



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1664

Introduced 2/9/2011, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

820 ILCS 305/6
820 ILCS 310/1

from Ch. 48, par. 138.6
from Ch. 48, par. 172.36

Amends provisions of the Workers' Compensation Act and the Workers' Occupational Diseases Act providing that the disability of a firefighter, emergency medical technician, or paramedic resulting from a condition or health impairment that results directly or indirectly from any bloodborne pathogen, lung or respiratory disease or condition, heart or vascular disease or condition, hypertension, tuberculosis, or cancer is rebuttably presumed to arise out of and in the course of employment and to be causally connected to the hazards or exposures of the employment, subject to specified conditions. Provides that, in the case of any condition or impairment of health of an employee employed as a firefighter which results directly or indirectly from cancer resulting in any disability to the employee, the presumption shall not apply to any employee who has been employed as a firefighter for less than 4 years (rather than 5 years) at the time he or she files an Application for Adjustment of Claim.

LRB097 10063 AEK 50240 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by
5 changing Section 6 as follows:

6 (820 ILCS 305/6) (from Ch. 48, par. 138.6)

7 Sec. 6. (a) Every employer within the provisions of this
8 Act, shall, under the rules and regulations prescribed by the
9 Commission, post printed notices in their respective places of
10 employment in such number and at such places as may be
11 determined by the Commission, containing such information
12 relative to this Act as in the judgment of the Commission may
13 be necessary to aid employees to safeguard their rights under
14 this Act in event of injury.

15 In addition thereto, the employer shall post in a
16 conspicuous place on the place of the employment a printed or
17 typewritten notice stating whether he is insured or whether he
18 has qualified and is operating as a self-insured employer. In
19 the event the employer is insured, the notice shall state the
20 name and address of his insurance carrier, the number of the
21 insurance policy, its effective date and the date of
22 termination. In the event of the termination of the policy for
23 any reason prior to the termination date stated, the posted

1 notice shall promptly be corrected accordingly. In the event
2 the employer is operating as a self-insured employer the notice
3 shall state the name and address of the company, if any,
4 servicing the compensation payments of the employer, and the
5 name and address of the person in charge of making compensation
6 payments.

7 (b) Every employer subject to this Act shall maintain
8 accurate records of work-related deaths, injuries and illness
9 other than minor injuries requiring only first aid treatment
10 and which do not involve medical treatment, loss of
11 consciousness, restriction of work or motion, or transfer to
12 another job and file with the Commission, in writing, a report
13 of all accidental deaths, injuries and illnesses arising out of
14 and in the course of the employment resulting in the loss of
15 more than 3 scheduled work days. In the case of death such
16 report shall be made no later than 2 working days following the
17 accidental death. In all other cases such report shall be made
18 between the 15th and 25th of each month unless required to be
19 made sooner by rule of the Commission. In case the injury
20 results in permanent disability, a further report shall be made
21 as soon as it is determined that such permanent disability has
22 resulted or will result from the injury. All reports shall
23 state the date of the injury, including the time of day or
24 night, the nature of the employer's business, the name,
25 address, age, sex, conjugal condition of the injured person,
26 the specific occupation of the injured person, the direct cause

1 of the injury and the nature of the accident, the character of
2 the injury, the length of disability, and in case of death the
3 length of disability before death, the wages of the injured
4 person, whether compensation has been paid to the injured
5 person, or to his or her legal representative or his heirs or
6 next of kin, the amount of compensation paid, the amount paid
7 for physicians', surgeons' and hospital bills, and by whom
8 paid, and the amount paid for funeral or burial expenses if
9 known. The reports shall be made on forms and in the manner as
10 prescribed by the Commission and shall contain such further
11 information as the Commission shall deem necessary and require.
12 The making of these reports releases the employer from making
13 such reports to any other officer of the State and shall
14 satisfy the reporting provisions as contained in the "Health
15 and Safety Act" and "An Act in relation to safety inspections
16 and education in industrial and commercial establishments and
17 to repeal an Act therein named", approved July 18, 1955, as now
18 or hereafter amended. The reports filed with the Commission
19 pursuant to this Section shall be made available by the
20 Commission to the Director of Labor or his representatives and
21 to all other departments of the State of Illinois which shall
22 require such information for the proper discharge of their
23 official duties. Failure to file with the Commission any of the
24 reports required in this Section is a petty offense.

25 Except as provided in this paragraph, all reports filed
26 hereunder shall be confidential and any person having access to

1 such records filed with the Illinois Workers' Compensation
2 Commission as herein required, who shall release any
3 information therein contained including the names or otherwise
4 identify any persons sustaining injuries or disabilities, or
5 give access to such information to any unauthorized person,
6 shall be subject to discipline or discharge, and in addition
7 shall be guilty of a Class B misdemeanor. The Commission shall
8 compile and distribute to interested persons aggregate
9 statistics, taken from the reports filed hereunder. The
10 aggregate statistics shall not give the names or otherwise
11 identify persons sustaining injuries or disabilities or the
12 employer of any injured or disabled person.

13 (c) Notice of the accident shall be given to the employer
14 as soon as practicable, but not later than 45 days after the
15 accident. Provided:

16 (1) In case of the legal disability of the employee or any
17 dependent of a deceased employee who may be entitled to
18 compensation under the provisions of this Act, the limitations
19 of time by this Act provided do not begin to run against such
20 person under legal disability until a guardian has been
21 appointed.

22 (2) In cases of injuries sustained by exposure to
23 radiological materials or equipment, notice shall be given to
24 the employer within 90 days subsequent to the time that the
25 employee knows or suspects that he has received an excessive
26 dose of radiation.

1 No defect or inaccuracy of such notice shall be a bar to
2 the maintenance of proceedings on arbitration or otherwise by
3 the employee unless the employer proves that he is unduly
4 prejudiced in such proceedings by such defect or inaccuracy.

5 Notice of the accident shall give the approximate date and
6 place of the accident, if known, and may be given orally or in
7 writing.

8 (d) Every employer shall notify each injured employee who
9 has been granted compensation under the provisions of Section 8
10 of this Act of his rights to rehabilitation services and advise
11 him of the locations of available public rehabilitation centers
12 and any other such services of which the employer has
13 knowledge.

14 In any case, other than one where the injury was caused by
15 exposure to radiological materials or equipment or asbestos
16 unless the application for compensation is filed with the
17 Commission within 3 years after the date of the accident, where
18 no compensation has been paid, or within 2 years after the date
19 of the last payment of compensation, where any has been paid,
20 whichever shall be later, the right to file such application
21 shall be barred.

22 In any case of injury caused by exposure to radiological
23 materials or equipment or asbestos, unless application for
24 compensation is filed with the Commission within 25 years after
25 the last day that the employee was employed in an environment
26 of hazardous radiological activity or asbestos, the right to

1 file such application shall be barred.

2 If in any case except one where the injury was caused by
3 exposure to radiological materials or equipment or asbestos,
4 the accidental injury results in death application for
5 compensation for death may be filed with the Commission within
6 3 years after the date of death where no compensation has been
7 paid or within 2 years after the date of the last payment of
8 compensation where any has been paid, whichever shall be later,
9 but not thereafter.

10 If an accidental injury caused by exposure to radiological
11 material or equipment or asbestos results in death within 25
12 years after the last day that the employee was so exposed
13 application for compensation for death may be filed with the
14 Commission within 3 years after the date of death, where no
15 compensation has been paid, or within 2 years after the date of
16 the last payment of compensation where any has been paid,
17 whichever shall be later, but not thereafter.

18 (e) Any contract or agreement made by any employer or his
19 agent or attorney with any employee or any other beneficiary of
20 any claim under the provisions of this Act within 7 days after
21 the injury shall be presumed to be fraudulent.

22 (f) Any condition or impairment of health of an employee
23 employed as a firefighter, emergency medical technician (EMT),
24 or paramedic which results directly or indirectly from any
25 bloodborne pathogen, lung or respiratory disease or condition,
26 heart or vascular disease or condition, hypertension,

1 tuberculosis, or cancer resulting in any disability
2 (temporary, permanent, total, or partial) to the employee shall
3 be rebuttably presumed to arise out of and in the course of the
4 employee's firefighting, EMT, or paramedic employment and,
5 further, shall be rebuttably presumed to be causally connected
6 to the hazards or exposures of the employment. This presumption
7 shall also apply to any hernia or hearing loss suffered by an
8 employee employed as a firefighter, EMT, or paramedic. However,
9 this presumption shall not apply to any employee who has been
10 employed as a firefighter, EMT, or paramedic for less than 5
11 years at the time he or she files an Application for Adjustment
12 of Claim concerning this condition or impairment with the
13 Illinois Workers' Compensation Commission (except in the case
14 of any condition or impairment of health of an employee
15 employed as a firefighter which results directly or indirectly
16 from cancer resulting in any disability (temporary, permanent,
17 total, or partial) to the employee, in which case this
18 presumption shall not apply to any employee who has been
19 employed as a firefighter for less than 4 years at the time he
20 or she files an Application for Adjustment of Claim concerning
21 this condition or impairment with the Illinois Workers'
22 Compensation Commission). The Finding and Decision of the
23 Illinois Workers' Compensation Commission under only the
24 rebuttable presumption provision of this subsection shall not
25 be admissible or be deemed res judicata in any disability claim
26 under the Illinois Pension Code arising out of the same medical

1 condition; however, this sentence makes no change to the law
2 set forth in Krohe v. City of Bloomington, 204 Ill.2d 392.

3 (Source: P.A. 95-316, eff. 1-1-08.)

4 Section 10. The Workers' Occupational Diseases Act is
5 amended by changing Section 1 as follows:

6 (820 ILCS 310/1) (from Ch. 48, par. 172.36)

7 Sec. 1. This Act shall be known and may be cited as the
8 "Workers' Occupational Diseases Act".

9 (a) The term "employer" as used in this Act shall be
10 construed to be:

11 1. The State and each county, city, town, township,
12 incorporated village, school district, body politic, or
13 municipal corporation therein.

14 2. Every person, firm, public or private corporation,
15 including hospitals, public service, eleemosynary,
16 religious or charitable corporations or associations, who
17 has any person in service or under any contract for hire,
18 express or implied, oral or written.

19 3. Where an employer operating under and subject to the
20 provisions of this Act loans an employee to another such
21 employer and such loaned employee sustains a compensable
22 occupational disease in the employment of such borrowing
23 employer and where such borrowing employer does not provide
24 or pay the benefits or payments due such employee, such

1 loaning employer shall be liable to provide or pay all
2 benefits or payments due such employee under this Act and
3 as to such employee the liability of such loaning and
4 borrowing employers shall be joint and several, provided
5 that such loaning employer shall in the absence of
6 agreement to the contrary be entitled to receive from such
7 borrowing employer full reimbursement for all sums paid or
8 incurred pursuant to this paragraph together with
9 reasonable attorneys' fees and expenses in any hearings
10 before the Illinois Workers' Compensation Commission or in
11 any action to secure such reimbursement. Where any benefit
12 is provided or paid by such loaning employer, the employee
13 shall have the duty of rendering reasonable co-operation in
14 any hearings, trials or proceedings in the case, including
15 such proceedings for reimbursement.

16 Where an employee files an Application for Adjustment
17 of Claim with the Illinois Workers' Compensation
18 Commission alleging that his or her claim is covered by the
19 provisions of the preceding paragraph, and joining both the
20 alleged loaning and borrowing employers, they and each of
21 them, upon written demand by the employee and within 7 days
22 after receipt of such demand, shall have the duty of filing
23 with the Illinois Workers' Compensation Commission a
24 written admission or denial of the allegation that the
25 claim is covered by the provisions of the preceding
26 paragraph and in default of such filing or if any such

1 denial be ultimately determined not to have been bona fide
2 then the provisions of Paragraph K of Section 19 of this
3 Act shall apply.

4 An employer whose business or enterprise or a
5 substantial part thereof consists of hiring, procuring or
6 furnishing employees to or for other employers operating
7 under and subject to the provisions of this Act for the
8 performance of the work of such other employers and who
9 pays such employees their salary or wage notwithstanding
10 that they are doing the work of such other employers shall
11 be deemed a loaning employer within the meaning and
12 provisions of this Section.

13 (b) The term "employee" as used in this Act, shall be
14 construed to mean:

15 1. Every person in the service of the State, county,
16 city, town, township, incorporated village or school
17 district, body politic or municipal corporation therein,
18 whether by election, appointment or contract of hire,
19 express or implied, oral or written, including any official
20 of the State, or of any county, city, town, township,
21 incorporated village, school district, body politic or
22 municipal corporation therein and except any duly
23 appointed member of the fire department in any city whose
24 population exceeds 500,000 according to the last Federal or
25 State census, and except any member of a fire insurance
26 patrol maintained by a board of underwriters in this State.

1 One employed by a contractor who has contracted with the
2 State, or a county, city, town, township, incorporated
3 village, school district, body politic or municipal
4 corporation therein, through its representatives, shall
5 not be considered as an employee of the State, county,
6 city, town, township, incorporated village, school
7 district, body politic or municipal corporation which made
8 the contract.

9 2. Every person in the service of another under any
10 contract of hire, express or implied, oral or written, who
11 contracts an occupational disease while working in the
12 State of Illinois, or who contracts an occupational disease
13 while working outside of the State of Illinois but where
14 the contract of hire is made within the State of Illinois,
15 and any person whose employment is principally localized
16 within the State of Illinois, regardless of the place where
17 the disease was contracted or place where the contract of
18 hire was made, including aliens, and minors who, for the
19 purpose of this Act, except Section 3 hereof, shall be
20 considered the same and have the same power to contract,
21 receive payments and give quittances therefor, as adult
22 employees. An employee or his or her dependents under this
23 Act who shall have a cause of action by reason of an
24 occupational disease, disablement or death arising out of
25 and in the course of his or her employment may elect or
26 pursue his or her remedy in the State where the disease was

1 contracted, or in the State where the contract of hire is
2 made, or in the State where the employment is principally
3 localized.

4 (c) "Commission" means the Illinois Workers' Compensation
5 Commission created by the Workers' Compensation Act, approved
6 July 9, 1951, as amended.

7 (d) In this Act the term "Occupational Disease" means a
8 disease arising out of and in the course of the employment or
9 which has become aggravated and rendered disabling as a result
10 of the exposure of the employment. Such aggravation shall arise
11 out of a risk peculiar to or increased by the employment and
12 not common to the general public.

13 A disease shall be deemed to arise out of the employment if
14 there is apparent to the rational mind, upon consideration of
15 all the circumstances, a causal connection between the
16 conditions under which the work is performed and the
17 occupational disease. The disease need not to have been
18 foreseen or expected but after its contraction it must appear
19 to have had its origin or aggravation in a risk connected with
20 the employment and to have flowed from that source as a
21 rational consequence.

22 An employee shall be conclusively deemed to have been
23 exposed to the hazards of an occupational disease when, for any
24 length of time however short, he or she is employed in an
25 occupation or process in which the hazard of the disease
26 exists; provided however, that in a claim of exposure to atomic

1 radiation, the fact of such exposure must be verified by the
2 records of the central registry of radiation exposure
3 maintained by the Department of Public Health or by some other
4 recognized governmental agency maintaining records of such
5 exposures whenever and to the extent that the records are on
6 file with the Department of Public Health or the agency.

7 Any injury to or disease or death of an employee arising
8 from the administration of a vaccine, including without
9 limitation smallpox vaccine, to prepare for, or as a response
10 to, a threatened or potential bioterrorist incident to the
11 employee as part of a voluntary inoculation program in
12 connection with the person's employment or in connection with
13 any governmental program or recommendation for the inoculation
14 of workers in the employee's occupation, geographical area, or
15 other category that includes the employee is deemed to arise
16 out of and in the course of the employment for all purposes
17 under this Act. This paragraph added by Public Act 93-829 is
18 declarative of existing law and is not a new enactment.

19 The employer liable for the compensation in this Act
20 provided shall be the employer in whose employment the employee
21 was last exposed to the hazard of the occupational disease
22 claimed upon regardless of the length of time of such last
23 exposure, except, in cases of silicosis or asbestosis, the only
24 employer liable shall be the last employer in whose employment
25 the employee was last exposed during a period of 60 days or
26 more after the effective date of this Act, to the hazard of

1 such occupational disease, and, in such cases, an exposure
2 during a period of less than 60 days, after the effective date
3 of this Act, shall not be deemed a last exposure. If a miner
4 who is suffering or suffered from pneumoconiosis was employed
5 for 10 years or more in one or more coal mines there shall,
6 effective July 1, 1973 be a rebuttable presumption that his or
7 her pneumoconiosis arose out of such employment.

8 If a deceased miner was employed for 10 years or more in
9 one or more coal mines and died from a respirable disease there
10 shall, effective July 1, 1973, be a rebuttable presumption that
11 his or her death was due to pneumoconiosis.

12 Any condition or impairment of health of an employee
13 employed as a firefighter, emergency medical technician (EMT),
14 or paramedic which results directly or indirectly from any
15 bloodborne pathogen, lung or respiratory disease or condition,
16 heart or vascular disease or condition, hypertension,
17 tuberculosis, or cancer resulting in any disability
18 (temporary, permanent, total, or partial) to the employee shall
19 be rebuttably presumed to arise out of and in the course of the
20 employee's firefighting, EMT, or paramedic employment and,
21 further, shall be rebuttably presumed to be causally connected
22 to the hazards or exposures of the employment. This presumption
23 shall also apply to any hernia or hearing loss suffered by an
24 employee employed as a firefighter, EMT, or paramedic. However,
25 this presumption shall not apply to any employee who has been
26 employed as a firefighter, EMT, or paramedic for less than 5

1 years at the time he or she files an Application for Adjustment
2 of Claim concerning this condition or impairment with the
3 Illinois Workers' Compensation Commission (except in the case
4 of any condition or impairment of health of an employee
5 employed as a firefighter which results directly or indirectly
6 from cancer resulting in any disability (temporary, permanent,
7 total, or partial) to the employee, in which case this
8 presumption shall not apply to any employee who has been
9 employed as a firefighter for less than 4 years at the time he
10 or she files an Application for Adjustment of Claim concerning
11 this condition or impairment with the Illinois Workers'
12 Compensation Commission). The Finding and Decision of the
13 Illinois Workers' Compensation Commission under only the
14 rebuttable presumption provision of this paragraph shall not be
15 admissible or be deemed res judicata in any disability claim
16 under the Illinois Pension Code arising out of the same medical
17 condition; however, this sentence makes no change to the law
18 set forth in Krohe v. City of Bloomington, 204 Ill.2d 392.

19 The insurance carrier liable shall be the carrier whose
20 policy was in effect covering the employer liable on the last
21 day of the exposure rendering such employer liable in
22 accordance with the provisions of this Act.

23 (e) "Disablement" means an impairment or partial
24 impairment, temporary or permanent, in the function of the body
25 or any of the members of the body, or the event of becoming
26 disabled from earning full wages at the work in which the

1 employee was engaged when last exposed to the hazards of the
2 occupational disease by the employer from whom he or she claims
3 compensation, or equal wages in other suitable employment; and
4 "disability" means the state of being so incapacitated.

5 (f) No compensation shall be payable for or on account of
6 any occupational disease unless disablement, as herein
7 defined, occurs within two years after the last day of the last
8 exposure to the hazards of the disease, except in cases of
9 occupational disease caused by berylliosis or by the inhalation
10 of silica dust or asbestos dust and, in such cases, within 3
11 years after the last day of the last exposure to the hazards of
12 such disease and except in the case of occupational disease
13 caused by exposure to radiological materials or equipment, and
14 in such case, within 25 years after the last day of last
15 exposure to the hazards of such disease.

16 (Source: P.A. 95-316, eff. 1-1-08; 95-331, eff. 8-21-07.)