

ASSEMBLY BILL

No. 128

Introduced by Assembly Member Coto

January 16, 2009

An act to amend Section 3212.1 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 128, as introduced, Coto. Workers' compensation: cancer presumption.

Existing law establishes a workers' compensation system to compensate an employee for injuries sustained in the course of his or her employment, and requires an employer to provide, or pay for all reasonable costs of, medical services necessary to care for or relieve work-related injuries. Existing law further provides that in the case of active firefighting members of certain fire departments and in the case of certain peace officers, a compensable injury includes cancer that develops or manifests itself during the period when the firefighter or peace officer demonstrates that he or she was exposed, while in the service of the public agency, to a known carcinogen, as defined, and the carcinogen is reasonably linked to the disabling cancer. Existing law establishes a presumption that the cancer in these cases is presumed to arise out of, and in the course of, employment, unless the presumption is controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer.

Existing law extends this presumption to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but not to exceed 60 months in any

circumstance, commencing with the last date actually worked in the specified capacity.

This bill would instead extend the presumption to a member following termination of service for a period of one year for each full year of the requisite service, commencing with the last date actually worked in the specified capacity.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) A person’s risk of developing a particular cancer is
- 4 influenced by a combination of factors, including exposure to
- 5 cancer-causing agents in their environment and, in particular, in
- 6 their workplace. In many cases, these factors may act together or
- 7 in sequence to cause cancer.
- 8 (b) In the course of performing their job-related duties,
- 9 firefighters and other public safety personnel routinely come into
- 10 contact with materials known to cause various types of cancer.
- 11 (c) California’s existing public safety cancer presumption statute
- 12 is extended for a period of three calendar months for each full year
- 13 of service that an eligible public safety officer worked, not to
- 14 exceed 60 months beyond the cancer-stricken officer’s last day of
- 15 service.
- 16 (d) Since the original public safety cancer presumption statute
- 17 was enacted nearly three decades ago, research has revealed that
- 18 latency periods for some industrially caused cancers can be 10
- 19 years or as long as 30 years or more. Therefore, cancers diagnosed
- 20 today are being associated with genetic changes that occurred in
- 21 the cells due to cancer-causing exposures several years, if not
- 22 decades, prior to the diagnosis.
- 23 (e) Other states, such as New Hampshire, Vermont, Wisconsin,
- 24 and Rhode Island, recognize the existence of prolonged cancer
- 25 latency periods and have extended safeguards to their respective
- 26 public safety personnel that more appropriately reflect these
- 27 periods.
- 28 (f) Given the complex synergistic effects of multiple compound
- 29 exposures, as well as the rapidly growing introduction of new

1 chemicals and industrial compounds into the environment in which
2 our state’s public safety officers work each day while protecting
3 the lives and property of the citizens of this great state, it is most
4 appropriate that the public safety cancer presumption statute of
5 limitations be stricken with a sense of urgency.

6 SEC. 2. Section 3212.1 of the Labor Code is amended to read:

7 3212.1. (a) This section applies to all of the following:

8 (1) Active firefighting members, whether volunteers, partly
9 paid, or fully paid, of all of the following fire departments:

10 (A) A fire department of a city, county, city and county, district,
11 or other public or municipal corporation or political subdivision.

12 (B) A fire department of the University of California and the
13 California State University.

14 (C) The Department of Forestry and Fire Protection.

15 (D) A county forestry or firefighting department or unit.

16 (2) Active firefighting members of a fire department that serves
17 a United States Department of Defense installation and who are
18 certified by the Department of Defense as meeting its standards
19 for firefighters.

20 (3) Peace officers, as defined in Section 830.1, subdivision (a)
21 of Section 830.2, and subdivisions (a) and (b) of Section 830.37,
22 of the Penal Code, who are primarily engaged in active law
23 enforcement activities.

24 (4) (A) Fire and rescue services coordinators who work for the
25 Office of Emergency Services.

26 (B) For purposes of this paragraph, “fire and rescue services
27 coordinator” means a coordinator with any of the following job
28 classifications: coordinator, senior coordinator, or chief
29 coordinator.

30 (b) The term “injury,” as used in this division, includes cancer,
31 including leukemia, that develops or manifests itself during a period
32 in which any member described in subdivision (a) is in the service
33 of the department or unit, if the member demonstrates that he or
34 she was exposed, while in the service of the department or unit,
35 to a known carcinogen as defined by the International Agency for
36 Research on Cancer, or as defined by the director.

37 (c) The compensation that is awarded for cancer shall include
38 full hospital, surgical, medical treatment, disability indemnity, and
39 death benefits, as provided by this division.

1 (d) The cancer so developing or manifesting itself in these cases
2 shall be presumed to arise out of and in the course of the
3 employment. This presumption is disputable and may be
4 controverted by evidence that the primary site of the cancer has
5 been established and that the carcinogen to which the member has
6 demonstrated exposure is not reasonably linked to the disabling
7 cancer. Unless so controverted, the appeals board is bound to find
8 in accordance with the presumption. This presumption shall be
9 extended to a member following termination of service for a period
10 of ~~three calendar months~~ *one year* for each full year of the requisite
11 service, ~~but not to exceed 60 months in any circumstance,~~
12 commencing with the last date actually worked in the specified
13 capacity.

14 (e) The amendments to this section enacted during the 1999
15 portion of the 1999–2000 Regular Session shall be applied to
16 claims for benefits filed or pending on or after January 1, 1997,
17 including, but not limited to, claims for benefits filed on or after
18 that date that have previously been denied, or that are being
19 appealed following denial.

20 (f) *This section shall be known, and may be cited as, the William*
21 *Dallas Jones Cancer Presumption Act of 2009.*