

RETRIEVE BILL

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 2038, entitled:

"AN ACT to amend the workers' compensation law, in relation to including Lyme disease as an occupational disease"

NOT APPROVED

This bill arises out of the sponsors' admirable efforts to ensure that workers who are exposed to the growing threat of Lyme disease are adequately protected by the Workers' Compensation Law (WCL). To that end, the bill would add Lyme disease to the list of occupational diseases delineated in WCL Section 3 that, if contracted right after a worker has engaged in certain processes during his or her job, are presumed for purposes of workers' compensation benefits to have arisen out of such employment.

I share the sponsors' concerns for protecting those who are exposed to Lyme disease through their employment. The precise need for this bill, however, is unclear. A review of recent Workers' Compensation Board decisions reveals numerous instances where workers successfully brought occupational disease claims involving Lyme disease. In those cases, the Board engaged in a fact-specific analysis, considering such factors as the worker's job, degree of time spent outdoors or otherwise exposed to ticks carrying the disease, and the incidence of Lyme disease in the area. The supporters of the bill do not point to any evidence that workers are not sufficiently protected by the current process.

While the bill does not appear necessary, I am concerned - like the Workers' Compensation Board, which opposes this legislation - that it has the potential to confuse and complicate the law in this area. WCL Section 3 generally addresses immediate prior exposure to specific chemicals, which supports a claim of poisoning by such materials. In this instance, however, the legislation lists certain occupations that are covered. Since the list is not, and cannot be, comprehensive, certain occupations receive the benefit of a presumption while others - which may be a equal risk - do not. Indeed, the Workers' Compensation Board has expressed the concern that this legislation may lead to the exclusion from benefits of certain jobs not listed. The sponsors have sought to address that issue by including "related occupations," but the scope of that term is unclear, and seems to invite back the fact-specific inquiry that this bill would replace.

In any case, a worker's particular occupation should not be the only factor in assessing a Lyme disease claim. The incidence of Lyme disease varies widely by area of the State, and the specific exposure of a worker to the risks of the disease will depend on the nature of the tasks he or she has performed, and in what locations. Yet under this bill, a presumption would arise from the individual's job, even if that individual worked in an area where there was no genuine exposure to risk.

I commend the sponsors for their efforts in addressing a significant public health concern. In the absence of evidence of a problem that needs to be remedied, however, and given the confusion the bill may cause and the opposition to it by the agency that must administer the statute at issue, I cannot see a reason to alter existing law.