

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

806I0168

## SENATE BILL NO. 197

Introduced by: Senators Koetzle, Kloucek, and Sutton (Dan) and Representatives Miles and Lintz

1 FOR AN ACT ENTITLED, An Act to create an infectious disease presumption regarding  
2 certain occupational disease disabilities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 62-8 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Hepatitis, meningococcal meningitis, tuberculosis, or HIV causing death or any health  
7 condition or impairment resulting in total or partial disability of any firefighter as defined by  
8 § 13-55-21, who has a documented occupational exposure to blood or body fluids, is presumed  
9 to be an occupational disease, suffered in the line of government duty, that is covered by this title  
10 unless the presumption is overcome by a preponderance of competent evidence to the contrary.

11 Section 2. That chapter 62-8 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 For purposes of this Act, any occupational exposure occurring on or after July 1, 2003, shall  
14 be deemed documented if the person covered under this Act gave notice, written or otherwise,  
15 of the occupational exposure to the person's employer. Any occupational exposure occurring



1 prior to July 1, 2003, shall be deemed documented without regard to whether the person gave  
2 notice, written or otherwise, of the occupational exposure to the person's employer.

3 Section 3. That chapter 62-8 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 For the purposes of this Act, the term, blood or body fluids, means blood and body fluids  
6 containing visible blood and other body fluids to which universal precautions for prevention of  
7 occupational transmission of blood-borne pathogens, as established by the Centers for Disease  
8 Control and Prevention, apply. For purposes of potential transmission of hepatitis,  
9 meningococcal meningitis, tuberculosis, or HIV, the term, blood or body fluids, includes  
10 respiratory, salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other  
11 fluid through which infectious airborne or blood-borne organisms can be transmitted between  
12 persons.

13 Section 4. That chapter 62-8 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 For the purposes of this Act, the term, hepatitis, means hepatitis A, hepatitis B, hepatitis non-  
16 A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the  
17 Centers for Disease Control and Prevention.

18 Section 5. That chapter 62-8 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 For the purposes of this Act, the term, HIV, means the medically recognized retrovirus  
21 known as human immunodeficiency virus, type I or type II, causing immunodeficiency syndrome.

22 Section 6. That chapter 62-8 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 For the purposes of this Act, the term, occupational exposure, in the case of hepatitis,

1 meningococcal meningitis, tuberculosis, or HIV, means an exposure that occurs during the  
2 performance of job duties that places a covered employee at risk of infection.

3 Section 7. That chapter 62-8 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Any person covered under the provisions of this Act who tests positive for exposure to the  
6 an enumerated occupational disease, but has not yet incurred the requisite total or partial  
7 disability, is entitled to make a claim for medical benefits pursuant to this chapter, including  
8 entitlement to an annual medical examination to measure the progress of the condition, if any,  
9 and any other medical treatment, prophylactic or otherwise.

10 Section 8. That chapter 62-8 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 If any standard, medically-recognized vaccine or other form of immunization or prophylaxis  
13 exists for the prevention of a communicable disease for which a presumption is established under  
14 this Act and if medically indicated by the given circumstances pursuant to immunization policies  
15 established by the Advisory Committee on Immunization Practices of the United States Public  
16 Health Service, a person subject to the provisions of this Act may be required by the person's  
17 employer to undergo the immunization or prophylaxis unless the person's physician determines  
18 in writing that the immunization or prophylaxis would pose a significant risk to the person's  
19 health.

20 Section 9. That chapter 62-8 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 The presumptions provided for in section 1 of this Act only apply if a person entitled to  
23 invoke them has, if requested by the person's employer, undergone a preemployment physical  
24 examination that:

- 1       (1)    Was conducted prior to the making of any claim under this title that relies on such  
2            presumptions;
- 3       (2)    Was performed by a physician whose qualifications are as prescribed by the employer;
- 4       (3)    Included such appropriate laboratory and other diagnostic studies as the employer  
5            may have prescribed; and
- 6       (4)    Found the person free of hepatitis, meningococcal meningitis, tuberculosis or HIV at  
7            the time of the examination.