

MAINE STATE LEGISLATURE

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MA

L.D. 1746

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1283, L.D. 1746, Bill, "An Act to Amend the Workers' Compensation Laws to Provide for a Rebuttable Presumption of Eligibility for Benefits for Hepatitis or Hepatic Disease for Firefighters and Emergency Medical Services Personnel"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Workers' Compensation Benefits for Firefighters, Rescue Workers and Safety Workers Who Contract Certain Communicable Diseases'

Further amend the bill by inserting after the title and before the enacting clause the following:

'Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.'

Further amend the bill by striking out everything after the enacting clause and before the concept draft summary and inserting in its place the following:

COMMITTEE AMENDMENT

Sec. 1. 39-A MRSA §328-A is enacted to read:

§328-A. Communicable disease contracted by emergency rescue
or public safety worker

1. Definitions. As used in this section, unless the
context otherwise indicates, the following terms have the
following meanings.

A. "Body fluids" means blood and body fluids containing
visible blood and other potentially infectious materials, as
defined in a regulation of the Occupational Safety and
Health Administration, 29 Code of Federal Regulations,
1910.1030 (2001). For purposes of potential transmission of
meningococcal meningitis or tuberculosis, "body fluids"
includes respiratory, salivary and sinus fluids, including
droplets, sputum and saliva, mucus and other fluids through
which infectious airborne organisms can be transmitted
between persons.

B. "Corrections officer" has the same meaning as in Title
25, section 2801-A, subsection 2.

C. "Emergency medical services person" means a person
licensed as an emergency medical services person under Title
32, chapter 2-B who is employed by, or provides voluntary
service to, an ambulance service as defined in Title 32,
section 83 or a nontransporting emergency medical service as
defined in Title 32, section 83.

D. "Emergency rescue or public safety worker" means a
person who:

(1) Is a firefighter, emergency medical services
person, law enforcement officer or corrections officer;
and

(2) In the course of employment, runs a high risk of
occupational exposure to hepatitis, meningococcal
meningitis or tuberculosis.

E. "Employer" includes an entity for which a person
provides volunteer services.

F. "Firefighter" means an active member of a municipal fire
department or a volunteer fire association as defined in
Title 30-A, section 3151.

2 G. "Hepatitis" means hepatitis A, hepatitis B, hepatitis C
4 or any other strain of hepatitis generally recognized by the
6 medical community.

8 H. "High risk of occupational exposure" means a risk that
10 is incurred because a person subject to the provisions of
12 this section, in performing the basic duties associated with
14 that person's employment:

16 (1) Provides emergency medical treatment in a
18 nonhealth-care setting where there is a potential for
20 the transfer of body fluids between persons;

22 (2) At the site of an accident, fire or other rescue
24 or public safety operation, or in an emergency rescue
26 or public safety vehicle, handles body fluids in or out
28 of containers or works with or otherwise handles
30 needles or other sharp instruments exposed to body
32 fluids;

34 (3) Engages in the pursuit, apprehension and arrest of
36 persons suspected of violating the law and, in
38 performing such duties, risks exposure to body fluids;
40 or

42 (4) Is responsible for the custody and physical
44 restraint, when necessary, of prisoners or inmates
46 within a prison, jail or other criminal detention
48 facility or while on work detail outside the facility
50 or while being transported and, in performing such a
duty, risks exposure to body fluids.

I. "Law enforcement officer" has the same meaning as in
Title 25, section 2801-A, subsection 5.

J. "Occupational exposure," in the case of hepatitis,
meningococcal meningitis or tuberculosis, means an exposure
that occurs during the performance of job duties that may
place a worker at risk of infection.

2. Presumption. There is a rebuttable presumption that an
emergency rescue or public safety worker who contracts hepatitis,
meningococcal meningitis or tuberculosis has a disease arising
out of and in the course of employment, that sufficient notice of
the disease has been given and that the disease was not
occasioned by the willful intention of the emergency rescue or
public safety worker to cause self-injury or injury to another if
the emergency rescue or public safety worker complies with the
requirements of subsections 3 to 5.

2 3. Written verification. In order to qualify for the
presumption set forth in subsection 2, an emergency rescue or
4 public safety worker must sign a written affidavit declaring
that, to the best of the person's knowledge and belief:

6 A. In the case of a medical condition caused by hepatitis,
8 the person has not:

10 (1) Been exposed, through transfer of body fluids, to
any person known to have sickness or medical conditions
12 derived from hepatitis outside the scope of the
person's employment as an emergency rescue or public
14 safety worker;

16 (2) Had a transfusion of blood or blood components,
other than a transfusion arising out of an accident or
18 injury happening in connection with the person's
employment as an emergency rescue or public safety
20 worker, or received any blood products for the
treatment of a coagulation disorder;

22 (3) Engaged in unsafe sexual practices or other
high-risk behavior, as identified by the Centers for
24 Disease Control and Prevention or the Surgeon General
of the United States, or had sexual relations with a
26 person known by the emergency rescue or public safety
worker to have engaged in such unsafe sexual practices
28 or other high-risk behavior; or

30 (4) Used intravenous drugs not prescribed by a
32 physician.

34 B. In the case of meningococcal meningitis, in the 10 days
immediately preceding diagnosis the person was not exposed
36 outside the scope of the person's employment as an emergency
rescue or public safety worker to any person known to have
38 meningococcal meningitis or known to be an asymptomatic
carrier of the disease.

40 C. In the case of tuberculosis, the person has not been
exposed, outside the scope of the person's employment as an
42 emergency rescue or public safety worker, to any person
known by the emergency rescue or public safety worker to
44 have tuberculosis.

46 A person who has tested negative for hepatitis or tuberculosis at
the time of employment or during employment as an emergency
48 rescue or public safety worker may satisfy the affidavit
requirement in paragraph A, subparagraph (2) or paragraph C by
50 making the required declaration with respect to the period of

time since the person's last negative test for hepatitis or tuberculosis, respectively.

4. Required medical tests; preemployment physical. In order to be entitled to the presumption set forth in subsection 2:

A. An emergency rescue or public safety worker, at the time of or during employment as an emergency rescue or public safety worker and prior to diagnosis, must have undergone standard, medically acceptable tests for evidence of the disease for which the presumption is sought or evidence of the medical conditions derived from the disease, which tests failed to indicate the presence of infection. This paragraph does not apply in the case of meningococcal meningitis and does not apply to an emergency rescue or public safety worker employed or serving in that capacity on the effective date of this section; and

B. On or after the effective date of this section, the emergency rescue or public safety worker has undergone a preemployment physical examination that tested for and failed to reveal any evidence of hepatitis or tuberculosis if the person's employer requires such preemployment physical examination and tests.

5. Immunization. Whenever any standard, medically recognized vaccine or other form of immunization or other prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices for the Centers for Disease Control and Prevention, an emergency rescue or public safety worker may be required by the worker's employer to undergo the immunization or other prophylaxis unless the worker's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the worker's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety worker to undergo such immunization or other prophylaxis disqualifies the worker from the benefits of the presumption.

6. Record of exposures. To the extent required by any state or federal law or regulation:

A. An employer shall maintain a record of any known or reasonably suspected exposure of an emergency rescue or public safety worker in its employ to the diseases described in this section and shall immediately notify the employee of that exposure; and

B. An emergency rescue or public safety worker shall file an incident or accident report with the worker's employer of each instance of known or suspected occupational exposure to hepatitis, meningococcal meningitis or tuberculosis.

7. Liability if services performed for more than one employer. If an emergency rescue or public safety worker was employed by more than one employer, the employer in whose employ the person was last injuriously exposed to the risk of the disease contracted and the insurer on the risk at the time of that last exposure, if any, are the only entities liable for the disease.

8. Effect of presumption on life and disability insurance coverage. The presumption set forth in subsection 2 does not apply in determining eligibility for life or disability benefits unless otherwise provided in the insurance contract.

9. Effect of presumption on disability retirement. The presumption set forth in subsection 2 is effective for purposes of determining whether a disability is work-related for purposes of determining eligibility for disability retirement in the Maine State Retirement System. This presumption does not affect any eligibility requirement other than the requirement that the disability be work-related.'

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

This bill requires municipalities to provide for a rebuttable presumption that an emergency rescue or public safety worker who contracts hepatitis, meningococcal meningitis or tuberculosis has a disease arising out of and in the course of employment if certain criteria are met. The additional local costs can not be determined at this time. Pursuant to the Mandate Preamble, the 2/3 vote of all members elected to each House exempts the State from the constitutional requirement to fund 90% of the additional local costs.

The requirement that there is a rebuttable presumption that a corrections officer or law enforcement officer who contracts these diseases has an illness arising out of and in the course of employment if certain criteria are met will result in additional General Fund and Highway Fund costs to the Department of Corrections and the Department of Public Safety. The amount can not be determined at this time but is not expected to be significant.'

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SUMMARY

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6 This amendment replaces the bill and changes its title. It
8 provides that a firefighter, emergency medical services person,
10 law enforcement officer or corrections officer who contracts
12 hepatitis, meningococcal meningitis or tuberculosis is presumed
14 to have contracted the disease in the course of employment if
16 certain criteria are met. First, the person must have run a high
18 risk of exposure in the course of that work. Second, the person
20 must sign an affidavit stating that, to the best of the person's
knowledge, there are not other likely sources of the disease.
Third, a person must have received immunization against the
diseases if the employer requires it and the immunization is
medically recognized, unless the worker's physician determines
that the immunization would pose a risk to the worker. Finally,
except for persons employed or providing service prior to the
effective date of the bill, the person must have had a negative
test for hepatitis or tuberculosis prior to diagnosis.

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This amendment also adds a fiscal note to the bill.