

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

State of Arizona
Senate
Fifty-fourth Legislature
Second Regular Session
2020

SB 1160

Introduced by

Senators Carter: Allen S, Alston, Bowie, Boyer, Brophy McGee, Gray,
Mendez, Pace, Quezada, Rios, Steele; Representatives Bolding, Butler,
Chávez, 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)

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

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

4 23-901.01. Occupational disease; proximate causation;
5 definitions

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

9 1. There is a direct causal connection between the conditions under
10 which the work is performed and the occupational disease.

11 2. The disease can be seen to have followed as a natural incident
12 of the work as a result of the exposure occasioned by the nature of the
13 employment.

14 3. The disease can be fairly traced to the employment as the
15 proximate cause.

16 4. The disease does not come from a hazard to which workers would
17 have been equally exposed outside of the employment.

18 5. The disease is incidental to the character of the business and
19 not independent of the relation of employer and employee.

20 6. The disease after its contraction appears to have had its origin
21 in a risk connected with the employment, and to have flowed from that
22 source as a natural consequence, although it need not have been foreseen
23 or expected.

24 B. Notwithstanding subsection A of this section and section
25 23-1043.01:

26 1. Any disease, infirmity or impairment of a firefighter's or peace
27 officer's health that is caused by brain, bladder, rectal or colon cancer,
28 lymphoma, leukemia or adenocarcinoma or mesothelioma of the respiratory
29 tract and that results in disability or death is presumed to be an
30 occupational disease as defined in section 23-901, paragraph 13,
31 subdivision (c) and is deemed to arise out of employment.

32 2. Any disease, infirmity or impairment of a firefighter's health
33 that is caused by buccal cavity, ~~and~~ pharynx, esophagus, large intestine,
34 lung, kidney, prostate, skin, stomach, **OVARIAN, BREAST** or testicular
35 cancer or non-Hodgkin's lymphoma, multiple myeloma or malignant melanoma
36 and that results in disability or death is presumed to be an occupational
37 disease as defined in section 23-901, paragraph 13, subdivision (c) and is
38 deemed to arise out of employment.

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

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

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

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

5 ~~4.~~ 3. For the presumption provided in subsection B, paragraph 2 of
6 this section, the firefighter received a physical examination that is
7 reasonably aligned with the national fire protection association standard
8 on comprehensive occupational medical program for fire departments
9 (NFPA 1582).

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

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

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

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

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

28 G. For the purposes of this section:

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

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

35 Sec. 2. Legislative findings and intent

36 A. The legislature finds that there is a growing body of
37 scientific, peer-reviewed evidence that firefighters and peace officers
38 assigned to hazardous duties face an increased risk of certain cancers
39 from the carcinogenic agents to which they are exposed in performing those
40 duties. See, e.g., Int'l Agency for Research on Cancer (IARC), World
41 Health Org., 98 IARC Monographs on the Evaluation of Carcinogenic Risks to
42 Humans: Painting, Firefighting, and Shiftwork, Table 1.1, at 401-03
43 (2010).

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

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