

**SENATE
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S.F. No. 1035

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1.1 A bill for an act

1.2 relating to workers' compensation; creating a presumption of occupational disease

1.3 for firefighters with certain forms of cancer; amending Minnesota Statutes 2020,

1.4 section 176.011, subdivision 15, as amended.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2020, section 176.011, subdivision 15, as amended by Laws

1.7 2020, Seventh Special Session chapter 1, article 2, section 6, is amended to read:

1.8 Subd. 15. **Occupational disease.** (a) "Occupational disease" means a mental impairment

1.9 as defined in paragraph (d) or physical disease arising out of and in the course of employment

1.10 peculiar to the occupation in which the employee is engaged and due to causes in excess of

1.11 the hazards ordinary of employment and shall include undulant fever. Physical stimulus

1.12 resulting in mental injury and mental stimulus resulting in physical injury shall remain

1.13 compensable. Mental impairment is not considered a disease if it results from a disciplinary

1.14 action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement,

1.15 or similar action taken in good faith by the employer. Ordinary diseases of life to which the

1.16 general public is equally exposed outside of employment are not compensable, except where

1.17 the diseases follow as an incident of an occupational disease, or where the exposure peculiar

1.18 to the occupation makes the disease an occupational disease hazard. A disease arises out of

1.19 the employment only if there be a direct causal connection between the conditions under

1.20 which the work is performed and if the occupational disease follows as a natural incident

1.21 of the work as a result of the exposure occasioned by the nature of the employment. An

1.22 employer is not liable for compensation for any occupational disease which cannot be traced

1.23 to the employment as a direct and proximate cause and is not recognized as a hazard

1.24 characteristic of and peculiar to the trade, occupation, process, or employment or which

2.1 results from a hazard to which the worker would have been equally exposed outside of the
2.2 employment.

2.3 (b) If immediately preceding the date of disablement or death, an employee was employed
2.4 on active duty with an organized fire or police department of any municipality, as a member
2.5 of the Minnesota State Patrol, conservation officer service, state crime bureau, as a forest
2.6 officer by the Department of Natural Resources, correctional officer or security counselor
2.7 employed by the state or a political subdivision at a corrections, detention, or secure treatment
2.8 facility, or sheriff or full-time deputy sheriff of any county, and the disease is that of
2.9 myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of employment
2.10 such employee was given a thorough physical examination by a licensed doctor of medicine,
2.11 and a written report thereof has been made and filed with such organized fire or police
2.12 department, with the Minnesota State Patrol, conservation officer service, state crime bureau,
2.13 Department of Natural Resources, Department of Corrections, or sheriff's department of
2.14 any county, which examination and report negated any evidence of myocarditis, coronary
2.15 sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and
2.16 shall be presumed to have been due to the nature of employment. If immediately preceding
2.17 the date of disablement or death, any individual who by nature of their position provides
2.18 emergency medical care, or an employee who was employed as a licensed police officer
2.19 under section 626.84, subdivision 1; firefighter; paramedic; correctional officer or security
2.20 counselor employed by the state or a political subdivision at a corrections, detention, or
2.21 secure treatment facility; emergency medical technician; or licensed nurse providing
2.22 emergency medical care; and who contracts an infectious or communicable disease to which
2.23 the employee was exposed in the course of employment outside of a hospital, then the
2.24 disease is presumptively an occupational disease and shall be presumed to have been due
2.25 to the nature of employment and the presumption may be rebutted by substantial factors
2.26 brought by the employer or insurer. Any substantial factors which shall be used to rebut
2.27 this presumption and which are known to the employer or insurer at the time of the denial
2.28 of liability shall be communicated to the employee on the denial of liability.

2.29 (c) A firefighter on active duty with an organized fire department who is unable to
2.30 perform duties in the department by reason of a disabling cancer of a type caused by exposure
2.31 to heat, radiation, or a known or suspected carcinogen, as defined by the International
2.32 Agency for Research on Cancer, and the carcinogen is reasonably linked to the disabling
2.33 cancer, is presumed to have an occupational disease under paragraph (a). If a firefighter
2.34 who enters the service after August 1, 1988, is examined by a physician prior to being hired
2.35 and the examination discloses the existence of a cancer of a type described in this paragraph,

3.1 the firefighter is not entitled to the presumption unless a subsequent medical determination
3.2 is made that the firefighter no longer has the cancer.

3.3 (d) Notwithstanding paragraph (c), an active duty firefighter or volunteer firefighter
3.4 with an organized fire department who has been employed with the fire department at least
3.5 five years before the date of disablement or death and who is examined by a physician prior
3.6 to being hired and the examination does not disclose the existence of one of the cancers
3.7 listed in clauses (1) to (14) is presumed to have an occupational disease under paragraph
3.8 (a) if the firefighter is found to have one of the following types of cancer:

3.9 (1) testicular cancer;

3.10 (2) multiple myeloma;

3.11 (3) non-Hodgkin's lymphoma;

3.12 (4) brain cancer;

3.13 (5) malignant melanoma;

3.14 (6) skin cancer;

3.15 (7) breast cancer;

3.16 (8) leukemia;

3.17 (9) colon cancer;

3.18 (10) prostate cancer;

3.19 (11) mesothelioma;

3.20 (12) bladder cancer;

3.21 (13) kidney cancer; or

3.22 (14) rectal cancer.

3.23 A retired firefighter, including a retired volunteer firefighter, is entitled to the presumption
3.24 under this paragraph if the firefighter was employed by an organized fire department for at
3.25 least five years, and one of the cancers listed in clauses (1) to (14) is discovered up to five
3.26 years past the last date of employment.

3.27 (e) For the purposes of this chapter, "mental impairment" means a diagnosis of
3.28 post-traumatic stress disorder by a licensed psychiatrist or psychologist. For the purposes
3.29 of this chapter, "post-traumatic stress disorder" means the condition as described in the most
3.30 recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by

4.1 the American Psychiatric Association. For purposes of section 79.34, subdivision 2, one or
4.2 more compensable mental impairment claims arising out of a single event or occurrence
4.3 shall constitute a single loss occurrence.

4.4 ~~(e)~~ (f) If, preceding the date of disablement or death, an employee who was employed
4.5 on active duty as: a licensed police officer; a firefighter; a paramedic; an emergency medical
4.6 technician; a licensed nurse employed to provide emergency medical services outside of a
4.7 medical facility; a public safety dispatcher; a correctional officer or security counselor
4.8 employed by the state or a political subdivision at a corrections, detention, or secure treatment
4.9 facility; a sheriff or full-time deputy sheriff of any county; or a member of the Minnesota
4.10 State Patrol is diagnosed with a mental impairment as defined in paragraph (d), and had not
4.11 been diagnosed with the mental impairment previously, then the mental impairment is
4.12 presumptively an occupational disease and shall be presumed to have been due to the nature
4.13 of employment. This presumption may be rebutted by substantial factors brought by the
4.14 employer or insurer. Any substantial factors that are used to rebut this presumption and that
4.15 are known to the employer or insurer at the time of the denial of liability shall be
4.16 communicated to the employee on the denial of liability. The mental impairment is not
4.17 considered an occupational disease if it results from a disciplinary action, work evaluation,
4.18 job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken
4.19 in good faith by the employer.

4.20 ~~(f)~~ (g) Notwithstanding paragraph (a) and the rebuttable presumption for infectious or
4.21 communicable diseases in paragraph (b), an employee who contracts COVID-19 is presumed
4.22 to have an occupational disease arising out of and in the course of employment if the
4.23 employee satisfies the requirements of clauses (1) and (2).

4.24 (1) The employee was employed as a licensed peace officer under section 626.84,
4.25 subdivision 1; firefighter; paramedic; nurse or health care worker, correctional officer, or
4.26 security counselor employed by the state or a political subdivision at a corrections, detention,
4.27 or secure treatment facility; emergency medical technician; a health care provider, nurse,
4.28 or assistive employee employed in a health care, home care, or long-term care setting, with
4.29 direct COVID-19 patient care or ancillary work in COVID-19 patient units; and workers
4.30 required to provide child care to first responders and health care workers under Executive
4.31 Order 20-02 and Executive Order 20-19.

4.32 (2) The employee's contraction of COVID-19 must be confirmed by a positive laboratory
4.33 test or, if a laboratory test was not available for the employee, as diagnosed and documented
4.34 by the employee's licensed physician, licensed physician's assistant, or licensed advanced
4.35 practice registered nurse (APRN), based on the employee's symptoms. A copy of the positive

5.1 laboratory test or the written documentation of the physician's, physician assistant's, or
5.2 APRN's diagnosis shall be provided to the employer or insurer.

5.3 (3) Once the employee has satisfied the requirements of clauses (1) and (2), the
5.4 presumption shall only be rebutted if the employer or insurer shows the employment was
5.5 not a direct cause of the disease. A denial of liability under this paragraph must meet the
5.6 requirements for a denial under section 176.221, subdivision 1.

5.7 (4) The date of injury for an employee who has contracted COVID-19 under this
5.8 paragraph shall be the date that the employee was unable to work due to a diagnosis of
5.9 COVID-19, or due to symptoms that were later diagnosed as COVID-19, whichever occurred
5.10 first.

5.11 (5) An employee who has contracted COVID-19 but who is not entitled to the
5.12 presumption under this paragraph is not precluded from claiming an occupational disease
5.13 as provided in other paragraphs of this subdivision or from claiming a personal injury under
5.14 subdivision 16.

5.15 (6) The commissioner shall provide a detailed report on COVID-19 workers'
5.16 compensation claims under this paragraph to the Workers' Compensation Advisory Council,
5.17 and chairs and ranking minority members of the house of representatives and senate
5.18 committees with jurisdiction over workers' compensation, by January 15, 2021.

5.19 **Sec. 2. REVISOR INSTRUCTION.**

5.20 The revisor of statutes shall make any cross-reference changes to Minnesota Statutes
5.21 needed as a result of the relettering of paragraphs in section 1.