

**Testimony of Elizabeth Crum
Deputy Secretary for Compensation and Insurance**

**before the House Veterans Affairs & Emergency Preparedness Committee
regarding Act 46 of 2011 (Cancer Presumption)**

**Harrisburg, Pennsylvania
November 14, 2012**

Chairman Barrar, Chairman Sainato, and members of the Veterans Affairs & Emergency Preparedness Committee. My name is Liz Crum. I am the Deputy Secretary for Compensation and Insurance with the Department of Labor & Industry (L&I). On behalf of Secretary Hearshway, thank you for the invitation to testify at this hearing regarding Act 46 of 2011 (Act).

Because the Insurance Department could not be here, I will read comments prepared by the agency regarding its authority under the Act.

Act 46 establishes a rebuttable presumption that any cancer suffered by a firefighter with the requisite years of service and exposure is considered to be work-related. To rebut this presumption, an insurer or self-insured employer must show by "substantial competent evidence" that the firefighter's cancer was not caused in the line of duty. In other words, the employer/carrier of an eligible firefighter has the burden of proving the cancer was caused by factors outside of his or her occupation. Among other provisions, the Act expands the time period of filing a claim from 300 weeks to 600 weeks.

This hearing specifically focuses on the announcement of municipal trusts authorized to self-insure workers' compensation to cancel volunteer firefighter policies because of potentially large claims under the Act. As a result, volunteer fire departments will need to obtain insurance from the State Workers' Insurance Fund (SWIF) or a private insurer.

By way of background, with respect to volunteer firefighters, there are two actual employers for workers' compensation purposes: (1) the volunteer fire company; and (2) the municipality. The municipality bears the primary, but not necessarily the exclusive, responsibility for insuring the workers' compensation liability for volunteer firefighters and paying the premium. Although volunteer fire departments may obtain separate workers' compensation insurance, they are not required to independently obtain coverage for their members. If a volunteer fire company does not obtain insurance, the municipality as the "statutory employer" remains ultimately liable for paying workers' compensation benefits to any injured member.

For those municipalities where policies were cancelled, there are options available: (1) purchase separate workers' compensation coverage from SWIF or a private insurer as an individual entity; (2) purchase separate workers' compensation coverage from SWIF or a private insurer as a combined entity; or (3) be included on the municipality's workers' compensation insurance policy.

Insurance Department Comments

L&I has also been working in conjunction with the state Insurance Department (PID) to evaluate and understand the potential impact Act 46 of 2011 has had on the availability of coverage options for municipalities with volunteer fire departments. It should be noted that the PID has a very limited but specific role in the regulatory scheme pertaining to workers compensation coverage in the Commonwealth. Most of the oversight responsibilities for the law rest with L&I. The PID is responsible for reviewing and approving the loss cost factors that are used by the state's two rating organizations – the Pennsylvania Compensation Rating Bureau and the Coal Mining Compensation Rating Bureau – to develop the classifications and rules used in the development of workers compensation rates. These filings submitted by the rating organizations are open to public comment but historically the PID has received little input on any modifications of a classification or rule.

The PID has spoken with a handful of insurers in the private market who currently have policies in force covering volunteer firefighters and was informed that these insurers are adopting a "wait and see" approach and have not made any final decisions on whether to non-renew the policies. Through our meetings with some of the self-insured municipal trusts, which has been anecdotally confirmed through conversations with insurers, the PID believes that a majority of the Commonwealth's volunteer fire departments currently secure their coverage either through a self-funded trust or SWIF – neither of these entities are regulated by the PID.

L&I understands the concern expressed by lawmakers regarding the loss of workers' compensation coverage for volunteer firefighters. L&I continues to pursue all options available under the Law so municipalities and volunteer firefighters are fully covered. Specifically, L&I's executive team continues to meet to address outstanding issues and stay apprised on latest developments; L&I has attended meetings with the General Assembly; and L&I met with two of the trusts in September.

The good news is these internal and external meetings were productive. We have been advised that the insurance industry identified a rating methodology that would minimize any rate increases for municipalities with multiple volunteer companies within their borders. Also, the Pennsylvania Compensation Rating Bureau (PCRB) will allow volunteer fire companies within a municipality to purchase a single policy, if all the companies within the municipality participate in that policy.

Additionally, L&I is working to ensure continuation of coverage and a seamless transition for those fire companies that apply for workers' compensation insurance with SWIF. As of November 8, 2012, SWIF received a total of 131 applications; 25 of those are for coverage to begin on January 1, 2013. I am happy to report that of those applications, SWIF has issued 107 policies, eight of which have January renewal dates. Fifteen applicants were provided with quotes, but have not followed-up with SWIF; nine remain pending for information that SWIF needs regarding classification and ownership issues. We will continue to process the applications as quickly as we can.

Regarding the Act broadly, there have been 75 petitions filed by 67 individuals with workers' compensation judges seeking benefits under the Act since its passage in July, 2011. Of those cases, three have settled, six have been withdrawn. The remainder are in various stages of litigation before workers' compensation judges. No decisions on the merits of any of the claims have been rendered.

Mr. Chairman, the administration is working within the scope of Act 46 to address the loss of coverage quickly and in a manner that ensures workers' compensation coverage will be available. The responsiveness of our team and partnership with other agencies is an example of how the functions of government can come together to reach solutions. If you or committee members have additional thoughts or ideas, L&I is available as a resource. Do not hesitate to contact me or our Office of Legislative Affairs.

Again, thank you for the opportunity to testify. I would be happy to answer any questions you may have.

