

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

806J0040

HOUSE BILL NO. 1229

Introduced by: Representatives LaRue, Miles, Nesselhuf, and Rave and Senators Koetzle, Abdallah, Kloucek, Kooistra, Moore, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to establish a presumption regarding occupational disease
2 disabilities of certain firefighters.

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, who is a full-
8 time member of a paid fire department and who has a documented occupational exposure to
9 blood or body fluids, is presumed to be an occupational disease, suffered in the line of
10 government duty, that is covered by this title unless the presumption is overcome by a
11 preponderance of competent evidence to the contrary.

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

14 For purposes of this Act, any occupational exposure occurring on or after July 1, 2004, shall
15 be deemed documented if the person covered under this Act gave notice, written or otherwise,



1 of the occupational exposure to the person's employer. Any occupational exposure occurring
2 prior to July 1, 2004, shall be deemed documented without regard to whether the person gave
3 notice, written or otherwise, of the occupational exposure to the person's employer.

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

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

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

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

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

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

24 Section 6. That chapter 62-8 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 For the purposes of this Act, the term, occupational exposure, in the case of hepatitis,
3 meningococcal meningitis, tuberculosis, or HIV, means an exposure that occurs during the
4 performance of job duties that places a covered employee at risk of infection.

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

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

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

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

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

24 The presumptions provided for in section 1 of this Act only apply if the person entitled to

1 invoke the presumption has, if requested by the person's employer, undergone a preemployment
2 physical examination that:

3 (1) Was conducted prior to the making of any claim under this title that relies on such
4 presumptions;

5 (2) Was performed by a physician whose qualifications are as prescribed by the
6 employer;

7 (3) Included such appropriate laboratory and other diagnostic studies as the employer
8 may have prescribed; and

9 (4) Found the person free of hepatitis, meningococcal meningitis, tuberculosis, or HIV
10 at the time of the examination.