

1 SENATE BILL 261

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 George K. Munoz

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10 AN ACT

11 RELATING TO HEALTH; ADDING PANDEMIC DISEASE TO THE LIST OF
12 CONDITIONS PRESUMED TO BE PROXIMATELY CAUSED BY EMPLOYMENT AS A
13 FIREFIGHTER; REVISING A PROVISION RELATING TO BREAST CANCER.

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

16 SECTION 1. Section 52-3-32.1 NMSA 1978 (being Laws 2009,
17 Chapter 252, Section 1, as amended) is amended to read:

18 "52-3-32.1. FIREFIGHTER OCCUPATIONAL CONDITIONS.--

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

23 B. If a firefighter is diagnosed with one or more
24 of the following conditions after the period of employment
25 indicated, and the condition was not revealed during an initial

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1 employment medical screening examination or during a subsequent
2 medical review pursuant to the Occupational Health and Safety
3 Act and rules promulgated pursuant to that act, the condition
4 is presumed to be proximately caused by employment as a
5 firefighter:

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

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1 [or]

2 (13) posttraumatic stress disorder diagnosed
3 by a physician or psychologist that results in physical
4 impairment, primary or secondary mental impairment or death; or

5 (14) a virus or disease that has been declared
6 a pandemic by the president of the United States, the governor
7 of New Mexico, the world health organization or the federal
8 centers for disease control and prevention, including the
9 coronavirus disease and other future qualifying pandemics.

10 C. The presumptions created in Subsections B and D
11 of this section may be rebutted by a preponderance of evidence
12 in a court of competent jurisdiction showing that the
13 firefighter engaged in conduct or activities outside of
14 employment that posed a significant risk of contracting or
15 developing a described condition.

16 D. If a firefighter is diagnosed with a heart
17 injury or stroke suffered within twenty-four hours of fighting
18 a fire, while responding to an alarm, while returning from an
19 alarm call, while engaging in supervised physical training or
20 while responding to or performing in a non-fire emergency, the
21 heart injury or stroke is presumed to be proximately caused by
22 employment as a firefighter. The presumption created in this
23 subsection shall not be made if the firefighter's employer does
24 not have a current physical training program and the
25 firefighter does not have a current medical screening

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1 examination or review pursuant to the Occupational Health and
2 Safety Act and rules promulgated pursuant to that act allowing
3 participation in that program.

4 E. When any presumptions created in this section do
5 not apply, it shall not preclude a firefighter from
6 demonstrating a causal connection between employment and
7 condition or injury by a preponderance of evidence in a court
8 of competent jurisdiction.

9 F. Medical treatment based on the presumptions
10 created in this section shall be provided by an employer as for
11 a job-related condition or injury unless and until a court of
12 competent jurisdiction determines that the presumption does not
13 apply. If the court determines that the presumption does not
14 apply or that the condition or injury is not job related, the
15 employer's workers' compensation insurance provider shall be
16 reimbursed for health care costs by the medical or health
17 insurance plan or benefit provided for the firefighter by the
18 employer."

19 SECTION 2. APPLICABILITY.--The provisions of this act
20 apply to claims for benefits filed on or after the effective
21 date of this act.