

R | T | G | R Law LLP

rtgriaw.com





AB 1749 BRAINSTORMING

**STRATEGIES FOR IMPLEMENTATION AND OTHER
PENDING SAFETY OFFICER LEGISLATION**

Presented by RTGR Law LLP
www.rtgrlaw.com



DISCLAIMER: THE INFORMATION CONTAINED IN THIS DOCUMENT IS PROVIDED BY RTGR LAW LLP FOR EDUCATIONAL AND INFORMATIONAL PURPOSES ONLY. IT SHOULD NOT BE CONSTRUED AS LEGAL ADVICE ON ANY SUBJECT MATTER, NOR AS A SUBSTITUTE FOR LEGAL SERVICES.

**COPYRIGHT © 2019 RTGR LAW, LLP
(ALL RIGHTS RESERVED)**



AB 1749

AB 932

SB 542

AB 1400

What does AB 1749 change?

- **3600.2 already provided that:**

(a) Whenever any peace officer...is injured, dies, or is disabled from performing his or her duties as a peace officer by reason of engaging in the apprehension or attempted apprehension of law violators or suspected law violators, or protection or preservation of life or property, or the preservation of the peace, **anywhere in this state**...Any injury, disability, or death incurred under the circumstances described in this section shall be deemed to have arisen out of and been sustained in the course of employment for purposes of workers' compensation and all other benefits.

About AB 1749

- Enacted 09/23/2018
- Allows an employer to accept liability for compensation for an injury sustained by a peace officer outside the state of California, even though not at the time acting under the immediate direction of his or her employer.
- This law was driven by claims for injuries sustained by peace officers during the October 1, 2017, mass shooting in Las Vegas, Nevada.

3600.2. was amended to add section (b)(4)

- “(A)n employer, at its discretion or in accordance with written policies adopted by resolution of the employer’s governing body, from accepting liability for compensation under this division for an injury sustained by a peace officer...by reason of engaging in the apprehension or attempted apprehension of law violators or suspected law violators, or protection or preservation of life or property, or the preservation of the peace, outside the state of California...if the employer determines that providing compensation serves the public purposes of the employer.”

3600.2 (b)(4) – limited to WC?

- “Acceptance of liability under this subdivision shall not affect the determination of whether or not the peace officer acted within the scope of his or her employment for any other purpose.”
- Does this mean they act without “police powers” and without limitation of the “Firefighter Rule”?

AB 932 – Would make AB 1749 *mandatory* for firefighters

- Expands WC coverage to all active firefighters injured while allegedly rendering aid while off-duty, out of the state, anywhere in the world.
- Presumably would have no effect on Police Officers and Deputy Sheriffs – they would still be subject to Agency discretion under AB 1749.

AB 932 (and AB 1749) Concerns

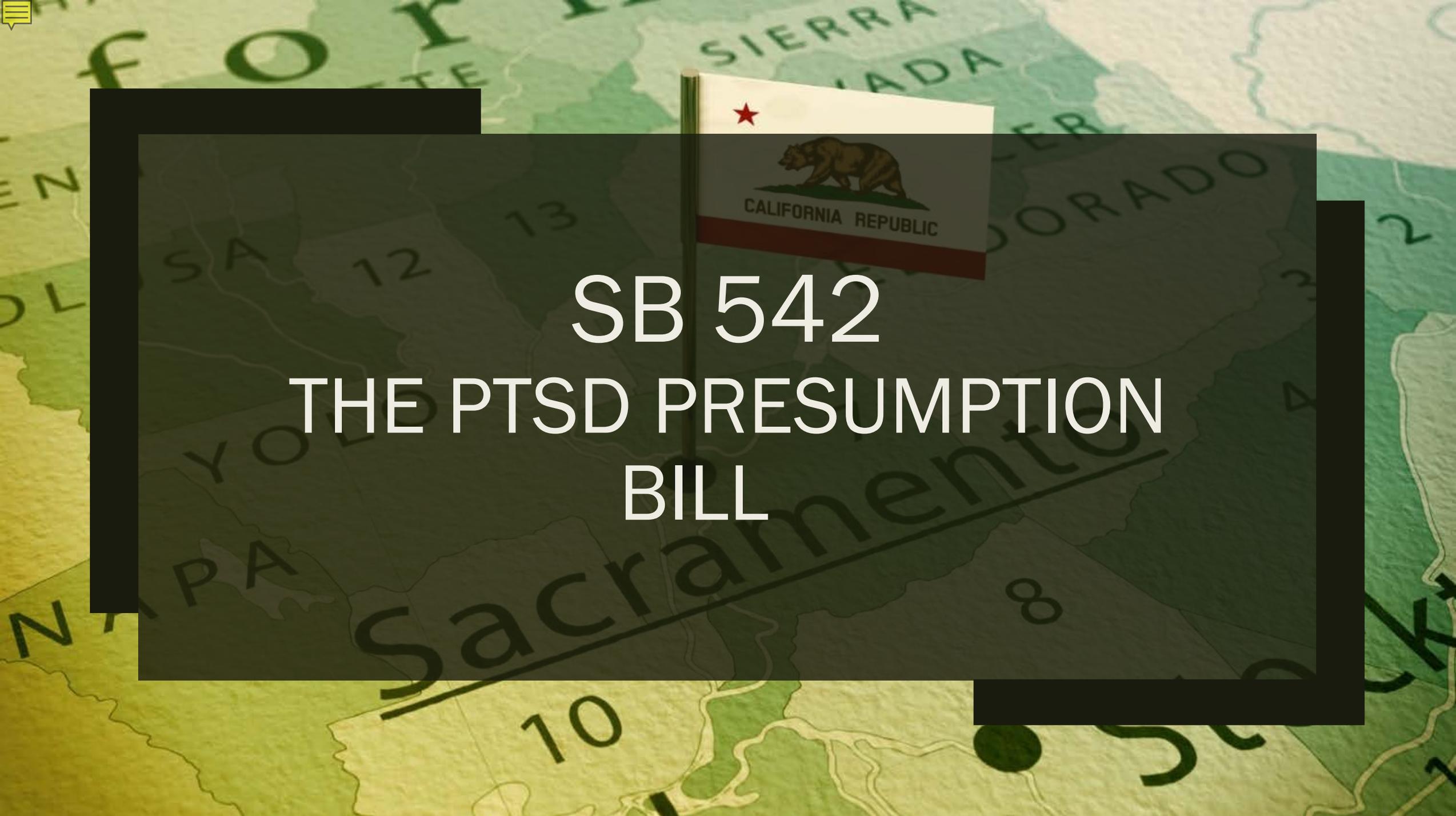
- This bill would increase the WC costs to the agency by making compensable some claims that could have previously be denied based on AOE/COE & jurisdiction.
- Those claims will be difficult to investigate given the fact that it occurs far from the agency and outside the presence of supervisors and co-workers.
- It may create liability exposure to the Firefighter and the employing Agency.

Status and effect of passage of AB 932

- Passed the State Assembly on 05/06/2019.
- Is at the Senate Rules Committee for assignment.
- If it passes the Senate it goes to the Governor to sign. If he does, it becomes law.
- Then Agencies would have to cover firefighters out-of-state, but police officers and deputies only in-state, unless they opt to cover them as well under AB 1749.



SB 542
THE PTSD PRESUMPTION
BILL



SB 542: the PTSD Presumption

SB 542 is a PTSD presumption bill that would create a rebuttable presumption of PTSD injury for active firefighters and peace officers, which means once claimed and diagnosed by a treater, the burden of proof shifts to the employer to prove there was no injury, an already difficult task given the subjective and speculative nature of psyche injuries. The risks include an increase in PTSD claims, increased direct (WC) and indirect (overtime for other police officers and firefighters) costs to the agency, and increased burdens on the state's retirement systems thru increased IDRs based on PTSD claims.

SB 542 would add Sec. 3212.5 to the Labor Code

3212.15.

(a) This section applies to all of the following:

(1) Active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

Proposed Sec. 3212.5 *Continued*

(2) Active firefighting members of a fire department that serves a United States Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters.

(3) Active firefighting members of a fire department that serves a National Aeronautics and Space Administration installation and who adhere to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(4) Peace officers, as defined in Section 830.1, subdivision (a), (b), and (c) of Section 830.2, Section 830.32, subdivisions (a) and (b) of Section 830.37, Sections 830.5 and 830.55 of the Penal Code, who are primarily engaged in active law enforcement activities.

(5) (A) Fire and rescue services coordinators who work for the Office of Emergency Services.

Proposed Sec. 3212.5 *Continued*

(B) For purposes of this paragraph, “fire and rescue services coordinators” means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.

(b) The term “injury,” as used in this division, includes a mental health condition or mental disability that results in a diagnosis of **post-traumatic stress *or* mental health disorder** that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit.

(c) The compensation that is awarded for post-traumatic stress or mental health disorder shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

Proposed Sec. 3212.5 *Continued*

(d) The post-traumatic stress or mental health disorder so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption **shall be extended to a member following termination** of service for a period of 3 calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Proposed Sec. 3212.5 *Continued*

(e) The act adding this section enacted during the 2019 portion of the 2019–20 Regular Session shall be applied to claims for benefits filed or pending on or after January 1, 2017, including, but not limited to, claims for benefits filed on or after that date that have previously been denied, or that are being appealed following denial.

(f) For the purposes of this section, a “mental health condition or mental disability” means a **post-traumatic stress disorder *or* mental health disorder as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.**

Status of SB 542

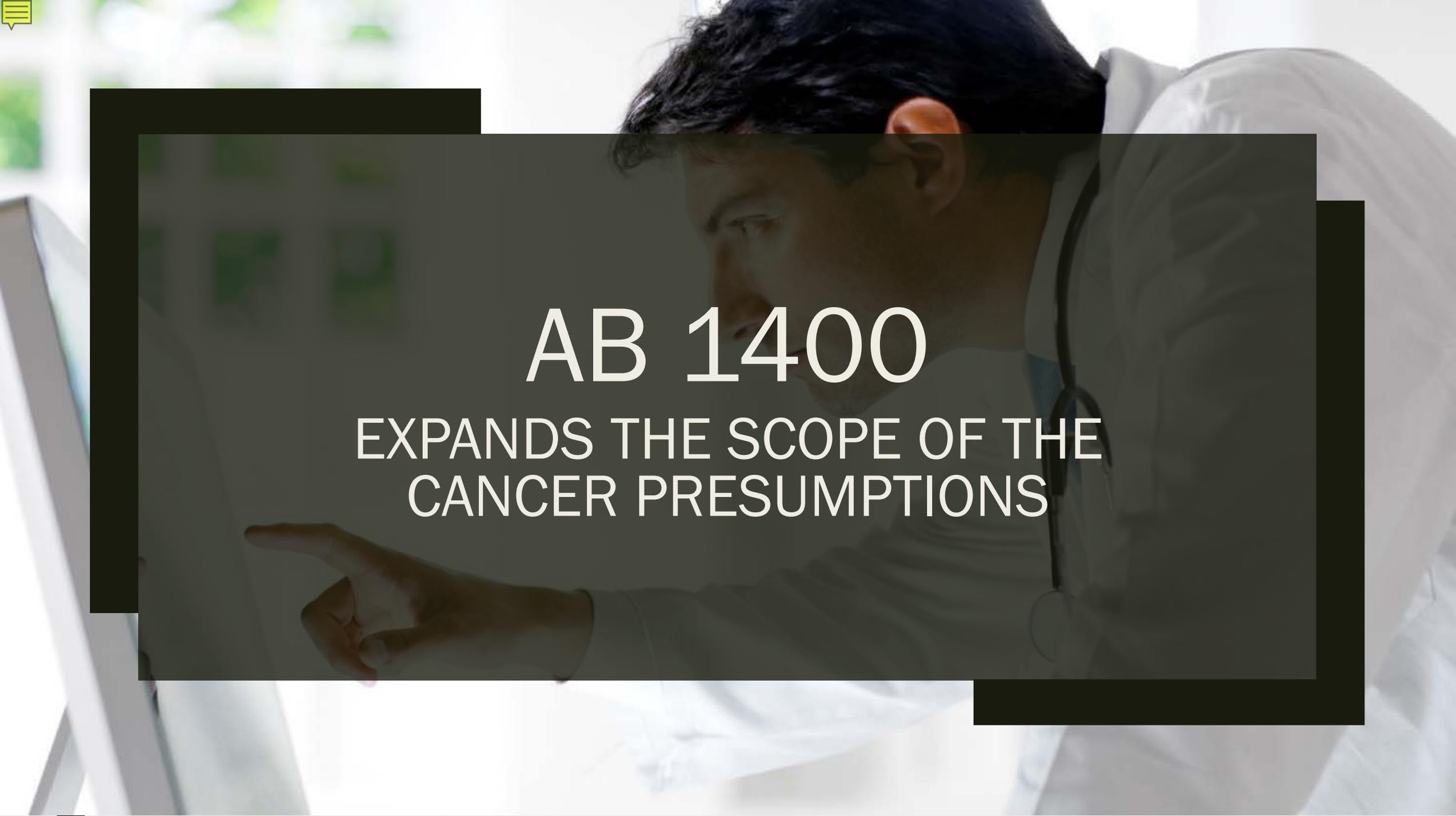
Introduced in February by State Senator Stern, it passed out of first Senate committee unanimously on April 10,

As of 04/22/19, the bill is awaiting action at Appropriations Committee.



AB 1400

EXPANDS THE SCOPE OF THE
CANCER PRESUMPTIONS





AB 1400: Extends the Cancer Presumption

Extends the cancer presumptions to all fire personnel “exposed” to fires and the hazards directly resulting from firefighting operations, not just active firefighters.

This would include EMTs, fire marshals & inspectors, and those who clear & maintain equipment and apparatuses where toxic chemicals are deposited.



AB 1400: Text

3212.18.

(a) The term “injury,” as used in this division, includes cancer, including leukemia, that develops or manifests during a period in which an individual described in subdivision (d) demonstrates that they were exposed to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

(b) The compensation that is awarded for an injury due to cancer shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.



AB 1400: Text

3212.18.

(c) Cancer that develops or manifests as described in subdivision (a) is presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the person has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be applied to an individual following termination of employment for a period of three calendar months for each full year of the requisite employment, but not to exceed 120 months in any circumstance, commencing with the last date actually worked in the specified capacity.



AB 1400: Text

3212.18.

(d) This section applies to employees of a city, county, city and county, district, or other municipal corporation or political subdivision, other than the persons to whom Section 3212.1 applies, whose job duties cause the employees to be regularly exposed to active fires or health hazards directly resulting from firefighting operations, such as exposure to toxic chemicals deposited on firefighting equipment.

Status of AB 1400

- Introduced 02/22/2019 in the Assembly. Sponsored by AFL-CIO, CLF, and AFSCME.
- Passed the Assembly on 05/14/2019 by a vote of 73-0.
- Now goes on to the state Senate.



DISABILITY RETIREMENT CONCERNS

Disability Retirement Concerns

- Public safety officers who are substantially incapacitated from performing the essential functions of the job due to an industrial injury are entitled to an Industrial Disability Retirement (IDR) under PERS or a Service Connected Disability Retirement under the County Act of 1937
- AB 1749 adds potential out-of-state covered industrial injuries that could qualify for IDRs, and AB 932 would make that coverage mandatory for firefighters.
- SB 542 would make all firefighter mental health claims presumptive, exponentially increasing the number of IDRs.

IDR Benefits

- Generally, for qualified workers under age 50, the pension is 50% of the highest year of salary, tax free and payable by the retirement system
- For qualified workers over age 50, the pension is calculated at either 50% or the percentage they would be entitled to due to a service retirement, whichever is greater, of which the first 50% of base is tax free

Disability Retirement Requirements

- Injured worker bears burden of showing they are substantially incapacitated from performing the essential functions of their job because of an *industrial* injury.
 - SB 542 and AB 1400 make some of those presumptive, easing that burden.
 - AB 1749 and AB 932 increase the scope of potential covered claims.
- Incapacity is still determined by the local agency or the State, not CalPERS



THANK YOU

Interested in more CE Credit?

Just send an E-mail to info@rtgrlaw.com and reference “CE program” in the subject line, and we will e-mail you invitations to our programs as well as our quarterly e-Newsletter.

Find a link to other PowerPoints and other helpful information at:

www.RTGRLaw.com/blog/



rtgrlaw.com

