

Fiscal Note

BILL # SB 1451

TITLE: workers' compensation; rates; firefighters; cancer

SPONSOR: Boyer

STATUS: Senate Engrossed

PREPARED BY: Jordan Johnston

Description

SB 1451 would modify the requirements for peace officers, firefighters and fire investigators to qualify for a presumption of workers' compensation. If the outlined requirements are met, the bill deems the listed cancers as presumed to be occupational diseases arising out of employment, and this presumption may be rebutted if there is clear and convincing evidence the disease did not arise out of employment. The bill also authorizes insurers covering firefighters and fire investigators to adjust their premium rates to cover anticipated increased costs from cancer claims and adds information sharing and reporting requirements for the Industrial Commission of Arizona (ICA) and the Department of Insurance and Financial Institutions (DIFI).

Estimated Impact

Based on estimates from the Arizona Self-Insurers Association (ASIA) and the Arizona Counties Insurance Pool (ACIP) in a 2020 study conducted by these organizations, the state and local governments are expected to incur \$37.6 million of workers' compensation claims annually related to peace officer and firefighter cancers.

With the exception of new positions and medical conditions added by the bill (inclusion of fire investigators, breast and ovarian cancer), we cannot determine what proportion of the \$37.6 million amount represents a new cost under the bill. This new cost cannot be determined because it is unclear what "baseline" amount of these \$37.6 million of claims would already be approved under current law.

There has been considerable discussion as to whether local governments are appropriately following the existing framework for claim processing under A.R.S. § 23-901.01. The Attorney General wrote to local governments in 2019 subsequent to reports of improperly handled claims. Related to the presumptions established under Laws 2017, Chapter 318, the Attorney General stated that "these seemingly improper denials suggest that some municipalities may not be aware of their responsibilities under the new amended statutes or alternatively, are disregarding the state law requirements."

The bill adds breast and ovarian cancer to the listed cancers that qualify for a presumption of workers' compensation. These cancers will represent a new cost, regardless of the application of current statute. Of the \$37.6 million estimated annual cost, breast and ovarian cancer represent approximately \$420,000 of the total cost. In a given breast or ovarian cancer case, the level of required insurance reserves for lifetime benefits could be up to an additional \$1.5 million, depending on the level of disability claim.

The ASIA/ACIP analysis assumes 14,500 peace officers and 9,778 firefighters in the state. The bill also adds fire investigators as eligible to qualify for a presumption of workers' compensation if requirements are met. ASIA/ACIP assume that fire investigators in the state are included in the estimated total, although they cannot estimate the total number of fire investigators in Arizona. These fire investigators would also represent a new cost under the bill. Given the unknown number of current fire investigators, we are unable to estimate their new cost.

The \$37.6 million amount is based on the incidence rate of the eligible cancers and the typical cost associated with each claim. The \$37.6 million estimate includes \$27.4 million in reserves set aside for disability payments and death benefits that are claimed in a given year but will be paid over the entire lifetime of the beneficiary.

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State employees represent a 6.7% share of the employees who may be impacted by this bill. If a state peace officer or firefighter were to submit a cancer claim, the cost would be approximately \$230,000 in medical and disability benefits for that year. The level of reserves could be up to an additional \$1.5 million, depending on the level of disability claim. As with the overall cost estimate of \$37.6 million, we cannot attribute the state impact to the bill itself, due to uncertainty about which claims would already be approved under current law.

We have not yet received fiscal impact estimates from ICA and DIFI.

Analysis

Background

Current statute, under A.R.S. § 23-901.01, prescribes certain cancers and conditions for which peace officers and firefighters are presumed to be eligible to receive worker's compensation. If the statutory requirements are met, the cancer or condition is deemed to arise out of employment. Peace officers and firefighters, among other stipulations, are currently eligible for compensation if they were exposed to a known carcinogen, informed the department of this exposure, and the carcinogen is reasonably related to the cancer.

In addition, current statute stipulates that the peace officer or firefighter must be 65 years of age or younger and diagnosed with a prescribed cancer listed in statute no more than 15 years after their last date of employment as a peace officer or firefighter to be eligible for compensation. If all the stipulations outlined in the statute apply to the peace officer or firefighter, the presumption may be rebutted by "a preponderance of evidence that there is a specific cause of the cancer other than an occupational exposure to a carcinogen".

For reference, the City of Phoenix has 27 firefighter cancer workers' compensation claims that have been accepted between 2017 to 2019. Given that the current statutory presumption was created in 2017, the city averages approximately 9 new claims a year under current law. Phoenix has approximately 1,600 sworn firefighters, which means about 0.6% of their workforce files new cancer claims annually.

State Fiscal Impact

The state's cost would range from approximately \$230,000 to \$2.2 million per claim depending on the level of disability. The state is estimated to have 1,557 sworn officers between all projected FY 2022 PSPRS active peace officers and current Arizona Department of Transportation peace officers. Additionally, the state has 77 firefighters in total between the Department of Emergency and Military Affairs and the Department of Forestry and Fire Management. Of the total 14,500 peace officers and 9,778 firefighters employed across all government entities in Arizona, the state portion is 6.7%.

Worker's Compensation Benefits

Our analysis is based on information provided by the Arizona Self-Insurers Association (ASIA) and the Arizona Counties Insurance Pool (ACIP), both of whom work with local and county employers on workers' compensation and liability claims. The analysis assumes 14,500 peace officers and 9,778 firefighters and fire investigators in the state, of which 1,634 work for the state. The analysis also assumes the following 5 benefits will apply for each workers' compensation claim:

- Medical benefits. Medical benefits entail the cost to cover any and all medical bills associated with treating an eligible cancer listed in statute. Workers' compensation pays all medical bills related to the eligible cancer, regardless of the beneficiary's other insurance coverage.
- Total temporary benefits (TTD). TTD entails the cost of government entities to pay a portion of the peace officer's or firefighter's salary. The analysis assumes payments at 66.7% (two-thirds) of the average monthly wage up to the established annual maximum determined by ICA, which in 2021 is \$5,030.33 a month.
- Lifetime loss of earning benefits (LEC). LEC entails the cost of paying the peace officer or firefighter, who has a permanent physical restriction and is unable to perform the essential functions of the position, the "loss of earning" in the form of monthly benefits for life. This payment makes up the difference between the salary of the new job the ex-peace officer or ex-firefighter takes and what he or she earned previously as a peace officer or firefighter.
- Permanent Total Disability benefits (PTD). PTD entails the cost of paying the peace officer or firefighter, who has a permanent physical restriction and is unable to return to the workforce, a portion of their salary for life. The analysis assumes payments at 66.7% (two-thirds) of the average monthly wage up to the established annual maximum determined by ICA, which in 2021 is \$5,030.33 a month.

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- Death benefits. Death benefits entail lifetime payments made to a surviving spouse and, up to the age of 18, dependents of any peace officer or firefighter who passes away due to an eligible cancer listed in statute.

Cost Estimate – New Annual Worker's Compensation Claims

The ASIA/ACIP analysis uses National and Arizona data gathered from the National Cancer Institute and the Arizona Cancer Registry Database. From these databases, the analysis includes national and state data on the number of incidents by cancer type and mortality rates by cancer. These rates are then adjusted for the relative age and gender distribution of firefighters in Arizona. Applying this data to the 14,500 active peace officers and 9,778 active firefighters and fire investigators in the state, the analysis assumes 43.4 new statewide cancer cases per year and 17.9 new statewide cancer fatalities per year from existing prior cases. Of the 17.9 fatal cases per year, the analysis assumes that 10.7 (or 60%) will have surviving spouses and/or dependents who will be eligible to receive the death benefits.

For the 43.4 new statewide cases, the following benefits would be paid for worker's compensation claims:

- Medical Costs – Given the presence of a cancer diagnosis, all 43.4 new statewide cases per year that are eligible for workers' compensation are assumed to incur costs for medical benefits. The analysis assumes mid-range cost estimates by cancer type provided by the City of Phoenix, who in 2019 paid worker's compensation for 27 firefighter cancer cases. These medical care costs for cancers range from an annual cost of \$40,000 for malignant melanoma to \$605,000 for multiple myeloma. Annually, ASIA/ACIP estimate a cost of \$9.0 million for all 43.4 cases, or about \$210,000 per case.
- TTD Costs – Due to the serious effects of cancer, the analysis assumes that all 43.4 new statewide cases per year will receive TTD benefits of some duration. These payments will be made over the first year of benefits. The analysis assumes that of the 43.4 cases, 8.7 will require 3 months of TTD benefits (20% of cases), 13 will require 6 months of TTD benefits (30% of cases), and 21.7 will require 12 months of TTD benefits (50% of cases). For each duration, monthly TTD benefits are assumed at 66.7% (two-thirds) of the ICA annual maximum. The sum of TTD benefits for all 43.4 cases will amount to \$1.2 million annually.
- LEC Costs – After receiving TTD benefits, ASIA/ACIP estimate that approximately 13 cases (or 30%) will qualify for LEC benefits. This would require the state, cities, and counties (or their respective insurance agencies) to set aside a reserve of monies to be paid over the remaining lifetime of earnings for the peace officer or firefighter. ASIA/ACIP estimate the remaining lifetime to be 34 years. Using an approximate cost of \$740,000 per case to be set aside in reserve (13 total cases each year), we estimate a total LEC annual cost of \$9.6 million.
- PTD – After receiving TTD benefits, ASIA/ACIP estimate that approximately 2 cases will qualify for PTD benefits. This would require the state, cities, and counties (or their respective insurance agencies) to set aside a reserve of monies to be paid over the remaining lifetime of the peace officer or firefighter. ASIA/ACIP estimate the remaining lifetime to be 34 years. Using an approximate cost of \$1.55 million per case to be set aside in reserve (2 total cases each year), we estimate a total PTD annual cost of \$3.1 million.

Death Benefits

Beyond the 43.4 annual new cases, the analysis assumes 17.9 deaths each year from prior cancer diagnoses. All 17.9 deaths would be eligible to receive \$5,000 in burial benefits. Of the 17.9 annual fatal cases, the analysis assumes that 10.7 cases (or 60%) will have a surviving spouse and/or dependents. This will require cities and counties (or their respective insurance pools) to set aside a reserve to be paid over the remaining lifetime of the surviving spouse and/or dependent (until the age of 18). ASIA/ACIP estimate that the death benefits will be paid to surviving spouses and/or dependents over 34 years on average. The 10.7 cases per year at a set aside reserve cost of \$1.37 million per case and the 17.9 total fatal cases at a burial cost of \$5,000 per case provides a total cost of \$14.7 million for death benefits each year.

As previously discussed, as part of the LEC, PTD, and death benefit portions of the workers' compensation claims, the state, cities, and counties (or their respective insurance pools) will be responsible for setting aside a reserve for these benefits to be paid out for each case. The analysis assumes that these reserves are established by the insurance provider, rather than using a policy of "pay as you go" for these claims.

Total Cost Estimate

Based on the \$10.2 million of medical and TTD benefits from the 43.4 new cases, \$9.6 million of LEC benefits from 13 new cases, \$3.1 million of PTD benefits from 2 new cases, and \$14.7 million from the 17.9 deaths per year, results in a total annual estimated claim amount of \$37.6 million.

Table 1 below illustrates the total annual claim estimate broken down by total peace officer and firefighter cases and the 5 previously mentioned benefits and reserves needed in workers' compensation claims. As noted above, we cannot determine what proportion of these claims would already be approved under current law.

SB 1451 Annual Workers' Compensation Cost (\$ in millions)			
	<u>Number of Cases</u>	<u>Cost per Case</u>	<u>Total Cost</u>
Medical Benefits	43.4	\$0.2	\$9.0
TTD Benefits	43.4	<u>0.03</u>	<u>1.2</u>
Subtotal		0.23	10.2
LEC Benefits	13	0.7	9.6
PTD Benefits	2	1.6	3.1
Death Benefits/Reserve	10.7	<u>1.4</u>	<u>14.7</u>
Reserve Needed		3.7	27.4
Total			37.6

Analysis Assumptions

Given some number of peace officers or firefighters whose claims have been previously denied and would be eligible for workers' compensation under this bill, the initial level of claims could potentially be higher than \$37.6 million annually in the short-term.

Similarly, the analysis does not consider population growth and subsequent growth in peace officer and firefighter employment in the state. This assumption, if included in the analysis, would raise the estimated amount of annual worker's compensation claims.

Moreover, the analysis excludes additional benefits peace officers or firefighters may be eligible for outside of workers' compensation claims under SB 1451. These benefits include, but are not limited to: supplemental benefits paid by the employer under A.R.S. § 38-961, PSPRS temporary disability or accidental disability pension benefits, and PSPRS Cancer Fund benefits.

Local Government Impact

Based on the ASIA/ACIP analysis, the state and local governments are expected to incur \$37.6 million of workers' compensation claims annually related to peace officer, firefighter, and fire investigator cancers. We cannot determine, however, what proportion of the \$37.6 million amount represents a new cost to local governments under the bill.