

1 SENATE BILL 369

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Harold Pope

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10 AN ACT

11 RELATING TO WORKERS' COMPENSATION; AMENDING THE NEW MEXICO
12 OCCUPATIONAL DISEASE DISABLEMENT LAW TO ADD CERTAIN CONDITIONS
13 TO THE LIST OF CONDITIONS PRESUMED TO BE PROXIMATELY CAUSED BY
14 EMPLOYMENT AS A FIREFIGHTER.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "52-3-32.1. FIREFIGHTER OCCUPATIONAL CONDITIONS.--

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

24 B. If a firefighter is diagnosed with one or more
25 of the following conditions after the period of employment

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1 indicated and the condition was not revealed during an initial
2 employment medical screening examination or during a subsequent
3 medical review pursuant to the Occupational Health and Safety
4 Act and rules promulgated pursuant to that act, the condition
5 is presumed to be proximately caused by employment as a
6 firefighter:

- 7 (1) brain cancer after ten years;
- 8 (2) bladder cancer after twelve years;
- 9 (3) kidney cancer after fifteen years;
- 10 (4) colorectal cancer after ten years;
- 11 (5) non-Hodgkin's lymphoma after fifteen
12 years;
- 13 (6) leukemia after five years;
- 14 (7) ureter cancer after twelve years;
- 15 (8) testicular cancer after five years if
16 diagnosed before the age of forty with no evidence of anabolic
17 steroids or human growth hormone use;
- 18 (9) breast cancer after five years [~~if~~
19 ~~diagnosed before the age of forty~~] without a breast cancer 1 or
20 breast cancer 2 genetic predisposition to breast cancer;
- 21 (10) esophageal cancer after ten years;
- 22 (11) multiple myeloma after fifteen years;
- 23 (12) hepatitis, tuberculosis, diphtheria,
24 meningococcal disease and methicillin-resistant staphylococcus
25 aureus appearing and diagnosed after entry into employment;

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1 ~~[or]~~

2 (13) posttraumatic stress disorder diagnosed
3 by a physician or psychologist that results in physical
4 impairment, primary or secondary mental impairment or death;

5 (14) lung cancer after five years of service;

6 or

7 (15) prostate cancer after five years of
8 service.

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

15 D. If a firefighter is diagnosed with a heart
16 injury or stroke suffered within twenty-four hours of fighting
17 a fire, while responding to an alarm, while returning from an
18 alarm call, while engaging in supervised physical training or
19 while responding to or performing in a non-fire emergency, the
20 heart injury or stroke is presumed to be proximately caused by
21 employment as a firefighter. The presumption created in this
22 subsection shall not be made if the firefighter's employer does
23 not have a current physical training program and the
24 firefighter does not have a current medical screening
25 examination or review pursuant to the Occupational Health and

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underscoring material = new
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1 Safety Act and rules promulgated pursuant to that act allowing
2 participation in that program.

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

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