



2024 South Dakota Legislature

Senate Bill 114

Introduced by: **Senator Johnson**

1 **An Act to create a presumption of workers' compensation coverage for occupational**
 2 **cancer for firefighters.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That a NEW SECTION be added to chapter 62-8:**

5 Terms used in this Act mean:

6 (1) "Firefighter," an individual member of a certified fire department;

7 (2) "Minimum period of employment," includes:

8 (a) Employment as a firefighter for at least two years; or

9 (b) Service as a volunteer firefighter for at least two years and actively
 10 participates or participated in a minimum of forty percent of the drills or
 11 training conducted by the volunteer firefighter's department and a minimum
 12 of twenty-five percent of the emergency calls received during the time the
 13 volunteer firefighter serves or served on call; and

14 (3) "Presumptive cancer," cancer, lymphoma, or leukemia that may be caused by
 15 exposure to heat, smoke, radiation, or a known or suspected carcinogen as
 16 determined by the International Agency for Research on Cancer.

17 **Section 2. That a NEW SECTION be added to chapter 62-8:**

18 A firefighter who suffers from a presumptive cancer is presumed to have developed
 19 the cancer when determining workers' compensation coverage.

20 A presumption established under this Act applies to a determination of whether a
 21 firefighter's injury, disease, illness, health impairment, disability, or death resulted from
 22 a presumptive cancer contracted in the course and scope of employment for purposes of
 23 workers' compensation.

1 A firefighter who qualifies for a presumption established under this Act is entitled
2 only to the benefits or compensation to which the firefighter would otherwise be entitled
3 to receive at the time the claim for benefits or compensation is filed.

4 **Section 3. That a NEW SECTION be added to chapter 62-8:**

5 A volunteer fire department must keep individual records that document the
6 participation in drills or training and service to emergency calls by a volunteer firefighter.

7 **Section 4. That a NEW SECTION be added to chapter 62-8:**

8 The presumption in section 2 of this Act applies only to a firefighter who is
9 employed for no less than the minimum period of employment and seeks the presumption
10 within ten years after cessation of employment.

11 The presumption does not apply:

12 (1) If the presumptive cancer is known to be caused by smoking tobacco and the
13 firefighter:

14 (a) Is a regular user of tobacco for ten or more years; or

15 (b) Was a regular user of tobacco for ten or more years and it has been fewer
16 than ten years since the firefighter quit the use of tobacco products; or

17 (2) In a cause of action brought in a state or federal court except for judicial review of
18 a proceeding in which there has been a grant or denial of employment-related
19 benefits or compensation.

20 **Section 5. That a NEW SECTION be added to chapter 62-8:**

21 This Act does not create a cause of action.

22 This Act does not enlarge or establish a right to any benefit or compensation or
23 eligibility for any benefit or compensation.

24 **Section 6. That a NEW SECTION be added to chapter 62-8:**

25 A person opposed to the award of benefits or compensation may rebut the
26 presumption under this Act through a showing by a preponderance of the evidence that a
27 risk factor, accident, hazard, or other cause not associated with the firefighter's service
28 was the dominant cause of the presumptive cancer.