intentional propelling or placing, or the causing to be propelled or placed, of any human excrement or bodily fluid upon the person of an employee.



(b) "Emergency medical attendant" means a person licensed as an attendant or certified as an emergency medical technician, intermediate emergency medical technician or advanced emergency medical technician pursuant to chapter 450B of NRS, whose primary duties of employment are the provision of emergency medical services.

(c) "Hepatitis" includes hepatitis A, hepatitis B, hepatitis C and any additional diseases or conditions that are associated with or result from hepatitis A, hepatitis B or hepatitis C.

(d) "Preventive treatment" includes, without limitation:

(1) Tests to determine if an employee has contracted hepatitis or any other contagious disease to which he was exposed; and

(2) If an employee tests positive for exposure to tuberculosis under the circumstances described in NRS 616C.052, such medication and chest X rays as are recommended by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

**Sec. 2.** NRS 616C.052 is hereby amended to read as follows:

616C.052 1. Except as otherwise provided in NRS 617.485 and 617.487, if a police officer , ~~fire~~ a salaried or volunteer firefighter *or an arson investigator* is exposed to a contagious disease:

(a) Upon battery by an offender; or

(b) While performing the duties of a police officer , ~~fire~~ firefighter ~~fire~~ *or arson investigator*,  
↳ the employer of the police officer , ~~fire~~ firefighter *or arson investigator* shall create and maintain a report concerning the exposure that includes, without limitation, the name of each police officer , ~~fire~~ firefighter ~~fire~~ *or arson investigator*, as applicable, who was exposed to the contagious disease and the name of each person, if any, to whom the police officer , ~~fire~~ firefighter *or arson investigator* was exposed.

2. Except as otherwise provided in paragraph (d) of subsection 2 of NRS 616A.265, if the results of a physical examination administered pursuant to NRS 617.455 or 617.457 to a police officer , ~~fire~~ a salaried or volunteer firefighter *or an arson investigator* after the commencement of his employment reveal that the police officer , ~~fire~~ firefighter *or arson investigator* tested positive for exposure to tuberculosis, the police officer , ~~fire~~ firefighter *or arson investigator* is eligible, during his lifetime, to receive compensation pursuant to chapters 616A to 617, inclusive, of NRS for tuberculosis and any additional diseases or conditions that are associated with or result from tuberculosis.

3. Except as otherwise provided in NRS 617.485 and 617.487, if the employment of a police officer , ~~fire~~ a salaried or volunteer



1 firefighter *or an arson investigator* is terminated, voluntarily or  
2 involuntarily, the employer of the police officer , ~~firefighter~~  
3 *or arson investigator*, regardless of whether the police officer , ~~firefighter~~  
4 firefighter *or arson investigator* has been exposed to a contagious  
5 disease during his employment and regardless of whether the  
6 employer has created or maintained a report concerning any  
7 exposure of the police officer , ~~firefighter~~ *or arson investigator*  
8 to a contagious disease pursuant to subsection 1, shall:

9 (a) At the time of termination and at 3 months after the date of  
10 termination, provide to the police officer , ~~firefighter~~ *or arson*  
11 *investigator* a purified protein derivative skin test to screen for  
12 exposure to tuberculosis, unless the police officer , ~~firefighter~~ *or*  
13 *arson investigator* previously submitted to such a test and tested  
14 positive for exposure to tuberculosis. Except as otherwise provided  
15 in paragraph (d) of subsection 2 of NRS 616A.265, if a skin test  
16 administered pursuant to this paragraph and provided to the  
17 employer reveals that the police officer , ~~firefighter~~ *or arson*  
18 *investigator* tested positive for exposure to tuberculosis, the police  
19 officer , ~~firefighter~~ *or arson investigator* is eligible, during his  
20 lifetime, to receive compensation pursuant to chapters 616A to 617,  
21 inclusive, of NRS for tuberculosis and any additional diseases or  
22 conditions that are associated with or result from tuberculosis.

23 (b) Within 30 days after the date of termination and at 6 and 12  
24 months after the date of termination, provide to the police officer ,  
25 ~~firefighter~~ *or arson investigator* a blood test or other  
26 appropriate test to screen for other contagious diseases, including,  
27 without limitation, hepatitis A, hepatitis B, hepatitis C and human  
28 immunodeficiency virus, unless the police officer , ~~firefighter~~ *or*  
29 *arson investigator* previously submitted to such a test for a  
30 contagious disease and tested positive for exposure to that  
31 contagious disease. Except as otherwise provided in paragraph (d)  
32 of subsection 2 of NRS 616A.265, if a blood test or other  
33 appropriate test administered pursuant to this paragraph and  
34 provided to the employer reveals that the police officer , ~~firefighter~~  
35 firefighter *or arson investigator* has any other contagious disease or  
36 the antibodies associated with a contagious disease, the police  
37 officer , ~~firefighter~~ *or arson investigator* is eligible, during his  
38 lifetime, to receive compensation pursuant to chapters 616A to 617,  
39 inclusive, of NRS for such a disease and any additional diseases or  
40 conditions that are associated with or result from the contagious  
41 disease.

42 4. The former employer of a police officer , ~~firefighter~~ a salaried or  
43 volunteer firefighter *or an arson investigator* shall pay all the costs  
44 associated with providing skin and blood tests and other appropriate  
45 tests required pursuant to subsection 3.



5. As used in this section, the term “battery” includes, without limitation, the intentional propelling or placing, or the causing to be propelled or placed, of any human excrement or bodily fluid upon the person of an employee.

**Sec. 3.** NRS 616C.507 is hereby amended to read as follows:

616C.507 1. Except as otherwise provided in this section, if the surviving spouse of a deceased police officer , ~~fire~~ firefighter *or arson investigator* who died while actively employed as a police officer , ~~fire~~ firefighter *or arson investigator* is entitled to be paid compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487, the surviving spouse:

(a) Must be paid that compensation until the death of the surviving spouse, whether or not the surviving spouse remarries; and

(b) Must not be paid any compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487 in one lump sum upon remarriage.

2. A surviving spouse of a deceased police officer , ~~fire~~ firefighter *or arson investigator* who was retired from employment as a police officer , ~~fire~~ firefighter *or arson investigator* at the time of death is entitled to receive compensation to the same extent and in the same manner as a surviving spouse specified in subsection 1 if:

(a) The police officer , ~~fire~~ firefighter *or arson investigator* retired because of the injury or occupational disease for which compensation is paid to the surviving spouse pursuant to this section; and

(b) The death of the police officer , ~~fire~~ firefighter *or arson investigator* was the direct and proximate result of the injury or occupational disease.

3. If the surviving spouse of a deceased police officer , ~~fire~~ firefighter *or arson investigator* specified in subsection 1 or 2 becomes the spouse of another employee or retiree who thereafter dies under circumstances that would otherwise entitle the surviving spouse to be paid compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487 with respect to the other employee, the surviving spouse:

(a) Must not be paid compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487 with respect to the other employee; and

(b) Shall be deemed to have predeceased the other employee for the purposes of chapters 616A to 616D, inclusive, and 617 of NRS.



4. Except as otherwise provided in subsections 1 and 2, the provisions of this section do not affect any compensation payable under chapter 617 of NRS.

**Sec. 4.** NRS 617.358 is hereby amended to read as follows:

617.358 1. An employee or his dependents are not entitled to receive compensation pursuant to the provisions of this chapter unless the employee or his dependents establish by a preponderance of the evidence that the employee's occupational disease arose out of and in the course of his employment.

2. If the employee files a notice of an occupational disease pursuant to NRS 617.342 after his employment has been terminated for any reason, there is a rebuttable presumption that the occupational disease did not arise out of and in the course of his employment.

*3. The provisions of this section do not apply to any claim filed for an occupational disease described in NRS 617.453, 617.455, 617.457, 617.485 or 617.487.*

**Sec. 5.** NRS 617.455 is hereby amended to read as follows:

617.455 1. Notwithstanding any other provision of this chapter, diseases of the lungs, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by exposure to heat, smoke, fumes, tear gas or any other noxious gases, arising out of and in the course of the employment of a person who, for 2 years or more, has been:

(a) Employed in this State in a full-time salaried occupation of fire fighting *or the investigation of arson* for the benefit or safety of the public;

(b) Acting as a volunteer firefighter in this State and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; or

(c) Employed in a full-time salaried occupation as a police officer in this State.

2. Except as otherwise provided in subsection 3, each employee who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to a physical examination, including a thorough test of the functioning of his lungs and the making of an X-ray film of his lungs, upon employment, upon commencement of the coverage, once every even-numbered year until he is 40 years of age or older and thereafter on an annual basis during his employment.

3. A thorough test of the functioning of the lungs is not required for a volunteer firefighter.

4. All physical examinations required pursuant to subsection 2 must be paid for by the employer.



5. A disease of the lungs is conclusively presumed to have arisen out of and in the course of the employment of a person who has been employed in a full-time continuous, uninterrupted and salaried occupation as a police officer , ~~fire~~ firefighter *or arson investigator* for 5 years or more before the date of disablement.

6. Failure to correct predisposing conditions which lead to lung disease when so ordered in writing by the examining physician after the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee.

7. A person who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a firefighter , ~~fire~~ police officer ~~fire~~ *or arson investigator*,  
→ may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

**Sec. 6.** NRS 617.457 is hereby amended to read as follows:

617.457 1. Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter ~~fire~~ , *arson investigator or* police officer in this State before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment.

2. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer firefighter by a person entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145 and who, for 5 years or more, has served continuously as a volunteer firefighter in this State and who has not reached the age of 55 years before the onset of the disease.

3. Except as otherwise provided in subsection 4, each employee who is to be covered for diseases of the heart pursuant to the provisions of this section shall submit to a physical examination, including an examination of the heart, upon employment, upon commencement of coverage and thereafter on an annual basis during his employment.

4. A physical examination is not required for a volunteer firefighter more than once every 3 years after an initial examination.



1        5. All physical examinations required pursuant to subsection 3  
2 must be paid for by the employer.

3        6. Failure to correct predisposing conditions which lead to  
4 heart disease when so ordered in writing by the examining physician  
5 subsequent to the annual examination excludes the employee from  
6 the benefits of this section if the correction is within the ability of  
7 the employee.

8        7. A person who is determined to be:

9        (a) Partially disabled from an occupational disease pursuant to  
10 the provisions of this section; and

11        (b) Incapable of performing, with or without remuneration, work  
12 as a firefighter ~~or~~, *arson investigator or* police officer,

13        ➔ may elect to receive the benefits provided under NRS 616C.440  
14 for a permanent total disability.

15        8. Claims filed under this section may be reopened at any time  
16 during the life of the claimant for further examination and treatment  
17 of the claimant upon certification by a physician of a change of  
18 circumstances related to the occupational disease which would  
19 warrant an increase or rearrangement of compensation.

20        **Sec. 7.** The amendatory provisions of sections 4, 5 and 6 of  
21 this act apply only to claims filed on or after October 1, 2009.

