

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
SB 391 (Blakespear) – As Introduced February 9, 2023

SENATE VOTE: 40-0

SUBJECT: Workers' compensation: skin cancer

SUMMARY: Grants certain peace officers of the Department of Fish and Wildlife and the Department of Parks and Recreation the presumption that skin cancer is a work related condition for purposes of making a workers' compensation claim, unless the presumption is rebutted.

EXISTING LAW:

- 1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by securing insurance against liability from an insurance company duly authorized by the state. (California Constitution Article XIV, Section 4)
- 2) Establishes presumptions that certain injuries or conditions are work related for specified public safety officers. Those injuries or conditions that are presumed to be work related for specified public safety officers include:
 - a) Cancer;
 - b) Heart trouble, pneumonia, or hernia;
 - c) Tuberculosis;
 - d) Exposure to a biochemical substance; or
 - e) Meningitis.

The compensation awarded for these injuries must include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by workers compensation law. These presumptions tend to run for 5 to 10 years commencing on their last day of employment, depending on the injury and the peace officer classification involved. Peace officers whose principal duties are clerical, such as stenographers, telephone operators, and other office workers are excluded. (Labor Code Sections 3212 to 3213.2)

- 3) Establishes a presumption that skin cancer is a work related injury for lifeguards employed by specified state and local government agencies. (Labor Code Section 3212.11)
- 4) Provides that the presumptions listed above are disputable and may be controverted by evidence. However, unless controverted, the Workers' Compensation Appeals Board must find in accordance with the presumption. (Labor Code Sections 3212 to 3213.2)

FISCAL EFFECT: Unknown

COMMENTS:1) *Purpose.* According to the author:

California Fish and Wildlife Officers and State Park Rangers often work 10 to 12 hours per day and many of those hours are spent outside in the sun. For career wildlife officers and park rangers this amounts to decades outside – far more than the average worker. If you earn your living working outdoors, your sun exposure and risk of skin cancer skyrocket. Solar ultraviolet radiation (UVR), the main risk factor for development of skin cancer, is classified as a group 1 carcinogen by the International Agency for Research on Cancer and World Health Organization. A recent meta-analysis reported that occupationally UVR-exposed workers have almost double the risk of developing cutaneous squamous cell carcinoma (cSCC), and at least a 43% higher risk of developing basal cell carcinoma (BCC) compared with non-exposed workers

2) *Presumptions.* Presumptions have never been intended to create work related injuries when, in fact, the injuries in question are not work related. Rather, presumptions of compensability have been adopted, some many decades ago, to reflect unique circumstances where injuries or illnesses appear to logically be work related, but it is difficult for the injured worker to prove it is work related. There has clearly been some slippage over time from a rigorous application of this rationale, but it remains the underlying premise of presuming injuries or illnesses to be work related.

With very narrow exceptions for privately employed firefighters for public facilities, presumptions of compensability have been granted only to public safety officers – fire and peace officer employees. Thus, the costs of presumptions are borne only by state and local government employers, and only for the narrow class of employee, broadly referred to as public safety employees, whose jobs regularly place them in harm's way.

The presumption that would be created by this bill is arguably narrow. The only condition it would apply to is skin cancer and the only employees it would apply to are peace officers employed by the Department of Fish and Wildlife (game wardens) and the Department of Parks and Recreation (park rangers). These game wardens and park rangers do not currently receive the benefit of any presumptions. The cost for this presumption would be borne by the state.

- 3) *Presumptions are rebuttable.* As a matter of law, public employers have the opportunity to rebut the presumption, and establish that the injury or condition was not the result of employment. As a practical matter, however, presumptions are rarely rebutted. Opponents argue that the virtual impossibility of proving a negative renders the presumptions functionally conclusive.
- 4) *Supporting data/Commission on Health and Safety and Workers' Compensation Study (CHSWC).* Generally, in order to establish that a new presumption ought to be adopted, proponents must show that the injury is most likely to be related to the job, it is hard to prove this fact, and that when claims are filed, they are denied for lack of proof that the injury is related to the job. A study request was submitted to CHSWC in February 2020 in an attempt to gain data related to skin cancer and the game wardens and park rangers this bill seeks to cover.

CHSWC contracted with occupational medicine experts from UC San Francisco and UC Berkeley to conduct the study, which consisted of a literature review, a single-field ride along, and interviews with officers. That study was inconclusive and noted “On the ultimate question of whether the peace officers under consideration sustain enough exposure to merit presumption, our medical opinion is that this is reasonable...However, our position is not that every skin cancer arising in the peace officers under consideration will have been substantially caused by occupational exposure to UV radiation.”

- 5) *Workers' compensation is not the only government-provided benefit for these employees.* The implication that these employees must be granted the benefit of a presumption, or they will be left out in the cold, is erroneous. First, the employee can always do what every other employee must do – prove the injury or illness is work related. Second, even if the employee cannot carry that burden of proof, they have health insurance and other employee benefits that assure their conditions can be treated, and sick leave to take time off to recover, and other employer-sponsored disability benefits.
- 6) *Related legislation.*
- a) AB 334 (Mullin) of 2021 would have created a skin cancer presumption for game wardens and park rangers that this bill seeks to provide. AB 334 was vetoed by the Governor. In his veto message, Governor Newsom stated:
- “A presumption is not required for an occupational disease to be compensable. Such presumptions should be provided sparingly and should be based on the unique hazards or proven difficulty of establishing a direct relationship between a disease or injury and the employee's work. Although well-intentioned, the need for the presumption envisioned by this bill is not supported by clear and compelling evidence.”
- b) AB 2665 (Mullin) of 2020 would have created a skin cancer presumption for game wardens and park rangers. AB 2665 was not heard in the Assembly Insurance Committee and the previously discussed CHSWC study was requested by the author.

REGISTERED SUPPORT / OPPOSITION:

Support

Audubon California
 California Fish & Game Warden Supervisors and Managers Association (CFGWSMA)
 California Statewide Law Enforcement Association
 California Waterfowl Association
 California Wildlife Officers Foundation
 Defenders of Wildlife
 Endangered Habitats League
 Friends of Fish and Game
 Monterey Bay Aquarium
 Mountain Lion Foundation
 National Wildlife Federation
 Nature Conservancy; the
 Oceana
 Peace Officers Research Association of California (PORAC)

Planning and Conservation League
Two Dozen Active and Retired California Wildlife Officers

Opposition

None on file.

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