



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
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March 13, 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, March 17, 2015  
Time: 10:00 a.m.  
Place: Conference Room 309, State Capitol

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

**Re: S.B. No. 675 S.D. 2 Relating to Firefighters**

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB675 SD2 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 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. Therefore, the department requests that the first sentence in section 3 be deleted.

**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

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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 SENATE BILL**

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

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 individuals 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 individual later succumbs to the injury or illness and has not filed for WC, survivors of the claimant may 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

March 13, 2015

TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR

For Hearing on Tuesday, March 17, 2015  
10:00 a.m., Conference Room 309

BY

JAMES K. NISHIMOTO  
DIRECTOR

**Senate Bill No. 675, S.D. 2**  
**Relating to Firefighters**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide comments on S.B. 675, S.D. 2.

The purposes of S.B. 675, S.D. 2, 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 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.

Third, 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.

Finally, in light of the apparent interest in having a cancer presumption specific to firefighters in the workers' compensation law, we would recommend convening a task force of stakeholders to first study the issue and make its recommendations—as proposed in H.C.R. 7 and S.C.R. 6—before any changes are made to the existing statute.

From: mailinglist@capitol.hawaii.gov  
Sent: Monday, March 16, 2015 10:02 AM  
To: LABtestimony  
Cc: kmizusawa@honolulu.gov  
Subject: Submitted testimony for SB675 on Mar 17, 2015 10:00AM

**SB675**

Submitted on: 3/16/2015

Testimony for LAB on Mar 17, 2015 10:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
PAUL K. W. AU	City & County of Honolulu	Comments Only	Yes

Comments: Paul K. W. Au to teestify

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From: mailinglist@capitol.hawaii.gov  
Sent: Friday, March 13, 2015 1:48 PM  
To: LABtestimony  
Cc: Irogers@honolulu.gov  
Subject: Submitted testimony for SB675 on Mar 17, 2015 10:00AM

**SB675**

Submitted on: 3/13/2015

Testimony for LAB on Mar 17, 2015 10:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lloyd Rogers	Honolulu Fire Department	Support	Yes

Comments: Assistant Chief Socrates Bratakos will testify on behalf of Fire Chief Manuel Neves. For questions please contact Lloyd Rogers at 723-7176 or Irogers@honolulu.gov

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# HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO  
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HOUSE OF REPRESENTATIVES  
THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015

March 17, 2015

Committee on Labor and Public Employment

Testimony by  
Hawaii Fire Fighters Association

S.B. 675 SD2            Relating to Firefighters

My name is Robert H. Lee and I am the President of the Hawaii Fire Fighters Association (HFFA), Local 1463, AFL-CIO. HFFA represents approximately 2,100 active-duty professional fire fighters throughout the State. We support S.B. 675 SD2, which provides fire fighters with comprehensive medical coverage through workers compensation by establishing a rebuttable presumption. S.B. 675 SD2 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.

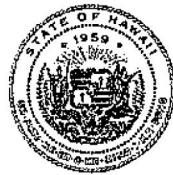
More recent studies, including 2010 report by the Underwriters Laboratories Inc. regarding fire fighters exposure to smoke particulates established that because 99+% of smoke particles are less than 1 micron in diameter making it invisible to the naked eye, it is difficult to determine whether or not "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 S.B. 675 SD2.



**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 16, 2015

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

Dear Chair Nakashima:

Subject: Senate Bill (SB) 675, Senate Draft (SD) 2 Relating to Firefighters

I am Manuel P. Neves, Chair of the Hawaii State Fire Council (SFC). The SFC supports SB 675, SD 2 with the recommended revisions to Section 3. The bill 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 biochemical substances contracted the condition in the course of 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 to be in compliance with federal and state health and safety laws. Current Hawaii Occupational Safety and Health (HIOSH) standards require employers to develop, implement, and maintain safety programs, which include hazard assessment, training, and retraining as necessary.

We propose to delete the phrase "Hawaii state fire council" in Section 3 (a), (b), and (c) and replace it with "the county fire departments." We also propose a revision to Section 3 (a) to delete the phrase "develop minimum standards and procedures" and replace it with "implement and maintain safety programs." These proposed revisions provide a more accurate description of fire department responsibilities and eliminate duplicating a responsibility upon the SFC. The SFC agrees to prepare a report that

The Honorable Mark Nakashima, Chair  
Page 2  
March 16, 2015

compiles the information from the county fire departments in Section 3 (d) with a clarifying revision.

Fire personnel are responsible for protecting life and property from the hazards of fire, hazardous materials, medical, and other emergencies. The health and safety of its personnel are high priorities for each fire department. Education and training are a continuous part of the fire department's responsibilities, and national health and safety standards are incorporated into the fire department's policies and procedures. Purchasing of up-to-date protective equipment, apparatus, and tools, keeps pace with technological advances in these areas. Supervisory oversight ensures that policies and procedures are complied with and reinforced. HIOSH inspections provide additional oversight of the best safety practices for personnel and fire stations.

The SFC strongly urges your committee's support and passage of SB 675, SD 2 with the recommended revisions to Section 3.

Should you have questions, please contact SFC Administrator Socrates Bratakos at 723-7105 or [sbratakos@honolulu.gov](mailto:sbratakos@honolulu.gov).

Sincerely,



MANUEL P. NEVES  
Chair

MPN/LR:clc

Attachment

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## 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 implement and maintain safety programs 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 2016.

March 11, 2015

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

Dear Chair Nakashima:

**Subject: S.B. 675 SD2 Relating to Firefighters**

My name is Garrett K. Kim, I am Hawaii Director of the Firefighter Cancer Support Network and a Captain at the Honoka'a fire station on the Island of Hawaii. I am writing in support of S.B 675 SD2 which would provide medical coverage and disability retirement benefits for certain medical conditions that are presumed to arise out of the course of their employment.

Numerous studies have shown that firefighters are at increased risk for many types of cancers. Cancer is now the leading cause of death for firefighters nationwide. The cause of these cancers can be directly attributed to the exposure of numerous carcinogens in the course of our duties as firefighters. The World Health Organization, has identified 10 known carcinogens and 24 probable or possible carcinogens in fire smoke. Diesel exhaust is another known carcinogen that Firefighters are exposed to on a daily basis.

It is hard not to be offended when others say we should not be considered a special group. What other employee shows up to work knowing that they may be exposed to 34 carcinogens, Hepatitis, HIV and numerous other threats to our health in addition to the inherent dangers of firefighting? We work in environments that if they were not emergency scenes would be shut down due to hazardous working conditions. We knowingly accept these risks as responsibilities of our profession. All we ask is that when we are stricken with an occupationally related disease it is acknowledged as such.

Claims that this bill is redundant make no sense, if such is the case then why oppose it? Presumption will only help to facilitate the workers compensation process. California's generous presumptive laws for firefighters account for just a tiny fraction of the overall workers compensation costs, so money cannot be a justification either. Even if money was a justification for opposing this bill, what a feeble argument that would be.

Please support the firefighters that knowingly place their lives at risk for the safety of others. This bill would provide much needed support to firefighters and their families during their darkest hours. On behalf of the Firefighters of Hawaii, we ask for your support of S.B 675 SD2

Thank you for your time,

Garrett K. Kim  
Hawaii Director FireFighter Cancer Support Network  
Captain, Hawaii Fire Department  
808-937-8321

# SHOPO



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**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:** March 13, 2015

**SUBJECT:** Testimony on S.B. No. 675 SD2, Relating to Firefighters

**HEARING DATE:** Tuesday, March 17, 2015  
10:00 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.

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  
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Honolulu, Hawaii 96813  
Telephone (808) 525-5877

**Alison H. Ueoka**  
Executive Director

## TESTIMONY OF JANICE FUKUDA

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

Tuesday, March 17, 2015  
10:00 a.m.

### **SB 675, SD2**

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.

For these reasons we ask that this bill be held.

Thank you for the opportunity to testify.