



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 03, 2015

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 03, 2015
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

From: Elaine Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 435 Relating to Firefighters

I. OVERVIEW OF PROPOSED LEGISLATION

HB435 proposes to add a new section in chapter 386, Hawaii Revised Statutes (HRS). Section 2 of the proposal states that this bill will provide firefighters with comprehensive medical coverage through workers' compensation benefits by establishing a rebuttable presumption that a firefighter who suffers from cancer, blood-borne infectious disease, or exposure to biochemical substances contracted the condition in the course of employment. Section 3 requires the Hawaii State Fire Council to develop standards and procedures to ensure health and safety of firefighters who may be exposed to hazardous materials in the course of their duties.

The DLIR notes that this measure may be unnecessary as the Worker's Compensation law already provides a rebuttable presumption and both health and safety law already requires the county and state fire departments to have standards.

II. CURRENT LAW

Section 386-3, HRS, defines injury and provides that the employee's employer shall pay compensation to the employee or the employee's dependents as provided in chapter 386, if an employee suffers personal injury either by accident

arising out of and in the course of the employment, or by disease proximately caused by or resulting from the nature of the employment.

Section 386-85, HRS, provides that there is a presumption that a claim for compensation is for a covered work injury. Section 386-85, HRS, provides that in any proceeding for the enforcement of a claim for compensation under this chapter, it shall be presumed, in the absence of substantial evidence to the contrary:

- (1) That the claim is for a covered work injury;
- (2) That sufficient notice of such injury has been given;
- (3) That the injury was not caused by the intoxication of the injured employee;
and
- (4) That the injury was not caused by the willful intention of the injured employee to injure oneself or another.

III. COMMENTS ON THE HOUSE BILL

Section 2, Subsection (b) references a “rebuttable” presumption. The current Section 386-85, HRS, already has provisions for presumption and rebuttal.

Section 2, Subsection (b) reads as follows, “Unless so controverted, the appeals board is bound to find in accordance with the presumption.” The DLIR notes that claims are first adjudicated at the Disability Compensation Division, therefore, if this proposal moves forward the department recommends that this sentence be deleted.

The department understands the concerns raised in this measure that the litigious environment of the workers’ compensation (WC) system and the difficulty of finding a physician who will accept a WC claimant may prevent firefighters from filing for and or pursuing a WC claim in order to receive timely, complex, and expensive medical treatments due them under the WC law.

The department, however, recognizes that these individuals can still pursue their diagnosis and treatment through their health plan (e.g. Employer-Union Health Benefits Trust Fund – EUTF). In the event of a controverted workers’ compensation claim, section 12-12-45 (Controverted workers’ compensation claims), Hawaii Administrative Rules, provides for the health care contractor to pay or provide for the medical services in accordance with the health care contract. If WC liability is later established, the health care contractor shall be reimbursed by the WC carrier.

The department is also concerned that these claimants may not file for or pursue their WC claim because of a lack of knowledge of their eligibility or to avoid the litigious and lengthy process of the WC system. If the claimant later succumbs to the injury or illness and has not filed for WC, survivors of the claimant will not be eligible to receive benefits that would have been due them (386-41 through 386-44, HRS).

Lastly, regarding section 3 of the bill, the DLIR notes that current HIOSH and OSHA standards apply to all employers, public and private. HIOSH standards already require employers to develop, implement and maintain safety programs, which include hazard assessment, training and re-training as necessary.

DAVID Y. IGE
GOVERNOR



JAMES K. NISHIMOTO
DIRECTOR

RANDY BALDEMOR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

January 30, 2015

**TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**

For Hearing on Tuesday, February 3, 2015
9:00 a.m., Conference Room 309

BY

JAMES K. NISHIMOTO
DIRECTOR

**House Bill No. 435
Relating to Firefighters**

WRITTEN TESTIMONY ONLY

HONORABLE CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE HOUSE
COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Thank you for the opportunity to provide comments on House Bill No. 435 (H.B. 435).

The purposes of H.B. 435 are to provide firefighters with comprehensive medical coverage through workers' compensation benefits by establishing a rebuttable presumption that a firefighter who suffers from cancer, blood-borne infectious disease, or exposure to biochemical substances contracted the condition in the course of employment; and to require the Hawaii State Fire Council to develop standards and procedures to ensure health and safety of firefighters who may be exposed to hazardous materials in the course of their duties.

The Department of Human Resources Development (DHRD) has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. In that regard, DHRD respectfully submits these comments on the bill.

First, Section 386-85, HRS, already contains a presumption that a claim for workers' compensation benefits is for a covered work injury. Section 386-3, HRS, is broadly construed and includes personal injury either by accident arising out of and in the course of the employment or by disease proximately caused by or resulting from the nature of the employment. These provisions would also apply to a firefighter's claim for cancer, leukemia, blood-borne infectious disease, or methicillin-resistant staphylococcus aureus skin infection.

Second, Section 386-85, HRS, already provides that the presumption of compensability can only be rebutted by "substantial evidence to the contrary." As demonstrated in legions of Disability Compensation Division, Labor and Industrial Relations Appeals Board, Hawaii Intermediate Court of Appeals decisions, and the 2014 Hawaii Supreme Court decision involving a vog-related claim for workers' compensation benefits, this "substantial evidence" standard is a very high standard for employers to overcome.

Finally, Section 386-82, HRS, already exempts certain exposure-type claims from the normal two-year statute of limitations for filing a workers' compensation claim. This exemption applies to claims for injury caused by occupational exposure to minerals or substances with carcinogenic properties and exposure to radioactive substances. Claims for such injuries can be filed up to two years after knowledge that the injury was proximately caused by, or resulted from the nature of, the employment. This provides an added safeguard for injured employees or their families to file claims when the work-relatedness of such injuries is not readily apparent.



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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 2, 2015

The Honorable Mark Nakashima, Chair
Committee on Labor
House of Representatives
State Capitol, Room 406
Honolulu, Hawaii 96813

Dear Chair Nakashima:

Subject: H.B. 435 Relating to Firefighters

I am Manuel P. Neves, Chair of the Hawaii State Fire Council (SFC). The SFC supports H.B. 435 with the recommended revisions to Section 3, which proposes to provide fire fighters with comprehensive medical coverage through workers compensation benefits by establishing a rebuttable presumption that a fire fighter who suffers from cancer, a blood-borne infectious disease, or exposure to a biochemical substance contracted the condition in the course of their employment. Attached are the suggested revisions in track changes format. Further testimony on this bill will be submitted by the county fire departments.

Section 3 (a), (b), and (c) of the bill are the responsibilities of the county fire departments. The county fire departments already have and continue to develop safety and health standards and procedures to comply with federal and state laws and nationally recognized standards. As written, Section 3 would usurp the county fire department's managing authority. We propose a revision to state that the phrase "Hawaii state fire council" be replaced with the "the county fire departments." The SFC will agree to prepare a report that compiles the information from the county fire departments, with a revision stating "no later than twenty days prior to the convening of the regular session of 2016."

The health and safety of personnel are high priorities for each fire department. They are responsible for protecting life and property from the hazards of fire, hazardous materials, medical, and other emergencies. Education and training are a continuous part of the fire department's responsibilities in addition to protecting its personnel.

The Honorable Mark Nakashima, Chair
Page 2
February 2, 2015

National standards are incorporated into the fire department's policies and procedures. Purchasing of the most up-to-date protective equipment, apparatus, and tools, keeps pace with technological advances in these areas. Supervisory oversight ensures that policies and procedures are reinforced and complied with. Hawaii Occupational Safety and Health inspections provide additional oversight of the best safety practices for personnel and fire stations.

The SFC strongly urges your support and passage of H.B.435 with the recommended revisions to Section 3.

Should you have questions, please contact SFC Administrator Socrates Bratakos at 723-7105 or sbratakos@honolulu.gov.

Sincerely,



MANUEL P. NEVES
Chair

MPN/LR:clc

Attachment

HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2015
STATE OF HAWAII

H.B. NO. 435

A BILL FOR AN ACT

RELATING TO FIREFIGHTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII

SECTION 3. (a) ~~The Hawaii state fire council~~county fire departments shall develop minimum standards and procedures to ensure the health and safety of firefighters and first responders who are or may be exposed to hazardous materials or situations in the course of their duties. ~~The Hawaii state fire council~~county fire departments shall take steps to ensure that personnel are trained regularly with regard to these minimum standards and procedures.

(b) ~~The Hawaii state fire council~~county fire departments shall ~~urge county fire departments to~~ conduct an inventory of fire stations to ensure that the fire stations meet environmental health and safety standards to mitigate the long-term health effects on their personnel.

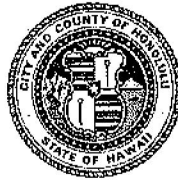
(c) As part of the minimum standards and procedures, the ~~Hawaii state fire council~~county fire departments shall require each fire station to employ best practices that limit an employee's exposure to hazardous materials by isolating equipment and material exposed in the field, proper cleaning protocol, and regular testing of the station for contaminants.

(d) The Hawaii state fire council shall compile the above information from the county fire departments prepare a report that outlines ~~its~~the progress in accordance with this Act and submit the report to the legislature no later than twenty days prior to the convening of the regular session of ~~2015~~2016.

HONOLULU FIRE DEPARTMENT
CITY AND COUNTY OF HONOLULU

636 South Street
Honolulu, Hawaii 96813-5007
Phone: 808-723-7139 Fax: 808-723-7111 Internet: www.honolulu.gov/hfd

KIRK CALDWELL
MAYOR



MANUEL P. NEVES
FIRE CHIEF

LIONEL CAMARA JR.
DEPUTY FIRE CHIEF

February 2, 2015

The Honorable Mark Nakashima, Chair
Committee on Labor
House of Representatives
State Capitol, Room 406
Honolulu, Hawaii 96813

Dear Chair Nakashima:

Subject: H.B. 435 Relating to Firefighters

I am Manuel P. Neves, Fire Chief of the Honolulu Fire Department (HFD). The HFD supports H.B. 435 with the recommended revisions, which proposes to provide fire fighters with comprehensive medical coverage through workers compensation benefits by establishing a rebuttable presumption that a fire fighter who suffers from cancer, a blood-borne infectious disease, or exposure to a biochemical substance, contracted the condition in the course of their employment. The revisions to Sections 1 and 2 are attached in track changes format.

The proposed revisions to Sections 1 and 2 are to provide consistent terminology found in Hawaii Revised Statutes (HRS) §386. We also propose that the last sentence in Section 2 (b) be deleted, as it shortens the time limitations for exposures to carcinogenic substances and is already provided in HRS §386-82. We suggest that the following sentence be substituted:

"The claim for cancer by the fire fighter shall be presumed to have occurred during the course of employment and the requirement to state in ordinary language the time, place, nature, and cause of the cancer do not apply."

Requiring a fire fighter to provide a specific time, place, and cause of the cancer would be unduly burdensome when exposures to carcinogenic, blood-borne, or biochemical substances were not documented in a medical report and no immediate ill effects or symptoms were realized. The nature of the various types of exposures may have occurred during the course of a fire fighter's entire career. We further propose that Section 2 (c) be deleted, as it is already stated in HRS §386-3.

The Honorable Mark Nakashima, Chair
Page 2
February 2, 2015

Thirty-three states and eight Canadian provinces currently have cancer presumptive laws that provide fire fighters with workers compensation, medical, and service-connected disability benefits. Numerous studies have proven that the risk of being diagnosed with cancer is higher among fire fighters than the general population. A study of male fire fighters in Massachusetts from 1987 to 2003 found an increased risk for numerous cancers, including colon and brain cancer. The University of Cincinnati's 2006 study found that on-the-job exposure to soot and toxins creates an increased risk of various cancers among fire fighters. A federal government study conducted during the development of an Occupational Safety and Health Administration Bloodborne Pathogen Standard showed that 98 percent of emergency medical technicians and 80 percent of fire fighters are exposed to blood-borne infectious diseases on the job.

Fire fighters are exposed to many compounds designated as carcinogens by the International Agency for Research on Cancer, including benzene, diesel engine exhaust, chloroform, soot, styrene, and formaldehyde. These substances can be inhaled or absorbed through the skin, and the fire fighter's protective equipment does not always prevent exposures.

Cancer treatment may take years and costs may exceed the financial resources of fire fighters and their families. In the unfortunate event that a fire fighter cannot return to duty, this bill will provide much needed benefits. Although the language of the current workers compensation law presumes a broad coverage of any injury or illness to be work related, the current system provides the employer with the right to deny claims and extend the process for several years. A fire fighter who is diagnosed with cancer and undergoes treatment is faced with a life and death struggle that he and his family must battle.

The HFD strongly urges your support and passage of H.B. 435 with the recommended revisions.

Should you have questions, please contact Assistant Chief Socrates Bratakos of our Support Services section at 723-7105 or sbratakos@honolulu.gov.

Sincerely,



MANUEL P. NEVES
Fire Chief

MPN/LR:clc

Attachment

A BILL FOR AN ACT

RELATING TO FIREFIGHTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII

SECTION 1. The legislature finds that risk of being diagnosed with cancer is higher among firefighters than the general population. In a three-year study completed in 2005 2006 by the University of Cincinnati, researchers concluded that firefighters face a higher risk of cancer than the general population. Statistics from this study show that when compared to the general population, the risk for firefighters is:

- (1) One hundred two per cent higher for testicular cancer;
- (2) Fifty-three per cent higher for multiple myeloma;
- (3) Fifty-one per cent higher for non-Hodgkin's lymphoma;
- (4) Thirty-nine per cent higher for skin cancer;
- (5) Thirty-two per cent higher for brain and malignant melanoma;

- (5) Twenty-nine per cent higher for rectal cancer;
- (6) Twenty-eight per cent higher for prostate cancer;
- (7) Twenty-four per cent higher for buccal cavity and pharynx cancer;
- (8) Twenty-two per cent higher for stomach cancer;
- (9) Twenty-one per cent higher for colon cancer; and
- (10) Fourteen per cent higher for leukemia.

Firefighters face a greater risk of contracting blood-borne infectious diseases and illnesses associated with exposures to patient care and biochemical substances due to from exposures to hazardous materials. bioterrorism.

The purpose of this Act is to provide firefighters with comprehensive medical coverage, one-hundred percent average weekly wages, and service-connected disability indemnity and death retirement benefits through a presumptive law for cancer, blood-borne infections diseases, and exposure to biochemical substances contracted ~~the condition~~ in the course of employment.

SECTION 2. Chapter 386, Hawaii Revised Statutes, is amended to read as follows:

§386- Injuries covered; firefighters. (a) In addition to the injuries covered pursuant to section 386, if a firefighter develops cancer or leukemia, suffers from develops a blood-borne infectious disease, or develops methicillin-resistant

staphylococcus aureus skin infection during a period that the firefighter is in the course of employment, the cancer, leukemia, blood-borne infectious disease, or methicillin resistant staphylococcus aureus skin infection shall be presumed to arise out of and in the course of the employment.

(b) This presumption under subsection (a) is rebuttable and may be rebutted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member 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 extended to a member following termination of service for a period of three calendar months for each full year of requisite service, but not to exceed sixty months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) No compensation shall be allowed for an injury incurred by an employee's wilful intention to injure oneself or another by actively engaging in any unprovoked non work related physical altercation other than self defense, or by the employee's intoxication."

Report Title:

~~Service-connected disability and medical coverage~~ Relating to
Firefighters

Description:

Includes ~~service-connected disability retirement~~ comprehensive
medical coverage, one-hundred percent average weekly wages,
disability indemnity and death benefits ~~and full medical~~
~~compensation for the treatment of~~ through a presumptive law for
cancer, or a blood-borne infectious diseases, or an exposures to
biochemical exposure for firefighters substances. The nature of
the employment is presumed to be the cause of the illness so
contracted, ~~unless rebutted by clear and convincing evidence.~~
Effective July 1, ~~2014~~ 2015.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

William P. Kenoi
Mayor



Darren J. Rosario
Fire Chief

Renwick J. Victorino
Deputy Fire Chief

County of Hawai'i
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Suite 2501 • Hilo, Hawai'i 96720
(808) 932-2900 • Fax (808) 932-2928

February 1, 2015

The Honorable Mark Nakashima, Chair
Committee on Labor
House of Representatives
State Capitol, Room 406
Honolulu, Hawai'i 96813

Dear Chair Nakashima:

Subject: H.B. 435 Relating to Fire Fighters

I am Darren J. Rosario, Fire Chief of the Hawai'i Fire Department of the County of Hawai'i (HCFD). The HCFD supports H.B. 435, which proposes to provide fire fighters with comprehensive medical coverage through workers compensation benefits by establishing a rebuttable presumption that a fire fighter who suffers from cancer, blood-borne infectious disease, or exposure to biochemical substance contracted the condition in the course of their employment, with recommended revisions. The revisions to Sections 1 and 2 are attached in track changes format.

The proposed revisions to Sections 1 and 2 are to provide consistent terminology found in Hawai'i Revised Statutes (HRS) §386. We also propose that the last sentence in Section 2 (b) be deleted because it shortens the time limitations for exposures to carcinogenic substances as already provided in HRS §386-82. We suggest that the below sentence be substituted as follows:

“The claim for cancer by the fire fighter shall be presumed to have occurred during the course of employment and the requirement to state in ordinary language the time, place, nature and cause of the cancer does not apply.”

Requiring a fire fighter to provide a specific time, place and cause of the cancer would be problematic, when exposures to carcinogenic, blood-borne, or biochemical substances were not documented in a medical report and no immediate ill effects or symptoms were realized. The nature of the various types of exposures may have occurred during the course of a fire fighter's entire career. We further propose that Section 2 (c) be deleted as it is already stated in HRS §386-3.



The Honorable Mark Nakashima, Chair
February 1, 2015
Page 2

Thirty-three states and eight Canadian provinces currently have cancer presumptive laws that provide fire fighters with workers compensation, medical, and service-connected disability benefits. Numerous studies have proven that the risk of being diagnosed with cancer is higher among fire fighters than the general population. A study of male fire fighters in Massachusetts from 1987 to 2003 found an increased risk for numerous cancers, including colon and brain cancer. The University of Cincinnati's 2006 study found that on-the-job exposure to soot and toxins creates an increased risk of various cancers among fire fighters. A federal government study conducted during the development of an Occupational Safety and Health Administration Bloodborne Pathogen Standard showed that 98 percent of emergency medical technicians and 80 percent of fire fighters are exposed to blood-borne infectious diseases on the job. Fire fighters are exposed to many compounds designated as carcinogens by the International Agency for Research on Cancer, including benzene, diesel engine exhaust, chloroform, soot, styrene, and formaldehyde. These substances can be inhaled or absorbed through the skin, and the fire fighter's protective equipment does not always prevent exposures.

Cancer treatment may take years and costs may exceed the financial resources of fire fighters and their families. In the unfortunate event that a fire fighter cannot return to duty, this bill will provide much needed benefits. Although the language of the current workman's compensation law presumes a broad coverage of any injury or illness to be work related, the current system provides the employer with the right to deny claims and extend the process for several years. A fire fighter who is diagnosed with cancer and undergoes treatment is faced with a life and death struggle that he, as well as his family must battle.

The HCFD strongly urge your support and passage of H.B. 435 with the recommended revisions.

Should you have questions, please contact me at (808) 932-2903 or via email at darren.rosario@hawaiicounty.gov.

Sincerely,



DARREN J. ROSARIO
Fire Chief

A BILL FOR AN ACT

RELATING TO FIREFIGHTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII

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Firefighters face a greater risk of contracting blood-borne infectious diseases and illnesses associated with exposures to patient care and biochemical substances ~~due to~~ from exposures to hazardous materials. bioterrorism.

The purpose of this Act is to provide firefighters with comprehensive medical coverage, one-hundred percent average weekly wages, and ~~service connected disability indemnity and death retirement benefits~~ through a presumptive law for cancer, blood-borne infections diseases, and exposure to biochemical substances contracted ~~the condition~~ in the course of employment.

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.B. NO.

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(b) This presumption under subsection (a) is rebuttable and may be rebutted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member 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 extended to a member following termination of service for a period of three calendar months for each full year of requisite service, but not to exceed sixty months in any circumstance, commencing with the last date actually worked in the specified capacity.

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Report Title:

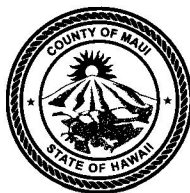
~~Service-connected disability and medical coverage~~Relating to
Firefighters

Description:

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Effective July 1, ~~2014~~2015.

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ALAN M. ARAKAWA
MAYOR



JEFFREY A. MURRAY
CHIEF

ROBERT M. SHIMADA
DEPUTY CHIEF

COUNTY OF MAUI
DEPARTMENT OF FIRE AND PUBLIC SAFETY

200 DAIRY ROAD
KAHULUI, MAUI, HAWAII 96732
(808) 270-7561
FAX (808) 270-7919
EMAIL: fire.dept@mauicounty.gov

February 1, 2015

The Honorable Mark Nakashima, Chair
Committee on Labor
House of Representatives
State Capitol, Room 406
Honolulu, Hawaii 96813

Dear Chair Nakashima:

Subject: H.B. 435 Relating to Firefighters

I am Jeffrey A. Murray, Fire Chief of the Maui Fire Department (MFD). The MFD supports H.B. 435, which proposes to provide fire fighters with comprehensive medical coverage through workers compensation benefits by establishing a rebuttable presumption that a fire fighter who suffers from cancer, blood-borne infectious disease, or exposure to biochemical substance contracted the condition in the course of their employment, with recommended revisions. The revisions to Sections 1 and 2 are attached in track changes format.

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The Honorable Mark Nakashima, Chair
Page 2
February 2, 2015

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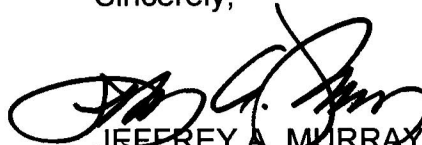
Thirty-three states and eight Canadian provinces currently have cancer presumptive laws that provide fire fighters with workers compensation, medical, and service-connected disability benefits. Numerous studies have proven that the risk of being diagnosed with cancer is higher among fire fighters than the general population. A study of male firefighters in Massachusetts from 1987 to 2003 found an increased risk for numerous cancers, including colon and brain cancer. The University of Cincinnati's 2006 study found that on-the-job exposure to soot and toxins creates an increased risk of various cancers among fire fighters. A federal government study conducted during the development of an Occupational Safety and Health Administration Bloodborne Pathogen Standard showed that 98 percent of emergency medical technicians and 80 percent of fire fighters are exposed to blood-borne infectious diseases on the job. Fire fighters are exposed to many compounds designated as carcinogens by the International Agency for Research on Cancer, including benzene, diesel engine exhaust, chloroform, soot, styrene, and formaldehyde. These substances can be inhaled or absorbed through the skin, and the fire fighter's protective equipment does not always prevent exposures.

Cancer treatment may take years and costs may exceed the financial resources of fire fighters and their families. In the unfortunate event that a fire fighter cannot return to duty, this bill will provide much needed benefits. Although the language of the current workman's compensation law presumes a broad coverage of any injury or illness to be work related, the current system provides the employer with the right to deny claims and extend the process for several years. A fire fighter who is diagnosed with cancer and undergoes treatment is faced with a life and death struggle that he, as well as his family must battle.

The MFD strongly urge your support and passage of H.B. 435 with the recommended revisions.

Should you have questions, please contact SFC Administrator Socrates Bratakos at 723-7105 or sbratakos@honolulu.gov.

Sincerely,



JEFFREY A. MURRAY
Fire Chief

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

February 3, 2015

The Honorable Mark M. Nakashima
and Members of the Committee
on Labor and Public Employment
The House of Representatives
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members of the Committee:

SUBJECT: House Bill No. 435
Relating to Firefighters

The purpose of H.B. 435, is to provide firefighters with comprehensive medical coverage by establishing a rebuttable presumption under workers' compensation for cancer, blood-borne infectious diseases, and staphylococcus aureus skin infections. The City and County of Honolulu offers the following comments with respect to the bill.

Hawaii Revised Statutes Section 386-85 already provides that injuries sustained under the conditions set forth in the measure are presumed covered for workers' compensation purposes in the absence of substantial evidence to the contrary. As a result, the amendments set forth in Section 2 are duplicative and unnecessary.

We also question the need to include a specific standard for overcoming the presumption given the "substantial evidence" standard already set forth in the law. Adding a different standard for a limited set of injuries sustained by a finite group of individuals is therefore both needless and excessive. Moreover, the standard proposed by the bill fails to account for individual employees who may develop cancer due to their voluntary use of tobacco.

Finally, the City takes no position with respect to Section 3, which mandates that the State Fire Council develop minimum standards and procedures to ensure the health and safety of our firefighters and first responders, except to note that subsection 3.(d) should be amended to indicate that the report should be submitted "no later than twenty days prior to the convening of the regular session of 2016."

Sincerely,

A handwritten signature in black ink that reads "Carolee C. Kubo".

Carolee C. Kubo
Director

cc: Mayor's Office



HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO
1018 PALM DRIVE, HONOLULU, HAWAII 96814-1929
TELEPHONE (808) 949-1566 FAX: (808) 952-6003
WEBSITE: www.hawaii firefighters.org

HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015
February 3, 2015

Committee on Labor and Public Employment

Testimony by
Hawaii Fire Fighters Association

H.B. No. 435 Relating to Fire Fighters

My name is Robert H. Lee and I am the President of the Hawaii Fire Fighters Association (HFFA), Local 1463, IAFF, AFL-CIO. The HFFA represents approximately 2,100 active-duty professional fire fighters throughout the State. We strongly support H.B. No. 435, which provides fire fighters with comprehensive medical coverage through workers' compensation benefits by establishing a rebuttable presumption. H.B. No. 435 recognizes the occupational exposures experienced by fire fighters in the line of duty

Thirty-three states and eight Canadian provinces already have cancer presumptive laws that provide fire fighters with medical and service-connected disability benefits. Several studies, as recommended by the International Association of Fire Fighters (IAFF), serve as the basis that demonstrates the need for cancer presumptive legislation locally. In a meta-analysis of 32 studies conducted by GK LeMasters in 2006, there was significant excess risk of cancer that was reported for the brain, stomach, colon, rectum, prostate, testes, multiple myeloma and non-Hodgkin lymphoma (NHL). A 2009 study conducted by the U.S. National Institute for Occupational Study (NIOSH) compared fire fighters to the general public for incidence rates in cancer diagnosis. Of the 30,000 full-and-part-time fire fighters involved in the study, there was an increase in cancer risks associated with excess malignancies of the oral, respiratory, digestive, and urinary systems. There were 4461 malignant tumors distributed among 3903 fire fighters with cancer, among which 488 reported cancers were at multiple primary sites.

More recent studies, including 2010 report by the Underwriters Laboratories Inc. regarding fire fighters exposure to smoke particulates established that because 99+% of smoke particles are less than 1 micron in diameter making it invisible to the naked eye, it is difficult to determine whether or not "clean air" is indeed clean air post-fire. Such exposure leads to deposits of phthalates, PAHs, lead, and mercury that remain on fire fighters' hoods and gloves that can be dermally absorbed or inhaled, thus contributing to the correlation with increased cardiovascular and respiratory morbidity and mortality, i.e., lung cancer. "Systemic Exposure to PAHs and Benzene in Firefighters Suppressing Controlled Structure Fires," a study administered in 2014, reported that despite wearing full protective ensembles, fire fighters absorb polycyclic aromatic hydrocarbons (PAHs) through their skin during firefighting as shown by an increase in their biological levels following the exposure period. PAHs are linked to an increase risk of skin, lung, bladder and gastrointestinal cancers.

These studies are consistent with other previous studies assessing the cancer risks in fire fighters associated with occupational exposure. With statistics showing an increase in the risk of cancer as well as infectious diseases and illnesses associated with exposure to patient care and biochemical substances for fire fighters in comparison to the general population, it is important that discussion begins.

HFFA appreciates the Committee's favorable consideration of this measure and ask that you pass H.B. No. 435.

SHOPO



PRESIDENT
Tenari R. Ma'afala

VICE PRESIDENT
Malcolm Lutu

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James "Kimo" Smith

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KAUA'I CHAPTER CHAIR
Jesse Guirao

MAUI CHAPTER CHAIR
Barry Aoki

Main Office & Honolulu Chapter
1717 Hoe Street
Honolulu, Hawai'i 96819-3125
Ph: (808) 847-4676 "84 SHOPO"
(800) 590-4676 Toll Free
Fax: (808) 841-4818

Hawai'i Chapter Office
688 Kino'ole Street, Room 220 B
Hilo, Hawai'i 96720
Ph: (808) 934-8405
Fax: (808) 934-8210

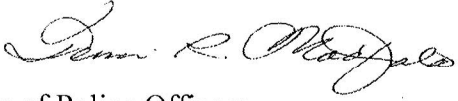
Maui Chapter Office
1887 Wili Pa Loop, Suite #2
Wailuku, Hawai'i 96793
Ph: (808) 242-6129
Fax: (808) 242-9519

Kaua'i Chapter Office
4264 Rice Street, Lihue
Mailing Address:
P.O. Box 1708
Lihue, Hawai'i 96766
Ph: (808) 246-8911

TO: The Honorable Mark M. Nakashima, Chair
House Committee on Labor & Public Employment

The Honorable Jarrett Keohokalole, Vice Chair
House Committee on Labor & Public Employment

Members of the House Committee on Labor &
Public Employment

FROM: Tenari Ma'afala, President 
State of Hawaii Organization of Police Officers

DATE: February 3, 2015

SUBJECT: Testimony on H.B. No. 435, Relating to Firefighters

HEARING DATE: Tuesday, February 3, 2015
9:00 a.m. Conference Room 309

This bill creates a rebuttable presumption for workers compensation benefits for firefighters in regards to certain diseases and exposure to biochemical substances. The State of Hawaii Organization of Police Officers ("SHOPO") supports this bill with amendments to extend its applicability to county police officers.

Workers compensation claims for Hawaii's county police officers demonstrate exposure to biochemical hazards when arriving as first responders at fires and other hazardous materials events. Police have been known many times to search burning buildings and to bring injured victims to safety, at the same time being exposed to hazardous fumes.

While the University of Cincinnati study focuses on the meta-analysis of 32 studies regarding firefighter exposure to "various mixtures of particulates, gases, mists, fumes of an organic and/or inorganic nature and the resultant pyrolysis products" at fire scenes (Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 Studies, Grace K. LeMasters, Ph.D. et al., 2005), it must be remembered that police officers are also present at these scenes.

Additionally, county police officers are exposed to infectious diseases on a regular basis when making arrests and other situations where officers have to come into physical contact with various members of the public, who may be contagious and/or infected.

The Honorable Mark M. Nakashima, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Members of the House Committee on Labor &
Public Employment
Testimony on H.B. 435, Relating to Firefighters
February 3, 2015
Page 2

SHOPO proposes amendments as follows:

§386- Injuries covered; firefighters, county police officers. (a) In addition to the injuries covered pursuant to section 386-3, if a firefighter or county police officer develops cancer or leukemia

We strongly ask your support for our proposed amendments which would include county police officers in the coverage of this bill, and for passage of this bill.



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877

Alison H. Ueoka
Executive Director

TESTIMONY OF JANICE FUKUDA

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Mark M. Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

Tuesday, February 3, 2015
9:00 a.m.

HB 435

Chair Nakashima, Vice Chair Keohokalole, and members of the Committee, my name is Janice Fukuda, Assistant Vice President, Workers' Compensation Claims at First Insurance, testifying on behalf of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately thirty-six percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill.

The proposed language specifies descriptive conditions under which a firefighter would be entitled to Workers Compensation benefits. This bill also attempts to establish a special statute of limitations to file a claim.

HRS 386-3 Injuries covered states that "If an employee suffers personal injury either by accident arising out of and in the course of the employment or by disease proximately caused by or resulting from the nature of the employment, the employee's employer or the special compensation fund shall pay compensation to the employee or the employee's dependents as provided in this chapter." We believe this language addresses illnesses referenced in this bill that may arise in the course and scope of employment.

The provision in HRS 386-85 Presumptions requires the employer to provide substantial evidence to the contrary to refute whether an injury or illness arose in the course and scope of employment. The proposed language in this bill regarding presumption conflicts with the presumption clause and dictates the decision making authority of the Appeals Board. This denies the employer due process to challenge a claim for compensation.

HRS 386-82 Claim for Compensation; limitation of time specifically addresses exposures to carcinogens and does not require years of service as a prerequisite to file a claim.

We believe the concern this bill attempts to address is already covered in HRS 386 and that the provisions in this bill is problematic due to conflicts with various other sections in HRS 386.

Sec. 3 contains a technical error in a report due-date that is past.

For these reasons we ask that this bill be held.

Thank you for the opportunity to testify.

DENNIS W. S. CHANG

Attorney at Law, A Limited Liability Law Corporation

WORKER'S RIGHTS - LABOR LAW
WORKER'S COMPENSATION
SOCIAL SECURITY DISABILITY
LABOR UNION REPRESENTATION
EMPLOYEES RETIREMENT SYSTEM
BODILY INJURIES

February 2, 2015

THE TWENTY-EIGHTH LEGISLATURE REGULAR SESSION OF 2015

The Honorable Mark M. Nakashima, Chair
and Members of the Committee
on Labor and Public Employment
House of Representatives
State Capitol, Conference Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

RE: HB 435 Relating to Firefighters
Hearing: 2/3/2015 at 9:00 a.m.

FULL SUPPORT

Dear Chair Nakashima and Members of the Committee:

Firefighters place their lives in danger daily while protecting the public. As a direct consequence they are subjected to innumerable ultra hazardous work conditions, which have placed them at risk for a disproportionate type of medical conditions - unknown cancers, infectious diseases and other medical conditions. The unfortunate reality is after exposure to such hazardous work conditions, there is a long latency before the manifestation of these medical conditions.

I have represented firefighters and litigated the hotly contested case of the *Survivors of Steve K. Aoki, Deceased vs. State of Hawaii, Department of Transportation*, 1999 HI Wrk. Comp. LEXIS 67 (Case No. AB 96-276(WH); 9-95-10044). In that case, Aoki was a firefighter from 1980 to 1995. He was constantly exposed to toxic chemical fumes, including diesel fumes, various types of unknown materials, and waste oil from service stations and restaurants used during training and fire fighting. Though he was a heavy cigarette smoker, we maintained that his work activities contributed to his adenocarcinoma of the lungs.

The State hired experts maintaining that cigarette smoking and genetic predisposition with a family history of cancer were the likely cause of his lung cancer. One of these experts maintained that adenocarcinoma cannot be caused by anything other than cigarette smoking.

Fortunately for the survivors, we were able to successfully find Fatima Phillips, a mainland occupational medicine specialist, who was studying the effects of exposure to occupational toxins. It became a costly battle among the experts over whether fumes from diesel and other materials at work were indeed a carcinogen, which played a role in Aoki's death. If, and I emphasize if, we were by chance unable to find Dr. Phillips, who found a bulletin showing the potential of carcinogenicity of diesel exhaust, Aoki's survivors would have

DILLINGHAM TRANSPORTATION BUILDING

735 BISHOP STREET ● SUITE 320 ● HONOLULU, HAWAII 96813 ● TELEPHONE: (808) 521-4005

collected nothing in the workers' compensation process. It was sheer luck that Dr. Phillips was researching the effects of exposure to occupational toxins, and the experts hired by the State ignored or overlooked the work connection of Aoki's death.

HB No 435 is intended to address the precise problem facing firefighters like Aoki. The real public policy question is how many firefighters have been cheated or denied their legal entitlements to workers' compensation benefits by the failure to find an expert to support their claim. What we do know is that there is a disproportionate number of firefighters inflicted with cancers and other unusual diseases, and they should be elevated to a special class because of their hazardous work, consistent with the three-year study cited in Section 1 of HB No. 435.

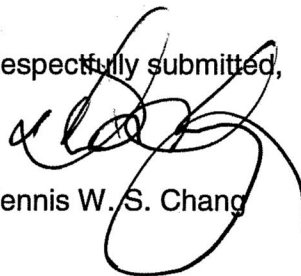
Preliminary Suggested Technical Change.

Line four of the proposed change should read "Director of Labor and Industrial Relations and Labor and Industrial Relations Appeals Board."

Conclusion.

Other opposition is that there is a current presumption to the proposed bill is nonsense. Firefighters have been robbed of benefits and the only way to correct this is to move the bill through this session. We should all embrace the passage of HB No. 435 especially when medical science is not in step with reality of the true effects of hazardous toxins and other hazardous materials.

Respectfully submitted,



Dennis W. S. Chang