SENATE BILL 261

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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AN ACT

RELATING TO HEALTH; ADDING PANDEMIC DISEASE TO THE LIST OF
CONDITIONS PRESUMED TO BE PROXIMATELY CAUSED BY EMPLOYMENT AS A
FIREFIGHTER; REVISING A PROVISION RELATING TO BREAST CANCER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 52-3-32.1 NMSA 1978 (being Laws 2009,
Chapter 252, Section 1, as amended) is amended to read:

"52-3-32.1. FIREFIGHTER OCCUPATIONAL CONDITIONS.--

A. As used in this section, "firefighter" means a
person who is employed as a full-time non-volunteer firefighter
by the state or a local government entity and who has taken the
oath prescribed for firefighters.

B. If a firefighter is diagnosed with one or more
of the following conditions after the period of employment
indicated, and the condition was not revealed during an initial
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employment medical screening examination or during a subsequent medical review pursuant to the Occupational Health and Safety Act and rules promulgated pursuant to that act, the condition is presumed to be proximately caused by employment as a firefighter:

   (1) brain cancer after ten years;
   (2) bladder cancer after twelve years;
   (3) kidney cancer after fifteen years;
   (4) colorectal cancer after ten years;
   (5) non-Hodgkin's lymphoma after fifteen years;
   (6) leukemia after five years;
   (7) ureter cancer after twelve years;
   (8) testicular cancer after five years if diagnosed before the age of forty with no evidence of anabolic steroids or human growth hormone use;
   (9) breast cancer after five years if diagnosed before the age of forty to fifty-five without a breast cancer 1 or breast cancer 2 genetic predisposition to breast cancer;
   (10) esophageal cancer after ten years;
   (11) multiple myeloma after fifteen years;
   (12) hepatitis, tuberculosis, diphtheria, meningococcal disease and methicillin-resistant staphylococcus aureus appearing and diagnosed after entry into employment;
(13) posttraumatic stress disorder diagnosed by a physician or psychologist that results in physical impairment, primary or secondary mental impairment or death; or

(14) a virus or disease that has been declared a pandemic by the president of the United States, the governor of New Mexico, the world health organization or the federal centers for disease control and prevention, including the coronavirus disease and other future qualifying pandemics.

C. The presumptions created in Subsections B and D of this section may be rebutted by a preponderance of evidence in a court of competent jurisdiction showing that the firefighter engaged in conduct or activities outside of employment that posed a significant risk of contracting or developing a described condition.

D. If a firefighter is diagnosed with a heart injury or stroke suffered within twenty-four hours of fighting a fire, while responding to an alarm, while returning from an alarm call, while engaging in supervised physical training or while responding to or performing in a non-fire emergency, the heart injury or stroke is presumed to be proximately caused by employment as a firefighter. The presumption created in this subsection shall not be made if the firefighter's employer does not have a current physical training program and the firefighter does not have a current medical screening.
examination or review pursuant to the Occupational Health and
Safety Act and rules promulgated pursuant to that act allowing
participation in that program.

E. When any presumptions created in this section do
not apply, it shall not preclude a firefighter from
demonstrating a causal connection between employment and
condition or injury by a preponderance of evidence in a court
of competent jurisdiction.

F. Medical treatment based on the presumptions
created in this section shall be provided by an employer as for
a job-related condition or injury unless and until a court of
competent jurisdiction determines that the presumption does not
apply. If the court determines that the presumption does not
apply or that the condition or injury is not job related, the
employer's workers' compensation insurance provider shall be
reimbursed for health care costs by the medical or health
insurance plan or benefit provided for the firefighter by the
employer."

SECTION 2. APPLICABILITY.--The provisions of this act
apply to claims for benefits filed on or after the effective
date of this act.