

House Bill 2349

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes presumption that certain bloodborne diseases are compensable occupational diseases for public safety officers.

A BILL FOR AN ACT

1
2 Relating to workers' compensation claims for bloodborne diseases by public safety officers; amending
3 ORS 656.802.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 656.802 is amended to read:

6 656.802. (1)(a) As used in this chapter, "occupational disease" means any disease or infection
7 arising out of and in the course of employment caused by substances or activities to which an em-
8 ployee is not ordinarily subjected or exposed other than during a period of regular actual employ-
9 ment therein, and which requires medical services or results in disability or death, including:

10 (A) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with
11 dust, fumes, vapors, gases, radiation or other substances.

12 (B) Any mental disorder, whether sudden or gradual in onset, which requires medical services
13 or results in physical or mental disability or death.

14 (C) Any series of traumatic events or occurrences which requires medical services or results in
15 physical disability or death.

16 (b) As used in this chapter, "mental disorder" includes any physical disorder caused or worsened
17 by mental stress.

18 (2)(a) The worker must prove that employment conditions were the major contributing cause of
19 the disease.

20 (b) If the occupational disease claim is based on the worsening of a preexisting disease or con-
21 dition pursuant to ORS 656.005 (7), the worker must prove that employment conditions were the
22 major contributing cause of the combined condition and pathological worsening of the disease.

23 (c) Occupational diseases shall be subject to all of the same limitations and exclusions as acci-
24 dental injuries under ORS 656.005 (7).

25 (d) Existence of an occupational disease or worsening of a preexisting disease must be estab-
26 lished by medical evidence supported by objective findings.

27 (e) Preexisting conditions shall be deemed causes in determining major contributing cause under
28 this section.

29 (3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable
30 under this chapter unless the worker establishes all of the following:

31 (a) The employment conditions producing the mental disorder exist in a real and objective sense.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) The employment conditions producing the mental disorder are conditions other than condi-
 2 tions generally inherent in every working situation or reasonable disciplinary, corrective or job
 3 performance evaluation actions by the employer, or cessation of employment or employment deci-
 4 sions attendant upon ordinary business or financial cycles.

5 (c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the
 6 medical or psychological community.

7 (d) There is clear and convincing evidence that the mental disorder arose out of and in the
 8 course of employment.

9 (4) Death, disability or impairment of health of firefighters of any political division who have
 10 completed five or more years of employment as firefighters, caused by any disease of the lungs or
 11 respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment
 12 as firefighters is an "occupational disease." Any condition or impairment of health arising under this
 13 subsection shall be presumed to result from a firefighter's employment. However, any such fire-
 14 fighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto,
 15 which failed to reveal any evidence of such condition or impairment of health which preexisted
 16 employment. Denial of a claim for any condition or impairment of health arising under this sub-
 17 section must be on the basis of clear and convincing medical evidence that the cause of the condi-
 18 tion or impairment is unrelated to the firefighter's employment.

19 (5)(a) Death, disability or impairment of health of a nonvolunteer firefighter employed by a pol-
 20 itical division or subdivision who has completed five or more years of employment as a nonvolunteer
 21 firefighter is an occupational disease if the death, disability or impairment of health:

22 (A) Is caused by brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer,
 23 multiple myeloma, non-Hodgkin's lymphoma, cancer of the throat or mouth, rectal cancer, breast
 24 cancer or leukemia;

25 (B) Results from the firefighter's employment as a nonvolunteer firefighter; and

26 (C) Is first diagnosed by a physician after July 1, 2009.

27 (b) Any condition or impairment of health arising under this subsection is presumed to result
 28 from the firefighter's employment. Denial of a claim for any condition or impairment of health aris-
 29 ing under this subsection must be on the basis of clear and convincing medical evidence that the
 30 condition or impairment was not caused or contributed to in material part by the firefighter's em-
 31 ployment.

32 (c) Notwithstanding paragraph (b) of this subsection, the presumption established under para-
 33 graph (b) of this subsection may be rebutted by clear and convincing evidence that the use of to-
 34 bacco by the nonvolunteer firefighter is the major contributing cause of the cancer.

35 (d) The presumption established under paragraph (b) of this subsection does not apply to pro-
 36 state cancer if the cancer is first diagnosed by a physician after the firefighter has reached the age
 37 of 55. However, nothing in this paragraph affects the right of a firefighter to establish the
 38 compensability of prostate cancer without benefit of the presumption.

39 (e) The presumption established under paragraph (b) of this subsection does not apply to claims
 40 filed more than 84 months following the termination of the nonvolunteer firefighter's employment
 41 as a nonvolunteer firefighter. However, nothing in this paragraph affects the right of a firefighter
 42 to establish the compensability of the cancer without benefit of the presumption.

43 (f) The presumption established under paragraph (b) of this subsection does not apply to volun-
 44 teer firefighters.

45 (g) Nothing in this subsection affects the provisions of subsection (4) of this section.

1 (h) For purposes of this subsection, “nonvolunteer firefighter” means a firefighter who performs
 2 firefighting services and receives salary, hourly wages equal to or greater than the state minimum
 3 wage, or other compensation except for room, board, lodging, housing, meals, stipends, reimburse-
 4 ment for expenses or nominal payments for time and travel, regardless of whether any such com-
 5 pensation is subject to federal, state or local taxation. “Nominal payments for time and travel”
 6 includes, but is not limited to, payments for on-call time or time spent responding to a call or similar
 7 noncash benefits.

8 (6) Notwithstanding ORS 656.027 (6), any city providing a disability and retirement system by
 9 ordinance or charter for firefighters and police officers not subject to this chapter shall apply the
 10 presumptions established under subsection (5) of this section when processing claims for firefighters
 11 covered by the system.

12 **(7)(a) Death, disability or impairment of health of public safety officers of any political**
 13 **division who have completed five or more years of employment as public safety officers,**
 14 **caused by hepatitis C, human immunodeficiency virus or methicillin-resistant Staphylococcus**
 15 **aureus, and resulting from their employment as public safety officers is an “occupational**
 16 **disease.” Any condition or impairment of health arising under this subsection shall be pre-**
 17 **sumed to result from a public safety officer’s employment. However, any such public safety**
 18 **officer must have taken a physical examination upon becoming a public safety officer, or**
 19 **subsequently thereto, that failed to reveal any evidence of such condition or impairment of**
 20 **health that preexisted employment. Denial of a claim for any condition or impairment of**
 21 **health arising under this subsection must be on the basis of clear and convincing medical**
 22 **evidence that the cause of the condition or impairment is unrelated to the public safety**
 23 **officer’s employment.**

24 (b) As used in this subsection, “public safety officer” means a corrections officer, youth
 25 corrections officer, parole and probation officer, emergency medical technician, firefighter,
 26 sheriff, marshal, police officer or member of the Oregon State Police.
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