

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

February 27, 2015

**TESTIMONY TO THE  
SENATE COMMITTEE ON WAYS AND MEANS**

For Decision Making on Monday, March 2, 2015  
9:00 a.m., Conference Room 211

BY

JAMES K. NISHIMOTO  
DIRECTOR

**Senate Bill No. 675, S.D. 1  
Relating to Firefighters**

**WRITTEN TESTIMONY ONLY**

CHAIRPERSON JILL TOKUDA, VICE CHAIR RONALD KOUCHI AND MEMBERS OF  
THE SENATE COMMITTEE ON WAYS AND MEANS:

Thank you for the opportunity to provide comments on S.B. 675, S.D. 1.

The purposes of S.B. 675, S.D. 1, are to provide firefighters with comprehensive medical coverage through workers compensation benefits by establishing a rebuttable presumption that a firefighter who suffers from cancer, blood-borne infectious disease, or exposure to biochemical substances contracted the condition in the course of employment; and to require the Hawaii State Fire Council to develop standards and procedures to ensure health and safety of firefighters who may be exposed to hazardous materials in the course of their duties.

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

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

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

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



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
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February 27, 2015

To: The Honorable Jill N. Tokuda, Chair,  
The Honorable Ronald D. Kouchi, Vice Chair, and  
Members of the Senate Committee on Ways and Means

Date: Monday, March 02, 2015  
Time: 9:00 a.m.  
Place: Conference Room 211, State Capitol

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

**Re: S.B. No. 675 S.D. 1 Relating to Firefighters**

**I. OVERVIEW OF PROPOSED LEGISLATION**

S.B. 675 S.D. 1 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.

**II. CURRENT LAW**

Section 386-3, HRS, defines injury and provides that the employee's employer shall pay compensation to the employee or the employee's dependents as provided in chapter 386 if an employee suffers personal injury either by accident arising out of and in the course of the employment, or by disease proximately caused by or resulting from the nature of the employment.

Section 386-85, HRS, provides that there is a presumption that a claim for compensation is for a covered work injury. Section 386-85, HRS, provides that in

any proceeding for the enforcement of a claim for compensation under this chapter, it shall be presumed, in the absence of substantial evidence to the contrary:

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

### **III. COMMENTS ON THE SENATE BILL**

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

Section 2, paragraph (b) (page 2, lines 26-27) reads, in part, as follows, “Unless so controverted, the appeals board is bound to find in accordance with the presumption.” The DLIR notes that claims are first adjudicated at the Disability Compensation Division, therefore, if this proposal moves forward the department recommends that this sentence be deleted.

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

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

The department is also concerned that these 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).

Regarding section 3 of the bill, the DLIR notes that current Hawaii Occupational Safety and Health Division (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.

The DLIR notes that Workers' Compensation law already provides a rebuttable presumption and both health and safety laws already require the county and state fire departments to have standards.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

March 2, 2015

The Honorable Jill N. Tokuda, Chair  
and Members of the Committee  
on Ways and Means  
The Senate  
State Capitol, Room 211  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Tokuda and Members of the Committee:

SUBJECT: Senate Bill No. 675, SD 1  
Relating to Firefighters

The purpose of S.B. 675, SD 1, is to provide firefighters with comprehensive medical coverage by establishing a rebuttable presumption under workers' compensation for cancer, blood-borne infectious diseases, and staphylococcus aureus skin infections. The City and County of Honolulu offers the following comments with respect to the bill.


Hawaii Revised Statutes Section 386-85 currently provides that injuries sustained under the conditions set forth in the measure are presumed covered for workers' compensation purposes in the absence of substantial evidence to the contrary. As a result, the presumption set forth in Section 2 of S.B. 675, SD 1, is duplicative and unnecessary.

Section 2 of the measure further provides that the firefighter presumption may be rebutted by evidence that the carcinogen to which the firefighter has demonstrated exposure is not reasonably linked to the disabling cancer. However, it is also not necessary to include a specific standard for overcoming the presumption as there is already a "substantial evidence" standard set forth in the law. Adding a different standard for a limited set of injuries sustained by a finite group of employees is excessive and discriminatory. Moreover, the standard proposed by the bill fails to account for individual employees who may develop cancer due to their voluntary use of tobacco.

The Honorable Jill N. Tokuda, Chair  
and Members of the Committee  
on Ways and Means  
The Senate  
Page 2  
March 2, 2015

Finally, the City takes no position with respect to Section 3, which mandates that the State Fire Council develop minimum standards and procedures to ensure the health and safety of our firefighters and first responders.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo", with a stylized flourish at the end.

Carolee C. Kubo  
Director

cc: Mayor's Office



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

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February 27, 2015

The Honorable Jill Tokuda, Chair  
Committee on Ways and Means  
The State Senate  
State Capitol, Room 207  
Honolulu, Hawaii 96813

Dear Chair Tokuda:

Subject: Senate Bill (SB) 675, Senate Draft (SD) 1 Relating to Firefighters

I am Manuel P. Neves, Chair of the Hawaii State Fire Council (SFC). The SFC supports SB 675, SD 1 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 compiles the information from the county fire departments in Section 3 (d) with a clarifying revision.



The Honorable Jill Tokuda, Chair  
Page 2  
February 27, 2015

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 1 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.

§386- Injuries covered; firefighters. (a) In addition to the injuries covered pursuant to section 386, if a firefighter develops cancer or leukemia, suffers from develops a blood-borne infectious disease, or develops methicillin-resistant staphylococcus aureus skin infection during a period that the firefighter is in the course of employment, the cancer, leukemia, blood-borne infectious disease, or methicillin resistant staphylococcus aureus skin infection shall be presumed to arise out of and in the course of the employment. The workers' compensation benefits shall include, but not be limited to, one-hundred percent medical coverage, one-hundred percent average weekly wages, and disability indemnity and death benefits.

(b) This presumption under subsection (a) is rebuttable and may be rebutted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of requisite service, but not to exceed sixty months in any

~~circumstance, commencing with the last date actually worked in the specified capacity.~~

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

**Report Title:**  
Firefighters; Presumption

**Description:**

Provides firefighters with comprehensive medical coverage through workers compensation benefits by establishing a rebuttable presumption that a firefighter who suffers from develops cancer, blood-borne infectious disease, or condition arising as a result of hazardous material exposures to biochemical substances contracted the condition in the course of employment. Requires the Hawaii State Fire Council county fire departments to develop standards and procedures implement and maintain safety programs to ensure health and safety of firefighters who may be exposed to hazardous materials in the course of their duties. (SD1)

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

**William P. Kenoi**  
*Mayor*



**Darren J. Rosario**  
*Fire Chief*

**Renwick J. Victorino**  
*Deputy Fire Chief*

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

February 27, 2015

The Honorable Jill Tokuda, Chair  
Committee on Ways and Means  
The State Senate  
State Capitol, Room 207  
Honolulu, Hawai'i 96813

Dear Chair Tokuda:

**Subject: Senate Bill (SB) 675, Senate Draft (SD) 1 Relating to Firefighters**  
**Hearing Date: March 2, 2015**  
**Time and Place of Hearing: 9:00 a.m., Conference Room 211**

I am Darren J. Rosario, Fire Chief of the Hawai'i Fire Department of the County of Hawai'i (HCFD). The HCFD supports SB 675, SD 1 with the recommended revisions. 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 develops cancer, a blood-borne infectious disease, or as a result of hazardous material exposures, contracted the condition in the course of their employment. The revisions to Sections 1 and 2 are attached in track changes format.

The proposed revisions to Sections 1 and 2 are to provide consistent terminology found in Hawai'i Revised Statutes (HRS) §386. It seeks to provide one-hundred percent medical and average weekly wage benefits and disability indemnity and death benefits through workers compensation. We also propose that the last two sentences in Section 2 (b) be deleted. The first sentence is inaccurate as workers compensation claims are first adjudicated at the Disability Compensation Division. The second sentence is not needed as it shortens the time limitations for exposures to carcinogenic substances which is already provided in HRS §386-82. We suggest that the following sentence be substituted:

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



The Honorable Jill Tokuda, Chair  
February 27, 2015  
Page 2

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

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

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

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

The HCFD strongly urges your committees' support and passage of SB 675, SD 1 with the recommended revisions and provide full and expedited workers compensation benefits to those who risked their lives to protect all our citizens.

Please feel free to contact me at 808-932-2903 or [darren.rosario@hawaiiicounty.gov](mailto:darren.rosario@hawaiiicounty.gov) should you have any questions.

Respectfully yours.



DARREN J. ROSARIO  
Fire Chief

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## A BILL FOR AN ACT

RELATING TO FIREFIGHTERS.

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

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

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



\_\_\_\_.B. NO.\_\_\_\_

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

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

The purpose of this Act is to provide firefighters with ~~comprehensive~~ one-hundred percent medical coverage, one-hundred percent average weekly wages, and disability indemnity and death through workers' compensation benefits by establishing a rebuttable presumption that a firefighter who suffers from develops cancer, blood-borne infectious diseases, and or conditions related to hazardous material exposures to biochemical substances contracted the condition in the course of employment.

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

\_\_\_\_.B. NO.\_\_\_\_

**\$386- Injuries covered; firefighters.** (a) In addition to the injuries covered pursuant to section 386, if a firefighter develops cancer or leukemia, ~~suffers from~~ develops a blood-borne infectious disease, or develops methicillin-resistant staphylococcus aureus skin infection ~~during a period that the firefighter is in the course of employment,~~ the cancer, leukemia, blood-borne infectious disease, or methicillin resistant staphylococcus aureus skin infection shall be presumed to arise out of and in the course of the employment. The workers' compensation benefits shall include, but not be limited to, one-hundred percent medical coverage, one-hundred percent average weekly wages, and disability indemnity and death benefits.

(b) This presumption under subsection (a) is rebuttable and may be rebutted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. ~~Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of requisite service, but not to exceed sixty months in any~~

\_\_\_B. NO. \_\_\_

~~circumstance, commencing with the last date actually worked in the specified capacity.~~

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

**Report Title:**

Firefighters; Presumption

**Description:**

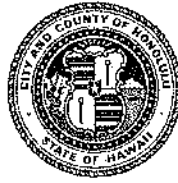
Provides firefighters with comprehensive medical coverage through workers compensation benefits by establishing a rebuttable presumption that a firefighter who ~~suffers from~~ develops cancer, blood-borne infectious disease, or condition arising as a result of hazardous material exposures to biochemical substances contracted the condition in the course of employment. Requires the Hawaii State Fire Council county fire departments to develop standards and procedures implement and maintain safety programs to ensure health and safety of firefighters who may be exposed to hazardous materials in the course of their duties. (SD1)

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

HONOLULU FIRE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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

KIRK CALDWELL  
MAYOR



MANUEL P. NEVES  
FIRE CHIEF

LIONEL CAMARA JR.  
DEPUTY FIRE CHIEF

February 27, 2015

The Honorable Jill Tokuda, Chair  
Committee on Ways and Means  
The State Senate  
State Capitol, Room 207  
Honolulu, Hawaii 96813

Dear Chair Tokuda:

Subject: Senate Bill (SB) 675, Senate Draft (SD) 1 Relating to Firefighters

I am Manuel P. Neves, Fire Chief of the Honolulu Fire Department (HFD). The HFD supports SB 675, SD 1 with the recommended revisions. The bill proposes to provide fire fighters (FF) with comprehensive medical coverage through workers compensation benefits by establishing a rebuttable presumption that a FF who suffers from cancer, a blood-borne infectious disease, or hazardous materials (HM) exposures contracted the condition in the course of their employment. The revisions to Sections 1 and 2 are attached in track changes format.

The proposed revisions to Sections 1 and 2 are to provide consistent terminology found in Hawaii Revised Statutes (HRS) §386. It seeks to provide 100 percent medical and average weekly wage benefits and disability indemnity and death benefits through workers compensation. We also propose that the last two sentences in Section 2 (b) be deleted. The first sentence is inaccurate, as workers compensation claims are first adjudicated at the Disability Compensation Division. The second sentence is not needed, as it shortens the time limitations for exposures to carcinogenic substances, which is already provided in HRS §386-82. We suggest that the following sentence be substituted:

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

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

The Honorable Jill Tokuda, Chair  
Page 2  
February 27, 2015

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

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

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

The HFD strongly urges your committee's support and passage of SB 675, SD 1 with the recommended revisions which will provide full and expedited workers compensation benefits to those who risked their lives to protect all our citizens.

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

Sincerely,



MANUEL P. NEVES  
Fire Chief

MPN/LR:clc

Attachment

---

## A BILL FOR AN ACT

RELATING TO FIREFIGHTERS.

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

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

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

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

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

The purpose of this Act is to provide firefighters with comprehensive one-hundred percent medical coverage, one-hundred percent average weekly wages, and disability indemnity and death through workers' compensation benefits by establishing a rebuttable presumption that a firefighter who suffers from develops cancer, blood-borne infectious diseases, and or conditions related to hazardous material exposures to biochemical substances contracted the condition in the course of employment.

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

§386- Injuries covered; firefighters. (a) In addition to the injuries covered pursuant to section 386, if a firefighter develops cancer or leukemia, suffers from develops a blood-borne infectious disease, or develops methicillin-resistant staphylococcus aureus skin infection during a period that the firefighter is in the course of employment, the cancer, leukemia, blood-borne infectious disease, or methicillin resistant staphylococcus aureus skin infection shall be presumed to arise out of and in the course of the employment. The workers' compensation benefits shall include, but not be limited to, one-hundred percent medical coverage, one-hundred percent average weekly wages, and disability indemnity and death benefits.

(b) This presumption under subsection (a) is rebuttable and may be rebutted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of requisite service, but not to exceed sixty months in any



~~circumstance, commencing with the last date actually worked in the specified capacity.~~

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

**Report Title:**

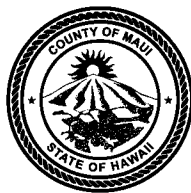
Firefighters; Presumption

**Description:**

Provides firefighters with comprehensive medical coverage through workers compensation benefits by establishing a rebuttable presumption that a firefighter who suffers ~~from~~ develops cancer, blood-borne infectious disease, or condition arising as a result of hazardous material exposures to biochemical substances contracted the condition in the course of employment. Requires the Hawaii State Fire Council county fire departments to develop standards and procedures implement and maintain safety programs to ensure health and safety of firefighters who may be exposed to hazardous materials in the course of their duties. (SD1)

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

ALAN M. ARAKAWA  
MAYOR



JEFFREY A. MURRAY  
CHIEF

ROBERT M. SHIMADA  
DEPUTY CHIEF

**COUNTY OF MAUI**  
**DEPARTMENT OF FIRE AND PUBLIC SAFETY**

200 DAIRY ROAD  
KAHULUI, MAUI, HAWAII 96732  
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February 27, 2015

The Honorable Jill Tokuda, Chair  
Committee on Ways and Means  
The State Senate  
State Capitol, Room 207  
Honolulu, Hawaii 96813

Dear Chair Tokuda:

Subject: Senate Bill (SB) 675, Senate Draft (SD) 1 Relating to Firefighters

I am Jeffrey A. Murray, Fire Chief of the Maui Fire Department (MFD). The MFD supports SB 675, SD 1 with the recommended revisions. 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 develops cancer, a blood-borne infectious disease, or as a result of hazardous material exposures, contracted the condition in the course of their employment. The revisions to Sections 1 and 2 are attached in track changes format.

The proposed revisions to Sections 1 and 2 are to provide consistent terminology found in Hawaii Revised Statutes (HRS) §386. It seeks to provide one-hundred percent medical and average weekly wage benefits and disability indemnity and death benefits through workers compensation. We also propose that the last two sentences in Section 2 (b) be deleted. The first sentence is inaccurate as workers compensation claims are first adjudicated at the Disability Compensation Division. The second sentence is not needed as it shortens the time limitations for exposures to carcinogenic substances which is already provided in HRS §386-82. We suggest that the following sentence be substituted:

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

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

The Honorable Jill Tokuda, Chair  
Page 2  
February 27, 2015

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

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

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

The MFD strongly urges your committees' support and passage of SB 675, SD 1 with the recommended revisions and provide full and expedited workers compensation benefits to those who risked their lives to protect all our citizens.

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

Sincerely,



JEFFREY A. MURRAY  
Fire Chief

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## A BILL FOR AN ACT

RELATING TO FIREFIGHTERS.

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

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

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

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

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

The purpose of this Act is to provide firefighters with ~~comprehensive one-hundred percent~~ medical coverage, one-hundred percent average weekly wages, and disability indemnity and death ~~through~~ workers' compensation benefits by establishing a rebuttable presumption that a firefighter who ~~suffers~~ from ~~develops~~ cancer, blood-borne infectious diseases, ~~and or~~ conditions related to hazardous material exposures to ~~biochemical substances~~ contracted the condition in the course of employment.

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



**§386- Injuries covered; firefighters.** (a) In addition to the injuries covered pursuant to section 386, if a firefighter develops cancer or leukemia, ~~suffers from~~ develops a blood-borne infectious disease, or develops methicillin-resistant staphylococcus aureus skin infection ~~during a period that the firefighter is in the course of employment,~~ the cancer, leukemia, blood-borne infectious disease, or methicillin resistant staphylococcus aureus skin infection shall be presumed to arise out of and in the course of the employment. The workers' compensation benefits shall include, but not be limited to, one-hundred percent medical coverage, one-hundred percent average weekly wages, and disability indemnity and death benefits.

(b) This presumption under subsection (a) is rebuttable and may be rebutted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. ~~Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of requisite service, but not to exceed sixty months in any~~

~~circumstance, commencing with the last date actually worked in the specified capacity.~~

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

**Report Title:**

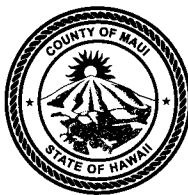
Firefighters; Presumption

**Description:**

Provides firefighters with comprehensive medical coverage through workers compensation benefits by establishing a rebuttable presumption that a firefighter who ~~suffers from~~develops cancer, blood-borne infectious disease, or condition arising as a result of hazardous material exposures to biochemical substances contracted the condition in the course of employment. Requires the ~~Hawaii State Fire Council~~county fire departments to ~~develop standards and procedures~~implement and maintain safety programs to ensure health and safety of firefighters who may be exposed to hazardous materials in the course of their duties. (SD1)

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ALAN M. ARAKAWA  
MAYOR



JEFFREY A. MURRAY  
CHIEF

ROBERT M. SHIMADA  
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**COUNTY OF MAUI**  
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February 27, 2015

The Honorable Jill Tokuda, Chair  
Committee on Ways and Means  
The State Senate  
State Capitol, Room 207  
Honolulu, Hawaii 96813

Dear Chair Tokuda:

Subject: Senate Bill (SB) 675, Senate Draft (SD) 1 Relating to 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 SB 675, SD 1 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



The Honorable Jill Tokuda, Chair  
Page 2  
February 27, 2015

responsibility upon the SFC. The SFC agrees to prepare a report that 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 and the MFD strongly urge your committee's support and passage of SB 675, SD 1 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,

A handwritten signature in black ink, appearing to read "Jeffrey A. Murray", with a stylized flourish at the end.

JEFFREY A. MURRAY  
Fire Chief

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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.

## **TESTIMONY OF JANICE FUKUDA**

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### **COMMITTEE ON WAYS AND MEANS**

Senator Jill N. Tokuda, Chair

Senator Ronald D. Kouchi, Vice Chair

Monday, March 2, 2015

9:00 a.m.

### **SB 675, SD1**

Chair Tokuda, Vice Chair Kouchi and members of the Committees, 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.