ECONOMIC AFFAIRS IC
JUNE 12, 2012
EXHIBIT 5

HOUSE BILL NO. 505

INTRODUCED BY E. HILL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A PRESUMPTIVE DISEASE FOR WORKERS' COMPENSATION CLAIMS FOR CERTAIN DISEASES EXPERIENCED BY FIREFIGHTERS; PROVIDING CONDITIONS AND A REBUTTABLE PRESUMPTION; AMENDING SECTIONS 39-71-116 AND 39-71-119, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, firefighters who respond to emergencies, including hazardous material incidents and fires involving toxic substances, wear protective gear and take precautions but often have less than adequate information about the dangers they may encounter; and

WHEREAS, a legislative fact sheet produced by the International Association of Fire Fighters for congressional legislation introduced in 2009 for federal firefighters stated that heart disease, lung disease, cancer, and infectious disease are among the leading causes of death and disability for firefighters, with studies having linked these diseases to the occupational hazards of firefighting; and

WHEREAS, at least 46 states have recognized the potential relationship between certain diseases and firefighting and other emergency situations by enacting presumptive disability laws so that firefighters and peace officers can file claims under workers' compensation or disability retirement without lengthy and medically invasive efforts to prove a connection between a disease and an accident or occupational hazard.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act necessary to:

(a) investigation, review, and settlement of claims;

1 (b) payment of benefits;
2 (c) setting of reserves;
3 (d) furnishing of services and facilities; and
4 (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.
5 (3) "Aid or sustenance" means a public or private subsidy made to provide a means of support,
6 maintenance, or subsistence for the recipient.
7 (4) "Beneficiary" means:
8 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;
9 (b) an unmarried child under 18 years of age;
10 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is
11 enrolled in an accredited apprenticeship program;
12 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the
13 decedent for support at the time of injury;
14 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time
15 of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and
16 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent
17 for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in
18 subsections (4)(a) through (4)(e), does not exist.
19 (5) "Business partner" means the community, governmental entity, or business organization that provides
20 the premises for work-based learning activities for students.
21 (6) "Casual employment" means employment not in the usual course of the trade, business, profession,
22 or occupation of the employer.
23 (7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the
24 injury.
25 (8) (a) "Construction industry" means the major group of general contractors and operative builders,
26 heavy construction (other than building construction) contractors, and special trade contractors listed in major
27 group 23 in the North American Industry Classification System Manual.
28 (b) The term does not include office workers, design professionals, salespersons, estimators, or any
29 other related employment that is not directly involved on a regular basis in the provision of physical labor at a
30 construction or renovation site.

1 (9) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan No.
2 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71
3 to:
4 (i) determine liability;
5 (ii) apply the requirements of this title;
6 (iii) settle workers' compensation or occupational disease claims; or
7 (iv) determine survivor benefits.
8 (b) The term does not include an adjuster as defined in 33-17-102.
9 (10) "Days" means calendar days, unless otherwise specified.
10 (11) "Department" means the department of labor and industry.
11 (12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.
12 (13) (a) "Household or domestic employment" means employment of persons other than members of the
13 household for the purpose of tending to the aid and comfort of the employer or members of the employer's family,
14 including but not limited to housecleaning and yard work.
15 (b) The term does not include employment beyond the scope of normal household or domestic duties,
16 such as home health care or domiciliary care.
17 (14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting
18 business under compensation plan No. 2, or the state fund under compensation plan No. 3.
19 (15) "Invalid" means one who is physically or mentally incapacitated.
20 (16) "Limited liability company" has the meaning provided in 35-8-102.
21 (17) "Maintenance care" means treatment designed to provide the optimum state of health while
22 minimizing recurrence of the clinical status.
23 (18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing
24 process when further material improvement would not be reasonably expected from primary medical treatment.
25 (19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle
26 strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.
27 (20) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the course
28 and scope of employment caused by events occurring on more than a single day or work shift <u>or, for a</u>
29 <u>presumptive disease, on a single day or more than a single day</u>.
30 (b) The term does not include a physical or mental condition arising from emotional or mental stress or

from a nonphysical stimulus or activity.

(21) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at by the department.

(22) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(23) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(24) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(25) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(26) "Presumptive disease" means an occupational disease affecting a firefighter who has met the criteria in [section 2] and who through exposure to hazardous substances on the job has contracted a disease, including heart disease, lung disease, brain cancer, leukemia, non-Hodgkin's lymphoma, multiple myeloma, malignant melanoma, colorectal cancer, prostate cancer, skin cancer, testicular cancer, tuberculosis, hepatitis A, B, C, or D, human immunodeficiency virus, diphtheria, hemorrhagic fever, meningococcal disease, rabies, or methicillin-resistant staphylococcus aureus.

~~(26)~~(27) "Primary medical services" means treatment prescribed by a treating physician, for conditions

1 resulting from the injury, necessary for achieving medical stability.

2 ~~(27)~~(28) "Public corporation" means the state or a county, municipal corporation, school district, city, city
3 under a commission form of government or special charter, town, or village.

4 ~~(28)~~(29) "Reasonably safe place to work" means that the place of employment has been made as free
5 from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

6 ~~(29)~~(30) "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that are
7 reasonably safe for use for the particular purpose for which they are furnished.

8 ~~(30)~~(31) (a) "Secondary medical services" means those medical services or appliances that are
9 considered not medically necessary for medical stability. The services and appliances include but are not limited
10 to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to
11 address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or
12 rehabilitation facilities.

13 (b) (i) As used in this subsection ~~(30)~~ (31), "disability" means a condition in which a worker's ability to
14 engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The
15 restrictions may be combined with factors, such as the worker's age, education, work history, and other factors
16 that affect the worker's ability to engage in gainful employment.

17 (ii) Disability does not mean a purely medical condition.

18 ~~(31)~~(32) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of
19 a business enterprise.

20 ~~(32)~~(33) "State's average weekly wage" means the mean weekly earnings of all employees under
21 covered employment, as defined and established annually by the department before July 1 and rounded to the
22 nearest whole dollar number.

23 ~~(33)~~(34) "Temporary partial disability" means a physical condition resulting from an injury, as defined in
24 39-71-119, in which a worker, prior to maximum healing:

25 (a) is temporarily unable to return to the position held at the time of injury because of a medically
26 determined physical restriction;

27 (b) returns to work in a modified or alternative employment; and

28 (c) suffers a partial wage loss.

29 ~~(34)~~(35) "Temporary service contractor" means a person, firm, association, partnership, limited liability
30 company, or corporation conducting business that hires its own employees and assigns them to clients to fill a

work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(35)~~(36) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(36)~~(37) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(37)~~(38) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection ~~(37)(a)~~ (38)(a), in the area where the physician assistant is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections ~~(37)(a)~~ (38)(a) through ~~(37)(e)~~ (38)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.

~~(38)~~(39) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

~~(39)~~(40) "Year", unless otherwise specified, means calendar year."

NEW SECTION. **Section 2. Conditions for claiming presumptive disease -- rebuttable presumption.** (1) A firefighter may file a claim under this chapter for a presumptive disease under the following conditions:

(a) having undertaken a physical examination by a physician, physician assistant, or nurse practitioner

1 as a condition of employment, which physical examination:
2 (i) must include tests for presumptive diseases as applicable for each gender; and
3 (ii) did not reveal any evidence of the existence of a presumptive disease prior to employment; and
4 (b) having experienced the presumptive disease while on the job or within 60 months of the last day of
5 employment, except as provided in subsection (2).
6 (2) Subsection (1)(b) does not apply to the following:
7 (a) myocardial infarction, except if experienced within 72 hours of an incident qualifying as an accident
8 as described in 39-71-119(2);
9 (b) heart or lung disease if the firefighter is a regular user of tobacco products or has a history in the past
10 year of regular tobacco use;
11 (c) prostate cancer diagnosed after 50 years of age; or
12 (d) heart disease, lung disease, brain cancer, leukemia, non-Hodgkin's lymphoma, multiple myeloma,
13 malignant melanoma, colorectal cancer, prostate cancer, skin cancer, or testicular cancer, which may not be
14 considered presumptive diseases unless manifested in a firefighter who has served less than 5 years.
15 (3) (a) An insurer may rebut a presumptive disease claim by showing that the conditions of subsection
16 (1) were not met or that through a preponderance of medical evidence the primary cause of the presumptive
17 disease was not related to exposure from employment. The medical evidence may include but is not limited to
18 use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from
19 nonemployment activities.
20 (b) For the purposes of subsection (3)(a), "primary cause" has the meaning provided in 39-71-119.
21 (4) A presumptive disease applies only to benefits obtained under this chapter and not to claims filed
22 under Title 19.
23
24 **Section 3.** Section 39-71-119, MCA, is amended to read:
25 **"39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:
26 (a) internal or external physical harm to the body that is established by objective medical findings;
27 (b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses,
28 dentures, or hearing aids; or
29 (c) death.
30 (2) An injury is caused by an accident. An accident is:

1 (a) an unexpected traumatic incident or unusual strain;
2 (b) identifiable by time and place of occurrence;
3 (c) identifiable by member or part of the body affected; and
4 (d) caused by a specific event on a single day or during a single work shift.
5 (3) "Injury" or "injured" does not mean a physical or mental condition arising from:
6 (a) emotional or mental stress; or
7 (b) a nonphysical stimulus or activity.
8 (4) "Injury" or "injured" does not include a disease that is not caused by an accident.
9 (5) (a) ~~A~~ Except as provided in subsection (5)(c), a cardiovascular, pulmonary, respiratory, or other
10 disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident
11 is the primary cause of the physical condition in relation to other factors contributing to the physical condition.
12 (b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of
13 medical certainty, is responsible for more than 50% of the physical condition.
14 (c) For firefighters applying for benefits under this chapter, accidents may include incidents to which they
15 respond that involve exposure to a hazardous substance and to which the conditions of [section 2] apply."
16
17 NEW SECTION. **Section 4. Codification instruction.** [Section 2] is intended to be codified as an
18 integral part of Title 39, chapter 71, part 1, and the provisions of Title 39, chapter 71, part 1, apply to [section 2].
19
20 NEW SECTION. **Section 5. Effective date -- applicability.** [This act] is effective July 1, 2011, and
21 applies to claims for injuries occurring on or after July 1, 2011.
22 - END -