

OCCUPATIONAL INJURIES AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses provisions related to occupational injuries and diseases.

Highlighted Provisions:

This bill:

- ▶ modifies requirements for calculating add-on fees under a medical workers' compensation claim;
- ▶ modifies the circumstances under which a firefighter is presumed to have contracted certain cancers during the course of the firefighter's employment;
- ▶ requires the Division of Industrial Accidents to conduct a study regarding cancers commonly caused in the course of a firefighter's employment;
- ▶ includes a sunset date and reporting requirements for the study; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-1-309, as repealed and reenacted by Laws of Utah 2019, Chapter 15

34A-3-113, as last amended by Laws of Utah 2022, Chapter 346



28 **63I-2-234**, as last amended by Laws of Utah 2021, Chapter 82



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

31 Section 1. Section **34A-1-309** is amended to read:

32 **34A-1-309. Add-on fees.**

33 (1) As used in this section:

34 (a) "Carrier" means:

35 (i) a workers' compensation insurance carrier[;];

36 (ii) the Uninsured Employers' Fund, an employer that does not carry workers'

37 compensation insurance[;]; or

38 (iii) a self-insured employer as defined in Section **34A-2-201.5**.

39 (b) "Indemnity compensation" means a workers' compensation claim for indemnity
40 benefits that arises from or may arise from a denial of a medical claim.

41 (c) "Medical claim" means a workers' compensation claim for medical expenses or
42 recommended medical care.

43 (d) "Unconditional denial" means a carrier's denial of a medical claim:

44 (i) after the carrier completes an investigation; or

45 (ii) 90 days after the day on which the claim was submitted to the carrier.

46 (2) (a) The commission may award an add-on fee to a claimant to be paid by the carrier
47 if:

48 (i) a medical claim is at issue;

49 (ii) the carrier issues an unconditional denial of the medical claim;

50 (iii) the claimant hires an attorney to represent the claimant during the formal
51 adjudicative process before the commission;

52 (iv) after the carrier issues the unconditional denial, the commission orders the carrier
53 or the carrier agrees to pay the medical claim; and

54 (v) any award of indemnity compensation in the case is less than \$5,000.

55 (b) An award of an add-on fee under this section is in addition to:

56 (i) the amount awarded for the medical claim or indemnity compensation; and

57 (ii) any amount for attorney fees agreed upon between the claimant and the claimant's
58 attorney.

59 (c) An award under this section is governed by the law in effect at the time the claimant
60 files an application for hearing with the Division of Adjudication.

61 (d) (i) The commission shall calculate the medical expenses awarded as part of a
62 medical claim under this section in accordance with the amount the carrier is required to pay
63 under the rules established by the commission under Subsection [34A-2-407\(9\)](#).

64 (ii) If the medical expenses awarded under this section are not set forth in the rules
65 described in Subsection [34A-2-407\(9\)](#), the commission shall calculate the medical expenses
66 based on the amount the carrier paid to the medical provider.

67 (3) If the commission awards an add-on fee under this section, the commission shall
68 award the add-on fee in the following amount:

69 (a) the lesser of 25% of the medical expenses the commission awards to the claimant or
70 \$25,000, for a case that is resolved at the commission level;

71 (b) the lesser of 30% of the medical expenses the Utah Court of Appeals awards to the
72 claimant or \$30,000, for a case that is resolved on appeal before the Utah Court of Appeals; or

73 (c) the lesser of 35% of the medical expenses that the Utah Supreme Court awards to
74 the claimant or \$35,000, for a case that is resolved on appeal before the Utah Supreme Court.

75 (4) If a court invalidates any portion of this section, the entire section is invalid.

76 Section 2. Section **34A-3-113** is amended to read:

77 **34A-3-113. Presumption of workers' compensation benefits for firefighters --**
78 **Study.**

79 (1) As used in this section:

80 (a) (i) "Firefighter" means a member, including a volunteer member, as described in
81 Subsection [67-20-2\(7\)\(b\)\(ii\)](#), or a member paid on call, of a fire department or other
82 organization that provides fire suppression and other fire-related service who is responsible for
83 or is in a capacity that includes responsibility for the extinguishment of fires.

84 (ii) "Firefighter" does not include a person whose job description, duties, or
85 responsibilities do not include direct involvement in fire suppression.

86 (b) "Presumptive cancer" means one or more of the following cancers:

87 (i) pharynx;

88 (ii) esophagus;

89 (iii) lung; and

90 (iv) mesothelioma.

91 (2) If a firefighter who contracts a presumptive cancer meets the requirements of
92 Subsection (3), there is a rebuttable presumption that:

93 (a) the presumptive cancer was contracted arising out of and in the course of
94 employment; and

95 (b) the presumptive cancer was not contracted by a willful act of the firefighter.

96 (3) To be entitled to the rebuttable presumption described in Subsection (2), the
97 firefighter shall:

98 (a) during the time of employment as a firefighter, [~~the firefighter undergoes~~] undergo
99 annual physical examinations;

100 (b) [~~the firefighter shall~~] have been employed as a firefighter for eight years or more
101 and regularly responded to firefighting or emergency calls within the eight-year period; and

102 (c) if [~~a~~] the firefighter has used tobacco, [~~the firefighter provides~~] provide
103 documentation from a physician that indicates that the firefighter has not used tobacco for the
104 eight years preceding reporting the presumptive cancer to the employer or division.

105 (4) A presumption established under this section may be rebutted by a preponderance
106 of the evidence.

107 (5) If a firefighter who contracts a presumptive cancer is employed as a firefighter by
108 more than one employer and qualifies for the presumption under Subsection (2), and that
109 presumption has not been rebutted, the employer and insurer at the time of the last substantial
110 exposure to risk of the presumptive cancer are liable under this chapter [~~pursuant to~~] under
111 Section 34A-3-105.

112 (6) A cause of action subject to the presumption under this section is considered to
113 arise on the date [~~after May 12, 2015,~~] that the employee:

114 (a) suffers disability from the occupational disease;

115 (b) knows, or in the exercise of reasonable diligence should have known, that the
116 occupational disease is caused by employment; and

117 (c) files a claim as provided in Section 34A-3-108.

118 (7) (a) The division shall conduct a study to determine whether cancers other than the
119 cancers listed in Subsection (1)(b) are commonly contracted in the course of a firefighter's
120 employment.

- 121 (b) In conducting the study, the division shall:
122 (i) consider cancer latency periods; and
123 (ii) consult with:
124 (A) associations representing firefighters;
125 (B) fire departments; and
126 (C) the Rocky Mountain Center for Occupational and Environmental Health created in
127 Section [53B-30-203](#).
128 (c) Before November 30, 2024, the division shall provide a report to the Business and
129 Labor Interim Committee summarizing the results of the study and any recommendations for
130 legislation.
131 Section 3. Section **63I-2-234** is amended to read:
132 **63I-2-234. Repeal dates: Title 34A.**
133 (1) Section [34A-2-107.3](#) is repealed May 15, 2025.
134 (2) Subsection [34A-3-113\(7\)](#) relating to a study is repealed on January 1, 2025.