

Senate Executive Departments and Administration Committee

Kevin Condict 271-7875

SB 181-FN, relative to workers' compensation for firefighters with cancer.

Hearing Date: February 5, 2025

Time Opened: 10:15 a.m.

Time Closed: 10:35 a.m.

Members of the Committee Present: Senators Pearl, McGough, Gannon, Altschiller and Reardon

Members of the Committee Absent : None

Bill Analysis: This bill extends the presumption that heart or lung disease is occupationally related for firefighters absent clear and convincing evidence to the contrary, and requires payment of workers' compensation benefits within a specified period of time in such cases.

Sponsors:

Sen. Perkins Kwoka

Sen. Reardon

Sen. Birdsell

Sen. Prentiss

Rep. Bridle

Rep. Telerski

Rep. Wilhelm

Rep. S. Pearson

Rep. Simpson

Who supports the bill: In total, **92** individuals signed in in support of SB 181-FN. The full sign in sheets are available upon request to the Legislative Aide, Kevin Condict (kevin.condict@gc.nh.gov).

Who opposes the bill: In total, **4** individuals signed in in opposition of SB 181-FN. The full sign in sheets are available upon request to the Legislative Aide, Kevin Condict (kevin.condict@gc.nh.gov).

Who is neutral on the bill: None.

Summary of testimony presented:

Senator Rebecca Perkins Kwoka, Senate District 21

- Senator Perkins Kwoka introduced SB 181-FN, relative to workers' compensation for firefighters with cancer.
- She noted last year a bipartisan cancer screening bill was passed to create a job-related cancer presumption for the state's firefighters.

- The presumption is in statute and when certain cancers occur it is presumed to be job-related.
- Due to the screening bill that passed last year, the firefighters have started to screen their workers and now before they start to incur that expense, they want to make sure the presumption process is fully established.
- SB 181-FN essentially codifies in statute and administrative rules, that the firefighters will have the presumption of job-related cancer.
- The presumption will exist unless clear and convincing evidence is provided that proves the cancer disease is not occupationally related.

Brian Ryll, PFFNH

- Mr. Ryll noted that the Professional Firefighters of New Hampshire were in support of SB 181-FN.
- The intent of the bill is to make technical changes to the presumptive law which passed in 2019.
- According to the World Health Organization and the CDC, approximately 48% of firefighters will be diagnosed with a form of cancer in their lifetime.
- He said on line 20 the bill adds in “unless clear and convincing evidence is provided which proves that the cancer disease is not occupationally related.” The intent of the original law was that for any firefighter in the state who gets cancer it would be presumed to be occupationally related unless proven otherwise.
- He noted they are finding it is very easy to debunk presumption based on a few minor details and it doesn’t satisfy the intent of the original law. Adding clear and convincing evidence will make the standard higher to meet but will satisfy the original intent.
- He said on line 30, the paragraph provides that the fire department must have the member get a NFPA 1582 physical prior to employment to prove they were cancer free prior to becoming a firefighter. If the employer fails to do that, the onus should not be on the employee and they should still have coverage. This language will not take away the requirement that the employer must have the employee take the physical. However, they have found paperwork snafus where members have filed a cancer claim and the employer cannot produce physical related documents.
- He explained on page 2, line 6, that if the medical examination standard is not followed, the PFFNH does not believe that should take away the presumption statute from the employee.

- He explained on page 2, line 17, as part of current law the employer is required to have a policy in place that follows best practices as defined by the Department of Safety Fire Standards and Training for decontamination, showering after a call, and proper cleaning of PPE. If the employer fails to do so, they do not feel the burden shall fall on the employee.
- He explained on page 2, section E, in current administrative rule there must be a claim paid or denied within 21 days of a workers' compensation claim. He said many of their members are getting denied based on the fact that the insurance carrier cannot account for the patients' full medical records within that period of time. They are getting a conditional denial on the workers' compensation claim where the employee either must appeal or hope that the workers' comp continues to look at the claim. That does not satisfy the intent of presumption.
- They would like the claims paid within 21 days rather than the employee getting a conditional denial based on not having a complete set of medical records. He noted that would not prevent a comp carrier from later reviewing and denying the claim, but it will just allow the families to get a claim paid during a reasonable period.
- Senator Gannon said the clear and convincing standard would be onerous for the insurance carrier especially if a firefighter was a smoker their whole life and got diagnosed with cancer.
 - o Mr. Ryll said it's important to recognize that within the current law there is language on smoking and how that would debunk any presumptive claim if it falls within certain smoking parameters outlined in the language.
 - o Mr. Ryll said the more probable than not standard would make it easy for the insurance carrier to overturn a claim. He said the beyond a reasonable doubt standard would make it too hard on the employer. He believed that the clear and convincing standard was the most reasonable for this situation.
- Senator Altschiller said nobody would disagree that someone joining a fire department should have a medical examination and prove they are cancer free prior to starting their employment. However, she asked why the employer is off the hook for not providing these examinations.
 - o Mr. Ryll said in order to meet the employment standards the employees in the fire department would need to fill out Form A, and on that form there is a long list of standards that they must meet, including a NFPA 1582 physical. The employer would still be required to meet all the standards, including the physical. However, he noted there was a period of years where employers could not find the employee's physical. He said for Form A to be signed without the physical that would be considered

unsworn falsification of a document and the employer would still be on the hook for that. They just want to make sure the employee can file the claim.

- Senator Altschiller said she still didn't believe that removing the requirement would solve the problem of the period of time where records were not retained. She also stated that on page 2, lines 24-27, it outlined what a tobacco free lifestyle means. She assumed that anything listed would increase one's possibility of developing lung cancer. She asked if vaping was left out as an oversight.
 - o Mr. Ryll said that is a very good question and the language in the bill they took from existing law. He believed that vaping was not as prominent in 2019, but he wouldn't be opposed to adding vaping into the language.