

A-Engrossed
House Bill 4113

Ordered by the House February 11
Including House Amendments dated February 11

Sponsored by Representative GRAYBER, Senator TAYLOR; Representatives ALONSO LEON, BYNUM, CAMPOS, CATE, DEXTER, EVANS, FAHEY, GOMBERG, HELM, HUDSON, KROPP, LEWIS, LIVELY, MCLAIN, MEEK, MORGAN, NELSON, NERON, NOBLE, NOSSE, PHAM, POWER, PRUSAK, REARDON, REYNOLDS, RUIZ, SALINAS, SANCHEZ, SCHOUTEN, SMITH DB, SMITH WARNER, SOSA, WILDE, WILLIAMS, WITT, Senators DEMBROW, FREDERICK, GELSER BLOUIN, GOLDEN, LAWRENCE SPENCE, LIEBER, MANNING JR, PATTERSON, PROZANSKI, WAGNER (Presession filed.)

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.

Adds to cancers covered by rebuttable presumption of occupational disease for eligible nonvolunteer firefighters.

Requires Workers' Compensation Management-Labor Advisory Committee to review material published by National Institute for Occupational Safety and Health related to cancers associated with nonvolunteer firefighters.

A BILL FOR AN ACT

1
2 Relating to occupational diseases of nonvolunteer firefighters; amending ORS 656.790 and 656.802.

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

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

5 656.802. (1)(a) As used in this chapter, "occupational disease" means any disease or infection
6 arising out of and in the course of employment caused by substances or activities to which an em-
7 ployee is not ordinarily subjected or exposed other than during a period of regular actual employ-
8 ment therein, and which requires medical services or results in disability or death, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) Notwithstanding ORS 656.027 (6), a city that provides a disability or retirement system for
27 firefighters by ordinance or charter that is not subject to this chapter, when accepting and pro-
28 cessing claims for death, disability or impairment of health from firefighters covered by the disabili-
29 ty or retirement system, shall apply:

30 (A) The provisions of this subsection; and

31 (B) For claims filed under this subsection, the time limitations for filing claims that are set forth
32 in ORS 656.807 (1) and (2).

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

36 (A) Is caused by brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer,
37 multiple myeloma, non-Hodgkin's lymphoma, cancer of the throat or mouth, rectal cancer, breast
38 cancer, [or] leukemia, **bladder cancer or gynecologic cancer of the uterus, fallopian tubes,**
39 **ovaries, cervix, vagina or vulva;**

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

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

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

1 ployment.

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

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

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

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

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

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

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

27 (7)(a) As used in this subsection:

28 (A) "Acute stress disorder" has the meaning given that term in the DSM-5.

29 (B) "Covered employee" means an individual who, on the date a claim is filed under this chapter:

30 (i) Was employed for at least five years by, or experienced a single traumatic event that satisfies
31 the criteria set forth in the DSM-5 as Criterion A for diagnosing post-traumatic stress disorder while
32 employed by, the state, a political subdivision of the state, a special government body, as defined in
33 ORS 174.117, or a public agency in any of these occupations:

34 (I) A full-time paid firefighter;

35 (II) A full-time paid emergency medical services provider;

36 (III) A full-time paid police officer;

37 (IV) A full-time paid corrections officer or youth correction officer;

38 (V) A full-time paid parole and probation officer; or

39 (VI) A full-time paid emergency dispatcher or 9-1-1 emergency operator; and

40 (ii) Remains employed in an occupation listed in sub-subparagraph (i) of this subparagraph or
41 separated from employment in the occupation not more than seven years previously.

42 (C) "DSM-5" means the fifth edition of the Diagnostic and Statistical Manual of Mental Disor-
43 ders published by the American Psychiatric Association.

44 (D) "Post-traumatic stress disorder" has the meaning given that term in the DSM-5.

45 (E) "Psychiatrist" means a psychiatrist whom the Oregon Medical Board has licensed and cer-

1 tified as eligible to diagnose the conditions described in this subsection.

2 (F) "Psychologist" means a licensed psychologist, as defined in ORS 675.010, whom the Oregon
3 Board of Psychology has certified as eligible to diagnose the conditions described in this subsection.

4 (b) Notwithstanding subsections (2) and (3) of this section, if a covered employee establishes
5 through a preponderance of persuasive medical evidence from a psychiatrist or psychologist that the
6 covered employee has more likely than not satisfied the diagnostic criteria in the DSM-5 for post-
7 traumatic stress disorder or acute stress disorder, any resulting death, disability or impairment of
8 health of the covered employee shall be presumed to be compensable as an occupational disease.
9 An insurer or self-insured employer may rebut the presumption only by establishing through clear
10 and convincing medical evidence that duties as a covered employee were not of real importance or
11 great consequence in causing the diagnosed condition.

12 (c) An insurer's or self-insured employer's acceptance of a claim of post-traumatic stress disorder
13 or acute stress disorder under this subsection, whether the acceptance was voluntary or was a re-
14 sult of a judgment or order, does not preclude the insurer or the self-insured employer from later
15 denying the current compensability of the claim if exposure as a covered employee to trauma that
16 meets the diagnostic criteria set forth as Criterion A in the DSM-5 for post-traumatic stress disorder
17 or acute stress disorder ceases being of real importance or great consequence in causing the disa-
18 bility, impairment of health or a need for treatment.

19 (d) An insurer or self-insured employer may deny a claim under paragraph (c) of this subsection
20 only on the basis of clear and convincing medical evidence.

21 (e) Notwithstanding ORS 656.027 (6), a city that provides a disability or retirement system for
22 firefighters and police officers by ordinance or charter that is not subject to this chapter, when ac-
23 cepting and processing claims for death, disability or impairment of health from firefighters and
24 police officers covered by the disability or retirement system, shall apply:

25 (A) The provisions of this subsection; and

26 (B) For claims filed under this subsection, the time limitations for filing claims that are set forth
27 in ORS 656.807 (1) and (2).

28 **SECTION 2.** ORS 656.790 is amended to read:

29 656.790. (1)(a) The Governor shall appoint a Workers' Compensation Management-Labor Advi-
30 sory Committee composed of 10 appointed members.

31 (b) Five members from organized labor shall represent subject workers and five members shall
32 represent subject employers.

33 (c) In addition to the appointed members, the Director of the Department of Consumer and
34 Business Services shall serve ex officio as a member of the committee.

35 (d) The appointment of members of the committee is subject to confirmation by the Senate in
36 the manner prescribed in ORS 171.562 and 171.565.

37 (2)(a) The director may recommend areas of the law [which] **that** the director desires to have
38 studied or the committee may study such aspects of the law as the committee shall determine re-
39 quire their consideration.

40 (b) The committee shall biennially review the standards for evaluation of permanent disability
41 adopted under ORS 656.726 and shall recommend to the director factors to be included or such other
42 modification of application of the standards as the committee considers appropriate.

43 (c) The committee shall biennially review and make recommendations about permanent partial
44 disability benefits.

45 (d) **The committee shall review and consider reports, findings and analysis made public**

1 **by the National Institute for Occupational Safety and Health that are related to cancers as-**
2 **sociated with nonvolunteer firefighters as set forth in ORS 656.802 (5).**

3 (e) The committee shall advise the director regarding any proposed changes in the operation
4 of programs funded by the Workers' Benefit Fund and shall review any plan the Department of
5 Consumer and Business Services devises to increase the balance of the fund to meet the requirement
6 set forth in ORS 656.506 (5).

7 (f) The committee shall report the committee's findings to the director for such action as the
8 director deems appropriate.

9 (3) The committee shall report to the Legislative Assembly such findings and recommendations
10 as the committee considers appropriate, including a report on the following matters:

11 (a) Decisions of the Supreme Court and Court of Appeals that have significant impact on the
12 workers' compensation system.

13 (b) Adequacy of workers' compensation benefits.

14 (c) Medical and legal system costs.

15 (d) Adequacy of assessments for reserve programs and administrative costs.

16 (e) The operation of programs funded by the Workers' Benefit Fund.

17 (4)(a) The members of the committee are appointed for a term of three years and shall serve
18 without compensation, but are entitled to travel expenses.

19 (b) The committee may hire, subject to approval of the director, such experts as the committee
20 may require to discharge the committee's duties.

21 (c) All expenses of the committee must be paid out of the Consumer and Business Services Fund.
22
