

Pennsylvania State Association of Boroughs



Statement on

Act 46 of 2011Pa Workers Compensation Law

“Cancer Presumption for Firefighters”

presented to

*PA House Veterans Affairs and Emergency
Preparedness Committee*

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Good morning and thank you for the opportunity to provide the House Veterans Affairs and Emergency Preparedness with this brief statement regarding Act 46 of 2011 which amended the PA Workers Compensation law. Today I have not prepared any lengthened testimony on the Act, but simply would like to provide a brief statement or observation if you please, on the law change, how PSAB was involved with the legislative path of Act 46, and finally recent findings that have been brought to our attention.

As the committee is aware, the Act expanded the definitions in the Pa Workers Comp law to enumerate as an "occupational disease" cancers suffered by a firefighter, provided that the cancer was caused by exposure to a documented Group 1 carcinogen (as recognized by the International Agency for Research on Cancer). The Act further amended Pa Workers Comp law to place the liability for this "injury arising in the course of his employment" upon the employer or in our case the municipality.

The most substantive changes made to the law, and probably why we are witnessing a loss of insurance carriers for our municipalities in complying with Act 46 provisions are the following:

Act 46 provides for a presumption of municipal liability which may only be rebutted by "*substantial competent evidence*" which thereby demonstrates it was not the occupation of firefighting that was the cause of the cancer.

Further, Act 46 stipulates that these "cancer" claims must be substantiated by reports filed with the *Pennsylvania Fire Information Reporting System* and that the claim is based on direct exposure to a documented Class 1 carcinogen.

Lastly, the Act directs the PA Department of Labor and Industry to biannually report the amount of successful claims to both House and Senate committees on Labor and Industry.

Moving on to consider PSAB's involvement in the legislative path leading to Act 46; our role was mainly a cooperative effort working in coalition with other municipal associations. That collaborative effort began in 2010 when we joined together in seeking to amend a previous legislative proposal (SB1231) containing similar amendments to PA Workers Comp law. We had worked vigorously to amend that bill only to be met with disappointment in both chambers. As a result, our coalition of municipal interests seeking to dispel the impacts of this unfunded mandate sought and obtained a veto from Governor Rendell.

As a result, the veto had led all parties impacted by the proposal back to the table to see whether agreeable language could be crafted. In the following session, Representatives Farry and Murphy, forging a compromise with our coalition of municipal interests introduced House Bill 797. Introduced in February the bill was approved as law by Governor Corbett in July of 2011. Now recognized as Act 46 of 2011 the enactment date of the law was immediate, July 7, 2011. This brings us to our final portion of our statement today, the recent impacts we are aware of.

Today, similar to the Committee, PSAB is hearing from a variety of member boroughs as well as interested administrators in our communities. The inquiries are especially heavy from communities in western, northwestern and central Pennsylvania. Several articles are showing up in regional dailies which are drawing interests and the attention to the broader impacts of the mandate. I have observed alone that there are at least 3 municipal insurance providers who have indicated their struggle to provide and worse, plans to cancel the provision of this coverage to their clients. Research has shown as well that as of September, the state has received over 65 unsettled claims resulting from the law change.

Further, PSAB has learned from its endorsed provider that it has offered less than 10 WC quotes to municipalities that are faced with non renewal due to the Act. Concerning actual claims under the new law, I have learned from one inquiry that our provider has had 4 claims reported; of those claims one did not have cancer so the claim was closed without payment, two had involved a melanoma and leukemia, and the last was a fatal claim in which the claimant contracted metastatic lung cancer. It should further be noted that providers are certifying that the PennFIRS criteria is being met as well.

In closing I want to thank the committee for this opportunity to provide a statement on what may indeed have been a well intentioned. PSAB and its member boroughs continually demonstrate their commitment to fire and emergency service providers in a number of ways. Through the provision of facilities, annual contributions and even dedicated fire taxes, municipalities support the firefighting community. However, Act 46 seems to be resulting in good intentions gone awry. An attractive benefit is apparently emerging as an unexpected unfunded liability. Local government trusts that the House committee on Veterans Affairs and Emergency Preparedness will take note of these dynamics and respond accordingly, thank you.

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