

SENATE BILL NO. 135—SENATOR RHODS

FEBRUARY 8, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing the presumption of eligibility for coverage for certain occupational diseases. (BDR 53-717)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to occupational diseases; revising provisions governing the presumption that certain occupational diseases arise out of the employment of certain persons; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides a presumption that certain occupational diseases,
2 including heart disease, lung disease, cancer and hepatitis, diagnosed after the
3 termination of the employment of a person in certain occupations, including as a
4 police officer, firefighter or arson investigator, arose out of the employment of the
5 person if the person was employed full-time, continuously for 5 years or more.
6 (NRS 617.453, 617.455, 617.457, 617.485, 617.487) This bill limits the
7 applicability of the presumption that certain occupational diseases arose out of such
8 employment and provides that the presumption applies if: (1) the person was
9 employed in a full-time continuous, uninterrupted and salaried occupation for
10 5 years or more before the diagnosis of the occupational disease; and (2) the
11 diagnosis occurs during the person's employment or within a limited period after
12 the termination of the person's employment. That period is limited to 5 years for
13 persons diagnosed with cancer, lung disease or heart disease and 1 year for persons
14 diagnosed with hepatitis.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 617.453 is hereby amended to read as follows:
2 617.453 1. Notwithstanding any other provision of this
3 chapter, cancer, resulting in either temporary or permanent



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1 disability, or death, is an occupational disease and compensable as
2 such under the provisions of this chapter if:

3 (a) The cancer develops or manifests itself out of and in the
4 course of the employment of a person who, for 5 years or more, has
5 been:

6 (1) Employed in this State in a full-time salaried occupation
7 of fire fighting for the benefit or safety of the public; or

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

11 (b) It is demonstrated that:

12 (1) The person was exposed, while in the course of the
13 employment, to a known carcinogen as defined by the International
14 Agency for Research on Cancer or the National Toxicology
15 Program; and

16 (2) The carcinogen is reasonably associated with the
17 disabling cancer.

18 2. With respect to a person who, for 5 years or more, has been
19 employed in this State in a full-time salaried occupation of fire
20 fighting for the benefit or safety of the public, the following
21 substances shall be deemed, for the purposes of paragraph (b) of
22 subsection 1, to be known carcinogens that are reasonably
23 associated with the following disabling cancers:

24 (a) Diesel exhaust, formaldehyde and polycyclic aromatic
25 hydrocarbon shall be deemed to be known carcinogens that are
26 reasonably associated with bladder cancer.

27 (b) Acrylonitrile, formaldehyde and vinyl chloride shall be
28 deemed to be known carcinogens that are reasonably associated with
29 brain cancer.

30 (c) Diesel exhaust and formaldehyde shall be deemed to be
31 known carcinogens that are reasonably associated with colon cancer.

32 (d) Formaldehyde shall be deemed to be a known carcinogen
33 that is reasonably associated with Hodgkin's lymphoma.

34 (e) Formaldehyde and polycyclic aromatic hydrocarbon shall be
35 deemed to be known carcinogens that are reasonably associated with
36 kidney cancer.

37 (f) Chloroform, soot and vinyl chloride shall be deemed to be
38 known carcinogens that are reasonably associated with liver cancer.

39 (g) Acrylonitrile, benzene, formaldehyde, polycyclic aromatic
40 hydrocarbon, soot and vinyl chloride shall be deemed to be known
41 carcinogens that are reasonably associated with lymphatic or
42 haematopoietic cancer.

43 (h) Diesel exhaust, soot, aldehydes and polycyclic aromatic
44 hydrocarbon shall be deemed to be known carcinogens that are



1 reasonably associated with basal cell carcinoma, squamous cell
2 carcinoma and malignant melanoma.

3 (i) Acrylonitrile, benzene and formaldehyde shall be deemed to
4 be known carcinogens that are reasonably associated with prostate
5 cancer.

6 (j) Diesel exhaust, soot and polychlorinated biphenyls shall be
7 deemed to be known carcinogens that are reasonably associated with
8 testicular cancer.

9 (k) Diesel exhaust, benzene and X-ray radiation shall be deemed
10 to be known carcinogens that are reasonably associated with thyroid
11 cancer.

12 3. The provisions of subsection 2 do not create an exclusive list
13 and do not preclude any person from demonstrating, on a case-by-
14 case basis for the purposes of paragraph (b) of subsection 1, that a
15 substance is a known carcinogen that is reasonably associated with a
16 disabling cancer.

17 4. Compensation awarded to the employee or his or her
18 dependents for disabling cancer pursuant to this section must
19 include:

20 (a) Full reimbursement for related expenses incurred for medical
21 treatments, surgery and hospitalization in accordance with the
22 schedule of fees and charges established pursuant to NRS 616C.260
23 or, if the insurer has contracted with an organization for managed
24 care or with providers of health care pursuant to NRS 616B.527, the
25 amount that is allowed for the treatment or other services under that
26 contract; and

27 (b) The compensation provided in chapters 616A to 616D,
28 inclusive, of NRS for the disability or death.

29 5. Disabling cancer is presumed to have developed or
30 manifested itself out of and in the course of the employment of any
31 firefighter ~~[described in this section.]~~ *who has been employed in a*
32 *full-time continuous, uninterrupted and salaried occupation as a*
33 *firefighter for 5 years or more before the date of the diagnosis.*
34 This rebuttable presumption applies to disabling cancer diagnosed
35 ~~[after]~~ :

36 (a) *During the person's employment; or*

37 (b) *After* the termination of the person's employment if the
38 diagnosis occurs within a period, not to exceed ~~[60 months,]~~ *5 years*
39 *after the termination of the person's employment*, which begins
40 with the last date the employee actually worked in the qualifying
41 capacity . ~~[and extends for a period calculated by multiplying~~
42 ~~3 months by the number of full years of his or her employment.]~~

43 ➡ This rebuttable presumption must control the awarding of
44 benefits pursuant to this section unless evidence to rebut the
45 presumption is presented.



6. The provisions of this section do not create a conclusive presumption.

Sec. 2. 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 or her lungs and the making of an X-ray film of the employee's lungs, upon employment, upon commencement of the coverage, once every even-numbered year until the employee is 40 years of age or older and thereafter on an annual basis during his or her 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, firefighter or arson investigator for 5 years or more before the date of disablement. *This rebuttable presumption applies to diseases of the lungs diagnosed:*

(a) During the person's employment; or

(b) After the termination of the person's employment if the diagnosis occurs within a period, not to exceed 5 years after the termination of the person's employment, which begins with the last date the employee actually worked in the qualifying capacity.

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.



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- 1 7. A person who is determined to be:
- 2 (a) Partially disabled from an occupational disease pursuant to
- 3 the provisions of this section; and
- 4 (b) Incapable of performing, with or without remuneration, work
- 5 as a firefighter, police officer or arson investigator,
- 6 ➔ may elect to receive the benefits provided under NRS 616C.440
- 7 for a permanent total disability.

8 **Sec. 3.** NRS 617.457 is hereby amended to read as follows:

9 617.457 1. Notwithstanding any other provision of this

10 chapter, diseases of the heart of a person who, for 5 years or more,

11 has been employed in a full-time continuous, uninterrupted and

12 salaried occupation as a firefighter, arson investigator or police

13 officer in this State before the date of disablement are conclusively

14 presumed to have arisen out of and in the course of the employment.

15 *This rebuttable presumption applies to diseases of the heart*

16 *diagnosed:*

- 17 (a) *During the person's employment; or*
- 18 (b) *After the termination of the person's employment if*
- 19 *the diagnosis occurs within a period, not to exceed 5 years after*
- 20 *the termination of the person's employment, which begins with the*
- 21 *last date the employee actually worked in the qualifying capacity.*

22 2. Notwithstanding any other provision of this chapter, diseases

23 of the heart, resulting in either temporary or permanent disability or

24 death, are occupational diseases and compensable as such under the

25 provisions of this chapter if caused by extreme overexertion in times

26 of stress or danger and a causal relationship can be shown by

27 competent evidence that the disability or death arose out of and was

28 caused by the performance of duties as a volunteer firefighter by a

29 person entitled to the benefits of chapters 616A to 616D, inclusive,

30 of NRS pursuant to the provisions of NRS 616A.145 and who, for

31 5 years or more, has served continuously as a volunteer firefighter in

32 this State by continuously maintaining an active status on the roster

33 of a volunteer fire department.

34 3. Except as otherwise provided in subsection 4, each

35 employee who is to be covered for diseases of the heart pursuant to

36 the provisions of this section shall submit to a physical examination,

37 including an examination of the heart, upon employment, upon

38 commencement of coverage and thereafter on an annual basis during

39 his or her employment.

40 4. A physical examination for a volunteer firefighter is required

41 upon initial employment and once every 3 years after the initial

42 examination until the firefighter reaches the age of 50 years. Each

43 volunteer firefighter who is 50 years of age or older shall submit to a

44 physical examination once each year.



5. The employer of the volunteer firefighter is responsible for scheduling the physical examination.

6. Failure to submit to a physical examination that is scheduled by his or her employer pursuant to subsection 5 excludes the volunteer firefighter from the benefits of this section.

7. The chief of a volunteer fire department may require an applicant to pay for any physical examination required pursuant to this section if the applicant:

(a) Applies to the department for the first time as a volunteer firefighter; and

(b) Is 50 years of age or older on the date of his or her application.

8. The volunteer fire department shall reimburse an applicant for the cost of a physical examination required pursuant to this section if the applicant:

(a) Paid for the physical examination in accordance with subsection 7;

(b) Is declared physically fit to perform the duties required of a firefighter; and

(c) Becomes a volunteer with the volunteer fire department.

9. Except as otherwise provided in subsection 7, all physical examinations required pursuant to subsections 3 and 4 must be paid for by the employer.

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

11. 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, arson investigator or police officer,

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

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

Sec. 4. NRS 617.485 is hereby amended to read as follows:

617.485 1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, if an employee has hepatitis, the disease is conclusively presumed to have arisen out of and in the course of his or her employment if the



1 employee has been ~~continuously~~ employed for 5 years or more ~~as~~
2 ~~a police officer,~~ in a full-time *continuous, uninterrupted and*
3 salaried *occupation as a police officer*, firefighter or emergency
4 medical attendant in this State before the date of any temporary or
5 permanent disability or death resulting from the hepatitis.

6 2. Compensation awarded to a police officer, firefighter or
7 emergency medical attendant, or to the dependents of such a person,
8 for hepatitis pursuant to this section must include:

9 (a) Full reimbursement for related expenses incurred for medical
10 treatments, surgery and hospitalization; and

11 (b) The compensation provided in chapters 616A to 616D,
12 inclusive, of NRS for the disability or death.

13 3. A police officer, salaried firefighter or emergency medical
14 attendant shall:

15 (a) Submit to a blood test to screen for hepatitis C upon
16 employment, upon the commencement of coverage and thereafter on
17 an annual basis during his or her employment.

18 (b) Submit to a blood test to screen for hepatitis A and hepatitis
19 B upon employment, upon the commencement of coverage and
20 thereafter on an annual basis during his or her employment, except
21 that a police officer, salaried firefighter or emergency medical
22 attendant is not required to submit to a blood test to screen for
23 hepatitis A and hepatitis B on an annual basis during his or her
24 employment if he or she has been vaccinated for hepatitis A and
25 hepatitis B upon employment or at other medically appropriate
26 times during his or her employment. Each employer shall provide a
27 police officer, salaried firefighter or emergency medical attendant
28 with the opportunity to be vaccinated for hepatitis A and hepatitis B
29 upon employment and at other medically appropriate times during
30 his or her employment.

31 4. All blood tests required pursuant to this section and all
32 vaccinations provided pursuant to this section must be paid for by
33 the employer.

34 5. The provisions of this section:

35 (a) Except as otherwise provided in paragraph (b), do not apply
36 to a police officer, firefighter or emergency medical attendant who
37 is diagnosed with hepatitis upon employment.

38 (b) Apply to a police officer, firefighter or emergency medical
39 attendant who is diagnosed with hepatitis upon employment if,
40 during the employment or within 1 year after the last day of the
41 employment, he or she is diagnosed with a different strain of
42 hepatitis.

43 (c) Apply to a police officer, firefighter or emergency medical
44 attendant who is diagnosed with hepatitis after the termination of the



1 employment if the diagnosis is made within 1 year after the last day
2 of the employment.

3 6. A police officer, firefighter or emergency medical attendant
4 who is determined to be:

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

7 (b) Incapable of performing, with or without remuneration, work
8 as a police officer, firefighter or emergency medical attendant,

9 ➔ may elect to receive the benefits provided pursuant to NRS
10 616C.440 for a permanent total disability.

11 7. As used in this section:

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

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

21 (c) "Police officer" means a sheriff, deputy sheriff, officer of a
22 metropolitan police department or city police officer.

23 **Sec. 5.** NRS 617.487 is hereby amended to read as follows:

24 617.487 1. Notwithstanding any other provision of this
25 chapter and except as otherwise provided in this section, if an
26 employee has hepatitis, the disease is conclusively presumed to have
27 arisen out of and in the course of his or her employment if the
28 employee has been ~~continuously~~ employed for 5 years or more *in*
29 *a full-time continuous, uninterrupted and salaried occupation* as a
30 police officer or a sheriff, deputy sheriff, officer of a metropolitan
31 police department or city police officer in this State before the date
32 of any temporary or permanent disability or death resulting from the
33 hepatitis.

34 2. Compensation awarded to a police officer, or to the
35 dependents of a police officer, for hepatitis pursuant to this section
36 must include:

37 (a) Full reimbursement for related expenses incurred for medical
38 treatments, surgery and hospitalization; and

39 (b) The compensation provided in chapters 616A to 616D,
40 inclusive, of NRS for the disability or death.

41 3. A police officer shall:

42 (a) Submit to a blood test to screen for hepatitis C upon
43 employment and upon the commencement of coverage.

44 (b) If the employer of the police officer provides screening for
45 hepatitis C for police officers on an annual basis, submit to a blood



1 test to screen for hepatitis C thereafter on an annual basis during his
2 or her employment.

3 (c) If the employer of the police officer provides screening for
4 hepatitis A and hepatitis B for police officers, submit to a blood test
5 to screen for hepatitis A and hepatitis B upon employment, upon the
6 commencement of coverage and thereafter on an annual basis during
7 his or her employment, except that a police officer is not required to
8 submit to a blood test to screen for hepatitis A and hepatitis B on an
9 annual basis during his or her employment if he or she has been
10 vaccinated for hepatitis A and hepatitis B upon employment or at
11 other medically appropriate times during his or her employment.
12 Each employer shall provide a police officer with the opportunity to
13 be vaccinated for hepatitis A and hepatitis B upon employment and
14 at other medically appropriate times during his or her employment.

15 4. All blood tests required pursuant to this section and all
16 vaccinations provided pursuant to this section must be paid for by
17 the employer.

18 5. The provisions of this section:

19 (a) Except as otherwise provided in paragraph (b), do not apply
20 to a police officer who is diagnosed with hepatitis upon
21 employment.

22 (b) Apply to a police officer who is diagnosed with hepatitis
23 upon employment if, during the employment or within 1 year after
24 the last day of the employment, the police officer is diagnosed with
25 a different strain of hepatitis.

26 (c) Apply to a police officer who is diagnosed with hepatitis
27 after the termination of the employment if the diagnosis is made
28 within 1 year after the last day of the employment.

29 6. A police officer who is determined to be:

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

32 (b) Incapable of performing, with or without remuneration, work
33 as a police officer,

34 ➤ may elect to receive the benefits provided pursuant to NRS
35 616C.440 for a permanent total disability.

36 7. As used in this section:

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

40 (b) "Police officer" means any police officer other than a sheriff,
41 deputy sheriff, officer of a metropolitan police department or city
42 police officer.

43 **Sec. 6.** This act becomes effective on July 1, 2011.

