

HB 913, HD1

RELATING TO MEDICAL COVERAGE
FOR FIREFIGHTERS.

HLT, LAB, FIN

HB913 HD1



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Measure Title: RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS.
Report Title: Cancer; Firefighters; Service Connected Disability; Medical Coverage
Description: Improves access for firefighters to comprehensive medical coverage and service-connected disability retirement benefits upon diagnosis with or death from cancer that is presumed to arise out of and in the course of employment. (HD1)
Companion: [SB383](#)
Package: None
Current Referral: HLT, LAB, FIN
Introducer(s): BELATTI, BROWER, EVANS, LOWEN, MCKELVEY, MIZUNO, MORIKAWA, NISHIMOTO, TAKAYAMA, TAKUMI, TOKIOKA, Yamashita

Sort by Date		Status Text
1/23/2017	H	Pending introduction.
1/25/2017	H	Pass First Reading
1/27/2017	H	Referred to HLT, LAB, FIN, referral sheet 4
1/27/2017	H	Bill scheduled to be heard by HLT on Tuesday, 01-31-17 8:30AM in House conference room 329.
1/31/2017	H	The committee(s) on HLT recommend(s) that the measure be deferred until 02-02-17 at 8:30AM.
1/31/2017	H	Bill scheduled for decision making on Thursday, 02-02-17 8:30AM in conference room 329.
1/31/2017	H	Broadcast of hearing/briefing available. See: www.capitoltv.org
2/2/2017	H	The committees on HLT recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 7 Ayes: Representative(s) Belatti, Har, Morikawa, Todd; Ayes with reservations: Representative(s) Kobayashi, Oshiro, Tupola; Noes: none; and Excused: none.
2/7/2017	H	Reported from HLT (Stand. Com. Rep. No. 88) as amended in HD 1, recommending passage on Second Reading and referral to LAB.
2/7/2017	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on LAB with none voting aye with reservations; none voting no (0) and Representative(s) Oshiro excused (1).
2/10/2017	H	Bill scheduled to be heard by LAB on Tuesday, 02-14-17 10:00AM in House conference room 309.

A BILL FOR AN ACT

RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that firefighters can be
2 exposed in the course of duty to contaminants that are known or
3 suspected to cause cancer. Although fire departments are
4 expected to use the best equipment and management practices
5 available, firefighters are still regularly exposed to multiple
6 carcinogens since residential and vehicle fires release highly
7 concentrated toxicants from burning plastics and other
8 synthetics. In October 2013, researchers from the National
9 Institute for Occupational Safety and Health published a study
10 that found that firefighters have a higher cancer risk than the
11 general population. The study looked at cancer diagnoses and
12 deaths among 30,000 firefighters from Chicago, Philadelphia, and
13 San Francisco fire departments and found that oral cancer and
14 cancers of the respiratory, digestive, and urinary systems were
15 the most common types found.

16 The legislature further finds that House Concurrent
17 Resolution No. 32, H.D.1, S.D.1, regular session of 2016,



1 convened a task force to examine cancer in the firefighting
2 profession. The task force found that some states, including
3 Arizona, California, Nevada, North Dakota, and Virginia, have
4 statutorily provided for special benefit programs for
5 firefighters diagnosed with cancer due to the higher
6 occupational risk they assume in the performance of their
7 essential public service. Providing sufficient medical coverage
8 and disability indemnity for firefighters will ensure that
9 firefighters receive proper medical treatment in a timely manner
10 and also lessen the emotional toil, financial burden, and impact
11 of decreased quality of life on firefighters diagnosed with
12 cancer and their families.

13 The purpose of this Act is to provide expanded benefits
14 equal to one hundred per cent of average weekly wages,
15 disability indemnity, and death benefits, paid for by the
16 employer. The legislature notes that this Act does not create
17 any new benefit or enhance the existing benefits available to
18 firefighters under the employees' retirement system. Rather, it
19 improves firefighters' access to comprehensive medical coverage
20 and service-connected disability retirement benefits for



1 hazardous duty related diseases that are presumed to arise out
2 of and in the course of employment.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 HAZARDOUS DUTY RELATED DISEASES TREATMENT INSURANCE BENEFITS

8 § -1 Definitions. As used in this chapter:

9 "Director" means the director of labor and industrial
10 relations.

11 "Disability" has the same meaning as in section 386-1.

12 "Firefighter" means all federal, state, and county
13 employees whose principal duties are to prevent and fight fires.

14 "Hazardous duty related disease" means cancer.

15 "Known carcinogen" means any of the carcinogenic agents
16 recognized as such by the International Agency for Research on
17 Cancer or the department of health.

18 "Total disability" means disability of such an extent that
19 a person has no reasonable prospect of finding regular
20 employment of any kind in the normal labor market.



1 § -2 Health coverage. (a) All individual and group
2 accident and health or sickness insurance policies issued in
3 this State, individual or group hospital or medical service plan
4 contracts, and nonprofit mutual benefit society, fraternal
5 benefit society, and health maintenance organization health plan
6 contracts shall include within their hospital and medical
7 coverage the benefits of hazardous duty related disease
8 treatment for firefighters, except that this section shall not
9 apply to insurance policies that are issued solely for single
10 diseases, or otherwise limited, specialized coverage.

11 (b) The policies and contracts set forth in subsection (a)
12 shall not be construed as reducing any obligation to provide
13 services to an individual under any publicly funded program, an
14 individualized family service plan, an individualized education
15 program, or an individualized service plan.

16 (c) Coverage under this section shall exclude coverage
17 for:

- 18 (1) Care that is custodial in nature;
- 19 (2) Services and supplies that are not clinically
20 appropriate;
- 21 (3) Services provided by family or household members;



1 (4) Treatments considered experimental; and

2 (5) Services provided outside of the State.

3 (d) Coverage under this section may be subject to
4 copayment, deductible, and coinsurance provisions of a policy
5 that are no less favorable than the copayment, deductible, and
6 coinsurance provisions for substantially all medical services
7 covered by the plan contract.

8 (e) The fees for medical care services and supplies for
9 firefighters who develop a hazardous duty related disease shall
10 be fully reimbursed based on the usual and customary charges
11 comparable to mutual benefit societies, health maintenance
12 organizations, and the Hawaii employer-union health benefits
13 trust fund for fees actually received by providers of health
14 care services and supplies.

15 § -3 Inapplicability of workers' compensation law.

16 Chapter 386 shall not apply to firefighters who develop a
17 hazardous duty related disease and receive benefits pursuant to
18 this chapter.

19 § -4 Hazardous duty related disease benefits;

20 screenings. (a) If a firefighter develops a hazardous duty
21 related disease, the condition shall be presumed to arise out of



1 and in the course of employment as a firefighter. The benefits
2 shall include a benefit equal to one hundred per cent of the
3 firefighter's average weekly wages, disability indemnity, and
4 death benefits paid for by the employer.

5 (b) The presumption under subsection (a) shall be
6 rebuttable only by a finding of substantial evidence to the
7 contrary. The presumption shall be extended to a firefighter in
8 perpetuity following termination of service.

9 (c) The employer shall pay for annual appropriate
10 screenings and preventative screenings for hazardous duty
11 related diseases for the firefighter; provided that the
12 firefighter need not be diagnosed with a hazardous duty related
13 disease as a condition for payment by the employer of the costs
14 of receiving a preventative screening for a hazardous duty
15 related disease.

16 § -5 Disability retirement. (a) If a firefighter who
17 has completed one or more years of credited service develops a
18 hazardous duty related disease or dies due to a hazardous duty
19 related disease, the death or hazardous duty related disease
20 shall be presumed to arise out of and in the course of
21 employment; provided that the firefighter shall have taken a



1 physical examination upon becoming a firefighter, or
2 subsequently thereto, that failed to reveal any evidence of the
3 condition or impairment to health.

4 The benefits that are awarded upon manifestation of or
5 death from a hazardous duty related disease shall include full
6 hospital, surgical, medical treatment, disability indemnity, and
7 death benefits, as provided by this chapter and chapter 88. The
8 computation of benefits authorized pursuant to this section
9 shall not include the firefighter's credited vacation or sick
10 leave while undergoing medical treatment for the condition.

11 (b) Notwithstanding the existence of nonindustrial
12 predisposing or contributing factors, any firefighter
13 permanently incapacitated from the performance of duty as a
14 result of a hazardous duty related disease, shall receive a
15 service-connected disability retirement if the firefighter was
16 exposed to a known carcinogen due to the performance of job
17 duties.

18 (c) The presumption under subsection (a) shall be
19 rebuttable only by a finding of substantial evidence to the
20 contrary. This presumption shall be extended to a firefighter
21 in perpetuity following termination of service.



1 § -6 **Payment after death.** When a firefighter is
2 entitled to weekly income and indemnity benefits for permanent
3 total disability and dies from any cause other than a hazardous
4 duty related disease, payment of any unpaid balance of the
5 benefits to the extent that the employer is liable therefor,
6 shall be made to the firefighter's dependents as follows:

- 7 (1) To a dependent widow, widower, or reciprocal
8 beneficiary, for the use of the widow, widower, or
9 reciprocal beneficiary, and the dependent children, if
10 any. The director may from time to time apportion
11 such compensation among the widow, widower, or
12 reciprocal beneficiary, and any dependent children;
- 13 (2) If there be no dependent widow, widower, or reciprocal
14 beneficiary, but one or more dependent children, then
15 to such child or children to be divided equally among
16 them if more than one;
- 17 (3) If there be no dependent widow, widower, reciprocal
18 beneficiary, or child, but there be a dependent
19 parent, then to such parent, or if both parents be
20 dependent, to both of them, to be divided equally
21 between them; or if there be no such parents, but a



1 dependent grandparent, then to such grandparent, or if
2 more than one, then to all of them to be divided
3 equally among them; and

4 (4) If there be no dependent widow, widower, reciprocal
5 beneficiary, child, parent, or grandparent, but there
6 be a dependent grandchild, brother, or sister, then to
7 such dependent, or if more than one, then to all of
8 them to be divided equally among them.

9 § -7 Total disability; permanent; temporary. (a) Where
10 a hazardous duty related disease causes permanent total
11 disability, the employer shall pay the firefighter a weekly
12 benefit equal to one hundred per cent of the firefighter's
13 weekly wages.

14 The employer shall pay permanent total disability benefits
15 promptly as they accrue to the firefighter entitled to the
16 benefits without waiting for a decision from the director. The
17 first payment of benefits shall become due and shall be paid no
18 later than on the tenth day after the employer has been notified
19 of the occurrence of the total disability and thereafter shall
20 be paid weekly.



1 (b) When a hazardous duty related disease causes total
2 disability not determined to be permanent in character, the
3 employer shall pay the firefighter a weekly benefit of one
4 hundred per cent of the firefighter's average weekly wages for
5 the duration of the disability. If a firefighter is unable to
6 complete a regular daily work shift due to a hazardous duty
7 related disease, the firefighter shall be deemed totally
8 disabled for work for that day.

9 The employer shall pay temporary total disability benefits
10 promptly as they accrue to the firefighter entitled thereto
11 without waiting for a decision from the director. The first
12 payment of benefits shall become due and shall be paid no later
13 than on the tenth day after the employer has been notified of
14 the occurrence of the total disability and thereafter shall be
15 paid weekly.

16 The payment of benefits pursuant to this subsection shall
17 only be terminated if the firefighter is able to resume work.
18 When the employer is of the opinion that temporary total
19 disability benefits should be terminated, the employer shall
20 notify the firefighter in writing at least two weeks prior to
21 the date when the last payment is to be made. The notice shall



1 give the reason for stopping payment and shall inform the
2 firefighter that the firefighter may make a written request to
3 the director for a hearing if the firefighter disagrees with the
4 employer. Upon receipt of the request from the firefighter, the
5 director shall conduct a hearing as expeditiously as possible
6 and render a prompt decision. If the firefighter is unable to
7 perform light work, if offered, temporary total disability
8 benefits shall not be discontinued based solely on the inability
9 to perform or continue to perform light work.

10 **§ -8 Entitlement to and rate of compensation. (a)**

11 Where a hazardous duty related disease causes death, the
12 employer shall pay funeral expenses not to exceed ten times the
13 maximum weekly benefit rate to the mortician and burial expenses
14 not to exceed five times the maximum weekly benefit rate to the
15 cemetery selected by the family including a reciprocal
16 beneficiary or next of kin of the deceased or in the absence of
17 such family including a reciprocal beneficiary or next of kin,
18 by the employer. Such payments shall be made directly to the
19 mortician and cemetery.

20 (b) In addition, the employer shall pay weekly benefits to
21 the deceased's dependents at the percentages of the deceased's



1 average weekly wages specified below, taking into account not
2 more than the maximum weekly benefit rate prescribed in this
3 section divided by .6667 and not less than the minimum
4 prescribed in this section divided by .6667.

5 To the dependent widow, widower, or reciprocal beneficiary,
6 if there are no dependent children, fifty per cent.

7 To the dependent widow, widower, or reciprocal beneficiary,
8 if there are one or more dependent children of the deceased,
9 sixty-six and two-thirds per cent. The compensation to the
10 widow, widower, or reciprocal beneficiary shall be for the use
11 and benefit of the widow, widower, or reciprocal beneficiary and
12 of the dependent children, and the director from time to time
13 may apportion the compensation between them in such way as the
14 director deems best.

15 If there is no dependent widow, widower, or reciprocal
16 beneficiary, but a dependent child, then to the child forty per
17 cent, and if there is more than one dependent child, then to the
18 children in equal parts sixty-six and two-thirds per cent.

19 If there is no dependent widow, widower, or reciprocal
20 beneficiary, or child, but there is a dependent parent, then to
21 the parent, if wholly dependent fifty per cent, or if partially



1 dependent twenty-five per cent; if both parents are dependent,
2 then one-half of the foregoing compensation to each of them; if
3 there is no dependent parent, but one or more dependent
4 grandparents, then to each of them the same compensation as to a
5 parent.

6 If there is no dependent widow, widower, or reciprocal
7 beneficiary, child, parent or grandparent, but there is a
8 dependent grandchild, brother, or sister, or two or more of
9 them, then to those dependents thirty-five per cent for one
10 dependent, increased by fifteen per cent for each additional
11 dependent, to be divided equally among the dependents if more
12 than one.

13 (c) The sum of all weekly benefits payable to the
14 dependents of the deceased employee shall not exceed one hundred
15 per cent of the firefighter's average weekly wages, computed by
16 observing the limits specified in subsection (b), if necessary,
17 the individual benefits shall be proportionally reduced.

18 (d) If there be no dependents who are entitled to benefits
19 under this section, the employer shall pay an amount equal to
20 twenty-five per cent of three hundred twelve times the effective



1 maximum weekly benefit rate provided in this section, to the
2 nondependent parent or parents.

3 **§ -9 Dependents.** (a) The following persons, and no
4 others, shall be deemed dependents and entitled to income and
5 indemnity benefits under this chapter:

6 (1) A child who is:

7 (A) Unmarried and under eighteen years;

8 (B) Unmarried and under twenty years if the child is
9 a full-time student at a high school, business
10 school, or technical school, or unmarried and
11 under twenty-two years if the child is a full-
12 time undergraduate student at a college;

13 (C) Unmarried and incapable of self-support; or

14 (D) Married and under eighteen years, if actually
15 dependent upon the deceased;

16 (2) The surviving spouse or reciprocal beneficiary, if
17 either living with the deceased at the time of the
18 hazardous duty related disease or actually dependent
19 upon the deceased;

20 (3) A parent or grandparent, if actually dependent upon
21 the deceased; and



1 (4) A grandchild, brother, or sister, if under eighteen
2 years or incapable of self-support, and actually and
3 wholly dependent upon the deceased.

4 (b) A person shall be deemed to be actually dependent upon
5 the deceased, if the deceased contributed all or a substantial
6 portion of the living expenses of that person at the time of
7 being diagnosed with a hazardous duty related disease.

8 (c) Alien dependents not residing in the United States at
9 the time that the hazardous duty related disease was diagnosed
10 or leaving the United States subsequently shall maintain annual
11 proof of such dependency as required by the director.

12 § -10 Duration of dependents' weekly benefits. (a) The
13 weekly benefits to dependents shall continue:

14 (1) To a surviving spouse or reciprocal beneficiary, until
15 death, remarriage, marriage, or entry into a new
16 reciprocal beneficiary relationship with two years'
17 compensation in one sum upon remarriage, marriage, or
18 entry into a new reciprocal beneficiary relationship;

19 (2) To or for a child:

20 (A) So long as unmarried, until attainment of the age
21 of eighteen;



- 1 (B) So long as unmarried, until attainment of the age
- 2 of:
- 3 (i) Twenty if the child is a full-time student
- 4 at a high school, business school, technical
- 5 school; or
- 6 (ii) Twenty-two if the child is a full-time
- 7 undergraduate student at a college;
- 8 (C) So long as unmarried, until termination of the
- 9 child's incapability of self-support; or
- 10 (D) Until marriage, except that in the case of a
- 11 married child under eighteen, weekly benefits
- 12 shall continue during the period of actual
- 13 dependency until attainment of the age of
- 14 eighteen;
- 15 (3) To a parent or grandparent, for the duration, whether
- 16 continuous or not, of the actual dependency, provided
- 17 that the amount of the weekly benefits shall at no
- 18 time exceed the amount payable at the time of death;
- 19 and
- 20 (4) To or for a grandchild, brother, or sister, for the
- 21 period in which that grandchild, brother, or sister



1 remains actually and wholly dependent until attainment
2 of the age of eighteen or termination of the
3 incapability of self-support.

4 (b) The aggregate weekly benefits payable on account of
5 any one death shall not exceed the product of three hundred
6 twelve times the effective maximum weekly benefit rate
7 prescribed in section -8, but this limitation shall not apply
8 with respect to benefits to a surviving spouse or reciprocal
9 beneficiary who is physically or mentally incapable of self-
10 support and unmarried as long as that surviving spouse or
11 reciprocal beneficiary remains in that condition and to benefits
12 to a child and to benefits to an unmarried child over eighteen
13 incapable of self-support as long as that unmarried child is
14 otherwise entitled to compensation.

15 (c) Upon the cessation under this section of compensation
16 to or for any person, the benefits of the remaining dependents
17 in the same class for any further period during which they are
18 entitled to weekly payments shall be in the amounts which they
19 would have received, had they been the only dependents entitled
20 to benefits at the time of the firefighter's death.



1 § -11 Presumptions. In any proceeding for the
2 enforcement of a claim for compensation under this chapter, it
3 shall be presumed, in the absence of substantial evidence to the
4 contrary, that:

- 5 (1) The claim is for a hazardous duty related disease;
- 6 (2) Sufficient notice of such hazardous duty related
7 disease has been given;
- 8 (3) The hazardous duty related disease was not caused by
9 the intoxication of the firefighter; and
- 10 (4) The hazardous duty related disease was not caused by
11 the wilful intention of the firefighter."

12 SECTION 3. This Act shall take effect on July 1, 2090.



Report Title:

Cancer; Firefighters; Service Connected Disability; Medical Coverage

Description:

Improves access for firefighters to comprehensive medical coverage and service-connected disability retirement benefits upon diagnosis with or death from cancer that is presumed to arise out of and in the course of employment. (HD1)

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



A BILL FOR AN ACT

RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that firefighters can be
2 exposed to contaminants from fires that are known or suspected
3 to cause cancer. Although fire departments are expected to use
4 the best equipment and management practices available,
5 firefighters are still exposed to multiple carcinogens and
6 toxicants through incident exposure as residential and vehicle
7 fires release highly concentrated toxicants from plastics and
8 synthetics. In October 2013, researchers from the National
9 Institute for Occupational Safety and Health published a study
10 that found that firefighters have a higher risk than the general
11 population of being diagnosed with cancer. The study looked at
12 cancers and cancer deaths among 30,000 firefighters from
13 Chicago, Philadelphia, and San Francisco fire departments and
14 found that cancers of the respiratory, digestive, and urinary
15 systems accounted for most of the higher rates of cancer in the
16 study population, suggesting that firefighters are more likely
17 to develop these types of cancers.



1 The legislature further finds that H.C.R. No. 32, H.D. 1,
2 S.D. 1, regular session of 2016, requested the convening of a
3 task force to examine cancer in the firefighting profession.
4 The task force discussed, among other things, recommendations
5 for revisions to state workers' compensation laws that expedite
6 the delivery of workers' compensation benefits for firefighters
7 diagnosed with cancer, the percentages of cancer diagnoses in
8 Hawaii for the general population compared to firefighters, and
9 estimated costs to the State and counties if there were to be an
10 increase in workers' compensation benefits for firefighters
11 diagnosed with cancer. These discussions led to the discovery
12 that others states, such as Arizona, California, Nevada, North
13 Dakota, and Virginia, have legislation that specifically
14 mentions coverage of occupational diseases for firefighters due
15 to the higher risks of contaminant exposure for firefighters.
16 Providing sufficient medical coverage for firefighters not only
17 ensures that firefighters receive the proper medical treatment
18 in a timely manner, but also lessens the impact of emotional
19 toil, financial burdens, and decreased quality of life on the
20 families of firefighters diagnosed with cancer.



1 The purpose of this Act is to provide to firefighters who
2 develop cancer expanded benefits equal to one hundred per cent
3 of average weekly wages, disability indemnity, and death
4 benefits, paid for by the employer. The intent of this Act is
5 not to be a new benefit or to enhance the employees' retirement
6 system benefits of firefighters, but to improve access for
7 firefighters to comprehensive medical coverage and service-
8 connected disability retirement benefits for hazardous duty
9 related diseases that are presumed to arise out of and in the
10 course of employment.

11 SECTION 2. The Hawaii Revised Statutes is amended by
12 adding a new chapter to be appropriately designated and to read
13 as follows:

14 "CHAPTER

15 HAZARDOUS DUTY RELATED DISEASES TREATMENT INSURANCE BENEFITS

16 § -1 Definitions. As used in this chapter:

17 "Director" means the director of labor and industrial
18 relations.

19 "Disability" shall be as defined in section 386-1.

20 "Firefighter" means all federal, state, and county
21 employees whose principal duties are to prevent and fight fires.



1 "Hazardous duty related disease" means cancer.

2 "Known carcinogen" means any of the carcinogenic agents
3 recognized by the International Agency for Research on Cancer,
4 or the state department of health.

5 "Total disability" means disability of such an extent that
6 the disabled firefighter has no reasonable prospect of finding
7 regular employment of any kind in the normal labor market.

8 § -2 Health coverage. (a) All individual and group
9 accident and health or sickness insurance policies issued in
10 this State, individual or group hospital or medical service plan
11 contracts, and nonprofit mutual benefit society, fraternal
12 benefit society, and health maintenance organization health plan
13 contracts shall include within their hospital and medical
14 coverage the benefits of hazardous duty related disease
15 treatment for firefighters, except that this section shall not
16 apply to insurance policies that are issued solely for single
17 diseases, or otherwise limited, specialized coverage.

18 (b) The policies and contracts set forth in subsection (a)
19 shall not be construed as reducing any obligation to provide
20 services to an individual under any publicly funded program, an



1 individualized family service plan, an individualized education
2 program, or an individualized service plan.

3 (c) Coverage under this section shall exclude coverage
4 for:

- 5 (1) Care that is custodial in nature;
- 6 (2) Services and supplies that are not clinically
7 appropriate;
- 8 (3) Services provided by family or household members;
- 9 (4) Treatments considered experimental; and
- 10 (5) Services provided outside of the State.

11 (d) Coverage under this section may be subject to
12 copayment, deductible, and coinsurance provisions of a policy
13 that are no less favorable than the copayment, deductible, and
14 coinsurance provisions for substantially all medical services
15 covered by the plan contract.

16 (e) The fees for medical care services and supplies for
17 firefighters who develop a hazardous duty related disease shall
18 be fully reimbursed based on the usual and customary charges
19 comparable to mutual benefit societies, health maintenance
20 organizations, and the Hawaii employer-union health benefits



1 trust fund for fees for services actually received by providers
2 of health care services.

3 **§ -3 Inapplicability of workers' compensation law.**

4 Chapter 386 shall not apply to firefighters who develop a
5 hazardous duty related disease and receive benefits pursuant to
6 this chapter.

7 **§ -4 Hazardous duty related disease benefits;**

8 **screenings.** (a) If a firefighter develops a hazardous duty
9 related disease, the condition shall be presumed to arise out of
10 and in the course of employment as a firefighter. The benefits
11 shall include a benefit equal to one hundred per cent of the
12 firefighter's average weekly wages, disability indemnity, and
13 death benefits paid for by the employer.

14 (b) The presumption under subsection (a) is rebuttable
15 only by a finding of substantial evidence to the contrary. This
16 presumption shall be extended to a firefighter in perpetuity
17 following termination of service.

18 (c) The employer shall pay for annual appropriate
19 screenings and preventative screenings for hazardous duty
20 related diseases for the firefighter; provided that the
21 firefighter need not be diagnosed with a hazardous duty related



1 disease as a condition for payment by the employer of the costs
2 of receiving a preventative screening for a hazardous duty
3 related disease.

4 § -5 Disability retirement. (a) If a firefighter who
5 has completed one or more years of credited service develops a
6 hazardous duty related disease or dies due to a hazardous duty
7 related disease, the death or hazardous duty related disease so
8 developing or manifesting itself in those cases shall be
9 presumed to arise out of and in the course of employment;
10 provided that the firefighter shall have taken a physical
11 examination upon becoming a firefighter, or subsequently
12 thereto, that failed to reveal any evidence of the condition or
13 impairment to health.

14 The benefits that are awarded for a death or hazardous duty
15 related disease shall include full hospital, surgical, medical
16 treatment, disability indemnity, and death benefits, as provided
17 by this chapter and chapter 88. The computation of benefits
18 authorized pursuant to this section shall not include the
19 firefighter's credited vacation or sick leave while undergoing
20 medical treatment for the condition.



1 (b) Notwithstanding the existence of nonindustrial
2 predisposing or contributing factors, any firefighter
3 permanently incapacitated from the performance of duty as a
4 result of a hazardous duty related disease, shall receive a
5 service-connected disability retirement if the member has been
6 exposed to a known carcinogen resulting from the performance of
7 job duties.

8 (c) The presumption under subsection (a) is rebuttable
9 only by a finding of substantial evidence to the contrary. This
10 presumption shall be extended to a firefighter in perpetuity
11 following termination of service.

12 § -6 **Payment after death.** Where a firefighter is
13 entitled to weekly income and indemnity benefits for permanent
14 total disability and dies from any cause other than a hazardous
15 duty related disease, payment of any unpaid balance of the
16 benefits to the extent that the employer is liable therefor,
17 shall be made to the firefighter's dependents as follows:

18 (1) To a dependent widow, widower, or reciprocal
19 beneficiary, for the use of the widow, widower, or
20 reciprocal beneficiary, and the dependent children, if
21 any. The director may from time to time apportion



- 1 such compensation among the widow, widower, or
 2 reciprocal beneficiary, and any dependent children;
- 3 (2) If there be no dependent widow, widower, or reciprocal
 4 beneficiary, but one or more dependent children, then
 5 to such child or children to be divided equally among
 6 them if more than one;
- 7 (3) If there be no dependent widow, widower, reciprocal
 8 beneficiary, or child, but there be a dependent
 9 parent, then to such parent, or if both parents be
 10 dependent, to both of them, to be divided equally
 11 between them; or if there be no such parents, but a
 12 dependent grandparent, then to such grandparent, or if
 13 more than one, then to all of them to be divided
 14 equally among them; and
- 15 (4) If there be no dependent widow, widower, reciprocal
 16 beneficiary, child, parent, or grandparent, but there
 17 be a dependent grandchild, brother, or sister, then to
 18 such dependent, or if more than one, then to all of
 19 them to be divided equally among them.

20 § -7 Total disability; permanent; temporary. (a) Where
 21 a hazardous duty related disease causes permanent total

1 disability, the employer shall pay the firefighter a weekly
2 benefit equal to one hundred per cent of the firefighter's
3 weekly wages.

4 The employer shall pay permanent total disability benefits
5 promptly as they accrue to the firefighter entitled to the
6 benefits without waiting for a decision from the director. The
7 first payment of benefits shall become due and shall be paid no
8 later than on the tenth day after the employer has been notified
9 of the occurrence of the total disability, and thereafter the
10 benefits due shall be paid weekly.

11 (b) Where a hazardous duty related disease causes total
12 disability not determined to be permanent in character, the
13 employer, for the duration of the disability shall pay the
14 firefighter a weekly benefit of one hundred per cent of the
15 firefighter's average weekly wages. If a firefighter is unable
16 to complete a regular daily work shift due to a hazardous duty
17 related disease, the firefighter shall be deemed totally
18 disabled for work for that day.

19 The employer shall pay temporary total disability benefits
20 promptly as they accrue to the firefighter entitled thereto
21 without waiting for a decision from the director. The first



1 payment of benefits shall become due and shall be paid no later
2 than on the tenth day after the employer has been notified of
3 the occurrence of the total disability, and thereafter the
4 benefits due shall be paid weekly.

5 The payment of these benefits shall only be terminated if
6 the firefighter is able to resume work. When the employer is of
7 the opinion that temporary total disability benefits should be
8 terminated because the firefighter is able to resume work, the
9 employer shall notify the firefighter in writing of an intent to
10 terminate the benefits at least two weeks prior to the date when
11 the last payment is to be made. The notice shall give the
12 reason for stopping payment and shall inform the firefighter
13 that the firefighter may make a written request to the director
14 for a hearing if the firefighter disagrees with the employer.
15 Upon receipt of the request from the firefighter, the director
16 shall conduct a hearing as expeditiously as possible and render
17 a prompt decision. If the firefighter is unable to perform
18 light work, if offered, temporary total disability benefits
19 shall not be discontinued based solely on the inability to
20 perform or continue to perform light work.



1 § -8 Entitlement to and rate of compensation. (a)
2 Where a hazardous duty related disease causes death, the
3 employer shall pay funeral expenses not to exceed ten times the
4 maximum weekly benefit rate to the mortician and burial expenses
5 not to exceed five times the maximum weekly benefit rate to the
6 cemetery selected by the family including a reciprocal
7 beneficiary or next of kin of the deceased or in the absence of
8 such family including a reciprocal beneficiary or next of kin,
9 by the employer. Such payments shall be made directly to the
10 mortician and cemetery.

11 (b) In addition, the employer shall pay weekly benefits to
12 the deceased's dependents at the percentages of the deceased's
13 average weekly wages specified below, taking into account not
14 more than the maximum weekly benefit rate prescribed in this
15 section divided by .6667 and not less than the minimum
16 prescribed in this section divided by .6667.

17 To the dependent widow, widower, or reciprocal beneficiary,
18 if there are no dependent children, fifty per cent.

19 To the dependent widow, widower, or reciprocal beneficiary,
20 if there are one or more dependent children of the deceased,
21 sixty-six and two-thirds per cent. The compensation to the



1 widow, widower, or reciprocal beneficiary shall be for the use
2 and benefit of the widow, widower, or reciprocal beneficiary and
3 of the dependent children, and the director from time to time
4 may apportion the compensation between them in such way as the
5 director deems best.

6 If there is no dependent widow, widower, or reciprocal
7 beneficiary, but a dependent child, then to the child forty per
8 cent, and if there is more than one dependent child, then to the
9 children in equal parts sixty-six and two-thirds per cent.

10 If there is no dependent widow, widower, or reciprocal
11 beneficiary, or child, but there is a dependent parent, then to
12 the parent, if wholly dependent fifty per cent, or if partially
13 dependent twenty-five per cent; if both parents are dependent,
14 then one-half of the foregoing compensation to each of them; if
15 there is no dependent parent, but one or more dependent
16 grandparents, then to each of them the same compensation as to a
17 parent.

18 If there is no dependent widow, widower, or reciprocal
19 beneficiary, child, parent or grandparent, but there is a
20 dependent grandchild, brother, or sister, or two or more of
21 them, then to those dependents thirty-five per cent for one



1 dependent, increased by fifteen per cent for each additional
2 dependent, to be divided equally among the dependents if more
3 than one.

4 (c) The sum of all weekly benefits payable to the
5 dependents of the deceased employee shall not exceed one hundred
6 per cent of the firefighter's average weekly wages, computed by
7 observing the limits specified in subsection (b), if necessary,
8 the individual benefits shall be proportionally reduced.

9 (d) If there be no dependents who are entitled to benefits
10 under this section, the employer shall pay an amount equal to
11 twenty-five per cent of three hundred twelve times the effective
12 maximum weekly benefit rate provided in this section, to the
13 nondependent parent or parents.

14 § -9 Dependents. (a) The following persons, and no
15 others, shall be deemed dependents and entitled to income and
16 indemnity benefits under this chapter:

- 17 (1) A child who is:
- 18 (A) Unmarried and under eighteen years;
 - 19 (B) Unmarried and under twenty years if the child is
 - 20 a full-time student at a high school, business
 - 21 school, or technical school, or unmarried and



- 1 under twenty-two years if the child is a full-
2 time undergraduate student at a college;
- 3 (C) Unmarried and incapable of self-support; or
4 (D) Married and under eighteen years, if actually
5 dependent upon the deceased;
- 6 (2) The surviving spouse or reciprocal beneficiary, if
7 either living with the deceased at the time of the
8 hazardous duty related disease or actually dependent
9 upon the deceased;
- 10 (3) A parent or grandparent, if actually dependent upon
11 the deceased; and
- 12 (4) A grandchild, brother, or sister, if under eighteen
13 years or incapable of self-support, and actually and
14 wholly dependent upon the deceased.
- 15 (b) A person shall be deemed to be actually dependent upon
16 the deceased, if the deceased contributed all or a substantial
17 portion of the living expenses of that person at the time of
18 being diagnosed with a hazardous duty related disease.
- 19 (c) Alien dependents not residing in the United States at
20 the time that the hazardous duty related disease was diagnosed



1 or leaving the United States subsequently shall maintain annual
2 proof of such dependency as required by the director.

3 § -10 Duration of dependents' weekly benefits. (a) The
4 weekly benefits to dependents shall continue:

5 (1) To a surviving spouse or reciprocal beneficiary, until
6 death, remarriage, marriage, or entry into a new
7 reciprocal beneficiary relationship with two years'
8 compensation in one sum upon remarriage, marriage, or
9 entry into a new reciprocal beneficiary relationship;

10 (2) To or for a child:

11 (A) So long as unmarried, until attainment of the age
12 of eighteen;

13 (B) So long as unmarried, until attainment of the age
14 of:

15 (i) Twenty if the child is a full-time student
16 at a high school, business school, technical
17 school; or

18 (ii) Twenty-two if the child is a full-time
19 undergraduate student at a college;

20 (C) So long as unmarried, until termination of the
21 child's incapability of self-support; or



1 (D) Until marriage, except that in the case of a
2 married child under eighteen, weekly benefits
3 shall continue during the period of actual
4 dependency until attainment of the age of
5 eighteen;

6 (3) To a parent or grandparent, for the duration, whether
7 continuous or not, of the actual dependency, provided
8 that the amount of the weekly benefits shall at no
9 time exceed the amount payable at the time of death;
10 and

11 (4) To or for a grandchild, brother, or sister, for the
12 period in which that grandchild, brother, or sister
13 remains actually and wholly dependent until attainment
14 of the age of eighteen or termination of the
15 incapability of self-support.

16 (b) The aggregate weekly benefits payable on account of
17 any one death shall not exceed the product of three hundred
18 twelve times the effective maximum weekly benefit rate
19 prescribed in section -8, but this limitation shall not apply
20 with respect to benefits to a surviving spouse or reciprocal
21 beneficiary who is physically or mentally incapable of self-



1 support and unmarried as long as that surviving spouse or
2 reciprocal beneficiary remains in that condition and to benefits
3 to a child and to benefits to an unmarried child over eighteen
4 incapable of self-support as long as that unmarried child is
5 otherwise entitled to compensation.

6 (c) Upon the cessation under this section of compensation
7 to or for any person, the benefits of the remaining dependents
8 in the same class for any further period during which they are
9 entitled to weekly payments shall be in the amounts which they
10 would have received, had they been the only dependents entitled
11 to benefits at the time of the firefighter's death.

12 § -11 Presumptions. In any proceeding for the
13 enforcement of a claim for compensation under this chapter, it
14 shall be presumed, in the absence of substantial evidence to the
15 contrary, that:

- 16 (1) The claim is for a hazardous duty related disease;
- 17 (2) Sufficient notice of such hazardous duty related
18 disease has been given;
- 19 (3) The hazardous duty related disease was not caused by
20 the intoxication of the firefighter; and



H.B. NO. 913

1 (4) The hazardous duty related disease was not caused by
 2 the wilful intention of the firefighter."

3 SECTION 3. This Act shall take effect on July 1, 2017.

4

INTRODUCED BY: Allen R. Kuttis

Tom B...

Michelle E. Lower

[Signature]

[Signature]

[Signature]

[Signature]

Cindy Evans

[Signature]

[Signature]

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H.B. NO. 913

Report Title:

Hazardous Duty Related Diseases; Firefighters; Service Connected Disability and Medical Coverage

Description:

Improves access for firefighters to comprehensive medical coverage and service-connected disability retirement benefits for hazardous duty related diseases that are presumed to arise out of and in the course of employment.

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



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

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: dllr.director@hawaii.gov

February 14, 2017

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 14, 2017
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol
From: Linda Chu Takayama, Director

Re: H.B. No. 913 H.D.1 Relating to Medical Coverage for Firefighters

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal is intended to improve access for firefighters to comprehensive medical coverage and service-connected disability retirement benefits for hazardous duty related diseases that are presumed to arise out of and in the course of employment. This bill adds a new chapter to the Hawaii Revised Statutes (HRS), entitled "Hazardous Duty Related Diseases Treatment Insurance Benefits."

The department provides comments on the proposal.

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 employment, or by disease proximately caused by or resulting from the nature of the employment.

Section 386-73.5, HRS, establishes that the director of labor and industrial relations has original jurisdiction over all controversies and disputes arising out of workers' compensation.

Section 386-85, HRS, provides a presumption of employment and compensation

for a work-covered work injury, in the absence of substantial evidence to the contrary.

Section 386-86, HRS, establishes an informal hearing process that is not subject to chapter 91.

III. COMMENTS ON THE HOUSE BILL

- The department appreciates the intent of this proposal to ensure that firefighters receive the proper medical treatment in a timely manner, as well as lessen the impact due to the effects of cancer. However, the department has concerns that this measure will set a precedent in carving out certain classes of workers from the Workers' Compensation law.
- The department recognizes that there may be times a firefighter will receive benefits covered under the proposed measure as well as chapter 386, HRS, creating a dual system. We are unclear of what administrative burden this will create given the Disability Compensation Division's limited staffing and resources.
- The department is concerned with a possible increase of insurance premiums resulting from this measure. In addition, the measure is unclear as to who is responsible for the copayment, deductible, and coinsurance provisions (firefighter or employer).
- The measure addresses the termination of benefits if the firefighter is able to resume work. In the case that the firefighter disagrees with the employer, rules need to be promulgated to address this process. In addition, the measure does not provide for a hearing process, the appeal rights, and whether chapter 91 applies to these procedures. The department has concerns with the July 1, 2017 effective date to address these procedural matters.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

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February 13, 2017

The Honorable Aaron Ling Johanson, Chair
Committee on Labor and Public Employment
House of Representatives
State Capitol, Room 426
Honolulu, Hawaii 96813

Dear Chair Johanson:

Subject: House Bill (HB) 913, House Draft (HD) 1 Relating to Medical Coverage for Firefighters

I am Manuel P. Neves, Chair of the Hawaii State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD support HB 913, HD 1, which proposes to provide fire fighters who develop cancer with expanded benefits that improves access to comprehensive medical coverage and disability benefits for hazardous duty-related diseases.

Over the last decade, the fire profession has experienced an increase in fire fighter deaths related to cancer. The University of Cincinnati and the National Institute for Occupational Safety and Health conducted studies as a result of the initial findings. They are the most comprehensive investigations into cancer-related diseases incurred by career fire fighters to date and support the initial findings. The State of Hawaii (State) cancer taskforce performed an investigative study with assistance from medical insurance companies and found that fire fighters in the State are also experiencing elevated levels of exposure to the effects of cancer-related diseases, correlating Hawaii's information with the national studies.

If passed, this bill will provide the fire fighter and their family with the financial and moral support they need during this crisis.

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The Honorable Aaron Ling Johanson, Chair
Page 2
February 13, 2017

The SFC and the HFD urge your committee's passage of HB 913, HD 1, for the welfare of our fire fighters.

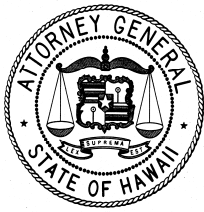
Should you have questions, please contact SFC Administrator Socrates Bratakos at 723-7105 or sbratakos@honolulu.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. P. Neves', with a stylized flourish at the end.

MANUEL P. NEVES
Chair

MPN/LR:clc



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 913, H.D. 1, RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Tuesday, February 14, 2017 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Daniel K. Jacob, Deputy Attorney General

Chair Johanson and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, and provides the following comments.

The purpose of this bill is to provide firefighters who develop cancer "expanded benefits equal to one hundred per cent of average weekly wages, disability indemnity, and death benefits, paid for by the employer."

This bill might be subject to challenge as being in violation of article III, section 14, of the Hawaii Constitution. Under article III, section 14, "Each law shall embrace but one subject, which shall be expressed in its title." The title of this bill is "Relating to Medical Coverage for Firefighters." This bill, however, covers disability indemnification and death benefits in addition to medical coverage.

To address these concerns, we recommend utilizing another bill with an appropriate title that encompasses the subject of the bill or deleting the portion of the bill that does not relate to medical coverage.

Additionally, pursuant to section 1311(d)(3)(B)(ii) of the Patient Protection and Affordable Care Act, a state shall make payments to defray the cost of any additional benefits mandated by the state that are not included within the state selected benchmark plan. Our understanding is that Hawaii's benchmark plan does not provide the coverage required by this bill. Accordingly, if this additional benefit is mandated, the State would be required to defray the cost.

Finally, pursuant to section 23-51, Hawaii Revised Statutes (HRS), before any legislative matter that mandates health insurance coverage for specific health services, specific diseases, or certain providers of health care services as part of an insurance policy can be considered, concurrent resolutions are required to be adopted that request the Auditor to prepare and submit to the Legislature a report that assesses both the social and financial effects of the proposed mandated coverage. Among other things, this bill proposes to mandate certain specific medical insurance coverage for firefighters. Our understanding is that there has been no concurrent resolution adopted regarding this coverage as required by section 23-51, HRS. Accordingly, we recommend either that the bill be held until such time as the concurrent resolutions have been adopted and the Auditor's report has been completed and submitted to the Legislature as required by section 23-51, HRS, or that the Legislature include wording within the bill that exempts this new mandate from the audit requirement set forth in section 23-51, HRS.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

TESTIMONY BY THOMAS WILLIAMS
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON

HOUSE BILL NO. 913, H.D. 1

February 14, 2017, 10:00 A.M.

RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS

Chair Johanson, Vice Chair Holt and Members of the Committee,

H.B. 913, H.D. 1 proposes to provide firefighters who develop cancer expanded benefits including service-connected disability retirement benefits for "hazardous duty related diseases" that are presumed to arise out of and in the course of employment.

The additional cancer presumption for service-connected disability retirement provided by H.B. 913, H.D. 1 represents a benefit enhancement. Under HRS 88-99, there is to be no benefit enhancement under HRS Chapter 88 until such time as the assets of the Employees' Retirement System (ERS) are 100% of the ERS's actuarial accrued liability. With an unfunded liability of \$12.4 billion and a funded ratio of 54.7% the ERS is far below 100% of its actuarial accrued liability. This bill would be in violation of HRS 88-99.

Currently, Section 88-79, HRS, provides for service-connected disability benefits for a member who is permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty or as the cumulative result of an occupational hazard. In addition, Sections 88-84 and 88-85, HRS, provide for ordinary and accidental death benefits to be paid to an ERS member's designated beneficiary, spouse or reciprocal beneficiary, and/or dependent children. Both Sections 88-79 and 88-85, HRS, already include a rebuttable presumption that firefighters, police officers and sewer workers who are permanently incapacitated for duty or who die as a result of any condition or impairment of health caused by any disease of the heart, lungs, or respiratory system, contracted the disease



Employees' Retirement System
of the State of Hawaii

while in the performance of duty and as the result of the inherent occupational hazard of exposure to smoke inhalation, toxic gases, chemical fumes, and other toxic vapors. H.B. 913, H.D. 1 proposes to add a new chapter to the Hawaii Revised Statutes that would have the effect of amending Section 88-79 and, perhaps, Section 88-85. As we view it, the new chapter proposed by H.B. 913, H.D. 1 has a number of flaws.

First, it is unclear which provisions of the new chapter proposed by H.B. 913, H.D. 1 are to apply to the ERS. The ERS does not provide health coverage as described in section 2 of the new chapter, nor does it provide weekly income and indemnity benefits for a permanent total disability as described in section 6 of the new chapter. The definitions in section 2 of the new chapter are inconsistent with ERS definitions and terminology. The definition of firefighter in section 2 includes federal employees who are not covered the ERS. The ERS does not use the terms “disability” or “total disability” in its statutes. The payments after death described in section 6 of the new chapter are inconsistent with the payments that the ERS makes for ordinary and accidental death benefits under Sections 88-84 and 88-85, HRS.

We would ask that H.B. 913, H.D. 1 be revised to make it clear which provisions of the new chapter apply and do not apply to the ERS. Further, we would recommend that any changes applicable to the ERS should be made through amendments to ERS statutes such as Sections 88-79 and 88-85 rather than through a new chapter outside of HRS Chapter 88.

Second, the presumption that the new chapter proposes to create is materially different and inconsistent with the rebuttable presumptions already present in ERS statutes. The presumptions in favor of firefighters under Sections 88-79 and 88-85, HRS, may be rebutted by “competent evidence” to the contrary. Under sections 4(b) and 5(c) of the new chapter, the presumption created by H.B. 913, H.D. 1 is rebuttable only by “substantial evidence” to the contrary, a higher standard used in workers’ compensation law. It would be anomalous to have two different standards for rebutting presumptions in the ERS statutes – one for firefighters with a hazardous duty related disease and one for firefighters, police officers, and sewer workers with conditions or impairments caused by other diseases of the heart, lungs, or respiratory system.

In addition, section 5(a) of the new chapter presumes that the death or hazardous duty related disease of a firefighter arises out of and in the course of employment. The “arise out of and in the course of employment” language is not used in the ERS statutes to describe what is required to trigger a grant of service-connected disability retirement or accidental death benefits. Service-connected disability retirement under Section 88-79 and accidental death benefits under Section 88-85 require that a firefighter’s permanent incapacity or death be the result of an “accident occurring while in the actual performance of duty at some definite time and place” or the “cumulative result of some occupational hazard.” Section 5(b) of the new chapter provides that notwithstanding the existence of non-industrial predisposing or contributing factors, a firefighter permanently incapacitated as a result of a hazardous duty related disease shall receive service-connected disability retirement if he/she has been exposed to a known carcinogen resulting from the performance of job duties. The exclusion of predisposing or

contributing factors and the requirement of exposure to a known carcinogen are not present in Section 88-79, HRS. Again, it would be anomalous for different standards and requirements to apply to firefighters incapacitated due to a hazardous duty related disease and other firefighters, police officers, and sewer workers with a condition or impairment caused by disease of the heart, lungs, or respiratory system.

Section 5(c) of the new chapter states that the presumption shall be extended to a firefighter in perpetuity following the firefighter's termination of service (and presumably retirement). However, a firefighter's application for ERS service-connected disability retirement must presently be made while the firefighter is still a member of the ERS (an active employee) and must be made within two years of the date of the firefighter's accident or the date upon which workers' compensation benefits cease, whichever is later. Please see Section 88-79(a)(2), HRS. An application for accidental death benefits must be made no later than three years after a firefighter's death. See Section 88-85.5(a). Unless corrected, the foregoing differences and inconsistencies will cause confusion, difficulties, and inconsistency in the ERS's administration of service-connected disability retirement and accidental death benefits.

Third, under section 7 of the new chapter, a firefighter whose hazardous duty related disease causes permanent total disability receives a weekly benefit equal to one hundred percent of the firefighter's weekly wages. This would be in addition to any service-connected disability retirement benefit the firefighter might receive from the ERS. If the same firefighter is also to receive service-connected disability retirement benefits from the ERS, the firefighter would likely receive more than his/her compensation as an active employee eliminating any economic incentive to return to work. ERS statutes generally limit a retired firefighter to a maximum retirement allowance of 80% of their average final compensation. See Section 88-74(b), HRS.

As of the submittal of this testimony, the Board of Trustees of the ERS has not yet reviewed H.B. 913, H.D. 1 and therefore has not yet taken a formal position on this cancer presumptive disability legislation; however, staff believes that the ERS Board of Trustees will oppose any legislation which provides for enhanced retirement benefits and the resulting increase in the unfunded liability of the System.

On behalf of the Board of Trustees and staff of ERS we wish to thank you for the opportunity to testify.

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 14, 2017

The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair
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 Johanson, Vice Chair Holt, and Members of the Committee:

**SUBJECT: House Bill No. 913
Relating to Medical Coverage for Firefighters**

H.B. 913 is intended to provide firefighters who develop cancer with (a) improved access to comprehensive medical coverage, (b) a presumption of work-relatedness for service-connected disability retirement benefits and (c) indemnity benefits outside of workers' compensation. As fully set forth below, the City and County of Honolulu has serious concerns with the bill, especially regarding the indemnity provisions set forth in H.B. 913.

The bill is clearly designed to provide firefighters who develop cancer with the same indemnity benefits, albeit in a higher amount, that the individuals would have received under Hawaii's workers' compensation law had the injuries been deemed work-related. However, H.B. 913 fails to recognize and provide the exemption from liability for workplace injuries that employers received under the "grand compromise" that led to workers' compensation laws being enacted over a century ago. Absent any such exclusivity provision, the State and counties would be subject to lawsuits from firefighters and their dependents for their injuries while also being required to provide indemnity benefits to these individuals. This would clearly result in double recovery for firefighters and/or their dependents to the fiscal detriment of the government entities that employ them.

The bill similarly fails to provide any mechanism whereby the City could either institute a third-party lawsuit against the parties responsible for the hazardous duty related disease or authorize the right of a first lien against any recovery should the

firefighter receive a judgment or settlement. This deficiency creates the potential for double recovery for the employee and/or the individual's dependents.

H.B. 913 also leaves open the question of who has jurisdiction should a dispute arise under the newly proposed chapter. While a few of the provisions covering indemnity benefits appear to give the decision-making responsibility to the Director of Labor and Industrial Relations, jurisdiction over all other issues related to compensability and indemnity are not addressed, nor is jurisdiction for those that may arise regarding the health coverage, health screening and disability retirement provisions set forth in the bill. Given the disparate components of the legislation, it is difficult to even assess where that responsibility should be placed.

The City is also concerned that H.B. 913 requires total disability benefits to be paid at 100% of the firefighter's weekly wages. Under workers' compensation, the same benefits would be paid at 66 2/3% of the firefighter's average weekly wages. From a public policy standpoint there appears to be no basis for the disparity. Moreover, paying indemnity benefits at 100% of wages creates a significant disincentive for a firefighter to return to work. We would therefore ask that the committee amend this portion of the bill so indemnity benefits are paid at 66 3/3% of average weekly wages rather than 100%.

Finally, we note there are areas of the bill that need to be clarified and/or amended. For example, "Section -8" of Section 2 refers to a "maximum weekly benefit rate" which is neither defined in the section or in "Section -1."

While the City supports the intent of the bill, we believe that additional discussions among the interested stakeholders should occur in light of the concerns expressed above. We would therefore request that decision-making on the bill be deferred until those issues can be properly addressed.

Thank you for the opportunity to testify.

Sincerely,



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-NINTH LEGISLATURE
REGULAR SESSION OF 2017

February 14, 2017

Committee on Labor and Public Employment

Testimony by
Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO

H. B. No. 913 HD 1 RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS

The Hawaii Fire Fighters Association (HFFA), Local 1463, IAFF, AFL-CIO represents more than 1,900 professional active-duty and 800 retired fire fighters throughout the State. On behalf of our members, HFFA **supports H. B. No. 913 HD 1** which improves the access for fire fighters to gain comprehensive medical coverage and service-connected disability retirement benefits upon diagnosis with or death from cancer that are presumed to arise out of and in the course of employment.

Thirty-three states and nine 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. These studies are consistent with other previous studies assessing the cancer risks in fire fighters associated with occupational exposure. As a stakeholder participating in the Cancer Presumption Task Force that convened in 2016 as a response to H.C.R. No. 32, H.D. 1, S.D. 1, HFFA is grateful that H. B. No. 913 HD 1 addresses the concerns of the fire service.

HFFA appreciates the Committee's favorable consideration of this measure and ask that you **pass H. B. No. 913 HD 1**. Thank you for the opportunity to testify.

SHOPO



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TO: The Honorable Aaron Ling Johanson, Chair
House Committee on Labor and Public Employment

The Honorable Daniel Holt, Vice-Chair
House Committee on Labor and Public Employment

Members of the House Committee on Labor and Public
Employment

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

DATE: February 13, 2017

SUBJECT: Testimony on H.B. No. 913 H.D.1, Relating to Medical Coverage
for Firefighters

HEARING: Tuesday, February 14, 2017
10:00 a.m. Conference Room 309

This bill creates a new chapter in the Hawaii Revised Statutes providing expanded benefits for firefighters who develop cancer, along with a presumption that the cancer arose out of and in the course of employment as a firefighter. The State of Hawaii Organization of Police Officers ("SHOPO") supports H.B. 913 H.D.1 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 officers have searched burning houses and buildings, prior to firefighters arrival, and have brought injured and/or helpless victims to safety, at the same time being exposed to hazardous fumes. They have done so, despite not having proper breathing apparatus and other safety equipment.

SHOPO proposes amendments as follows, under new chapter, "Hazardous Duty Related Diseases Treatment Insurance Benefits", section 1, add definition "Police officer" means all county employees whose principal duties include prevention of crime and enforcement of criminal laws." Thereafter, in sections 1 through 7, and 11, where there is "firefighter", add "and police officer".

SHOPO stands in support of firefighters receiving these proposed benefits, and also requests that amendments be made to include police officers.



An Independent Licensee of the Blue Cross and Blue Shield Association

February 14, 2017

The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair
House Committee on Labor and Public Employment

Re: HB 913, HD1 – Relating to Medical Coverage for Firefighters

Dear Chair Johanson, Vice Chair Holt, and Committee Members:

The Hawaii Medical Association (HMSA) appreciates the opportunity to testify on HB 913, HD1, that would expand access to comprehensive medical coverage and service-connected disability retirement benefits for hazardous duty related diseases for firefighters. HMSA is empathetic to the dangers and health risks Hawaii's firefighters face, and we offer comments.

As we understand this legislation, HB 913, HD1, places the administration of firefighter cancer benefits outside of the Workers Compensation (WC) system. The Bill presumes that if a firefighter contracts a cancer, that cancer was contracted as a result of the firefighter's employment. However, despite potentially being compensable under the WC system, the firefighter may seek medical service from a non-WC provider, and the firefighter's private health plan will cover the medical benefits at the firefighter's health plan's "usual and customary charge" levels. While we do cover the costs of cancer treatment-related services, bypassing the WC system may result in increased costs for insuring firefighters - a cost to the EUTF.

Although this Bill specifically addresses firefighters with cancer, we note that other groups of employees who similarly face dangerous work conditions (e.g., police officers, emergency medical technicians, wastewater system employees, employees who process solid waste) may argue for their potential WC cases to be administered outside of the WC system.

Thank you for allowing us to provide these comments on this measure.

Sincerely,

Mark K. Oto
Director, Government Relations

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 10, 2017 3:56 PM
To: LABtestimony
Cc: victor.ramos@mpd.net
Subject: *Submitted testimony for HB913 on Feb 14, 2017 10:00AM*

HB913

Submitted on: 2/10/2017

Testimony for LAB on Feb 14, 2017 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

HB913, HD1

Late Testimony

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

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LATE
LATE

WRITTEN TESTIMONY

TESTIMONY BY DEREK MIZUNO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON
HOUSE BILL NO. 913, HD1

February 14, 2017
10:00 a.m.
Room 309

LATE

RELATING TO MEDICAL COVERAGE FOR FIREFIGHTERS

Chair Johanson, Vice Chair Holt, and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees has not had an opportunity to take a position on this bill. The EUTF Board's next meeting is February 21, 2017.

This bill appears to cover hazardous duty related disease treatment for firefighters under the firefighters' EUTF or private insurance medical plans. If this is the case, EUTF staff would respectfully request that this be stated explicitly in the bill.

The Committee should also consider that if coverage for the firefighters' hazardous duty related diseases is under the EUTF or private insurance, the levels of coverage will differ based on the plan selected. The EUTF alone has six different

EUTF's Mission: We care for the health and well being of our beneficiaries by striving to provide quality benefit plans that are affordable, reliable, and meet their changing needs. We provide informed service that is excellent, courteous, and compassionate.

medical plans and three different prescription drug plans with differing levels of coverage. Additionally, the bill does not address firefighters who, in the unlikely event, do not have EUTF or private insurance.

Finally, we have concerns about adopting a presumption for eligibility as a statewide policy for an entire class of workers.

Thank you for the opportunity to testify.

Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

Wallace G. Rezendes, Jr.
Managing Director

Kilipaki K. F. Vaughan
Deputy Fire Chief

KAUA'I FIRE DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite 315, Lihu'e, Hawai'i 96766
TEL (808) 241-4980 FAX (808) 241-6508

February 13, 2017

The Honorable Aaron Ling Johanson, Chair
Committee on Labor and Public Employment
House of Representatives
State Capitol, Room 426
Honolulu, Hawaii 96813

Dear Chair Johanson:

Subject: HB 913, HD 1 Relating to Medical Coverage for Firefighters

I am Robert F. Westerman, Vice-Chair of the Hawaii State Fire Council (SFC) and Fire Chief of the Kauai Fire Department (KFD). The SFC and the KFD support HB 913, HD 1, which proposes to provide fire fighters who develop cancer with expanded benefits that improving access to comprehensive medical coverage and disability benefits for hazardous duty-related diseases.

Over the last decade, the fire profession has experienced an increase in fire fighter deaths related to cancer. The University of Cincinnati and the National Institute for Occupational Safety and Health conducted studies as a result of the initial findings. They are the most comprehensive investigations into cancer-related diseases incurred by career fire fighters to date and support the initial findings. The State of Hawaii (State) cancer taskforce performed an investigative study with assistance from medical insurance companies and found that fire fighters in the State are also experiencing elevated levels of exposure to the effects of cancer-related diseases correlating Hawaii's information with the national studies.

If passed, this bill will provide the fire fighter and their family with the financial and moral support they need during this crisis.

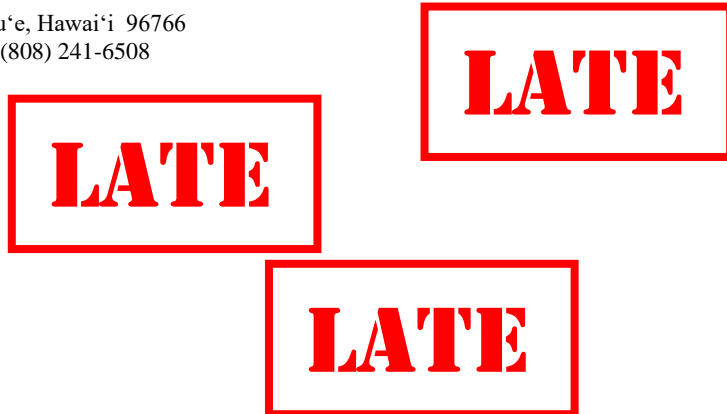
The SFC and the KFD urge your committee's passage of HB 913, HD 1 for the welfare of our fire fighters.

Please contact me at (808) 241-4975 or rwesterman@kauai.gov should you have any questions or require additional information regarding this matter.

Sincerely,

Robert Westerman
Fire Chief, County of Kaua'i

RFW/eld



Harry Kim
Mayor



Darren J. Rosario
Fire Chief

Renwick J. Victorino
Deputy Fire Chief

LATE

County of Hawai'i
HAWAI'I FIRE DEPARTMENT
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LATE

February 13, 2017

The Honorable Aaron Ling Johanson, Chair
Committee on Labor and Public Employment
House of Representatives
State Capitol, Room 426
Honolulu, Hawai'i 96813

LATE

Dear Chair Johanson:

Subject: HB 913, HD 1 RELATING TO MEDICAL COVERAGE FOR FIRE FIGHTERS
Hearing Date: Tuesday, February 14, 2017
Time/Place of Hearing: 10:00 a.m., Conference Room 309

I am Darren J. Rosario, Member of the Hawai'i State Fire Council (SFC) and Fire Chief of the Hawai'i Fire Department of the County of Hawai'i (HCFD). The SFC and the HCFD support HB 913, HD 1, which proposes to provide fire fighters who develop cancer with expanded benefits that improves access to comprehensive medical coverage and disability benefits for hazardous duty-related diseases.

Our profession has experienced an increase in fire fighter deaths related to cancer. This has steadily increased over the past 10 years. Studies conducted by The University of Cincinnati and the National Institute for Occupational Safety and Health were a result of the initial findings. They are the most comprehensive investigations into cancer-related diseases incurred by career fire fighters to date and support the initial findings. The State of Hawaii (State) cancer taskforce performed an investigative study with assistance from medical insurance companies and found that fire fighters in the State are also experiencing elevated levels of exposure to the effects of cancer-related diseases, correlating Hawaii's information with the national studies.

This bill will provide the fire fighter and their family with the financial and moral support they need during this crisis upon the onset of diagnosis. Any delay in financially supported treatment can prove to be fatal

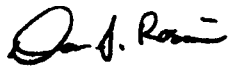
The SFC and the HCFD urge your committee's passage of HB 913, HD 1, for the welfare of our fire fighters.



The Honorable Aaron Ling Johanson, Chair
February 13, 2017
Page 2

Please do not hesitate to call me at 932-2903 or Darren.Rosario@hawaiicounty.gov should you have any questions.

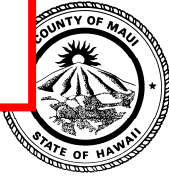
Respectfully,

A handwritten signature in black ink, appearing to read "Darren J. Rosario". The signature is written in a cursive style with a prominent initial "D".

DARREN J. ROSARIO
Fire Chief

ALAN M ARAKAWA
MAYOR

LATE



LATE

JEFFREY MURRAY
FIRE CHIEF

ROBERT SHIMADA
DEPUTY FIRE CHIEF

COUNTY OF MAUI
DEPARTMENT OF FIRE & PUBLIC SAFETY

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LATE

February 13, 2017

The Honorable Aaron Ling Johanson, Chair
Committee on Labor and Public Employment
House of Representatives
State Capitol, Room 426
Honolulu, Hawaii 96813

Dear Chair Johanson:

Subject: House Bill (HB) 913, House Draft (HD) 1 Relating to Medical Coverage for Firefighters

I am Jeffrey A. Murray, Member of the Hawaii State Fire Council (SFC) and Fire Chief of the Maui Fire Department (MFD). The SFC and the MFD support HB 913, HD 1, which proposes to provide fire fighters who develop cancer with expanded benefits that improves access to comprehensive medical coverage and disability benefits for hazardous duty-related diseases.

Over the last decade, the fire profession has experienced an increase in fire fighter deaths related to cancer. The University of Cincinnati and the National Institute for Occupational Safety and Health conducted studies as a result of the initial findings. They are the most comprehensive investigations into cancer-related diseases incurred by career fire fighters to date and support the initial findings. The State of Hawaii (State) cancer taskforce performed an investigative study with assistance from medical insurance companies and found that fire fighters in the State are also experiencing elevated levels of exposure to the effects of cancer-related diseases, correlating Hawaii's information with the national studies.

If passed, this bill will provide the fire fighter and their family with the financial and moral support they need during this crisis. The SFC and the MFD urge your committee's passage of HB 913, HD 1, for the welfare of our fire fighters.

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

Sincerely,

Handwritten signature of Jeffrey A. Murray in black ink.

JEFFREY A. MURRAY
Fire Chief