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AN ACT

RELATING TO THE NEW MEXICO OCCUPATIONAL DISEASE DISABLEMENT  
LAW; REQUIRING CERTAIN DISEASES AND INJURIES TO BE PRESUMED  
TO BE CAUSED BY EMPLOYMENT FOR CERTAIN FIREFIGHTERS;  
PROVIDING EXCEPTIONS; ESTABLISHING BURDEN OF PROOF FOR  
DEFENSES; REQUIRING WORKERS' COMPENSATION REIMBURSEMENT IN  
CERTAIN SITUATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico Occupational  
Disease Disablement Law is enacted to read:

"FIREFIGHTER OCCUPATIONAL DISEASE.--

A. As used in this section, "firefighter" means a  
person who is employed as a full-time non-volunteer  
firefighter by the state or a local government entity and who  
has taken the oath prescribed for firefighters.

B. If a firefighter is diagnosed with one or more  
of the following diseases after the period of employment  
indicated, which disease was not revealed during an initial  
employment medical screening examination or during a  
subsequent medical review pursuant to the Occupational Health  
and Safety Act and rules promulgated pursuant to that act,  
the disease is presumed to be proximately caused by  
employment as a firefighter:

- (1) brain cancer after ten years;

- 1 (2) bladder cancer after twelve years;  
2 (3) kidney cancer after fifteen years;  
3 (4) colorectal cancer after ten years;  
4 (5) non-Hodgkin's lymphoma after fifteen  
5 years;  
6 (6) leukemia after five years;  
7 (7) ureter cancer after twelve years;  
8 (8) testicular cancer after five years if  
9 diagnosed before the age of forty with no evidence of  
10 anabolic steroids or human growth hormone use;  
11 (9) breast cancer after five years if  
12 diagnosed before the age of forty without a breast cancer 1  
13 or breast cancer 2 genetic predisposition to breast cancer;  
14 (10) esophageal cancer after ten years;  
15 (11) multiple myeloma after fifteen years;  
16 and  
17 (12) hepatitis, tuberculosis, diphtheria,  
18 meningococcal disease and methicillin-resistant  
19 staphylococcus aureus appearing and diagnosed after entry  
20 into employment.

21 C. The presumptions created in Subsection B and D  
22 of this section may be rebutted by a preponderance of  
23 evidence in a court of competent jurisdiction showing that  
24 the firefighter engaged in conduct or activities outside of  
25 employment that posed a significant risk of contracting or

1 developing a described disease.

2 D. If a firefighter is diagnosed with a heart  
3 injury or stroke suffered within twenty-four hours of  
4 fighting a fire, while responding to an alarm, while  
5 returning from an alarm call, while engaging in supervised  
6 physical training or while responding to or performing in a  
7 non-fire emergency, the heart injury or stroke is presumed to  
8 be proximately caused by employment as a firefighter. The  
9 presumption created in this subsection shall not be made if  
10 the firefighter's employer does not have a current physical  
11 training program and the firefighter does not have a current  
12 medical screening examination or review pursuant to the  
13 Occupational Health and Safety Act and rules promulgated  
14 pursuant to that act allowing participation in that program.

15 E. When any presumptions created in this section  
16 do not apply, it shall not preclude a firefighter from  
17 demonstrating a causal connection between employment and  
18 disease or injury by a preponderance of evidence in a court  
19 of competent jurisdiction.

20 F. Medical treatment based on the presumptions  
21 created in this section shall be provided by an employer as  
22 for a job-related illness or injury unless and until a court  
23 of competent jurisdiction determines that the presumption  
24 does not apply. If the court determines that the presumption  
25 does not apply or that the illness or injury is not job

1 related, the employer's workers' compensation insurance  
2 provider shall be reimbursed for health care costs by the  
3 medical or health insurance plan or benefit provided for the  
4 firefighter by the employer."

5 Section 2. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2010. \_\_\_\_\_

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