

SENATE BILL NO. 135—SENATOR RHOADS

FEBRUARY 8, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing the presumption of eligibility for coverage for certain occupational diseases. (BDR 53-717)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to occupational diseases; revising provisions governing the presumption that certain occupational diseases arise out of the employment of certain persons; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides a presumption that certain occupational diseases,
2 including heart disease, lung disease, cancer and hepatitis, diagnosed after the
3 termination of the employment of a person in certain occupations, including as a
4 police officer, firefighter or arson investigator, arose out of the employment of the
5 person if the person was employed full-time, continuously for 5 years or more.
6 (NRS 617.453, 617.455, 617.457, 617.485, 617.487) This bill limits the benefits
7 available for certain occupational diseases that arose out of such employment by
8 providing that the benefits are only available if the person files a claim within a
9 limited period after terminating employment. For certain diseases of the lungs and
10 heart, **sections 2 and 3** require a person to file a claim for benefits within 5 years of
11 ceasing employment if the person ceases employment before reaching an age at
12 which the person is eligible for an unreduced retirement benefit.

13 The provisions of this bill apply only to a person hired on or after July 1, 2011.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 617.453 is hereby amended to read as follows:
2 617.453 1. Notwithstanding any other provision of this
3 chapter, cancer, resulting in either temporary or permanent



1 disability, or death, is an occupational disease and compensable as
2 such under the provisions of this chapter if:

3 (a) The cancer develops or manifests itself out of and in the
4 course of the employment of a person who, for 5 years or more, has
5 been:

6 (1) Employed in this State in a full-time salaried occupation
7 of fire fighting for the benefit or safety of the public; or

8 (2) Acting as a volunteer firefighter in this State and is
9 entitled to the benefits of chapters 616A to 616D, inclusive, of NRS
10 pursuant to the provisions of NRS 616A.145; and

11 (b) It is demonstrated that:

12 (1) The person was exposed, while in the course of the
13 employment, to a known carcinogen as defined by the International
14 Agency for Research on Cancer or the National Toxicology
15 Program; and

16 (2) The carcinogen is reasonably associated with the
17 disabling cancer.

18 2. With respect to a person who, for 5 years or more, has been
19 employed in this State in a full-time salaried occupation of fire
20 fighting for the benefit or safety of the public, the following
21 substances shall be deemed, for the purposes of paragraph (b) of
22 subsection 1, to be known carcinogens that are reasonably
23 associated with the following disabling cancers:

24 (a) Diesel exhaust, formaldehyde and polycyclic aromatic
25 hydrocarbon shall be deemed to be known carcinogens that are
26 reasonably associated with bladder cancer.

27 (b) Acrylonitrile, formaldehyde and vinyl chloride shall be
28 deemed to be known carcinogens that are reasonably associated with
29 brain cancer.

30 (c) Diesel exhaust and formaldehyde shall be deemed to be
31 known carcinogens that are reasonably associated with colon cancer.

32 (d) Formaldehyde shall be deemed to be a known carcinogen
33 that is reasonably associated with Hodgkin's lymphoma.

34 (e) Formaldehyde and polycyclic aromatic hydrocarbon shall be
35 deemed to be known carcinogens that are reasonably associated with
36 kidney cancer.

37 (f) Chloroform, soot and vinyl chloride shall be deemed to be
38 known carcinogens that are reasonably associated with liver cancer.

39 (g) Acrylonitrile, benzene, formaldehyde, polycyclic aromatic
40 hydrocarbon, soot and vinyl chloride shall be deemed to be known
41 carcinogens that are reasonably associated with lymphatic or
42 haematopoietic cancer.

43 (h) Diesel exhaust, soot, aldehydes and polycyclic aromatic
44 hydrocarbon shall be deemed to be known carcinogens that are



1 reasonably associated with basal cell carcinoma, squamous cell
2 carcinoma and malignant melanoma.

3 (i) Acrylonitrile, benzene and formaldehyde shall be deemed to
4 be known carcinogens that are reasonably associated with prostate
5 cancer.

6 (j) Diesel exhaust, soot and polychlorinated biphenyls shall be
7 deemed to be known carcinogens that are reasonably associated with
8 testicular cancer.

9 (k) Diesel exhaust, benzene and X-ray radiation shall be deemed
10 to be known carcinogens that are reasonably associated with thyroid
11 cancer.

12 3. The provisions of subsection 2 do not create an exclusive list
13 and do not preclude any person from demonstrating, on a case-by-
14 case basis for the purposes of paragraph (b) of subsection 1, that a
15 substance is a known carcinogen that is reasonably associated with a
16 disabling cancer.

17 4. Compensation awarded to the employee or his or her
18 dependents for disabling cancer pursuant to this section must
19 include:

20 (a) Full reimbursement for related expenses incurred for medical
21 treatments, surgery and hospitalization in accordance with the
22 schedule of fees and charges established pursuant to NRS 616C.260
23 or, if the insurer has contracted with an organization for managed
24 care or with providers of health care pursuant to NRS 616B.527, the
25 amount that is allowed for the treatment or other services under that
26 contract; and

27 (b) The compensation provided in chapters 616A to 616D,
28 inclusive, of NRS for the disability or death.

29 5. Disabling cancer is presumed to have developed or
30 manifested itself out of and in the course of the employment of any
31 firefighter ~~[described in this section.]~~ *who has been employed in a*
32 *full-time continuous, uninterrupted and salaried occupation as a*
33 *firefighter for 5 years or more before the date of the diagnosis.*
34 This rebuttable presumption applies to disabling cancer diagnosed
35 ~~[after]~~ :

36 (a) *During the person's employment; or*

37 (b) *After* the termination of the person's employment if the
38 diagnosis occurs within a period, not to exceed ~~[60 months,]~~ *5 years*
39 *after the termination of the person's employment*, which begins
40 with the last date the employee actually worked in the qualifying
41 capacity . ~~[and extends for a period calculated by multiplying 3~~
42 ~~months by the number of full years of his or her employment.]~~

43 ➔ This rebuttable presumption must control the awarding of
44 benefits pursuant to this section unless evidence to rebut the
45 presumption is presented.



1 6. The provisions of this section do not create a conclusive
2 presumption.

3 **Sec. 2.** NRS 617.455 is hereby amended to read as follows:

4 617.455 1. Notwithstanding any other provision of this
5 chapter, diseases of the lungs, resulting in either temporary or
6 permanent disability or death, are occupational diseases and
7 compensable as such under the provisions of this chapter if caused
8 by exposure to heat, smoke, fumes, tear gas or any other noxious
9 gases, arising out of and in the course of the employment of a
10 person who, for 2 years or more, has been:

11 (a) Employed in this State in a full-time salaried occupation of
12 fire fighting or the investigation of arson for the benefit or safety of
13 the public;

14 (b) Acting as a volunteer firefighter in this State and is entitled
15 to the benefits of chapters 616A to 616D, inclusive, of NRS
16 pursuant to the provisions of NRS 616A.145; or

17 (c) Employed in a full-time salaried occupation as a police
18 officer in this State.

19 2. Except as otherwise provided in subsection 3, each
20 employee who is to be covered for diseases of the lungs pursuant to
21 the provisions of this section shall submit to a physical examination,
22 including a thorough test of the functioning of his or her lungs and
23 the making of an X-ray film of the employee's lungs, upon
24 employment, upon commencement of the coverage, once every
25 even-numbered year until the employee is 40 years of age or older
26 and thereafter on an annual basis during his or her employment.

27 3. A thorough test of the functioning of the lungs is not
28 required for a volunteer firefighter.

29 4. All physical examinations required pursuant to subsection 2
30 must be paid for by the employer.

31 5. A disease of the lungs is conclusively presumed to have
32 arisen out of and in the course of the employment of a person who
33 has been employed in a full-time continuous, uninterrupted and
34 salaried occupation as a police officer, firefighter or arson
35 investigator for 5 years or more before the date of disablement.

36 6. Failure to correct predisposing conditions which lead to lung
37 disease when so ordered in writing by the examining physician after
38 the annual examination excludes the employee from the benefits of
39 this section if the correction is within the ability of the employee.

40 7. A person who is determined to be:

41 (a) Partially disabled from an occupational disease pursuant to
42 the provisions of this section; and

43 (b) Incapable of performing, with or without remuneration, work
44 as a firefighter, police officer or arson investigator,



1 ↳ may elect to receive the benefits provided under NRS 616C.440
2 for a permanent total disability.

3 **8. Except as otherwise provided in subsection 9, a person may**
4 **not file a claim for benefits pursuant to this section more than 5**
5 **years after ceasing employment in the position through which the**
6 **person qualified for benefits pursuant to this section if at the time**
7 **the person ceased such employment the person had not reached**
8 **the required age to retire pursuant to NRS 286.510 without a**
9 **reduction pursuant to subsection 6 of NRS 286.510.**

10 **9. The provisions of subsection 8 do not limit the ability of a**
11 **person:**

12 **(a) Pursuant to any other provision of law to reopen a claim**
13 **for benefits pursuant to this section if the original claim for**
14 **benefits which is to be reopened was filed and accepted in**
15 **accordance with the provisions of this section; or**

16 **(b) To file a claim pursuant to any provision of law other than**
17 **this section, including, without limitation, NRS 617.440.**

18 **Sec. 3.** NRS 617.457 is hereby amended to read as follows:

19 617.457 1. Notwithstanding any other provision of this
20 chapter, diseases of the heart of a person who, for 5 years or more,
21 has been employed in a full-time continuous, uninterrupted and
22 salaried occupation as a firefighter, arson investigator or police
23 officer in this State before the date of disablement are conclusively
24 presumed to have arisen out of and in the course of the employment.

25 2. Notwithstanding any other provision of this chapter, diseases
26 of the heart, resulting in either temporary or permanent disability or
27 death, are occupational diseases and compensable as such under the
28 provisions of this chapter if caused by extreme overexertion in times
29 of stress or danger and a causal relationship can be shown by
30 competent evidence that the disability or death arose out of and was
31 caused by the performance of duties as a volunteer firefighter by a
32 person entitled to the benefits of chapters 616A to 616D, inclusive,
33 of NRS pursuant to the provisions of NRS 616A.145 and who, for 5
34 years or more, has served continuously as a volunteer firefighter in
35 this State by continuously maintaining an active status on the roster
36 of a volunteer fire department.

37 3. Except as otherwise provided in subsection 4, each
38 employee who is to be covered for diseases of the heart pursuant to
39 the provisions of this section shall submit to a physical examination,
40 including an examination of the heart, upon employment, upon
41 commencement of coverage and thereafter on an annual basis during
42 his or her employment.

43 4. A physical examination for a volunteer firefighter is required
44 upon initial employment and once every 3 years after the initial
45 examination until the firefighter reaches the age of 50 years. Each



1 volunteer firefighter who is 50 years of age or older shall submit to a
2 physical examination once each year.

3 5. The employer of the volunteer firefighter is responsible for
4 scheduling the physical examination.

5 6. Failure to submit to a physical examination that is scheduled
6 by his or her employer pursuant to subsection 5 excludes the
7 volunteer firefighter from the benefits of this section.

8 7. The chief of a volunteer fire department may require an
9 applicant to pay for any physical examination required pursuant to
10 this section if the applicant:

11 (a) Applies to the department for the first time as a volunteer
12 firefighter; and

13 (b) Is 50 years of age or older on the date of his or her
14 application.

15 8. The volunteer fire department shall reimburse an applicant
16 for the cost of a physical examination required pursuant to this
17 section if the applicant:

18 (a) Paid for the physical examination in accordance with
19 subsection 7;

20 (b) Is declared physically fit to perform the duties required of a
21 firefighter; and

22 (c) Becomes a volunteer with the volunteer fire department.

23 9. Except as otherwise provided in subsection 7, all physical
24 examinations required pursuant to subsections 3 and 4 must be paid
25 for by the employer.

26 10. Failure to correct predisposing conditions which lead to
27 heart disease when so ordered in writing by the examining physician
28 subsequent to the annual examination excludes the employee from
29 the benefits of this section if the correction is within the ability of
30 the employee.

31 11. A person who is determined to be:

32 (a) Partially disabled from an occupational disease pursuant to
33 the provisions of this section; and

34 (b) Incapable of performing, with or without remuneration, work
35 as a firefighter, arson investigator or police officer,

36 ➔ may elect to receive the benefits provided under NRS 616C.440
37 for a permanent total disability.

38 12. Claims filed under this section may be reopened at any
39 time during the life of the claimant for further examination and
40 treatment of the claimant upon certification by a physician of a
41 change of circumstances related to the occupational disease which
42 would warrant an increase or rearrangement of compensation.

43 ***13. Except as otherwise provided in subsection 14, a person***
44 ***may not file a claim for benefits pursuant to this section more than***
45 ***5 years after ceasing employment in the position through which***



1 *the person qualified for benefits pursuant to this section if at the*
2 *time the person ceased such employment the person had not*
3 *reached the required age to retire pursuant to NRS 286.510*
4 *without a reduction pursuant to subsection 6 of NRS 286.510.*

5 *14. The provisions of subsection 13 do not limit the ability of*
6 *a person:*

7 *(a) Pursuant to subsection 12 or any other provision of law to*
8 *reopen a claim for benefits pursuant to this section if the original*
9 *claim for benefits which is to be reopened was filed and accepted*
10 *in accordance with the provisions of this section; or*

11 *(b) To file a claim pursuant to any provision of law other than*
12 *this section, including, without limitation, NRS 617.440.*

13 **Sec. 4.** NRS 617.485 is hereby amended to read as follows:

14 617.485 1. Notwithstanding any other provision of this
15 chapter and except as otherwise provided in this section, if an
16 employee has hepatitis, the disease is conclusively presumed to have
17 arisen out of and in the course of his or her employment if the
18 employee has been ~~[continuously]~~ employed for 5 years or more ~~[as~~
19 ~~a police officer.]~~ *in a full-time continuous, uninterrupted and*
20 *salaried occupation as a police officer, firefighter or emergency*
21 *medical attendant in this State before the date of any temporary or*
22 *permanent disability or death resulting from the hepatitis.*

23 2. Compensation awarded to a police officer, firefighter or
24 emergency medical attendant, or to the dependents of such a person,
25 for hepatitis pursuant to this section must include:

26 (a) Full reimbursement for related expenses incurred for medical
27 treatments, surgery and hospitalization; and

28 (b) The compensation provided in chapters 616A to 616D,
29 inclusive, of NRS for the disability or death.

30 3. A police officer, salaried firefighter or emergency medical
31 attendant shall:

32 (a) Submit to a blood test to screen for hepatitis C upon
33 employment, upon the commencement of coverage and thereafter on
34 an annual basis during his or her employment.

35 (b) Submit to a blood test to screen for hepatitis A and hepatitis
36 B upon employment, upon the commencement of coverage and
37 thereafter on an annual basis during his or her employment, except
38 that a police officer, salaried firefighter or emergency medical
39 attendant is not required to submit to a blood test to screen for
40 hepatitis A and hepatitis B on an annual basis during his or her
41 employment if he or she has been vaccinated for hepatitis A and
42 hepatitis B upon employment or at other medically appropriate
43 times during his or her employment. Each employer shall provide a
44 police officer, salaried firefighter or emergency medical attendant
45 with the opportunity to be vaccinated for hepatitis A and hepatitis B



1 upon employment and at other medically appropriate times during
2 his or her employment.

3 4. All blood tests required pursuant to this section and all
4 vaccinations provided pursuant to this section must be paid for by
5 the employer.

6 5. The provisions of this section:

7 (a) Except as otherwise provided in paragraph (b), do not apply
8 to a police officer, firefighter or emergency medical attendant who
9 is diagnosed with hepatitis upon employment.

10 (b) Apply to a police officer, firefighter or emergency medical
11 attendant who is diagnosed with hepatitis upon employment if,
12 during the employment or within 1 year after the last day of the
13 employment, he or she is diagnosed with a different strain of
14 hepatitis.

15 (c) Apply to a police officer, firefighter or emergency medical
16 attendant who is diagnosed with hepatitis after the termination of the
17 employment if the diagnosis is made within 1 year after the last day
18 of the employment.

19 6. A police officer, firefighter or emergency medical attendant
20 who is determined to be:

21 (a) Partially disabled from an occupational disease pursuant to
22 the provisions of this section; and

23 (b) Incapable of performing, with or without remuneration, work
24 as a police officer, firefighter or emergency medical attendant,
25 → may elect to receive the benefits provided pursuant to NRS
26 616C.440 for a permanent total disability.

27 7. As used in this section:

28 (a) "Emergency medical attendant" means a person licensed as
29 an attendant or certified as an emergency medical technician,
30 intermediate emergency medical technician or advanced emergency
31 medical technician pursuant to chapter 450B of NRS, whose
32 primary duties of employment are the provision of emergency
33 medical services.

34 (b) "Hepatitis" includes hepatitis A, hepatitis B, hepatitis C and
35 any additional diseases or conditions that are associated with or
36 result from hepatitis A, hepatitis B or hepatitis C.

37 (c) "Police officer" means a sheriff, deputy sheriff, officer of a
38 metropolitan police department or city police officer.

39 **Sec. 5.** NRS 617.487 is hereby amended to read as follows:

40 617.487 1. Notwithstanding any other provision of this
41 chapter and except as otherwise provided in this section, if an
42 employee has hepatitis, the disease is conclusively presumed to have
43 arisen out of and in the course of his or her employment if the
44 employee has been ~~continuously~~ employed for 5 years or more *in*
45 *a full-time continuous, uninterrupted and salaried occupation* as a



1 police officer or a sheriff, deputy sheriff, officer of a metropolitan
2 police department or city police officer in this State before the date
3 of any temporary or permanent disability or death resulting from the
4 hepatitis.

5 2. Compensation awarded to a police officer, or to the
6 dependents of a police officer, for hepatitis pursuant to this section
7 must include:

8 (a) Full reimbursement for related expenses incurred for medical
9 treatments, surgery and hospitalization; and

10 (b) The compensation provided in chapters 616A to 616D,
11 inclusive, of NRS for the disability or death.

12 3. A police officer shall:

13 (a) Submit to a blood test to screen for hepatitis C upon
14 employment and upon the commencement of coverage.

15 (b) If the employer of the police officer provides screening for
16 hepatitis C for police officers on an annual basis, submit to a blood
17 test to screen for hepatitis C thereafter on an annual basis during his
18 or her employment.

19 (c) If the employer of the police officer provides screening for
20 hepatitis A and hepatitis B for police officers, submit to a blood test
21 to screen for hepatitis A and hepatitis B upon employment, upon the
22 commencement of coverage and thereafter on an annual basis during
23 his or her employment, except that a police officer is not required to
24 submit to a blood test to screen for hepatitis A and hepatitis B on an
25 annual basis during his or her employment if he or she has been
26 vaccinated for hepatitis A and hepatitis B upon employment or at
27 other medically appropriate times during his or her employment.
28 Each employer shall provide a police officer with the opportunity to
29 be vaccinated for hepatitis A and hepatitis B upon employment and
30 at other medically appropriate times during his or her employment.

31 4. All blood tests required pursuant to this section and all
32 vaccinations provided pursuant to this section must be paid for by
33 the employer.

34 5. The provisions of this section:

35 (a) Except as otherwise provided in paragraph (b), do not apply
36 to a police officer who is diagnosed with hepatitis upon
37 employment.

38 (b) Apply to a police officer who is diagnosed with hepatitis
39 upon employment if, during the employment or within 1 year after
40 the last day of the employment, the police officer is diagnosed with
41 a different strain of hepatitis.

42 (c) Apply to a police officer who is diagnosed with hepatitis
43 after the termination of the employment if the diagnosis is made
44 within 1 year after the last day of the employment.

45 6. A police officer who is determined to be:



- 1 (a) Partially disabled from an occupational disease pursuant to
2 the provisions of this section; and
3 (b) Incapable of performing, with or without remuneration, work
4 as a police officer,
5 ➤ may elect to receive the benefits provided pursuant to NRS
6 616C.440 for a permanent total disability.
7 7. As used in this section:
8 (a) "Hepatitis" includes hepatitis A, hepatitis B, hepatitis C and
9 any additional diseases or conditions that are associated with or
10 result from hepatitis A, hepatitis B or hepatitis C.
11 (b) "Police officer" means any police officer other than a sheriff,
12 deputy sheriff, officer of a metropolitan police department or city
13 police officer.
14 **Sec. 6.** The amendatory provisions of this act apply only to a
15 person hired on or after July 1, 2011.
16 **Sec. 7.** This act becomes effective on July 1, 2011.

