

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

May 17, 2021

4:01 p.m.

MEMBERS PRESENT

Representative Zack Fields, Co-Chair
Representative Ivy Spohnholz, Co-Chair
Representative Calvin Schrage
Representative Liz Snyder
Representative David Nelson
Representative James Kaufman
Representative Ken McCarty

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 204

"An Act relating to the presumption of compensability for a disability resulting from certain cancers in firefighters."

- MOVED CSHB 204(L&C) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 204

SHORT TITLE: WORKERS' COMP DISABILITY FOR FIREFIGHTERS

SPONSOR(S): REPRESENTATIVE(S) KAUFMAN

| | | |
|----------|-----|---------------------------------|
| 05/05/21 | (H) | READ THE FIRST TIME - REFERRALS |
| 05/05/21 | (H) | L&C |
| 05/14/21 | (H) | L&C AT 8:00 AM GRUENBERG 120 |
| 05/14/21 | (H) | Heard & Held |
| 05/14/21 | (H) | MINUTE(L&C) |
| 05/17/21 | (H) | L&C AT 3:15 PM BARNES 124 |

WITNESS REGISTER

CHARLES COLLINS, Director
Division of Workers' Compensation
Department of Labor & Workforce Development(DLWD)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 204.

JUSTIN MACK
Alaska Professional Firefighters Association
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 204.

LORI WING-HEIER, Director
Division of Insurance
Department of Commerce, Community & Economic Development (DCCED)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 204.

ALLISON LEIGH
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 204.

ACTION NARRATIVE

[4:01:00 PM](#)

CO-CHAIR IVY SPOHNHOLZ called the House Labor and Commerce Standing Committee meeting to order at 4:01 p.m. Representatives McCarty, Kaufman, Schrage, Nelson, Fields, and Spohnholz were present at the call to order. Representative Snyder arrived as the meeting was in progress.

HB 204-WORKERS' COMP DISABILITY FOR FIREFIGHTERS

[4:01:41 PM](#)

CO-CHAIR SPOHNHOLZ announced that the only order of business would be HOUSE BILL NO. 204, "An Act relating to the presumption of compensability for a disability resulting from certain cancers in firefighters."

[4:02:16 PM](#)

CO-CHAIR SPOHNHOLZ moved to adopt Amendment 1 to HB 204, labeled 32-LS0908\A.2, Marx, 5/13/21, which read as follows:

Page 2, following line 23:

Insert a new bill section to read:

"* Sec. 2. AS 23.30.121(f) is amended to read:

(f) In this section, "firefighter" means
(A) a person employed by a state or municipal fire department or who is a member of a volunteer fire department registered with the state fire marshal; or
(B) a person registered for purposes of workers' compensation with the state fire marshal as a member of a volunteer fire department [HAS THE MEANING GIVEN IN AS 09.65.295]."

Renumber the following bill section accordingly.

Page 2, line 26:

Delete "AS 23.30.121(b), as amended by this Act, applies"

Insert "AS 23.30.121(b) and (f), as amended by this Act, apply"

[4:02:20 PM](#)

CO-CHAIR FIELDS objected for the purpose of discussion.

[4:02:21 PM](#)

CO-CHAIR SPOHNHOLZ explained that the purpose of Amendment 1 is to define "firefighter" and to include volunteer firefighters under the proposed bill. She shared that it is her understanding that the majority of firefighters in Alaska are volunteers, and she would like to ensure that workers' compensation covers volunteer firefighters.

[4:02:57 PM](#)

CO-CHAIR FIELDS withdrew his objection.

[4:02:59 PM](#)

REPRESENTATIVE KAUFMAN objected for the purpose of discussion.

CO-CHAIR SPOHNHOLZ asked if he would like to comment on his objection.

REPRESENTATIVE KAUFMAN explained that he objected because it appears that "this is already covered" in other statutes. He suggested that the invited testifier in the room speak on the amendment.

[4:03:41 PM](#)

CHARLES COLLINS, Director, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), explained that AS 09.65.295 is the statute that the division looks to on this matter. He said that the division's opinion is that this statute already covers volunteer firefighters. He noted that there have been a number of cases where volunteer firefighters have been covered and there has been no legal pushback.

[4:04:19 PM](#)

The committee took an at-ease from 4:04 p.m. to 4:05 p.m.

[4:05:20 PM](#)

JUSTIN MACK, Alaska Professional Firefighters Association, addressed Amendment 1 and explained that currently, the definition of "firefighter" [in statute] does include volunteer organizations that are registered with the fire marshal's office. One of the concerns in the past has been to ensure that firefighters employed by state are covered, and he said that there may have been a discrepancy in whether these firefighters were covered. He explained that this would include airport firefighters that are not necessarily employed by a municipality nor considered to be volunteers. He shared his understanding that firefighters that are registered with the state are included [in statute]. He identified that a problem that some volunteer firefighters experience is that these individuals sometimes fail to meet other qualifications for coverage, such as medical language and exposure language.

[4:06:47 PM](#)

CO-CHAIR FIELDS asked Mr. Collins if volunteer firefighters have been included as a result of case law, regulations, or existing statutes.

[4:07:07 PM](#)

MR. COLLINS responded that all he can state at this point is that the division has never had a case where an individual was excluded from workers' compensation due to the definition of firefighter. Typically, volunteers do not meet the criteria of the required medical evaluations, he said.

[4:07:50 PM](#)

CO-CHAIR FIELDS noted that Mr. Collins' answer is consistent with his understanding that this is a matter of historic practice, but that the amendment would add some clarity.

[4:08:00 PM](#)

REPRESENTATIVE KAUFMAN quoted language from AS 09.65.295(c), which read as follows:

In this section, "firefighter" means a person employed by a municipal fire department or who is a member of a volunteer fire department registered with the state fire marshal, or a person registered for purposes of workers' compensation with the state fire marshal as a member of a volunteer fire department."

REPRESENTATIVE KAUFMAN shared his understanding that the statute covers the intent of the amendment.

[4:08:36 PM](#)

CO-CHAIR SPOHNHOLZ explained that the Amendment 1 has a second intent, which is to ensure that firefighters employed at airports and Department of Natural Resources (DNR) wildland firefighters are included. She asked Mr. Collins to address this topic.

[4:08:55 PM](#)

MR. COLLINS responded that he doesn't have any information on that. He said that the division has not experienced difficulties and has no position either way.

CO-CHAIR SPOHNHOLZ expressed that it doesn't seem like updating the language would cause any problems for the department. She asked Mr. Mack to address the issue of firefighters that may not be specifically referenced in the statutory definition of firefighter.

[4:09:42 PM](#)

MR. MACK responded that firefighters are certainly asked to put themselves at risk, particularly regarding exposure [to harmful materials]. He said that he doesn't know if every potential scenario has been litigated, but if the intent of the legislature is to cover municipal, state, and volunteer

organizations, then the addition of the language in the amendment would be appropriate.

[4:10:34 PM](#)

REPRESENTATIVE KAUFMAN withdrew his objection to the motion to adopt Amendment 1.

[4:10:42 PM](#)

REPRESENTATIVE MCCARTY objected. He shared his understanding that the question at hand is whether the statute is sufficient or whether language needs to be added [for clarity]. He said that the language already in statute seems sufficient to him and questioned why the language could not be left as is.

[4:11:40 PM](#)

The committee took an at-ease from 4:11 p.m. to 4:12 p.m.

[4:12:48 PM](#)

CO-CHAIR SPOHNHOLZ referenced a legal memorandum ("memo") from Marie Marx from Legislative Legal Services [included in the committee packet], which refers to AS 09.65.295(c) and read as follows [original punctuation provided]:

The statute's plain language makes it clear that "firefighter" doesn't include firefighters employed by the state. It includes only firefighters employed by a municipal fire department and certain volunteer firefighters.

CO-CHAIR SPOHNHOLZ explained that the intention of Amendment 1, which came about as a result of guidance from Legislative legal Services, is to be "crystal clear" that all firefighters in Alaska are covered.

[4:14:03 PM](#)

REPRESENTATIVE MCCARTY asked if the word "state" would be appropriate to add to the statute.

CO-CHAIR SPOHNHOLZ restated that the language in Amendment 1 is before the committee as proposed by Marie Marx from Legislative Legal Services in order to be as clear as possible.

[4:14:55 PM](#)

REPRESENTATIVE MCCARTY maintained his objection.

[4:14:58 PM](#)

A roll call vote was taken. Representatives Spohnholz, Fields, Nelson, Schrage, Snyder, and Kaufman voted in favor of Amendment 1 to HB 204. Representative McCarty voted against it. Therefore, Amendment 1 was adopted by a vote of 6-1.

[An Amendment 2 was in the committee packet but never offered.]

[4:15:47 PM](#)

REPRESENTATIVE MCCARTY moved to adopt Amendment 3 to HB 204, labeled 32-LS0908\A.5, Marx, 5/16/21, which read as follows:

Page 1, line 2, following "**firefighters**":

Insert "**; and relating to a duty to document a firefighter's exposure to a carcinogen**"

Page 2, line 18:

Delete "and"

Insert "[AND]"

Page 2, line 23:

Delete "."

Insert "**;and**

(D) maintains a record of each exposure to a known carcinogen, as defined by the International Agency for Research on Cancer or the National Toxicology Program.

* **Sec. 2.** AS 23.30.243 is amended by adding a new subsection to read:

(c) An employer shall maintain a record of a firefighter's exposure to a known carcinogen, as defined by the International Agency for Research on Cancer or the National Toxicology Program, that occurred while the firefighter was working as a firefighter for the employer."

Renumber the following bill section accordingly.

Page 2, line 26:

Delete "AS 23.30.121(b), as amended by this Act,"

Insert "This Act"

[4:15:53 PM](#)

CO-CHAIR SPOHNHOLZ objected for the purpose of discussion.

[4:15:56 PM](#)

REPRESENTATIVE MCCARTY explained that Amendment 3 intends to address who is recording the encounters firefighters may have with carcinogenic materials. He explained that he contacted fire departments in Los Angeles, California, New York, New York, and Seattle, Washington, and shared that in these fire departments, the firefighter and the captain both record the instance of a fire and whether there were carcinogenic materials present. He shared that Amendment 3 says that the responsibility to record this information would be the duty of the individual firefighter as well as the department.

[4:17:14 PM](#)

REPRESENTATIVE KAUFMAN opined that centralized reporting is beneficial and would better ensure that there is a record of these encounters with potential carcinogenic materials. However, he said, this could result in an unfunded mandate being placed on volunteer fire departments that may not have the resources to record information about possible encounters with carcinogenic materials, which could mean that the record-keeping responsibility could fall on the individual firefighter. He said that this could burden volunteer fire departments. This being said, he continued that having a backup of these records is important. He asked where the data would go, how it would be retained, and how it would be verified. He expressed that there is a challenge in ensuring that this information is accurate, "durable," and easily retrievable and verifiable. He asked how this could be done without being burdensome.

[4:19:53 PM](#)

CO-CHAIR FIELDS asked Ms. Wing-Heier and Mr. Collins if they could share their thoughts on whether this is an effective structure for recording potential encounters with carcinogenic materials.

[4:20:30 PM](#)

MR. COLLINS responded that from the division's point of view, it is a big burden for volunteer firefighters to record instances

of potential encounters with carcinogenic materials. He shared his opinion that Amendment 3 might narrow the presumption because firefighters could be required to produce this record, which could be burdensome. However, he shared that in Anchorage, Alaska, there was a hearing [on an incident of exposure] and there was a considerable amount of time spent on research, incident reports, and legal proceedings to discover what the cause of the cancer was in a firefighter, and he shared that for larger departments, [the proposed changes in Amendment 3] could result in cost savings.

[4:21:53 PM](#)

LORI WING-HEIER, Director, Division of Insurance, Department of Commerce, Community & Economic Development (DCCED), responded that there is something "very good" about Amendment 3, and she said that to meet the presumption, there has to be a record. However, she shared that when there are fire departments that are having cookie sales and bake sales to raise money, and there would be a cost. She said that she doesn't know what the cost would be, and therefore doesn't know how there could be a decision made about the cost. She concluded that keeping a record is a good idea.

[4:22:37 PM](#)

CO-CHAIR FIELDS noted that he wants to ensure that this wouldn't exclude someone from benefits if a volunteer firefighter or department failed to keep a record. He said that he wants to ensure that this wouldn't give an insurer a means by which to deny payment due to the lack of a record, particularly if it was an employer's and not an employee's failure to keep the record.

[4:23:10 PM](#)

MS. WING-HEIER responded that she would hope that insurance companies wouldn't make the argument for denial of coverage that a fire department was meant to keep a record and failed to do so. She expressed that she doesn't think that the failure of a department would negate an employee's claim.

[4:23:43 PM](#)

CO-CHAIR SPOHNHOLZ asked Mr. Mack to comment on Amendment 3.

MR. MACK responded there are currently three qualifying aspects in statute for presumption, which are a qualifying medical exam,

seven years of employment, and demonstrated exposure to a known carcinogen. He said that it seems to him that needing to show that there has been an exposure is already a requirement. He explained that there is a national fire incident reporting system through the U.S. Fire Administration. He shared that his concern is that Amendment 3 seems to go the "opposite direction" when it comes to presenting a presumptive claim. He said that an additional requirement of keeping a record of each exposure would be difficult to define and could be defined in different ways by different departments and individuals. He noted that reporting and ensuring that departments have good reporting standings is important, but said that he is not sure this amendment is the place to input that language.

[4:26:32 PM](#)

CO-CHAIR FIELDS asked Mr. Mack if every fire is a presumed exposure. He said that his understanding of the amendment is that every fire is an exposure.

[4:27:04 PM](#)

REPRESENTATIVE SNYDER opined that the language in Amendment 3 is fairly vague. She stated her concern is that this could be setting individuals up for being denied coverage if the cancer that has been contracted is not linked to a carcinogen in the individual's list of exposures. She said that it is possible that firefighters are being exposed to a variety of materials that are not documentable. She asked if there is a reason to not include "suspected carcinogens" in statute as defined by the Occupational Safety and Health Administration (OSHA).

[4:29:06 PM](#)

MR. MACK responded with an example of recent study where military style dog tags made of silicone that mimicked skin were placed on firefighters in the field. These dog tags provided information on the materials that are being absorbed by firefighters' skin. He shared that "they found the things they thought they were going to find" in addition to several other carcinogens that were not necessarily expected to be present. He shared that manufacturing processes are constantly changing, and therefore there is always going to be an increased amount of exposures. He explained that there are enough known carcinogens in a vehicle fire, a building fire, a multi-family structure fire, and so on, to qualify for an increased cancer risk [for firefighters exposed to these carcinogens]. There are exposures

to carcinogens in the fire service also from personal protection equipment (PPE) that is designed to protect firefighters, and he said that the exposure is "nearly all the time," which speaks to why presumptive cancer language in state statute is necessary.

[4:31:12 PM](#)

REPRESENTATIVE KAUFMAN directed attention to language on page 2, Section 1, paragraph (3), subparagraph (C) of HB 204, which read as follows:

(C) with regard to diseases described in (1)(C) of this subsection, demonstrates that, while in the course of employment as a firefighter, the firefighter was exposed to a known carcinogen, as defined by the International Agency for Research on Cancer or the National Toxicology Program, and the carcinogen is associated with a disabling cancer.

REPRESENTATIVE KAUFMAN shared his understanding that it seems like there is a sufficient definition for exposure.

[4:32:04 PM](#)

REPRESENTATIVE MCCARTY said that he agrees with Representative Kaufman. He said that there is nothing that mentions recording exposures to carcinogens. He explained that recording of each potential instance of exposure is not only done by large fire departments, and noted that the chief of the fire department in Chugiak, Alaska, said that firefighters are using applications ("apps") for recordkeeping. He opined that this isn't a new burden; it brings the statutes up to date. He said that Amendment 3 would make it easier to substantiate experiences and make the claim process easier.

[4:33:37 PM](#)

CO-CHAIR SPOHNHOLZ maintained her objection. She shared her understanding that Amendment 3 would do the opposite of what the bill intends to do, which is to create a presumption of exposure, and would likely also create an unfunded mandate for volunteer fire departments. She said that she is reluctant to support something at the state level that could create additional costs at the local level.

[4:34:44 PM](#)

CO-CHAIR FIELDS said he would vote for Amendment 3. He said that he hopes that the legislature can work with Mr. Mack, Ms. Wing-Heier, and Mr. Collins to come up with appropriate language regarding an employer's responsibility to record exposures so that an error in recordkeeping does not exclude an employee from coverage.

[4:35:23 PM](#)

CO-CHAIR SPOHNHOLZ commented that she appreciates the sentiment of wanting to construct this language, but that she worries that this could potentially create another barrier to workers' compensation for firefighters that are being exposed to carcinogens. She said that if insufficient records could obstruct firefighters from receiving coverage, that would concern her.

[4:36:06 PM](#)

A roll call vote was taken. Representatives McCarty and Fields voted in favor of Amendment 3 to HB 204. Representatives Schrage, Nelson, Kaufman, Snyder, and Spohnholz voted against it. Therefore, Amendment 3 failed to be adopted by a vote of 2-5.

[4:37:11 PM](#)

The committee took a brief at-ease.

[4:37:23 PM](#)

CO-CHAIR SPOHNHOLZ opened public testimony on HB 204.

[4:37:34 PM](#)

ALLISON LEIGH stated that she opposes HB 204 because the information given to the committee is incorrect. She opined that while Mr. Collins continues to inform the legislature that workers' compensation has gone down, he has failed to inform the legislature of all of the unnecessary and ongoing litigation going on. She asked how this bill can come with a zero fiscal note when Mr. Collins has repeatedly testified how expensive a cancer claim is. She shared her understanding that Representative Fields knows that workers' compensation does not follow the Alaska State Constitution. She opined that the Workers' Compensation Board uses injured workers' records to coerce them into settlement because injured workers are left

with "literally nothing." She asked if Mr. Mack was or is on the Workers' Compensation Board. She shared a personal anecdote about her own experience in trying to receive workers' compensation after a fall and said that she has been unable to get a hearing. She opined that Mr. Collins has supplied incorrect numbers to the committee and changes his recommendations during meetings to benefit the Workers' Compensation Board. She expressed that the workers' compensation system is broken and that this bill doesn't properly address the issues.

[4:40:25 PM](#)

REPRESENTATIVE KAUFMAN asked Ms. Leigh to contact his office so that he could learn more.

[4:40:45 PM](#)

CO-CHAIR SPOHNHOLZ, after ascertaining that there was no one else who wished to testify, closed public testimony on HB 204.

[4:40:55 PM](#)

CO-CHAIR FIELDS moved to report HB 204 out of committee, as amended, with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 204(L&C) was reported out of the House Labor and Commerce Standing Committee.

[4:41:56 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:42 p.m.