

1 **WORKERS' COMPENSATION COVERAGE OF**
2 **FIRE DEPARTMENT EMPLOYEES**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Joseph G. Murray**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Labor Code to address presumptions related to fire
10 department employees and workers' compensation.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides for a presumption for purposes of workers' compensation that certain
14 occupational diseases are employment related for fire department employees.

15 **Monies Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 ENACTS:

21 **34A-3-113**, Utah Code Annotated 1953

23 *Be it enacted by the Legislature of the state of Utah:*

24 Section 1. Section **34A-3-113** is enacted to read:

25 **34A-3-113. Presumption for fire department employees.**

26 (1) As used in this section:

27 (a) (i) "Fire department employee" means an individual that:



28 (A) is a member of a fire department or other organization that:
29 (I) provides fire suppression and other fire-related services; and
30 (II) is an agency of a political subdivision of the state; and
31 (B) (I) is in a capacity that includes responsibility for the extinguishment of fire; or
32 (II) is emergency medical service personnel, as defined in Section 26-8a-102, who is a
33 member of a fire department or other organization described in Subsection (1)(a)(i) when
34 providing services as an emergency medical service personnel.

35 (ii) "Fire department employee" includes a volunteer member of a fire department or
36 other organization described in Subsection (1)(a)(i).

37 (b) "Line-of-duty employment" means an activity of a fire department employee for
38 which the fire department employee is obligated or authorized to perform as a fire department
39 employee by:

40 (i) rule;

41 (ii) condition of employment or service; or

42 (iii) statute.

43 (c) "Presumptive occupational disease" means one of the following cancers:

44 (i) brain cancer;

45 (ii) cancer of the digestive system;

46 (iii) leukemia;

47 (iv) lymphoma, except for Hodgkin's disease;

48 (v) melanoma;

49 (vi) multiple myeloma; or

50 (vii) respiratory cancer.

51 (2) Notwithstanding the other provisions of this chapter or Chapter 2, Workers'
52 Compensation Act, for a claim for compensation under this chapter that meets the requirements
53 of Subsection (3), there is a rebuttable presumption that a presumptive occupational disease:

54 (a) arose out of and in the course of line-of-duty employment; and

55 (b) is medically caused or aggravated by the line-of-duty employment described in
56 Subsection (2)(a).

57 (3) The presumption described in Subsection (2) is created if:

58 (a) the claim for compensation under this chapter is filed within the time periods

59 provided in Sections 34A-3-108 and 34A-3-109;

60 (b) the fire department employee for which the claim is filed is employed in the
61 line-of-duty employment;

62 (i) for at least 36 months; and

63 (ii) (A) on the day on which the claim for compensation is filed; or

64 (B) within no more than three years before the day on which the claim for
65 compensation is filed;

66 (c) (i) as a condition of being employed in line-of-duty employment, the fire
67 department employee passed a physical examination before the day on which the fire
68 department employee made a claim under this chapter for a presumptive occupational disease;
69 and

70 (ii) the examination described in Subsection (3)(c)(i) did not indicate evidence of a
71 presumptive occupational disease; and

72 (d) the claim for compensation under this chapter is for a presumptive occupational
73 disease.

74 (4) If the conditions of Subsection (3) are met, a fire department employee may rely on
75 the presumption described in Subsection (2) to meet a burden of proof to establish entitlement
76 to compensation under this chapter and Chapter 2, Workers' Compensation Act.

77 (5) The presumption described in Subsection (2) may be rebutted if the employer or the
78 employer's insurer establishes by a preponderance of the evidence that the presumptive
79 occupational disease:

80 (a) did not arise out of and in the course of the line-of-duty employment; and

81 (b) was not medically caused or aggravated by the line-of-duty employment described
82 in Subsection (5)(a).

83 (6) Notwithstanding the other provisions of this section, an employer is not liable for a
84 presumptive occupational disease if after a fire department employee is no longer employed in
85 the line-of-duty employment, the fire department employee is injuriously exposed to the
86 hazards of the presumptive occupational disease as provided in Section 34A-3-105.

87 (7) Notwithstanding the other provisions of this section, Title 26, Chapter 6a, Disease
88 Testing and Workers' Compensation Presumption for Benefit of Emergency Medical Services
89 Providers, governs whether there is or is not a presumption that a disease, as defined in Section

90 26-6a-1, is compensable under this chapter or Chapter 2, Workers' Compensation Act.
91 (8) This section may not be construed as preventing a fire department employee from
92 receiving workers' compensation benefits under this chapter or Chapter 2, Workers'
93 Compensation Act, because the fire department employee fails to meet the requirements under
94 this section to establish the rebuttable presumption described in Subsection (2).

Legislative Review Note
as of 1-18-05 10:20 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Employers of firefighters (including the state but usually local governments) will pay more in workers' compensation premiums.

Individual and Business Impact

Qualifying firefighters will receive increased benefits.