

REFERENCE TITLE: **firefighters; cancers; presumption; workers' compensation**

State of Arizona
Senate
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SB 1160

Introduced by

Senators Carter: Allen S, Alston, Bowie, Boyer, Brophy McGee, Gray, Mendez, Pace, Quezada, Rios, Steele; Representatives Bolding, Butler, Chavez, Fernandez, Hernandez A, Osborne, Payne, Powers Hannley, Salman, Teller

AN ACT

AMENDING SECTION 23-901.01, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-901.01, Arizona Revised Statutes, is amended to read:

23-901.01. Occupational disease; proximate causation; definitions

A. The occupational diseases as defined by section 23-901, paragraph 13, subdivision (c) shall be deemed to arise out of the employment only if all of the following six requirements exist:

1. There is a direct causal connection between the conditions under which the work is performed and the occupational disease.
2. The disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment.
3. The disease can be fairly traced to the employment as the proximate cause.
4. The disease does not come from a hazard to which workers would have been equally exposed outside of the employment.
5. The disease is incidental to the character of the business and not independent of the relation of employer and employee.
6. The disease after its contraction appears to have had its origin in a risk connected with the employment, and to have flowed from that source as a natural consequence, although it need not have been foreseen or expected.

B. Notwithstanding subsection A of this section and section 23-1043.01:

1. Any disease, infirmity or impairment of a firefighter's or peace officer's health that is caused by brain, bladder, rectal or colon cancer, lymphoma, leukemia or adenocarcinoma or mesothelioma of the respiratory tract and that results in disability or death is presumed to be an occupational disease as defined in section 23-901, paragraph 13, subdivision (c) and is deemed to arise out of employment. ♦
2. Any disease, infirmity or impairment of a firefighter's health that is caused by buccal cavity, **and** pharynx, esophagus, large intestine, lung, kidney, prostate, skin, stomach, **OVARIAN, BREAST** or testicular cancer or non-Hodgkin's lymphoma, multiple myeloma or malignant melanoma and that results in disability or death is presumed to be an occupational disease as defined in section 23-901, paragraph 13, subdivision (c) and is deemed to arise out of employment.

C. The presumptions provided in subsection B of this section are granted if all of the following apply:

1. The firefighter or peace officer passed a physical examination before employment and the examination did not indicate evidence of cancer.

2. The firefighter or peace officer was assigned to hazardous duty for at least five years.

~~3.— The firefighter or peace officer was exposed to a known carcinogen as defined by the international agency for research on cancer and informed the department of this exposure, and the carcinogen is reasonably related to the cancer.~~

4. 3. For the presumption provided in subsection B, paragraph 2 of this section, the firefighter received a physical examination that is reasonably aligned with the national fire protection association standard on comprehensive occupational medical program for fire departments (NFPA 1582).

D. Subsection B of this section applies to **BOTH OF THE FOLLOWING:**

1. **FIREFIGHTERS OR PEACE OFFICERS CURRENTLY IN SERVICE.**

2. Former firefighters or peace officers who are sixty-five years of age or younger and who are diagnosed with a cancer that is listed in subsection B of this section not more than fifteen years after the firefighter's or peace officer's last date of employment as a firefighter or peace officer.

E. Subsection B of this section does not apply to cancers of the respiratory tract if there is evidence that the firefighter's or peace officer's exposure to cigarettes or tobacco products outside of the scope of the firefighter's or peace officer's official duties is a substantial contributing cause in the development of the cancer.

F. The presumptions provided in subsection B of this section ~~may be rebutted by a preponderance of the evidence that there is a specific cause of the cancer other than an occupational exposure to a carcinogen as defined by the international agency for research on cancer~~ **ARE CONCLUSIVE AND IRREBUTTABLE IF THE REQUIREMENTS OF SUBSECTIONS C AND D OF THIS SECTION ARE MET AND SUBSECTION E OF THIS SECTION DOES NOT APPLY.**

G. For the purposes of this section:

1. "Firefighter" means a full-time firefighter who was regularly assigned to hazardous duty.

2. "Peace officer" means a full-time peace officer who was regularly assigned to hazardous duty as a part of a special operations, special weapons and tactics, explosive ordinance disposal or hazardous materials response unit.

Sec. 2. Legislative findings and intent

A. The legislature finds that there is a growing body of scientific, peer-reviewed evidence that firefighters and peace officers assigned to hazardous duties face an increased risk of certain cancers from the carcinogenic agents to which they are exposed in performing those duties. ♦ See, e.g., Int'l Agency for Research on Cancer (IARC), World Health Org., 98 IARC Monographs on the Evaluation of Carcinogenic Risks to Humans: Painting, Firefighting, and Shiftwork, Table 1.1, at 401-03 (2010).

B. The intent of section 23-901.01, subsections B through G, Arizona Revised Statutes, as amended by this act, is to establish a presumption that the cancers listed in section 23-901.01, subsection B, Arizona Revised Statutes, arise out of firefighters' or peace officers' employment, subject only to the limitations of section 23-901.01, subsections C and D, Arizona Revised Statutes, as amended by this act, and section 23-901.01, subsection E, Arizona Revised Statutes. ♦ To qualify for the presumption, firefighters and peace officers are not required to identify the specific carcinogens to which they were exposed or to prove a causal link between a known carcinogen and their particular cancer. ♦ The presumption established by section 23-901.01, subsections B through G, Arizona Revised Statutes, as amended by this act, is irrebuttable.

C. The legislature finds that the inherent imprecision of such a presumption is outweighed by the constitutional mandate that such public servants be afforded relief and protection from the burdensome, expensive and litigious practices to which they are now subjected, even as they battle their disease.