

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE DRS15195-MG-51 (3/2)

Short Title: Workers' Comp/Firefighter Occupat'l Diseases.

(Public)

Sponsors: Senator Berger of Franklin.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE A PRESUMPTION THAT CERTAIN INFECTIOUS DISEASES,  
3 RESPIRATORY DISEASE, HYPERTENSION, HEART DISEASE, AND CERTAIN  
4 CANCERS ARE OCCUPATIONAL DISEASES FOR FIREFIGHTERS EMPLOYED BY  
5 UNITS OF LOCAL GOVERNMENT THAT ARE COVERED BY THE WORKERS'  
6 COMPENSATION ACT.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. G.S. 97-53 reads as rewritten:

9 "§ 97-53. Occupational diseases enumerated. ~~enumerated; when due to exposure to~~  
10 ~~ehemicals.~~

11 (a) Occupational Diseases Due to Exposure to Chemicals. – The following diseases and  
12 conditions only shall be deemed to be occupational diseases within the meaning of this Article:

- 13 (1) Anthrax.
- 14 (2) Arsenic poisoning.
- 15 (3) Brass poisoning.
- 16 (4) Zinc poisoning.
- 17 (5) Manganese poisoning.
- 18 (6) ~~Lead poisoning. Provided poisoning if the employee shall have been was~~  
19 ~~exposed to the hazard of lead poisoning for at least 30 days in the preceding~~  
20 ~~12 months' period; and, provided further, only 12-month period. Only the~~  
21 ~~employer in whose employment such the employee was last injuriously~~  
22 ~~exposed shall be liable.~~
- 23 (7) Mercury poisoning.
- 24 (8) Phosphorus poisoning.
- 25 (9) Poisoning by carbon bisulphide, menthanol, naphtha or volatile halogenated  
26 hydrocarbons.
- 27 (10) Chrome ulceration.
- 28 (11) Compressed-air illness.
- 29 (12) Poisoning by benzol, or by nitro and amido derivatives of benzol  
30 (dinitrolbenzol, anilin, and others).
- 31 (13) Any disease, other than hearing loss covered in another subdivision of this  
32 section, which is proven to be due to causes and conditions which are  
33 characteristic of and peculiar to a particular trade, occupation or  
34 employment, but excluding all ordinary diseases of life to which the general  
35 public is equally exposed outside of the employment.



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- 1 (14) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of  
2 the eye due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound,  
3 product, or residue of any of these substances.
- 4 (15) Radium poisoning or disability or death due to radioactive properties of  
5 substances or to roentgen rays, X rays or exposure to any other source of  
6 radiation; provided, however, that the disease under this subdivision shall be  
7 deemed to have occurred on the date that disability or death shall occur by  
8 reason of such disease.
- 9 (16) Blisters due to use of tools or appliances in the employment.
- 10 (17) Bursitis due to intermittent pressure in the employment.
- 11 (18) Miner's nystagmus.
- 12 (19) Bone felon due to constant or intermittent pressure in employment.
- 13 (20) Synovitis, caused by trauma in employment.
- 14 (21) Tenosynovitis, caused by trauma in employment.
- 15 (22) Carbon monoxide poisoning.
- 16 (23) Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
- 17 (24) Asbestosis.
- 18 (25) Silicosis.
- 19 (26) Psittacosis.
- 20 (27) Undulant fever.
- 21 (28) Loss of hearing caused by harmful noise in the employment. The following  
22 rules shall be applicable in determining eligibility for compensation and the  
23 period during which compensation shall be payable:
- 24 a. The term "harmful noise" means sound in employment capable of  
25 producing occupational loss of hearing as hereinafter defined. Sound  
26 of an intensity of less than 90 decibels, A scale, shall be deemed  
27 incapable of producing occupational loss of hearing as defined in this  
28 section.
- 29 b. "Occupational loss of hearing" shall mean a permanent sensorineural  
30 loss of hearing in both ears caused by prolonged exposure to harmful  
31 noise in employment. Except in instances of preexisting loss of  
32 hearing due to disease, trauma, or congenital deafness in one ear, no  
33 compensation shall be payable under this subdivision unless  
34 prolonged exposure to harmful noise in employment has caused loss  
35 of hearing in both ears as hereinafter provided.
- 36 c. No compensation benefits shall be payable for temporary total or  
37 temporary partial disability under this subdivision and there shall be  
38 no award for tinnitus or a psychogenic hearing loss.
- 39 d. An employer shall become liable for the entire occupational hearing  
40 loss to which ~~his~~the employment has contributed, but if previous  
41 deafness is established by a hearing test or other competent evidence,  
42 whether or not the employee was exposed to harmful noise within six  
43 months preceding such test, the employer shall not be liable for  
44 previous loss so established, nor shall ~~he~~the employer be liable for  
45 any loss for which compensation has previously been paid or  
46 awarded and the employer shall be liable only for the difference  
47 between the percent of occupational hearing loss determined as of the  
48 date of disability as herein defined and the percentage of loss  
49 established by the preemployment and audiometric examination  
50 excluding, in any event, hearing losses arising from nonoccupational  
51 causes.

- 1 e. In the evaluation of occupational hearing loss, only the hearing levels  
2 at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second  
3 shall be considered. Hearing losses for frequencies below 500 and  
4 above 3,000 cycles per second are not to be considered as  
5 constituting compensable hearing disability.
- 6 f. The employer liable for the compensation in this section shall be the  
7 employer in whose employment the employee was last exposed to  
8 harmful noise in North Carolina during a period of 90 working days  
9 or parts thereof, and an exposure during a period of less than 90  
10 working days or parts thereof shall be held not to be an injurious  
11 exposure; provided, however, that in the event an insurance carrier  
12 has been on the risk for a period of time during which an employee  
13 has been injuriously exposed to harmful noise, and if after insurance  
14 carrier goes off the risk said employee has been further exposed to  
15 harmful noise, although not exposed for 90 working days or parts  
16 thereof so as to constitute an injurious exposure, such carrier shall,  
17 nevertheless, be liable.
- 18 g. The percentage of hearing loss shall be calculated as the average, in  
19 decibels, of the thresholds of hearing for the frequencies of 500,  
20 1,000, 2,000, and 3,000 cycles per second. Pure tone air conduction  
21 audiometric instruments, properly calibrated according to accepted  
22 national standards such as American Standards Association, Inc.,  
23 (ASA), International Standards Organization (ISO), or American  
24 National Standards Institute, Inc., (ANSI), shall be used for  
25 measuring hearing loss. If more than one audiogram is taken, the  
26 audiogram having the lowest threshold will be used to calculate  
27 occupational hearing loss. If the losses of hearing average 15  
28 decibels (26 db if ANSI or ISO) or less in the four frequencies, such  
29 losses of hearing shall not constitute any compensable hearing  
30 disability. If the losses of hearing average 82 decibels (93 db if ANSI  
31 or ISO) or more in the four frequencies, then the same shall  
32 constitute and be total or one hundred percent (100%) compensable  
33 hearing loss. In measuring hearing impairment, the lowest measured  
34 losses in each of the four frequencies shall be added together and  
35 divided by four to determine the average decibel loss. For each  
36 decibel of loss exceeding 15 decibels (26 db if ANSI or ISO) an  
37 allowance of one and one-half percent (1 1/2%) shall be made up to  
38 the maximum of one hundred percent (100%) which is reached at 82  
39 decibels (93 db if ANSI or ISO). In determining the binaural  
40 percentage of loss, the percentage of impairment in the better ear  
41 shall be multiplied by five. The resulting figure shall be added to the  
42 percentage of impairment in the poorer ear, and the sum of the two  
43 divided by six. The final percentage shall represent the binaural  
44 hearing impairment.
- 45 h. There shall be payable for total occupational loss of hearing in both  
46 ears 150 weeks of compensation, and for partial occupational loss of  
47 hearing in both ears such proportion of these periods of payment as  
48 such partial loss bears to total loss.
- 49 i. No claim for compensation for occupational hearing loss shall be  
50 filed until after six months have elapsed since exposure to harmful  
51 noise with the last employer. The last day of such exposure shall be

1 the date of disability. The regular use of employer-provided  
2 protective devices capable of preventing loss of hearing from the  
3 particular harmful noise where the employee works shall constitute  
4 removal from exposure to such particular harmful noise.

5 j. No consideration shall be given to the question of whether or not the  
6 ability of an employee to understand speech is improved by the use  
7 of a hearing aid. The North Carolina Industrial Commission may  
8 order the employer to provide the employee with an original hearing  
9 aid if it will materially improve the employee's ability to hear.

10 k. No compensation benefits shall be payable for the loss of hearing  
11 caused by harmful noise after October 1, 1971, if employee fails to  
12 regularly utilize employer-provided protection device or devices,  
13 capable of preventing loss of hearing from the particular harmful  
14 noise where the employee works.

15 (29) Infection with smallpox, infection with vaccinia, or any adverse medical  
16 reaction when the infection or adverse reaction is due to the employee  
17 receiving in employment vaccination against smallpox incident to the  
18 Administration of Smallpox Countermeasures by Health Professionals,  
19 section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25,  
20 2002) (to be codified at 42 U.S.C. § 233(p)), or when the infection or  
21 adverse medical reaction is due to the employee being exposed to another  
22 employee vaccinated as described in this subdivision.

23 Occupational diseases caused by chemicals shall be deemed to be due to exposure of an  
24 employee to the chemicals herein mentioned only when as a part of the employment such  
25 employee is exposed to such chemicals in such form and quantity, and used with such  
26 frequency as to cause the occupational disease mentioned in connection with such chemicals.

27 (b) Occupational Diseases of Firefighters. – Any condition or impairment of health  
28 caused by any of the following shall be deemed to be occupational diseases of firefighters  
29 within the meaning of this Article:

30 (1) Hypertension.

31 (2) Heart disease.

32 (3) Respiratory disease.

33 (4) Cancer that manifests itself in a firefighter during or after the period in  
34 which the firefighter is in the service of the unit of local government.

35 (5) Hepatitis that manifests itself in a firefighter during or five years after the  
36 period in which the firefighter is in the service of the unit of local  
37 government.

38 (6) HIV that manifests itself in a firefighter during or five years after the period  
39 in which the firefighter is in the service of the unit of local government."

40 **SECTION 2.** Article 1 of Chapter 97 of the General Statutes is amended by adding  
41 a new section to read:

42 **"§ 97-53.1. Compensability of firefighter occupational diseases.**

43 (a) Findings. – The General Assembly finds that:

44 (1) Firefighting is a particularly hazardous occupation that requires firefighters  
45 to work under constantly changing and often unstable environments.

46 (2) Firefighters are often subjected to stressful life and death situations that  
47 require lifting and maneuvering of heavy equipment in extremely hot  
48 environments while wearing heavy, specialized personal protective  
49 equipment.

1           (3)     Firefighters are routinely exposed to hazardous agents such as carbon  
2                 monoxide, carcinogens, particulate matter, and a broad array of other toxic  
3                 chemicals generated from the smoke of burning materials.

4           (4)     Firefighters as a class face an increased risk of certain infectious diseases,  
5                 respiratory disease, hypertension, heart disease, and certain cancers as a  
6                 result of their duties and responsibilities toward the general public.

7           (b)     Intent. – Recognizing that firefighting is a hazardous occupation that is essential to  
8                 protecting the personal safety of the citizens of this State, it is in the interest of the public and  
9                 the welfare of those who perform firefighting activities to ensure that firefighters are  
10                adequately compensated for injuries, illnesses, and deaths that are causally related to their  
11                firefighting activities. Therefore, it is the intent of the General Assembly to presume that the  
12                diseases specified in G.S. 97-53(b) are occupationally related to firefighting for the purpose of  
13                determining eligibility for compensation under the Workers' Compensation Act.

14          (c)     Definitions. – The following definitions apply in this section:

15           (1)     Disability. – Incapacity because of an occupational disease described in  
16                 G.S. 97-53(b) to earn the wages that the firefighter was receiving at the time  
17                 of manifestation of the occupational disease.

18           (2)     Firefighter. – A paid, partially paid, or volunteer member of a fire  
19                 department of a unit of local government.

20           (3)     Hepatitis. – Hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B,  
21                 hepatitis C, or any other strain of hepatitis generally recognized by the  
22                 medical community.

23           (4)     HIV. – The medically recognized retrovirus known as human  
24                 immunodeficiency virus, type I or type II, causing immunodeficiency  
25                 syndrome.

26          (d)     Presumed Eligibility. – A firefighter shall be presumed eligible for compensation for  
27                 occupational disease under this Article if either of the following sets of conditions are met:

28           (1)     The firefighter was required to submit to a physical examination upon  
29                 entering the service of the unit of local government as a firefighter, the  
30                 examination failed to reveal any evidence of a firefighter occupational  
31                 disease described in G.S. 97-53(b), and the firefighter has completed at least  
32                 five years of service as a firefighter for the unit of local government.

33           (2)     The firefighter was not required to submit to a physical examination upon  
34                 entering the service of the unit of local government as a firefighter and, at  
35                 the time of disability by an occupational disease described in G.S. 97-53(b),  
36                 the firefighter has completed at least five years of continuous service  
37                 immediately preceding January 1, 2009, as a firefighter for the unit of local  
38                 government.

39          (e)     Burden of Rebuttal. – In the case of cancer, heart disease, hypertension, or  
40                 respiratory disease, the unit of local government has the burden of proving by a preponderance  
41                 of competent evidence that the condition was caused by some means other than the firefighter's  
42                 occupation in order to disqualify the firefighter from receiving compensation for occupational  
43                 disease pursuant to this section.

44          (f)     Applicability. – This section applies to firefighters of units of local government  
45                 only.

46          **SECTION 2.** This act is effective when it becomes law and applies to claims for  
47 workers' compensation benefits filed on or after that date.