

State: N.J.

Bill to Create Cancer Presumption Heads to Christie's Desk: Top [2015-12-18]

The New Jersey state Assembly on Thursday passed a bill that would create a rebuttable cancer presumption for firefighters, one that critics say is far too broad and will needlessly increase costs for the state, cities, towns and taxpayers.

[Senate Bill 264](#) would create a presumption that any cancer contracted by firefighters is work related, making them eligible for workers' compensation benefits. The Assembly voted 45-23 to approve the measure on Thursday, which followed a 22-12 vote by the Senate to pass the measure on Oct. 23.



The bill now goes to presidential candidate Gov. Chris Christie, who vetoed a similar bill that cleared the legislature two years ago, arguing it was not properly vetted by the legislature's budget committees.

State lawmakers in Ohio and Florida are also considering legislation to create a cancer presumption for firefighters.

Two bills were introduced in the Ohio legislature. The first, [SB 27](#), covers only professional firefighters and limits the types of cancer that can be covered. It was introduced by Sen. Tom Patton, of Cleveland.

[HB 292](#), introduced by Rep. Christina Hagan, R-Alliance, is broader, allowing coverage for professionals and volunteers who develop any type of cancer.

"We want to protect our firefighters during their career and after they leave," Doug Stern, of the Ohio Association of Professional Fire Fighters, told Stateline.org, the Pew Trust's news and research service. "As we see more and more of our colleagues coming down with these cancers at a younger and younger age, it's very emotional. It's very personal."

In Florida, legislation has been filed for the session that commences Jan. 12 to create a presumption that any firefighter or paramedic diagnosed with cancer contracted the disease in the line of duty. Those affected would receive benefits unless "competent evidence" proved the cancer was not work-related.

Florida League of Cities lobbyist Craig Konn said it will be "the most expansive" protection in the country.

Konn [told the Orlando Sun Sentinel](#). The mandate is so broad that carriers would have to assume the worst and set premiums accordingly, he said.

"The presumption," Konn said, "would be nearly impossible to overcome."

According to the International Association of Fire Fighters, 33 states have some type of firefighter cancer presumption law. Specifics vary from state to state, with some applying only to full-time firefighters and others including volunteers. Some specify the types of cancer that are compensable, while others cover all types of cancer.

All of the presumption laws have provisions stating that a firefighter has to be on the job for a set period of time for the presumption to apply, ranging from two to 12 years.

New Jersey's bill has been working its way through the legislature for much of the current two-year session, which spanned 2014 and 2015 and ends in January. The Senate passed the bill in October 2014, but the Assembly Appropriations Committee approved the measure only last week.

It has passed along largely partisan lines, with Democrats in support and Republican opposed. The Democrats have a majority in both houses of the legislature, but Christie is a Republican.

The bill states: "In the case of any firefighter with seven or more years of service, due to the extremely high likelihood that such a firefighter will be repeatedly exposed to smoke and other carcinogens, the bill creates a rebuttable presumption that if the firefighter suffers an injury, illness or death which may be caused by cancer, that the cancer is a compensable occupational disease."

Employers can require workers to undergo reasonable testing, evaluation and monitoring of health conditions in order to determine whether the exposures or other presumed causes of cancer are actually linked to the deaths, illnesses or disabilities for which compensation is sought, the bill says. It covers volunteer as well as professional firefighters.

An employer has to find "clear and convincing" evidence the cancer is not linked to the job, the legislation states.

That's a big problem, according to the New Jersey State League of Municipalities (NJSLOM). According to the group, cities and towns will bear the cost of increased premiums if the legislation passes.

"The provisions of this bill will, we feel, tip the scales and increase costs that will need to be passed on to taxpayers," said Jon Moran, NJSLOM's legislative analyst.

In a briefing note published on NJSLOM's website after the Assembly's appropriations committee sent the bill to the full Assembly last week, Moran laid out the organization's objections.

A-1347/S-264 will create a presumption that all cancers are due to on-the-job exposure, Moran said.

He added that the most comprehensive study on the risk and rate of firefighters contracting cancer, by the National Institute of Occupational Safety Hazards, concluded that career firefighters had a significantly higher rate of mesothelioma and an elevated rate of respiratory, digestive and urinary cancers.

presumption for volunteers,” Moran said.

Further, Moran argued, the bill shifts the standard of proof to rebut the presumption of compensability from firefighters to employers. He added there is no definition of this new standard, which will lead to costly litigation.

Record-keeping requirements and coverage for retirees will add further costs, Moran said.

He concluded: “Our recommendation is to create a study commission to examine the issue, review the NIOSH study and consider the experience of other states. Further, this issue should be addressed outside of workers’ compensation.”

Dominick Marino, president of the Professional Firefighters Association of New Jersey, which has pushed for legislation on workers' compensation coverage for firefighters with cancer for years, said it is not known if there are going to be increased costs for cities and towns.

“Everybody who spoke against it talked about higher premiums, but that's all an assumption,” Marino said. He added that the state's Office of Legislative Affairs could not determine the cost of presumption for firefighters.

Marino said the governor raised concerns when he vetoed the previous presumption bill in 2013, but those concerns have now been addressed. The bill is named after Thomas P. Canzanella, a past president of the association, who died in 2007.

Brian Murray, Christie's spokesman, said the governor's office has a general practice of not commenting on pending legislation until a final bill is submitted and “we have had time to consider and review it in detail.”

[In his 2013 veto message](#) for the previous bill, Gov. Christie said that although this measure would likely have a significant impact on state, local and municipal government budgets, the bill’s sponsors refused to obtain a fiscal analysis or refer the bill to either house’s budget committee.

“Regrettably, the Legislature’s failure to pursue the responsible course of thoroughly reviewing the significant changes to a successful and long-standing system, and the corresponding impact of this proposal on taxpayers, prevent my approval,” the governor wrote.

The Senate on Thursday also considered a second presumption bill that was introduced in the Assembly. [A1347](#) was referred to the Senate Budget and Appropriations Committee and to the Assembly Appropriations Committee.

The Senate made some changes to the bill, such as increasing the number of years of service a firefighter has to complete before becoming eligible for benefits from five to seven years.

In its fiscal study, the OLS concluded the costs could not be determined but it “will most likely result in increased costs to state and local public entities.”

This was due, the OLS said, “to the shift of the burden of proof from the worker to the employer in certain cases, which may result in increased claims for workers’ compensation benefits, and the requirement for public safety employers to maintain additional records.”

number of individuals who may submit claims each year and the costs of those claims,” the office concluded.