



BILL NO.: House Bill 1280
TITLE: Workers' Compensation – Medical Presumptions
POSITION: **OPPOSE**
DATE: March 3, 2010
COMMITTEE: Economic Matters
CONTACT: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** House Bill 1280. The expansion of the workers' compensation presumption for firefighters and rescue workers would: (1) ignore the many possible sources and risk factors of the cancers and diseases identified in the bill; (2) impose a significant fiscal burden on county and municipal governments at a time when the State is limiting its own new spending; and (3) exacerbate underlying burden of proof inequities found in the current law.

Counties cannot realistically regulate the numerous sources or potential exposure to causal agents for the cancers and diseases covered in the bill to manage risk. "Cancer" represents a wide and diverse range of diseases that have a variety of causes. Lifestyle choices, such as alcohol consumption, smoking, poor diet, lack of exercise, and high body weight all have been shown to increase the risk of contracting certain cancers. Sources of ionizing radiation, such as radon gas or a CT scan can cause cancer. Prolonged exposure to sunlight can cause melanoma or other skin cancers. Cancer can also result from certain viruses, including Hepatitis B, and bacterial infections. Finally, cancer can originate through immune system dysfunction or inherited genetic traits.

Likewise, the various forms of acute and chronic hepatitis have a variety of causal agents, including alcohol, viruses, and certain drugs. Transmission of some types of hepatitis can occur through ingesting contaminated food or sexual intercourse. Increased risk factors for contracting tuberculosis include diabetes, low body weight, IV drug abuse, and heredity. Meningococcus bacteria is found in a certain percentage of the general population and can be transmitted through saliva or prolonged close contact with an infected person.

In the past, the Committee has refused to support expansion of the Lyme Disease presumption to cover law enforcement officers, as the disease could be contracted through many non-work related activities.¹ HB 1280 represents a similar illogical expansion.

¹ See SB 743 of 2008 (Committee gave an unfavorable report) and HB 749 of 2007 (Committee heard the bill but took no action).

HB 1280 would also impose a significant fiscal burden on county and municipal governments at a time when they, like the State, are struggling to contain costs and reduce spending. The proposed FY 2011 budget, reflecting some \$400 million in cuts to local governments being carried over from FY 2010, provides \$600 million less in funding to county and municipal government than that of FY 2007, sending local government aid down to 1984 levels. As a result, counties and municipalities have laid off 400 employees, used furloughs and salary cuts, and dipped into “rainy day” funds and balances. The General Assembly has adopted a policy of not passing a bill even if it only contains a modest fiscal cost to the State. The same consideration should be extended to local governments.

Finally, the bill would exacerbate underlying burden of proof inequities found in the existing “Morgan” presumption law. A 2001 Maryland Court of Appeals decision held that for burden of proof issues, it is a “Morgan” presumption, meaning a claimant does not need to present any evidence to prevail in a claim for workers’ compensation.² In practice, this standard makes compensation automatic once the claim is filed. The only other instance in Maryland law where the Morgan presumption applies is in family law where a husband is presumed to be the father of his wife’s children.³ Today, a DNA test easily determines paternity. Unfortunately, there is no analogous test to determine the origin of cancer or other diseases covered under this bill.

MACo has consistently urged modest and reasonable adjustments to the presumption law.⁴ This bill represents a significant expansion of the presumption that would force local governments to cover workers’ compensation claims for diseases that may not have been contracted in the line of duty. Accordingly, MACo urges the Committee to give HB 1280 an **UNFAVORABLE** report.

² *City of Frederick vs. Shankle*, 367 Md. 5 (2001).

³ See § 5-1027 of the Family Law Article.

⁴ See MACo testimony on HB 1069/SB 491 of 2005 and HB 1070/SB 557 of 2004.