Cancer Presumption Statutes in Maryland and Other States

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Cancer Presumption Statutes in Maryland and Other States

Chapter 445 of 2012 (House Bill 1101) altered 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 legislation also increased the minimum service requirement for a covered employee to qualify for specified occupational disease presumptions. The enacted legislation took effect June 1, 2012, but provisions related to coverage did not go into effect until June 1, 2013.

In light of Chapter 445, the Chairman of the Senate Finance Committee, the Chairman of the House Economic Matters Committee, and the co-chairs of the Workers’ Compensation Benefit and Insurance Oversight Committee requested that the Department of Legislative Services, in consultation with the Workers’ Compensation Commission and others as determined by the department, study the workers’ compensation cancer presumption statutes in the State and in other states. Appendix 1 provides a copy of the letter sent to the department by the chairmen and co-chairs.

This update describes legislation that the Maryland General Assembly passed during the 2015 and 2016 sessions as well as legislation enacted in six states – California, Connecticut, Idaho, Illinois, Maine, and New Hampshire – since the paper was initially completed in December 2012. Neither the Maryland General Assembly nor any other state legislature enacted presumption legislation during the 2017 session. This update does not account for case law changes during that same timeframe that may have altered rebuttability standards for occupational disease presumptions in other states.

Maryland Legislative History

Enactment and Expansion of Labor and Employment § 9-503

Firefighters, police officers, and related personnel have benefitted from gradual expansion of the State’s occupational disease presumption law in several respects over the last half-century. Appendix 2 (§ 9-503 Legislative History) provides a detailed description of amendments to the statute.

Classifications

In the first respect, the General Assembly created presumptions for four classifications of diseases:

- heart disease, hypertension, and lung disease;
- heart disease and hypertension;
- cancer; and
- Lyme disease.
In 1971, the General Assembly created the first statutory occupational disease presumption for paid municipal, county, airport authority, or fire control district firefighters who developed “lung diseases, heart diseases, or hypertension” resulting in disability or death (Chapter 695). In 1972, the General Assembly created a second presumption for paid State, municipal, county, or airport authority police officers whose compensable claims resulted from “heart diseases or hypertension” (Chapter 281). In 1985, the General Assembly created a third presumption for firefighters or firefighting instructors who developed throat, prostate, rectal, or pancreatic cancers or leukemia due to contact with toxic substances in the line of duty (Chapter 760). As introduced, Chapter 760 would have included all cancers in the presumption, but an amendment struck the general reference to “cancer that is caused by contact with toxic substances that the firefighter is likely to encounter in the line of duty.” The cancer presumption also required qualifying personnel to have (1) worked for at least five years in the department where they currently work or serve and (2) been unable to perform their “normal duties” due to the cancer disability. In 1999, the General Assembly created a fourth presumption for certain employees of the Department of Natural Resources who suffered from Lyme disease.

Types of Personnel

In the second respect, from 1972 through 2014, the General Assembly amended the presumption statute 17 times to extend the occupational disease presumptions to different types of personnel. For example, the statute initially included only paid municipal, county, airport authority, or fire control district firefighters within the presumption (Chapter 695 of 1971). Three years after its enactment, the statute was amended to encompass volunteer firefighters and rescue squad members who passed a physical examination (Chapter 598 of 1975). Most recently, the legislation was enacted to extend several occupational disease presumptions to cover paid rescue squad members and paid advanced life support unit members (Chapter 374 of 2014) and to extend the heart disease and hypertension presumption to Anne Arundel County detention officers (Chapter 324 of 2015).

Several times, the General Assembly expanded the presumption to temporarily cover additional personnel. In the first instance, in 2008, park police officers of the Maryland-National Capital Park and Planning Commission became eligible under the Lyme disease presumption from October 1, 2008, through September 30, 2015 (Chapter 98). In 2014, however, legislation was enacted to repeal the termination date and make the presumption permanent (Chapter 629). In the second instance, in 2009, other Maryland-National Capital Park and Planning Commission employees became eligible under the same presumption from October 1, 2009, through September 30, 2015 (Chapter 709). As of December 2016, the heart disease, hypertension, and lung disease presumption covered 13 types of personnel; the heart disease and hypertension presumption covered 13 types of personnel; the cancer presumption covered 13 types of personnel; and the Lyme disease presumption covered 2 types of personnel. Appendix 3 details the personnel who are covered under the presumption.
Enhanced Benefits

In the third respect, the General Assembly amended the enhanced benefit provision of the presumption statute – § 9-503(e) in current law – to allow some personnel covered by the presumptions to receive both workers’ compensation and retirement benefits up to the amount of the weekly salary.

Maryland Current Law

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, firefighting instructor, rescue squad member, or advanced life support unit member; 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, firefighting 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.)

Chapter 445 of 2012 altered the list of diseases that are presumed to be compensable under § 9-503 for firefighters and related personnel by excluding pancreatic cancer and including multiple myeloma, non-Hodgkin’s lymphoma, brain, testicular, and breast cancers. The enacted bill also increased the minimum service requirement from 5 to 10 years for firefighters and related personnel seeking to benefit from the presumption. The changes apply prospectively for claims filed on or after June 1, 2013 (see Appendix 3).

Accordingly, as of June 1, 2013, and unchanged as of December 2016, any one of the individuals specified above could also be presumed to have a compensable occupational disease if the individual:

- has leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin’s lymphoma, brain, testicular, or breast cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty;

- has completed at least 10 years of service as a firefighter, firefighting 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;

- is unable to perform the normal duties of a firefighter, firefighting instructor, rescue squad member, or advanced life support unit member in the department where the individual currently serves; and

- in the case of a volunteer, has met a suitable standard of physical examination before becoming a volunteer.
Evidentiary Standard for Rebutting Occupational Disease Presumptions

Two competing views exist on how rebuttable presumptions should operate, as the prior bills and amendments to codify rebuttability language reflect.

- The first approach, called the Thayer-Wigmore or “bursting bubble” theory, contends that a presumption bursts or “drops out of the case...as if no presumption ever existed” once the opponent of the presumption introduces enough evidence to support a favorable factual finding. Thayer-Wigmore type presumptions would not require an employer to persuade the fact finder that the occupational disease was not compensable under § 9-503.

- The second approach, called the Morgan-McCormick approach, requires the opponent of the presumption to bear both the burden of persuasion and the burden of production. A Morgan-type presumption would require an employer to produce evidence that convinced a fact finder that the disease was not compensable. (See Montgomery County Fire Board v. Fisher, 298 Md. 245, 256-258, 468 A.2d 625, 6331 (1983).)

Although the statute is silent on the issue, Maryland courts have long considered occupational disease presumptions to be Morgan-type rebuttable presumptions. Two court decisions generally address the statute’s use of “is presumed” in reference to occupational diseases by 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).) The Court of Appeals stated in Fisher that “both the burden of production and the burden of persuasion remain fixed on the employer” so that the presumption bolsters a firefighter’s case regardless of contrary evidence that an employer has provided. (See 298 Md. at 258, 468 A.2d at 631.) The Court of Special Appeals, in turn, 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)). In practice, an employer or its insurer can rebut a presumption by offering facts, such as family history, genetic predisposition, or lifestyle choices, and by getting an independent medical evaluation to demonstrate that a disease is not work related.

Members of the General Assembly have unsuccessfully sought to codify a rebuttal standard for occupational disease presumptions. In 2010, for example, the House adopted an amendment to add rebuttability language to House Bill 1280 (failed), which would have added esophageal, brain, and lung cancers to the list of presumed compensable occupational diseases for firefighters and related personnel. In turn, House Bill 1069 of 2005 (failed) would have introduced rebuttability language in § 9-503 by requiring (1) a claimant to meet statutory requirements for the occupational disease presumption; (2) an employer or its insurer to then bear the burden of production by presenting “medical or factual evidence contrary to the presumption”; and (3) a claimant to bear the burden of production and the burden of persuasion of demonstrating compensability.
Costs of Presumptions

Employers and insurers have historically opposed legislation that expands occupational disease presumptions, due to the increased cost of paying out additional claims and, for certain types of employees, enhanced benefits. Section 9-610(a) exhausts an employer’s liability “for payment of similar benefits,” such as pension benefits, with payment of workers’ compensation benefits. Maryland courts have ascertained the General Assembly’s “unmistakable intent” behind § 9-610 to be that governmental employees should receive only a “single recovery” rather than both pension benefits and workers’ compensation benefits. (See Mayor of Baltimore v. Polomski, 106 Md. App. 689, 666 A.2d 895 (1995), aff’d 344 Md. 70, 684 A.2d 1338 (1996).) Section 9-503(e)(1), however, creates an exception to the dual benefit prohibition by entitling firefighters, police officers, and related personnel to workers’ compensation benefits in addition to any other benefits so long as the total benefits do not exceed the prior weekly salary.

The Department of Legislative Services indicated in the fiscal note for Chapter 445 of 2012 that the cost of newly expanded occupational disease presumptions to local governments “cannot be reliably estimated....[but] could be significant.” As an example, Baltimore City advised that it paid an average of $40,900 per year for firefighter presumption claims in fiscal 2009, 2010, and 2011. Based on the addition of new cancers to § 9-503(c), the city would likely lose more contested claims after June 1, 2013, because more claims would be adjudged “compensable.” The city would also be required to pay enhanced benefits to the firefighters, police officers, and related personnel based on the entitlement to dual benefits under § 9-503(e).
Other States

Cancers in Workers’ Compensation Statutes

Thirty-five states have a cancer presumption for firefighters, as shown in Exhibit 1.

Exhibit 1
States with Firefighter Work-related Cancer Presumption

<table>
<thead>
<tr>
<th>Alabama</th>
<th>Maine</th>
<th>Oregon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>Maryland</td>
<td>Pennsylvania</td>
</tr>
<tr>
<td>Arizona</td>
<td>Massachusetts*</td>
<td>Rhode Island</td>
</tr>
<tr>
<td>California</td>
<td>Michigan</td>
<td>South Dakota*</td>
</tr>
<tr>
<td>Colorado</td>
<td>Minnesota</td>
<td>Tennessee</td>
</tr>
<tr>
<td>Connecticut**</td>
<td>Missouri</td>
<td>Texas</td>
</tr>
<tr>
<td>Idaho***</td>
<td>Nebraska</td>
<td>Utah</td>
</tr>
<tr>
<td>Illinois</td>
<td>Nevada</td>
<td>Vermont</td>
</tr>
<tr>
<td>Indiana</td>
<td>New Hampshire</td>
<td>Virginia</td>
</tr>
<tr>
<td>Iowa*</td>
<td>New Mexico</td>
<td>Washington</td>
</tr>
<tr>
<td>Kansas*</td>
<td>North Dakota</td>
<td>Wisconsin</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Oklahoma*</td>
<td></td>
</tr>
</tbody>
</table>

*Several of the state statutes establish presumptions in retirement or pension provisions of law rather than in workers’ compensation law. Some of these states potentially include: Iowa, Kansas, Massachusetts, Oklahoma, and South Dakota. In these states, the statutes may not confer workers’ compensation benefits but may instead confer other types of benefits. Benefit payment and funding differ depending on the type of presumption statute.

**Connecticut statute indicates that eligible claimants “shall be eligible for such benefits…” but does not reference a presumption.

***Idaho’s law has a termination date of July 1, 2021.

Source: State Statutes

In a review of other state statutes, there are four ways states have approached including cancer in their workers’ compensation statutes. As summarized in Exhibit 2, 35 states (including Maryland) mention cancer in their statutes. Of the 35 states:

- 19 (including Maryland) specifically identify the specific covered cancers (of which 39 types are identified in states’ workers’ compensation statutes);
- 10 states take a general approach by covering “cancers” generally;
- 4 states link the types of covered cancers as determined by the International Agency for Research on Cancer (IARC) or the National Institute for Occupational Safety and Health (NIOSH); and
- 2 states mention a combination of exposures (e.g., heat; radiation; carcinogen; smoke; fumes; and poisonous, toxic, or chemical substances).
### Exhibit 2

**Cancers in Workers’ Compensation Statutes**

**Maryland and Other States**

<table>
<thead>
<tr>
<th>Type of Cancer</th>
<th>Maryland</th>
<th>Other States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally</td>
<td></td>
<td>10 – AL, CA, IL, MN, ND, NH, NV, OK, SD, TN</td>
</tr>
<tr>
<td>Adenocarcinoma</td>
<td></td>
<td>1 – AZ</td>
</tr>
<tr>
<td>Bladder</td>
<td></td>
<td>10 – AK, AZ, IA, ID****, LA, ME, MI, NM, OR, VT, WA</td>
</tr>
<tr>
<td>Brain/Primary Brain</td>
<td>Current Law</td>
<td>12 – AK, AZ, CO, IA, ID****, LA, ME, MI, NM, OR, VT, WA</td>
</tr>
<tr>
<td>Breast</td>
<td>Current Law</td>
<td>8 – IA, ID****, ME, MO, NM, OR, VA, WI</td>
</tr>
<tr>
<td>Central Nervous System</td>
<td></td>
<td>4 – MA, MO, NE, WI</td>
</tr>
<tr>
<td>Colon</td>
<td></td>
<td>5 – AZ, LA, ME, OR, VT</td>
</tr>
<tr>
<td>Colorectal (relates to both colon and rectal)</td>
<td></td>
<td>4 – IA, ID****, NM, WA</td>
</tr>
<tr>
<td>Digestive System</td>
<td></td>
<td>5 – CO, MA, MO, NE, WI</td>
</tr>
<tr>
<td>Esophageal</td>
<td></td>
<td>3 – ID****, NM, UT</td>
</tr>
<tr>
<td>Gastrointestinal Tract</td>
<td></td>
<td>3 – LA, MO, VT</td>
</tr>
<tr>
<td>Genitourinary System</td>
<td></td>
<td>2 – CO, MO</td>
</tr>
<tr>
<td>Hematological System</td>
<td></td>
<td>5 – CO, MA, MO, NE, WI</td>
</tr>
<tr>
<td>Kidney</td>
<td></td>
<td>9 – AK, IA, ID****, LA, ME, MI, NM, VT, WA</td>
</tr>
<tr>
<td>Leukemia</td>
<td>Current Law</td>
<td>13 – AK, AZ, CA, IA, ID****, LA, ME, MI (“blood cancer”), NM, OR, VA, VT, WA</td>
</tr>
<tr>
<td>Liver</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Lymphoma/ Lymphatic</td>
<td></td>
<td>Lymphoma – 6 – AZ, LA, MO, NE, VT, WI</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lymphatic – 2 – MA, MI</td>
</tr>
<tr>
<td>Lung</td>
<td></td>
<td>2 – MA, UT</td>
</tr>
<tr>
<td>Malignant Melanoma</td>
<td></td>
<td>3 – AK, IA, WA</td>
</tr>
<tr>
<td>Mesothelioma</td>
<td></td>
<td>3 – AZ, ID****, UT</td>
</tr>
<tr>
<td>Mouth</td>
<td></td>
<td>1 – OR</td>
</tr>
<tr>
<td>Multiple Myeloma/Kahler’s Disease</td>
<td>Current Law</td>
<td>9 – CT, IA, ID****, LA, ME, NM, OR, VT, WA</td>
</tr>
<tr>
<td>Non-Hodgkin’s Lymphoma</td>
<td>Current Law</td>
<td>9 – AK, CT, IA, ID, ME, NM, OR, VT, WA</td>
</tr>
<tr>
<td>Oral System</td>
<td></td>
<td>4 – MA, MO, NE, WI</td>
</tr>
<tr>
<td>Ovarian</td>
<td></td>
<td>2 – IA, VA</td>
</tr>
<tr>
<td>Pancreatic</td>
<td></td>
<td>3 – LA, VA, VT</td>
</tr>
<tr>
<td>Type of Cancer</td>
<td>Maryland</td>
<td>Other States</td>
</tr>
<tr>
<td>-------------------</td>
<td>----------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Pharynx</td>
<td></td>
<td>1 – UT</td>
</tr>
<tr>
<td>Prostate*</td>
<td>Current Law</td>
<td>10 – AK, CT, IA, MA, ME, MI, MO, OR, VA, WA</td>
</tr>
<tr>
<td>Rectal</td>
<td>Current Law</td>
<td>3 – AZ, OR, VA</td>
</tr>
<tr>
<td>Reproductive System</td>
<td></td>
<td>1 – WI</td>
</tr>
<tr>
<td>Respiratory**</td>
<td></td>
<td>3 – AZ, MA, MI</td>
</tr>
<tr>
<td>Skeletal System</td>
<td></td>
<td>4 – MA, MO, NE, WI</td>
</tr>
<tr>
<td>Skin</td>
<td></td>
<td>7 – LA, MA, ME, MI, NE, VT, WI</td>
</tr>
<tr>
<td>Stomach</td>
<td></td>
<td>1 – OR</td>
</tr>
<tr>
<td>Testicular</td>
<td>Current Law</td>
<td>10 – CT, IA, ID****, ME, MI, MO, NM, OR, VT, WA</td>
</tr>
<tr>
<td>Throat</td>
<td>Current Law</td>
<td>2 – OR, VA</td>
</tr>
<tr>
<td>Thyroid</td>
<td></td>
<td>1 – MI</td>
</tr>
<tr>
<td>Ureter</td>
<td></td>
<td>3 – AK, NM, WA</td>
</tr>
<tr>
<td>Urinary</td>
<td></td>
<td>4 – MA, MO, NE, WI</td>
</tr>
<tr>
<td>Uterine (uterus)</td>
<td></td>
<td>1 – IA</td>
</tr>
<tr>
<td>As determined by IARC or NIOSH</td>
<td></td>
<td>1 – IN</td>
</tr>
<tr>
<td>Exposure to heat, radiation, or a known carcinogen</td>
<td></td>
<td>1 – KS</td>
</tr>
<tr>
<td>Exposure to known carcinogen as determined by IARC (Group 1 carcinogen)</td>
<td></td>
<td>1 – PA</td>
</tr>
<tr>
<td>Exposure to heat, radiation, or a known or suspected carcinogen as determined by IARC</td>
<td></td>
<td>1 – MA***</td>
</tr>
<tr>
<td>Exposure to smoke, fumes or carcinogenic, poisonous, toxic, or chemical substances</td>
<td></td>
<td>1 – RI</td>
</tr>
<tr>
<td>Exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by IARC</td>
<td></td>
<td>1 – TX</td>
</tr>
</tbody>
</table>

*For prostate cancer: Washington (WA) covers prostate cancer only if the firefighter or related personnel is younger than 55 years old. Oregon (OR) covers prostate cancer only if the firefighter or related personnel is younger than 55 years old.

**For respiratory cancer: Arizona (AZ) covers respiratory tract cancer only if the firefighter or related personnel has not smoked tobacco products.
Massachusetts (MA) law provides that the presumption applies to “any condition of cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral or prostate systems, lung or respiratory tract…” if the cancer results from exposure to heat, radiation, or a known or suspected carcinogen as determined by IARC; also applies to other kinds of cancer if determined by IARC to result from exposure to heat or radiation or to a known or suspected carcinogen and the commissioner of the department of public health identifies a statistically significant correlation with fire service.

Idaho’s law contains a July 1, 2021, termination date and contains service requirements for each type of cancer covered.

Note: According to *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*, Volume 98 (2010), exposures to arsenic may cause cancer of the skin, lung, liver; asbestos may cause cancer of the lung, mesothelioma, larynx, and gastrointestinal tract; benzene may cause leukemia; benzo pyrene may cause cancer of the lung, bladder, or skin; 1, 2-Butadiene may cause cancer of the lymphohaematopoietic system; cadmium may cause cancer of the lung; formaldehyde may cause cancer of the nasopharynx; radioactivity and radionuclides may cause cancer in a many sites; silica (crystalline) may cause cancer of the lung; and 2, 3, 7, 8-tetrachloro dibenzo-para-dioxin may cause cancer to lung, lymphocytes (non-Hodgkin lymphoma), and muscles and tissues (sarcoma).

Source: State Statutes, IARC Website

Six states have enacted legislation since 2012 relating to the application of existing occupational disease presumptions: California, Connecticut, Idaho, Illinois, New Hampshire, and Maine.

- California’s enacted legislation extends the statute of limitations period for dependents filing for death benefits under specified circumstances, including when the individual who died was an active firefighter whose death was due to cancer (Chapter 15 of 2014).

- Connecticut enacted legislation in 2016 (Public Act 16-10) that will redirect funds from the Enhanced 9-1-1 Telecommunications Fund to a newly created Firefighters Cancer Relief Account on a monthly basis, beginning February 1, 2017. A contingency exists where the funds will not be redirected if doing so would jeopardize Federal funds for 9-1-1 service. The Cancer Relief Subcommittee of the statutorily created Connecticut State Firefighters Association will disburse the wage replacement funds for qualifying firefighters beginning on July 1, 2019. A firefighter may not receive benefits for more than 24 months and the subcommittee is required to determine the maximum weekly benefit amount. For more information on the account, the chapter law is available here: https://www.cga.ct.gov/2016/act/pa/pdf/2016PA-00010-R00HB-05262-PA.pdf.

- In 2016, the Idaho Legislature passed legislation (House Bill 554) that establishes a cancer presumption for qualifying firefighters who submit to a medical test at the start of employment and who meet the specified service requirement for the type of cancer. The legislation specifies a standard for rebutting the presumption, where “substantial evidence to the contrary” is presented. If the presumption is rebutted, then the firefighter or the firefighter’s dependents must demonstrate that the cancer was caused by duties of employment. The legislation references 11 types of cancer, but indicates that the list is not exhaustive. Further legislation will be needed to extend or repeal the July 1, 2021, termination date.
In Illinois, Public Act 98-291 of 2013 provided that a rebuttable presumption that specified impairments that arose out of employment did not apply to emergency medical technicians and paramedics employed by private employers, under certain circumstances.

In Maine, the legislature overrode a veto from the Governor of Senate Paper 59 to add investigators and sergeants employed by the Office of the State Fire Marshal to the cancer presumption statute (Chapter 373 of 2015).

New Hampshire’s recent legislation, in turn, established a committee to study the establishment of a fund to reimburse costs associated with firefighters who develop cancer (Chapter 182 of 2014). The committee’s final report, issued on November 1, 2014, included a general finding to support a definitive link between firefighting and cancer and recommended that the state statute be reworded to more narrowly capture only work-related cancers. The report also recommended that firefighters demonstrate that they do not smoke and that they observe a 10-year “latency period of exposure before solid cancers can be detected.”

In 2016, the Georgia General Assembly passed legislation (House Bill 216) that would have established a general cancer presumption for qualifying firefighters based on a preponderance of the evidence. On May 3, 2016, however, Governor Deal vetoed the legislation, citing concerns about the low evidentiary threshold and other aspects of the legislation.

### Presumption Requirements

In a review of other state statutes, to be eligible for the cancer presumption, many states require firefighters or related personnel to (1) pass a medical examination before becoming a firefighter or related personnel; (2) serve a certain number of years; (3) not have used tobacco; or (4) not be older than a certain age.

As summarized in Exhibit 3, 35 states (including Maryland) mention cancer in their statutes. Of the 35 states:

- 22 states (including Maryland) require firefighters and related personnel to pass a medical examination before becoming a firefighter or related personnel (12 states are silent);
- 10 states (including Maryland) have a length of service requirement of 5 years, 3 states have less than 5 years, 6 states have more than 5 years, and 2 states (Idaho and New Mexico) have different service requirements for different types of cancer (14 states are silent);
- 10 states refer to tobacco use in determining eligibility (25 states (including Maryland) are silent); and
- 4 states have an age limit requirement.
### Exhibit 3

#### Presumption Requirements
Maryland and Other States

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Maryland</th>
<th>Other States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pass Medical (Physical) Exam</td>
<td>Yes</td>
<td>Yes: 20 – AK, AL, AZ, CO, ID, ME, MN, MO, ND, NE, NH, NM, NV, OK, PA, TN, UT, VA, VT, WA, WI Silent: 12 – CA, CT, IA, IL, IN, KS, LA, MA, OR, RI, SD, TX</td>
</tr>
<tr>
<td>Length of Service Requirement</td>
<td>5 years; increases to 10 years, effective June 1, 2013</td>
<td>2 years: 1 – KS* 3 years: 1 – AL 4 years: 1 – PA 5 years: 9 – CO, IL, MA, ME, MI, MO, ND, OR, VT 7 years: 1 – AK 8 years: 1 – UT 10 years: 3 – LA, WA, WI 12 years: 1 – VA Varies: 1 – ID*, NM* Silent: 14 – AZ, CA, CT, IA, IN, MN, NE, NH, NV, OK, RI, SD, TN, TX</td>
</tr>
<tr>
<td>References Tobacco Use</td>
<td>Silent</td>
<td>Yes: 11 – AK, AZ, ID, MI, MO, ND, OR, UT, VT, WA, WI Must not have smoked or used tobacco products: WI Must not have smoked tobacco products (for respiratory tract): AZ Silent: 24 – AL, CA, CO, CT, IA, IL, IN, KS, LA, MA, ME, MN, NE, NH, NM, NV, OK, PA, RI, SD, TN, TX, VA</td>
</tr>
<tr>
<td>Age Limit Requirement</td>
<td>Silent</td>
<td>Must be younger than 40 years old (for breast and testicular): ID and NM Must be younger than 50 years old (for prostate cancer): WA Must be younger than 55 years old (for prostate cancer): OR Must be younger than 65 years old: VT Must be 65 years old or younger: AZ</td>
</tr>
</tbody>
</table>

*For length of service requirement:

In Kansas (KS), a rebuttable presumption applies if a member contributes for at least 2 years or can provide clear and precise evidence that the cancer was “occasioned by an act of duty.”
In Idaho (ID), while the law remains in effect (until July 1, 2021), the following service requirements exist for different types of cancers:

- for bladder cancer, more than 12 years;
- for brain cancer, more than 10 years;
- for breast cancer, more than 5 years (if diagnosed before age of 40 without breast cancer 1 or breast cancer 2 genetic predisposition);
- for colorectal cancer, more than 10 years;
- for esophageal cancer, more than 10 years;
- for kidney cancer, more than 15 years;
- for leukemia, more than 5 years;
- for mesothelioma, more than 10 years;
- for multiple myeloma, more than 15 years;
- for non-Hodgkin’s lymphoma, more than 15 years; and
- for testicular cancer, more than 5 years (if diagnosed before age of 40 with no evidence of anabolic steroids or human growth hormone use).

In New Mexico (NM), a firefighter or related personnel is not eligible for the presumption until serving 5 years for leukemia, testicular cancer (if diagnosed before age of 40 with no evidence of anabolic steroids or human growth hormone use), breast cancer (if diagnosed before age of 40 without breast cancer 1 or breast cancer 2 genetic predisposition); 10 years for brain, colorectal, and esophageal cancers; 12 years for bladder and ureter cancers; and 15 years for kidney cancer, non-Hodgkin’s lymphoma, and multiple myeloma.

Source: State Statutes

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Filing a Claim Following Termination

In a review of other state statutes, many states limit the time when firefighters or related personnel may file a claim following termination.

As summarized in Exhibit 4, 35 states (including Maryland) mention cancer in their statutes. Of the 35 states:

- 22 states (including Maryland) are silent with regard to the deadline for filing a claim under the presumption statutes; and

- 13 states set a deadline in statute ranging from 3 months to 20 years in allowing the filing of a claim under the presumption statutes, depending on service years, age, or periodic examinations.
Exhibit 4
Deadline for Filing a Claim Following Termination
Maryland and Other States

<table>
<thead>
<tr>
<th>Deadline</th>
<th>Maryland</th>
<th>Other States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Silent</td>
<td>Yes</td>
<td>21 – AL, AZ, CO, CT, IA, IL, IN, KS, MA, MI, MN, MO, NM, OK, RI, SD, TN, TX, UT, VA, WI</td>
</tr>
<tr>
<td>3 months</td>
<td>1 – NE</td>
<td>4 – AK, LA, NV, WA</td>
</tr>
<tr>
<td>3 months per service year, up to 5 years</td>
<td>1 – CA</td>
<td></td>
</tr>
<tr>
<td>3 months per service year, up to 10 years</td>
<td>1 – ND</td>
<td></td>
</tr>
<tr>
<td>2 years if employed 10 years or less; 5 years if employed over 10 years</td>
<td>1 – PA</td>
<td></td>
</tr>
<tr>
<td>5 years and 40 weeks</td>
<td>1 – OR</td>
<td></td>
</tr>
<tr>
<td>7 years</td>
<td>1 – OR</td>
<td></td>
</tr>
<tr>
<td>10 years</td>
<td>2 – ID*, VT</td>
<td></td>
</tr>
<tr>
<td>10 years or prior to 70 years old, whichever is first</td>
<td>1 – ME</td>
<td></td>
</tr>
<tr>
<td>20 years if periodic exams</td>
<td>1 – NH</td>
<td></td>
</tr>
</tbody>
</table>

Source: State Statutes

*Idaho’s law contains a July 1, 2021, termination date.

Rebuttable Information Specified in State Statutes

In a review of other state statutes, many states specify the standard of evidence and other information relating to the rebuttability of a claim. Maryland statute is silent.

Preponderance of Evidence, Competent Evidence, or Prima Facie Evidence

- **Alaska:** Preponderance of evidence may include the use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

- **Alabama:** Municipality must prove by a preponderance of the evidence that the condition was caused by some means other than the occupation to disqualify the firefighter from benefits.
Colorado: Occupational disease shall not be deemed to result from the firefighter’s employment if the employer or insurer shows by a preponderance of the medical evidence that such condition or impairment did not occur on the job.

Massachusetts: When results in total disability or death, presumed to have been suffered in the line of duty if passed physical examination. Exception: shown by a preponderance of the evidence that nonservice-connected risk factors or nonservice-connected accidents or hazards or any combination caused such incapacity.

Virginia: The presumption may be overcome by a preponderance of competent evidence to the contrary.

Vermont: The firefighter shall be presumed to have suffered from cancer in the line of duty, unless it is shown by a preponderance of the evidence that the cancer was caused by nonservice-related risk factors or nonservice-connected exposure.

Missouri: The condition shall be presumed to have been suffered in the line of duty unless the contrary can be shown by competent evidence and it can be proven to a reasonable degree of medical certainty that the condition did not result nor was contributed to by the voluntary use of tobacco.

Nebraska: There is *prima facie* evidence presumed that such death or disability resulted from injuries, accident, or other causes while in the line of duty.

New Hampshire: A firefighter shall have the benefit of this *prima facie* presumption only if there is on record reasonable medical evidence that such firefighter was free of such disease at the beginning of his/her employment. It shall be the duty of the employer to provide the required reasonable medical evidence. If the employer fails to do so, the firefighter shall have the benefit of the *prima facie* presumption regardless of the absence of said reasonable medical evidence.

Utah: To be entitled to the rebuttable presumption of “presumptive cancer,” a firefighter must (1) undergo annual physical examinations during employment; (2) have been employed for at least 8 years and regularly responded to firefighting or emergency calls during that period; and (3) if the firefighter used tobacco, provide documentation from a physician that the firefighter has not used tobacco products for the 8 years preceding reporting the cancer. A presumption may be rebutted by a preponderance of the evidence.
Presumed Unless Competent Medical Evidence

- **Tennessee:** Any county with a metropolitan form of government with a population of 400,000 or more may establish by ordinance a presumption that any impairment of health of such firefighter caused by disease or cancer resulting in hospitalization, medical treatment, or any disability or death, shall be presumed, unless the contrary is shown by competent medical evidence, to have occurred or to be due to accidental injury suffered in the course of employment.

Rebuttably Presumed

- **Illinois:** The condition resulting in any disability to the employee shall be rebuttably presumed to arise out of and in the course of the employee’s firefighting and shall be rebuttably presumed to be causally connected to the hazards or exposures of the employment.

Rebutted by Competent Evidence, Evidence Meeting Judicial Standards, Clear and Convincing Evidence, or Preponderance of the Evidence

- **Idaho:** The presumption may be rebutted where substantial evidence to the contrary is presented. If the presumption is rebutted, then the firefighter or the firefighter’s dependents must demonstrate that the cancer was caused by duties of employment.

- **Indiana:** Presumption may be rebutted by competent evidence; meeting or hearing held to rebut the presumption may be held as an executive session.

- **Pennsylvania:** The presumption may be rebutted by substantial competent evidence that shows that the firefighter’s cancer was not caused by the occupation of firefighting.

- **Louisiana:** Presumption shall be rebuttable by evidence meeting judicial standards.

- **North Dakota:** The presumption may be rebutted by clear and convincing evidence the condition or impairment is not work-related. Periodic medical exams are required every 5 years for 1 to 10 years of service, every 3 years for 11 to 20 years of service, and every year for 21 or more years of service. Exam must include a general medical history of the individual and the individual’s family. Employee is required to document that the employee has not used tobacco. Results of exams must be used in rebuttal to a presumption.

- **Oregon:** Denial of a claim for any condition or impairment of health arising under this section must be on a basis of clear and convincing medical evidence that the condition or impairment was not caused or contributed to in material part by the firefighter’s employment. The presumption may be rebutted by clear and convincing evidence that the use of tobacco by the firefighter is the major contributing cause of cancer.
New Mexico: The disease is presumed to be proximately caused by employment as a firefighter. The presumption may be rebutted by a preponderance of evidence showing that the firefighter engaged in conduct or activities outside of employment that posed a significant risk of contracting or developing a described disease.

Michigan: “Neither mere evidence that the condition was preexisting, nor an abstract medical opinion that the employment was not the cause of the disease or condition, is sufficient to overcome the presumption for purposes of a claim against the first responder presumed coverage fund. The presumption may be rebutted by scientific evidence that the member of the fully paid fire department or public fire authority was a substantial and consistent user of cigarettes or other tobacco products within the 10 years immediately preceding the date of injury, and that this use was a significant factor in the cause, aggravation, or progression of the cancer.”

Disputable and May Be Controverted By Evidence

California: Presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disablinng cancer.

Rebuttable Presumption: Contributing Member

Kansas: Rebuttable presumption except if contributing member ceases to be a contributing member due to disability for six months or more and then becomes a contributing member; shall not apply until member contributes for at least two years or can provide clear and precise evidence that the cancer was occasioned by an act of duty by the firefighter. If the retirement system receives evidence to the contrary of a presumption, the burden of proof shall be on the member or other party to present evidence that the disease was service connected.

Rebuttable Presumption Unless Evidence to Rebut

Nevada: This rebuttable presumption must control the awarding of benefits pursuant to this section unless evidence to rebut the presumption is presented. The provisions of this section do not create a conclusive presumption.

Rebuttable Presumption by Preponderance of Evidence

Texas: Rebuttable through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual’s service as a firefighter or emergency medical technician caused the individual’s disease or illness. Limited applicability.
• **Washington:** There is a *prima facie* presumption that cancer is an occupational disease. The presumption may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

**Sign Affidavit Declaring No Exposure**

• **Maine:** In order to qualify for the presumption, a firefighter must sign a written affidavit declaring, to the best of the firefighter’s knowledge and belief, that the firefighter’s diagnosed cancer is not prevalent among the firefighter’s blood-related parents, grandparents, or siblings and that the firefighter has *no substantial lifetime exposures* to carcinogens that are associated with the firefighter’s diagnosed cancer other than exposure through firefighting.

**Finding of Cancer is Presumptive Evidence**

• **Wisconsin:** Where the disability or death is found to be caused by cancer, such finding shall be presumptive evidence that the cancer was caused by such employment.

**Recent Study by the National Institute for Occupational Safety and Health (NIOSH)**

Beginning in 2010, NIOSH undertook a multi-year effort to study the incidence of cancer in firefighters to determine whether job exposures put them at higher risk as compared with the general public. Considered as the first phase of examining health effects in career firefighters, the study included data from 30,000 current and retired firefighters (followed from 1950 to 2009) from three fire departments (Chicago, Philadelphia, and San Francisco). On October 14, 2013, NIOSH issued the first manuscript of the study, which contains the following findings, as well as other findings.

• The most recent newsletter from NIOSH providing a progress update on the study indicated that, compared to the general United States population, “certain cancers were modestly increased in…firefighters” – specifically, digestive, oral, respiratory, and urinary system cancers.

• Additionally, the researchers found that some cancers (prostate and bladder) occurred at higher than expected rates among younger firefighters (those under the age of 65) and that there were approximately twice as many malignant mesothelioma cancers than expected (suggesting the presence of an occupational disease from asbestos hazards).
NIOSH anticipated subsequent analyses of firefighter risks, including exposure metrics related to detailed employment histories (i.e., number and type of fire runs) and institutional knowledge (i.e., use of respiratory protection) and to women and non-Caucasian firefighters. In January 2015, NIOSH released a second manuscript, which contained the following findings, as well as other findings.

- Among 19,309 male firefighters eligible for the study, there were 1,333 cancer deaths and 2,609 cancer incidence cases.

- Significant positive associations between fire-hours (exposure level) and lung cancer mortality and incidence were evident; a similar relationship exists between leukemia mortality and fire-runs. The lung cancer associations were nearly linear in cumulative exposure, while the association with leukemia mortality was attenuated at higher exposure levels and greater for recent exposures.

- “Significant negative associations were evident for the exposure surrogates and colorectal and prostate cancers, suggesting a healthy worker survivor effect possibly enhanced by medical screening.”

In June 2015, a third manuscript evaluated methods of exposure to determine whether duration of employment, which is often presumed to cause exposure, contributes to misclassification of the cause of exposure. Methods of exposure included duration of employment (cumulative time with a standardized exposed job title and assignment), fire-runs (cumulative events of potential fire exposure) and time at fire (cumulative hours of potential fire exposure). NIOSH’s findings, among others, included a finding that misclassification can occur in up to 30% of a study population when using duration of employment as a surrogate for exposure compared with other metrics. The manuscript recommended that future studies on firefighters should use other metrics of exposure beyond simply using duration of employment.

In July 2016, NIOSH released a fact sheet summarizing findings from its study. In addition to the findings, the fact sheet recommended steps that fire service and firefighters could take to mitigate the impact. For fire service, NIOSH recommended efforts to raise awareness and prevent exposure through education about safe work practices, including training, use of protective clothing, and use of approved respiratory protection during all phases of firefighting. For firefighters, NIOSH recommended sharing the study with their respective physician to ensure that the physician is aware of possible job-related health concerns. The fact sheet is available here: http://www.cdc.gov/niosh/pgm/s/worknotify/pdfs/ff-cancer-factsheet-final.pdf.

NIOSH has not published any updates to the study since July 2016.
Appendix 1

THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991
April 9, 2012

Mr. Warren Deschenaux
Director, Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Dear Mr. Deschenaux:

We request that the Department of Legislative Services, in consultation with the Workers’ Compensation Commission and others as determined by the department, study the workers’ compensation cancer presumption statutes in the State and in other states.

Specifically, we request that the department:

- identify the evidentiary standards for rebuttability under the workers’ compensation cancer presumption statutes in the State and in other states;

- identify the types of cancers that other states include in their workers’ compensation cancer presumption statutes for firefighters and related personnel, as specified under the workers’ compensation cancer presumption statute, including any rationale for including the types of cancers in their law, if available;

- determine whether there is an evidentiary standard for rebuttability other than the Thayer-Wigmore standard or the Morgan standard in which both firefighters and related personnel, as specified under the workers’ compensation cancer presumption statute, and local governments may fairly present their respective cases to the Workers’ Compensation Commission as to whether a specific cancer contracted by a firefighter or related personnel is compensable under workers’ compensation law;

- identify the costs of the wage provisions related to the workers’ compensation cancer presumptions in the State, as specified under §§ 9-503(e) and 9-610(a) of the Labor and Employment Article, and in other states; and

- consider any other relevant matter in relation to the workers’ compensation cancer presumption statutes.
We also request that the Workers' Compensation Benefit and Insurance Oversight Committee convene to discuss the department's preliminary findings.

Lastly, we request that the department report to the Senate Finance Committee and the House Economic Matters Committee on or before December 20, 2012, with its findings and any recommendations of the oversight committee.

Sincerely,

Senator Thomas McLain Middleton, Chair
Senate Finance Committee

Delegate E. Dereck Davis, Chair
House Economic Matters Committee

Senator Katherine Klausmeier, Senate Chair
Workers' Compensation Benefit and Insurance Oversight Committee

Delegate Sally Y. Jameson, House Chair
Workers' Compensation Benefit and Insurance Oversight Committee

cc: President Thomas V. Mike Miller, Jr.
Speaker Michael E. Busch
Ms. Vicki Gruber
Ms. Kristin Jones
Mr. David Stamper
Appendix 2  
§ 9-503 Legislative History

The General Assembly has changed Maryland’s occupational disease presumption law in three respects. In particular, the legislature has expanded the statute to (1) cover additional types of personnel (“personnel”); (2) cover additional diseases (“disease”); and (3) allow persons with compensable claims to receive both workers’ compensation and retirement benefits up to the amount of weekly salary (“benefits”). This appendix summarizes the changes in those categories by year.

Chapter 695 of 1971

- Enacted Article 101, § 64A of the 1957 Annotated Code of Maryland:

  Any condition or impairment of health of any municipal, county, airport authority, or fire control district firefighter caused by lung diseases, heart diseases, or hypertension resulting in total or partial disability or death shall be presumed to be compensable under this article and to have been suffered in the line of duty and as a result of his employment.

  Notwithstanding any provision of this article, any paid firefighter whose compensable claim results from a condition or impairment of health caused by lung diseases, heart diseases, or hypertension and has been suffered in the line of duty shall receive such benefits as are provided for in this article in addition to such benefits as he may be entitled to under the retirement system in which said firefighter was a participant at the time of his claim. The benefits received under this article, however, shall be adjusted so that the total of all weekly benefits shall not exceed one hundred percent of the weekly salary which was paid to said firefighter.

- **Personnel** – Added any paid municipal, county, airport authority, or fire control district firefighter.

- **Disease** – Created a presumption for “lung diseases, heart diseases, or hypertension resulting in total or partial disability or death” for firefighters and related personnel.

- **Benefits** – Entitled “any paid firefighter” to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.
Chapter 281 of 1972

- **Personnel** – Added any paid State, municipal, county, or airport authority police officer.

- **Disease** – Created a presumption for “any condition or impairment of health… caused by heart diseases or hypertension resulting in total or partial disability or death” for police officers and related personnel.

- **Benefits** – Entitled “any paid police officer” to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

Chapter 598 of 1975

- **Personnel** – Added volunteer fireman or rescue squad member “if that person has met a suitable standard of physical examination for membership.”

- **Disease** – Created a presumption for “lung diseases, heart diseases, or hypertension” for volunteer firefighters and rescue squad members.

- **Benefits** – No change unless some “rescue squad members” qualify for the benefits as “paid firefighters” under the then existing language of § 64A. Otherwise, the reference to “paid firefighter” would seem to exclude both types of personnel from receiving both workers’ compensation benefits and retirement benefits.

Chapter 388 of 1977

- **Personnel** – Added Maryland-National Capital Park and Planning Commission police officers to the heart disease or hypertension presumption. (Note: Chapter 98 of 2008 uses the term “park police officer” of the Maryland-National Capital Park and Planning Commission in reference to the Lyme disease presumption. The terms “police officer” and “park police officer” may cover the same type of personnel.)

- **Disease** – No change.

- **Benefits** – No express statutory change, but the personnel could be entitled to both workers’ compensation and retirement benefits under the general phrase “any paid police officer whose compensable claim results from a condition or impairment of health caused by heart disease or hypertension and has been suffered in the line of duty.”
Chapter 547 of 1978

- **Personnel** –
  - Added State firefighter and firefighting instructor to the lung disease, heart disease, or hypertension presumption.
  - Added firefighting instructor to the presumption for volunteers who meet a suitable standard of physical examination for membership.

- **Disease** – No change.

- **Benefits** – Entitled State firefighters and firefighting instructors to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

Chapter 760 of 1985

- **Personnel** – No change.

- **Disease** –
  - Created a presumption for “throat, prostate, rectal, and pancreatic cancer or leukemia that is caused by contact with toxic substances that the firefighter or firefighting instructor has encountered in the line of duty” if the person (1) served five years or more in the department where the person currently serves and (2) is unable to perform his or her normal duties because of cancer disability.
  - Expanded the presumption for volunteer firemen, firefighting instructors, and rescue squad members to include throat, prostate, rectal, and pancreatic cancer or leukemia.

- **Benefits** – Entitled firefighters and related personnel whose compensable claims result from throat, prostate, rectal, and pancreatic cancer or leukemia to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

Chapter 8 of 1991

- Code Revision transferred Article 101 § 64A to Labor and Employment § 9-503 and re-organized the statute by disease (heart disease, hypertension, lung disease; heart disease or hypertension; cancer). No substantive changes.
Chapter 341 of 1992

- **Personnel** – Added deputy sheriff of Montgomery County to the heart disease or hypertension presumption.

- **Disease** – No change.

- **Benefits** – Entitled deputy sheriffs of Montgomery County to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

Chapter 118 of 1996

- **Personnel** –
  
  - Added volunteer advanced life support unit member to the heart disease, hypertension, or lung disease presumption so long as the member also meets a suitable physical examination standard.
  
  - Added volunteer advanced life support unit member to the throat, prostate, rectal, and pancreatic cancer or leukemia presumption if the member also meets a suitable physical examination standard.

- **Disease** – No change.

- **Benefits** – No change.

Chapter 637 of 1996

- **Personnel** –
  
  - Added Prince George’s County deputy sheriff to the heart disease or hypertension presumption if the person (1) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension and (2) submits to a medical examination prior to employment to determine any preexisting condition.
  
  - In the case of deputy sheriffs hired on or before September 30, 1996, the person would be required to (1) provide a medical report by December 31, 1996, disclosing any heart disease or hypertension and (2) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension.

- **Disease** – No change.
• **Benefits** – Entitled Prince George’s County deputy sheriffs to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

**Chapter 446 of 1998**

• **Personnel** –
  - Added “sworn member of the Office of the State Fire Marshal” to the heart disease, hypertension, or lung disease presumption.
  - Added “sworn member of the Office of the State Fire Marshal” to the throat, prostate, rectal, and pancreatic cancer or leukemia presumption.

• **Disease** – No change.

• **Benefits** – Entitled “sworn member of the Office of the State Fire Marshal” to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

**Chapter 179 of 1999**

• **Personnel** – Added Lyme disease presumption to cover paid law enforcement employees of the Department of Natural Resources who (1) suffer from Lyme disease; (2) were not suffering from Lyme disease before being assigned to an outdoor wooded environment; and (3) received a vaccination provided by the Department of Natural Resources, unless objected on the basis of bona fide religious beliefs and practices.

• **Disease** – Created a presumption for Lyme disease.

• **Benefits** – Entitled paid law enforcement employees of the Department of Natural Resources to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.
Chapter 160 of 2000

- **Personnel** –
  
  - Added Prince George’s County correctional officer to heart disease or hypertension presumption if the person (1) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension and (2) submits to a medical examination prior to employment to determine any preexisting condition.

  - In the case of correctional officers hired on or before September 30, 2000, the person would be required to (1) provide a medical report by December 31, 2000, disclosing any heart disease or hypertension and (2) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension.

- **Disease** – No change.

- **Benefits** – Entitled Prince George’s County correctional officers to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

Chapter 107 of 2003

- **Personnel** –
  
  - Added deputy sheriff of Baltimore City to heart disease or hypertension presumption if the person (1) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension and (2) submits to a medical examination prior to employment to determine any preexisting condition.

  - In the case of deputy sheriffs hired on or before September 30, 2003, the person would be required to (1) provide a medical report by December 31, 2003, disclosing any heart disease or hypertension and (2) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension.

- **Disease** – No change.

- **Benefits** – Entitled deputy sheriffs of Baltimore City to workers’ compensation benefits.
Chapter 553 of 2005

- **Personnel** –
  - Added Montgomery County correctional officer to heart disease or hypertension presumption if the person (1) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension and (2) submits to a medical examination prior to employment to determine any preexisting condition.
  - In the case of correctional officers hired on or before September 30, 2005, the person would be required to (1) provide a medical report by December 31, 2005, disclosing any heart disease or hypertension and (2) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension.

- **Disease** – No change.

- **Benefits** – Entitled Montgomery County correctional officers to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

Chapter 270 of 2006

- Repealed the requirement that an employee of the Department of Natural Resources demonstrate receipt of a Lyme disease vaccination in order to qualify for the presumption.

- **Personnel** – No change.

- **Disease** – No change.

- **Benefits** – No change.

Chapters 350 and 351 of 2007

- **Personnel** – No change.

- **Disease** – No change.

- **Benefits** – Entitled dependents of eligible individuals to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.
Chapter 98 of 2008

- **Personnel** – Added park police officer of the Maryland-National Capital Park and Planning Commission to the Lyme disease presumption effective October 1, 2008, through September 30, 2015, if the person applied for the benefits (1) during the time the person was assigned to an outdoor wooded environment or (2) within three years after the last date that the person was assigned to an outdoor wooded environment. (Note: Chapter 388 of 1977 uses the term “police officer” of the Maryland-National Capital Park and Planning Commission in reference to the heart disease or hypertension presumption. The terms “police officer” and “park police officer” may cover the same type of personnel.)

- **Disease** – No change.

- **Benefits** – Entitled park police officer of the Maryland-National Capital Park and Planning Commission to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

Chapter 709 of 2009

- **Personnel** – Added “employee of the Maryland-National Capital Park and Planning Commission other than a park police officer” to the Lyme disease presumption effective October 1, 2009, through September 30, 2015, if the person (1) suffers from Lyme disease; (2) was not suffering from Lyme disease before assignment to an outdoor wooded environment; (3) was not a seasonal or intermittent employee for the 12-month period before filing the claim; (4) has been employed full-time; (5) has been assigned to an outdoor wooded environment for at least one year; and (6) has filed the claim on or before the third anniversary of the last date the employee was assigned to an outdoor wooded environment.

- **Disease** – No change.

- **Benefits** – Entitled “employee of Maryland-National Capital Park and Planning Commission” to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

Chapters 75 and 76 of 2010

- **Personnel** – Added deputy sheriff of Allegany County to the heart disease or hypertension presumption.

- **Disease** – No change.
• **Benefits** – No express statutory change, so the deputy sheriff would not likely be entitled to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary based on the specificity of the list of entitled personnel.

**Chapter 584 of 2011**

• **Personnel** –
  
  • Added deputy sheriff of Anne Arundel County to heart disease or hypertension presumption if the person (1) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension and (2) submits to a medical examination prior to employment to determine any preexisting condition.
  
  • In the case of deputy sheriffs hired on or before September 30, 2011, the person would be required to (1) provide a medical report by December 31, 2011, disclosing any heart disease or hypertension and (2) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension.

• **Disease** – No change.

• **Benefits** – Entitled deputy sheriff of Anne Arundel County to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

**Chapter 445 of 2012**

• **Personnel** – Raised the minimum service requirement for personnel to be eligible for the cancer presumption from 5 years to 10 years.

• **Disease** – Eliminated the presumption for pancreatic cancer and added multiple myeloma, non-Hodgkin’s lymphoma, brain, testicular, and breast cancers to the existing cancer presumption.

• **Benefits** – No change.
Chapter 374 of 2014

- **Personnel** –
  - Added “paid rescue squad member” and “paid advanced life support unit member” to the heart disease, hypertension, or lung disease presumption.
  - Added “paid rescue squad member” and “paid advanced life support unit member” to the cancer presumption.

- **Disease** – No change.

- **Benefits** – Entitled “paid rescue squad member” and “paid advanced life support unit member” to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

Chapter 629 of 2014

- **Personnel** – Made permanent a provision that entitles a park police officer of the Maryland-National Capital Park and Planning Commission to benefit from the Lyme disease presumption if the person applied for the benefits (1) during the time the person was assigned to an outdoor wooded environment or (2) within three years after the last date that the person was assigned to an outdoor wooded environment.

- **Disease** – No change.

- **Benefits** – Made permanent the entitlement of a park police officer of the Maryland-National Capital Park and Planning Commission to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.

Chapter 324 of 2015

- **Personnel** –
  - Added detention officer of Anne Arundel County to heart disease or hypertension presumption if the person (1) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension and (2) submits to a medical examination prior to employment to determine any preexisting condition.
  - In the case of deputy sheriffs hired on or before September 30, 2015, the person would be required to (1) provide a medical report by December 31, 2015, disclosing
any heart disease or hypertension and (2) suffers from heart disease or hypertension that is “more severe” than any preexisting heart disease or hypertension.

- **Disease** – No change.

- **Benefits** – Entitled detention officer of Anne Arundel County to workers’ compensation benefits and retirement benefits up to the amount of the weekly salary.
Appendix 3
§ 9-503 Personnel and Diseases

Heart Disease, Hypertension, and Lung Disease Presumption (§ 9-503(a))

Personnel

- paid firefighter
- paid firefighting instructor
- paid rescue squad member
- paid advanced life support unit member
- sworn member of the Office of the State Fire Marshal employed by an airport authority
- sworn member of the Office of the State Fire Marshal employed by a county
- sworn member of the Office of the State Fire Marshal employed by a fire control district
- sworn member of the Office of the State Fire Marshal employed by a municipality
- sworn member of the Office of the State Fire Marshal employed by the State
- volunteer firefighter*
- volunteer firefighting instructor*
- volunteer rescue squad member*
- volunteer advanced life support unit member who is a covered employee under § 9-234*

*Must meet a suitable standard of physical examination before being hired.

Heart Disease and Hypertension Presumption (§ 9-503(b))

Personnel

- paid police officer employed by an airport authority
- paid police officer employed by a county
- paid police officer employed by the Maryland-National Capital Park and Planning Commission
- paid police officer employed by a municipality
- paid police officer employed by the State
- deputy sheriff of Montgomery County
- deputy sheriff of Anne Arundel County*
- deputy sheriff of Baltimore City*
- Montgomery County correctional officer*
- Prince George’s County deputy sheriff*
- Prince George’s County correctional officer*
- deputy sheriff of Allegany County
- detention officer of Anne Arundel County*

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*Only to the extent that the individual suffers from heart disease or hypertension that is more severe than the individual’s heart disease or hypertension condition existing prior to being hired; and must submit to a medical examination to determine any heart disease or hypertension condition existing prior to being hired.

Cancer Presumption (§ 9-503(c))

**Personnel**

- paid firefighter
- paid firefighting instructor
- paid rescue squad member
- paid advanced life support unit member
- sworn member of the Office of the State Fire Marshal employed by an airport authority
- sworn member of the Office of the State Fire Marshal employed by a county
- sworn member of the Office of the State Fire Marshal employed by a fire control district
- sworn member of the Office of the State Fire Marshal employed by a municipality
- sworn member of the Office of the State Fire Marshal employed by the State
- volunteer firefighter*
- volunteer firefighting instructor*
- volunteer rescue squad member*
- volunteer advanced life support unit member**

*Must be a covered employee under § 9-234.
**Must meet a suitable standard of physical examination before being hired.

**Cancers**

- leukemia
- prostate cancer
- rectal cancer
- throat cancer
- multiple myeloma cancer
- non-Hodgkin’s lymphoma cancer
- brain cancer
- testicular cancer
- breast cancer

Notes:
(1) Caused by contact with a toxic substance that the individual has encountered in the line of duty.
(2) Has completed at least 5 years of service as an individual under presumption.
(3) Is unable to perform the normal duties of an individual under presumption.
Lyme Disease Presumption (§ 9-503(d))

Personnel

• paid law enforcement employee of the Department of Natural Resources*, **
• park police officer of the Maryland-National Capital Park and Planning Commission**, ***

*Must be a covered employee under §9-207.

**Was not suffering from Lyme disease before assignment to a position that regularly places the individual in an outdoor wooded environment.

***Only applies during the time that the individual is assigned to a position that regularly places the individual in an outdoor wooded environment and for three years after the last date that the individual was assigned to a position that regularly placed the individual in an outdoor wooded environment.

Note: Effective October 1, 2015, employees of the Maryland-National Capital Park and Planning Commission are no longer entitled to the presumption, which previously applied only if for the 12-month period before the filing of a workers’ compensation claim, the individual had not been employed by the Maryland-National Capital Park and Planning Commission as a seasonal or intermittent employee; and had been employed by the Maryland-National Capital Park and Planning Commission on a full-time basis; the individual’s assignment to a position that regularly placed the individual in an outdoor wooded environment lasted for at least one year; and the individual filed a workers’ compensation claim on or before the third anniversary of the last date that the individual was assigned to a position that regularly placed the individual in an outdoor wooded environment. Additionally, as with the two remaining types of personnel covered by the presumption, the employees must not have been suffering from Lyme disease before assignment to a position that regularly places the individual in an outdoor wooded environment.
The Honorable Martin O’Malley  
Governor, State of Maryland  
100 State Circle  
Annapolis, Maryland 21401-1925

Date: February 14, 2013

Subject: SB681 & HB1314 - Workers Compensation - Medical Presumptions

Dear Governor O’Malley,

Senate Bill 681 and House Bill 1314 have been introduced in the respective chambers of the Maryland General Assembly. These bills, as introduced, would delay the implementation of coverage for new cancers that were enacted in House Bill 1101, sponsored by your administration, during the 2012 legislative session.

HB 1101 that was signed into law provided for a study to be conducted. The purpose of the study was to identify the types of cancers fire fighters and others are likely to contract in the line of duty and to provide guidance to the General Assembly on possible future legislative changes.

There are two issues at hand that have precluded the study from being conducted. First is finding funding for the estimated $480,000 cost to conduct the study. Second is an agreement of the various stakeholders concerning who will conduct the study.

Funding for the study has been a considerable obstacle. The Maryland Association of Counties (MACO) has offered to provide approximately $280,000 dollars towards the cost of the study. The remaining $200,000 would be covered by the Administration from sources that are currently in the approved budget or by other means the Administration deems appropriate. The Professional Fire Fighters of Maryland strongly objects to MACO providing any funding for the study whatsoever. It was, and has always been, the intent for the study be conducted using funds, if necessary, from sources other-than the stakeholders. We believe that allowing MACO to provide approximately fifty eight percent (58%) of the funding for the study creates an impermissible intrusion into the neutrality of the study to be conducted.
Originally, the various stakeholders mutually agreed to contract with Cheung OEM Group to conduct the study in accordance with guidelines set forth in HB1101. The Professional Fire Fighters of Maryland have withdrawn, for just cause, our support for Dr. Cheung and/or his associates for the reasons set forth below.

In December of 2012 during a jury trial conducted in the Circuit Court for Baltimore County on an appeal of a decision by the Workers Compensation Commission Dr. Cheung testified as an “expert medical witness” on behalf of Baltimore County Government.

Dr. Cheung testified, consistent with his medical report, that the employee’s lung disease had nothing to do with the employee’s long term employment and exposure as a fire fighter. On cross-examination Dr. Cheung admitted that while he was aware of the Maryland presumption law (Section 9-503 of the Labor & Employ. Art., Md. Ann. Code) that fire fighters and first responders who have lung disease are presumed to have suffered a compensable occupational disease, he believed that: (1) there was no good literature to support the basis for the presumption; that (2), he did not believe the exposures that fire fighters and first responders encounter could cause or contribute to the development of lung disease; and (3), that fire fighters in general were not at a higher risk for developing lung disease as compared to other workers. Such testimony is both contrary to the existing law and the several decisions on the specific subject by the Court of Appeals. [City of Frederick v. Shankle 367 Md. 5, 785 A.2d 749 (2001) & Montgomery County v. Pirrone 109 Md. App. 201, 674 A.2d 98 (1996)]

A motion was made to strike Dr. Cheung’s testimony as it was inconsistent with Maryland law and would only serve to mislead or confuse the jury, as stated above, since the law is clear that fire fighters and first responders who have lung disease are presumed to suffer from a compensable occupational disease. Dr. Cheung’s testimony that there is no medical basis to support the law was, therefore, at best, improper. The trial court granted the motion and Dr. Cheung’s testimony was stricken from the record.

We believe that in light of Dr. Chueng’s sworn testimony in open Court that Dr. Chueng and/or his associates should be disqualified from consideration to conduct the study that is referenced in HB 1101. It is clear that Dr. Chueng’s underlying biased philosophy concerning workers’ compensation medical presumptions for fire fighters is not only in direct contradiction to the law in this State, but also creates a fundamental conflict of interest that is irreconcilable.

The time frame for the study has come and gone. For the reasons expressed herein the study was unable to be conducted in a timely manner. We are strongly opposed to any delay in the implementation of the new cancers that were added to the workers compensation law by HB 1101. Final passage of HB 1101 provided for a delay in the effective date until June 1, 2013 in order to allow time for the study to be conducted. That delay was a compromise by the fire fighters in order to come to a mutual agreement among all the stakeholders. Now those same stakeholders are asking the fire fighters to compromise again because the General Assembly could not get the study they wanted done in the time frame required under the law. This is unacceptable. None of this even touches upon the delay for that our brothers and sisters who are suffering from these cancers who would have to wait several more years, should they survive, to even be able to file a claim.
As an alternative that would resolve both the issue of funding and the neutrality of the study we urge the stakeholders to give serious consideration to the National Institute for Occupational Safety and Health (NIOSH)/Center for Disease Control and Prevention (CDC) Study of Fire Fighter Cancers that is currently being conducted and is expected to be completed by the end of the year. Once that study is issued all the stakeholders can review those findings and make a determination if any changes to the presumptive law that goes into effect on June 1, 2013 are necessary.

We are asking for the strong support of the Administration in opposing SB681 & HB1314 to ensure that Maryland’s fire fighters are protected under the law currently scheduled to go into effect June 1, 2013 without any further and unnecessary delay.

Sincerely,

Michael B. Rund
President

cc: Mike Thomas V. Miller, Jr., Senate President
    Michael E. Bush, House Speaker
    Thomas M. Middleton, Chairman, Senate Finance Committee
    Dereck E. Davis, Chairman, House Economic Matters Committee
    Members, Senate Finance Committee
    Members, House Economic Matters Committee
    John P. McDonough, Secretary of State
    PFFMD Executive Board
    PFFMD Affiliate Local Presidents
    Maryland State Fireman’s Association
    Maryland Association of Counties