

[First Reprint]

SENATE, No. 716

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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SYNOPSIS

“Thomas P. Canzanella Twenty First Century First Responders Protection Act”; concerns workers’ compensation for public safety workers.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 13, 2019, with amendments.

(Sponsorship Updated As Of: 6/21/2019)

1 **AN ACT** concerning workers' compensation, public safety workers
2 and other employees and supplementing chapter 15 of Title 34 of
3 the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. This act shall be known and may be cited as the "Thomas P.
9 Canzanella Twenty First Century First Responders Protection Act."

10
11 2. The Legislature hereby finds and declares:

12 a. Since the terrorist attacks of September 11, 2001, and the
13 subsequent discovery of terrorist use of anthrax against American
14 citizens that year, millions of dollars of State and federal funds have
15 been spent, and many thousands of man-hours dedicated, to train
16 and equip public safety workers in New Jersey regarding the
17 management of terrorist attacks and other man-made or natural
18 disasters;

19 b. Public safety workers are required by necessity to take great
20 personal risks of serious injury, illness and death in their duties to
21 protect the people of New Jersey from the dangers of catastrophic
22 emergencies, including, but in no way limited to, terrorist attacks
23 and epidemics;

24 c. The risks of exposure to carcinogens, communicable
25 diseases, radiation and related hazards to health, already especially
26 high for fire, police, emergency, medical and other public safety
27 workers, is further increased by the duties of such workers in
28 response to catastrophic emergencies, epidemics, and terrorist
29 attacks which may involve materials related to biological or
30 chemical warfare, or industrial chemicals or other hazardous
31 materials released in connection with terrorist attacks against
32 military, governmental, industrial, infrastructural, and other
33 vulnerable facilities; and

34 d. Many of the severe, painful and even fatal diseases and
35 health conditions which afflict these workers because of those
36 exposures and duties, such as cancer, may take long periods of time
37 to manifest themselves;

38 e. It is therefore an appropriate public policy to modernize the
39 workers' compensation system in this State to ensure the meeting of
40 the critical needs of public safety workers who are New Jersey's
41 first line of defense in the event of catastrophic emergencies,
42 epidemics and terrorist attacks, and assure that those workers are
43 not denied a level of support which is commensurate to the
44 sacrifices they and their families make for the safety and wellbeing
45 of the citizens of this State and the nation.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted June 13, 2019.

1 3. For the purposes of this act:

2 “Hazardous chemicals or materials used in, or related to,
3 chemical warfare” means chemicals and materials which may be
4 used in chemical warfare, including, but not limited to, nerve
5 agents, chemical asphyxiates, choking agents, blister agents,
6 incapacitating agents, explosives, and includes other toxic,
7 carcinogenic or otherwise hazardous industrial chemicals and
8 materials to which public safety workers and members of the public
9 may be exposed in connection with possible terrorist attacks against
10 military, governmental, industrial, infrastructural, and other
11 vulnerable facilities.

12 “Known carcinogen” means a substance which ¹“may cause
13 cancer, including any substance identified as a carcinogen” is
14 known, or generally accepted by the scientific community to cause
15 cancer in humans, as identified¹ by the State Department of Health
16 or by the International Agency for Research on Cancer.

17 “Pathogens or biological toxins used in, or related to, biological
18 warfare or epidemics” means serious communicable diseases,
19 pathogens not necessarily transmitted by sick or infected
20 individuals, such as anthrax, and biological toxins, such as ricin,
21 whether or not in weaponized form.

22 “Public safety worker” includes ¹“, but is not limited to,”¹ a
23 member, employee, or officer of a paid, partially-paid, or volunteer
24 fire or police department, force, company or district, including the
25 State Police, a Community Emergency Response Team approved by
26 the New Jersey Office of Emergency Management, or a correctional
27 facility, or a basic or advanced medical technician of a first aid or
28 rescue squad, or any other nurse, basic or advanced medical
29 technician responding to a catastrophic incident and directly
30 involved and in contact with the public during such an incident,
31 either as a volunteer, member of a Community Emergency
32 Response Team or employed or directed by a health care facility.

33 “Serious communicable disease” means any disease which is
34 characterized by the interruption, cessation or disorder of body
35 functions, systems or organs which may result, if not treated, in
36 disability, chronic illness or death, and is transmittable by
37 association with, or proximity to, sick, infected or colonized
38 individuals, including airborne transmission, or is transmittable by
39 contact with their bodily fluids, secretions or excretions. “Serious
40 communicable disease” includes, but is not limited to, meningitis,
41 tuberculosis, viral hepatitis, human immunodeficiency virus
42 infections, acquired immunodeficiency syndrome, cholera,
43 hemorrhagic fever, plague, smallpox, or other disease identified as a
44 serious communicable disease by the Department of Health, and
45 also includes diseases caused by antibiotic resistant organisms.

46

47 4. If ¹a public safety worker can demonstrate that¹ in the

1 course of ¹**[a public safety worker's]** his or her¹ employment, the
2 worker is:

3 a. exposed to¹;
4 (1)¹ the excretions, secretions, blood or other bodily fluids of one
5 or more other individuals or is otherwise subjected to a potential
6 exposure, by the other individual or individuals, including airborne
7 exposure, to a serious communicable disease and any one of the
8 other individuals is diagnosed with a serious communicable disease,
9 ¹**[has symptoms consistent with the serious communicable**
10 **disease,]**¹ or is otherwise determined to be infected with or at
11 significant risk of contracting the serious communicable disease; or
12 ¹**[b. exposed to]** (2)¹ any pathogen or biological ¹**[toxins]**
13 toxin¹ used in, or related to, biological warfare or epidemics,
14 including airborne exposure, then all care or treatment of the public
15 safety worker, including testing, diagnosis, surveillance or other
16 services needed to ascertain whether the public safety worker
17 contracted a serious communicable disease and any related
18 monitoring of the worker's condition, and all time during which the
19 public safety worker is unable to work while receiving the care or
20 treatment, shall be compensable under the provisions of R.S.34:15-
21 1 et seq., even if, after the care or treatment, it is ascertained that
22 the public safety worker did not contract a serious communicable
23 disease.

24 ¹b.¹ If it is ascertained that the public safety worker has
25 contracted a serious communicable disease or related illness under
26 the circumstances set forth in ¹subsection a. of¹ this section, there
27 shall be a presumption that any injury, disability, chronic or
28 corollary illness or death of the public safety worker caused by,
29 attributable to, or attendant to the disease is compensable under the
30 provisions of R.S.34:15-1 et seq. ¹**[, but this]** This prima facie¹
31 presumption may be rebutted by ¹**[clear and convincing proof]** a
32 preponderance of the evidence showing¹ that the exposure is not
33 linked to the occurrence of the disease. The employer may require
34 the worker to undergo, at the expense of the employer, reasonable
35 testing, evaluation and monitoring of health conditions of the
36 worker which is relevant to determining whether the exposure is
37 linked to the occurrence of the disease, but the presumption of
38 compensability shall not be adversely affected by any failure of the
39 employer to require such testing, evaluation or monitoring.

40
41 5. Any injury, illness or death of any ¹**[employee, including**
42 **a]**¹ public safety worker, resulting from the administration to the
43 ¹**[employee]** worker¹ of a vaccine including, but not limited to,
44 smallpox vaccine, to prepare for, or respond to, any actual,
45 threatened, or potential bioterrorism or epidemic, as part of an
46 inoculation program in connection with the ¹**[employee's]**

1 worker's¹ employment or in connection with any governmental
2 program or recommendation for the inoculation of workers in the
3 **'[employee's] worker's'** occupation, geographical area, or other
4 category that includes the **'[employee] worker'**¹, or resulting from
5 the transmission of disease from another employee or member of
6 the public inoculated under the program, is **'[deemed] presumed'**¹
7 to arise out of and in the course of the employment and all care or
8 treatment of the **'[employee] worker'**¹, including testing, diagnosis,
9 surveillance and monitoring of the **'[employee's] worker's'**¹
10 condition, and all time during which the **'[employee] worker'**¹ is
11 unable to work while receiving the care or treatment, is
12 compensable under the provisions of R.S.34:15-1 et seq. This
13 section shall not be regarded as authorizing any requirement that
14 employees participate in an inoculation program or as diminishing
15 any requirement of law that an inoculation program be voluntary.
16 ¹This prima facie presumption may be rebutted by a preponderance
17 of the evidence showing that the administration of the vaccine is not
18 linked to the injury, illness or death. The employer may require the
19 worker to undergo, at the expense of the employer, reasonable
20 testing, evaluation and monitoring of health conditions of the
21 worker which is relevant to determining whether the administration
22 of the vaccine is linked to the occurrence, but the presumption of
23 compensability shall not be adversely affected by any failure of the
24 employer to require such testing, evaluation or monitoring.¹

25
26 6. Any injury, illness or death of a public safety worker which
27 may be caused by exposure to a known carcinogen, cancer-causing
28 radiation or a radioactive substance, including cancer and damage
29 to reproductive organs, shall be presumed to be compensable under
30 the provisions of R.S.34:15-1 et seq., if the worker demonstrates
31 that he was exposed, due to fire, explosion, spill or other means, to
32 a known carcinogen, cancer-causing radiation or radioactive
33 substances in the course of the worker's employment as a public
34 safety worker ¹and demonstrates that the injury, illness or death has
35 manifested during his or her employment as a public safety
36 worker¹. This ¹prima facie¹ presumption may be rebutted by
37 **'[clear and convincing proof] a preponderance of the evidence'**¹
38 that the exposure is not linked to the injury, illness or death. The
39 employer of the public safety worker may require the worker to
40 undergo, at the expense of the employer, reasonable testing,
41 evaluation and monitoring of health conditions of the worker which
42 is relevant to determining whether the exposure is linked to the
43 occurrence, but the presumption of compensability shall not be
44 adversely affected by any failure of the employer to require such
45 testing, evaluation or monitoring. The employer shall maintain
46 records regarding any instance in which any public safety worker in
47 its employ was deployed to a facility or location where the presence

1 of one or more substances which are known carcinogens is
2 indicated in documents provided to local fire or police departments
3 pursuant to the requirements of section 7 of P.L.1983, c.315
4 (C.34:5A-7) and where fire, explosions, spills or other events
5 occurred which could result in exposure to those carcinogens. The
6 records shall include the identity of each deployed public safety
7 worker and each worker shall be provided notice of the records.

8
9 7. Any injury, illness or death of a firefighter which may be
10 caused by cancer, including leukemia, shall be presumed to be an
11 occupational disease compensable under the provisions of
12 R.S.34:15-1 et seq., if the firefighter has completed not less than
13 seven years of service as a firefighter ¹, regardless of whether the
14 firefighter is in active service or is no longer in active service of a
15 paid, part-paid, or volunteer fire department at the time of the
16 injury, illness or death, provided that the firefighter is not more than
17 75 years of age or has not been out of active service for more than
18 20 years¹. This ¹prima facie¹ presumption may be rebutted by
19 ¹[clear and convincing] a preponderance of the¹ evidence that the
20 occupational disease did not arise out of and in the course of the
21 employment. The employer may require the firefighter to undergo,
22 at the expense of the employer, reasonable testing, evaluation and
23 monitoring of health conditions of the firefighter which is relevant
24 to determining whether the occupational disease arose out of and in
25 the course of the employment, but the presumption of
26 compensability shall not be adversely affected by any failure of the
27 employer to require such testing, evaluation or monitoring. ¹In
28 order to receive this occupational cancer disability benefit, the type
29 of cancer involved shall be a type which may be caused by exposure
30 to heat, radiation, or a known or suspected carcinogen as defined by
31 the International Agency for Research on Cancer.¹ A firefighter
32 with less than seven years of service as a firefighter ¹who
33 experiences injury, illness or death which may be caused by
34 exposure to a known carcinogen, cancer-causing radiation or a
35 radioactive substance, including cancer and damage to reproductive
36 organs,¹ shall be subject to the provisions of section 6 of this act.

37
38 8. This act is intended to affirm certain rights of public safety
39 workers and other employees under the circumstances specified in
40 this act with respect to compensation provided pursuant to
41 R.S.34:15-1 et seq. and shall not be construed as reducing, limiting
42 or curtailing any rights of any other worker or employee to
43 compensation pursuant to R.S.34:15-1 et seq. or of any worker with
44 respect to any claim for compensation pursuant to R.S.34:15-1 et
45 seq., including a claim initiated prior to the effective date of this
46 act.

- 1 ¹9. On the first day of the 18th month following the date of
2 enactment of P.L. , c. (C.) (pending before the Legislature
3 as this bill) and annually on the anniversary of the effective date of
4 P.L. , c. (C.) (pending before the Legislature as this bill), the
5 Commissioner of the Department of Labor and Workforce
6 Development shall, pursuant to section 2 of P.L.1991, c.164
7 (C.52:14-19.1) and in a manner consistent with section 1 of
8 P.L.1966, c.164 (C.34:15-128), submit to the Legislature, a report
9 containing available information regarding:
- 10 a. The number of claim petitions with respect to which a
11 determination was rendered by the Division of Workers'
12 Compensation during the previous calendar year that an injury or
13 illness enumerated within Sections 4 through 7 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill) is
15 compensable; and
- 16 b. The total amount of workers' compensation benefits
17 awarded by the Division of Workers' Compensation for the claim
18 petitions counted under subsection a. of this section, including
19 medical benefits, temporary total disability benefits, permanent
20 partial benefits, and permanent total benefits.¹
- 21
- 22 ¹**[9.] 10.**¹ This act shall take effect immediately.