

WORKERS' COMPENSATION: FIREFIGHTERS' CANCER

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House Bill 4473 (Substitute H-1)

Sponsor: Rep. Jennifer Haase

Committee: Labor

First Analysis (4-1-09)

BRIEF SUMMARY: The bill would create a presumption that certain cancers found in firefighters are job-related, thus making the firefighters with those cancers eligible for worker's compensation, as long as they had not smoked cigarettes or used tobacco products during the five years prior to filing a claim.

FISCAL IMPACT: The bill would have no significant impact on the state or local governmental units with a full-time fire department. The Department of Energy, Labor, and Economic Growth has indicated that it would anticipate very few worker's compensation claims under the expanded provisions of the bill. Continuing law provides that firefighters (or their families) would have to first apply for whatever pension benefits are available, with the presumption of then making a worker's compensation claim if ineligible for pension benefits. This provision, the department indicates, would tend to cover most situations.

THE APPARENT PROBLEM:

The International Association of Fire Fighters (a union affiliated with the AFL-CIO and the Canadian Labor Congress that represents 280,000 firefighters) conducts an annual "Death and Injury Survey." During a 10-year period, 1990-1999, professional fire fighters experienced 342 line-of-duty deaths, more than 500 occupational disease deaths, 349,509 injuries, and 6,577 forced retirements due to occupationally induced diseases or injuries.

There are more than 5,000 fulltime professional firefighters in Michigan. When they fight fires they encounter many toxic chemicals, most often unknowingly. Despite this occupational hazard, they willingly confront these dangers in order to protect the communities where fires rage.

Generally, occupational health experts rely on the International Agency for Research on Cancer (IARC) to categorize chemicals for their potential to cause cancer in people. Studies have revealed that firefighters are commonly exposed to many known carcinogens, including asbestos, benzene, benzo[a]pyrene, formaldehyde, and soot. Firefighters also are frequently exposed to probable human carcinogens such as 1,3 butadiene, diesel engine exhaust, and combustible wood products.

Scores of studies have located toxic agents in fires. For example, a Harvard study that examined the levels of air contaminants at more than 200 structure fires detected the carcinogen benzene in 92 percent of samples; half were over one part per million—the

current Occupational Safety and Health Administration permissible exposure level. About five percent of the samples were above 10 parts per million.

Personal protective equipment—for example, respirators and turn-out gear—does not completely eliminate hazardous risk if exposure is high, as commonly occurs in fire fighting. For example, the National Institute for Occupational Safety and Health studied benzene at 22 fires, collecting samples via probes placed inside and outside the masks of working firefighters. The levels of benzene *inside* the mask ranged as high as 21 parts per million.

Unlike with other hazardous occupations, firefighters' work-sites cannot be made safer in order to prevent exposure to lethal substances. Consequently researchers have concluded that firefighters have a "probable cancer risk" or a "possible cancer risk" for several cancers. See Background Information.

Twenty-three states in the U.S. have laws in effect to presume that if firefighters develop certain kinds of cancer, the disease is occupationally induced. Legislation has been introduced to achieve that end in Michigan.

THE CONTENT OF THE BILL:

The bill would amend the Worker's Disability Compensation Act to establish certain cancers as a presumption of eligibility for firefighters under the worker's compensation program, if the firefighters were not substantial and consistent users of cigarettes or other tobacco products during the five years prior to the injury.

Specifically under the bill, "personal injury" would include all respiratory tract, bladder, skin, brain, kidney, blood, and lymphatic cancers for a member of a fully paid fire department who was actively employed for 60 months or more at the time the cancer manifested itself. The subsection would only apply to a member of a fully paid fire department or public fire authority who was exposed to the hazards incidental to fire suppression, rescue, or emergency medical services in the performance of work-related duties for the department of authority. (This would be in addition to the current provision that includes respiratory diseases and heart diseases under "personal injury" for firefighters and for certain public safety officers.)

These diseases would be presumed to arise out of and in the course of employment, *in the absence of affirmative evidence of non-work related causation, or specific incidents that establish a cause independent of the employment. Neither mere evidence that the condition was pre-existing, nor an abstract medical opinion that the employment was not the cause of that disease or condition, would be sufficient to overcome the presumption.* However, if scientific evidence were introduced that a member of a fully paid fire department or public fire authority had been a substantial and consistent user of cigarettes or other tobacco products within the five years immediately preceding the date of the injury, and that this use was a significant factor in the cause, aggravation, or progression of the cancer, then the diseases noted above would *not* be considered as arising out of and in the course of employment.

Currently, the section being amended says that "personal injury" for the purposes of workers' compensation for various public safety personnel and firefighters includes respiratory and heart diseases, and says that illnesses resulting from them *are deemed to arise out of and in the course of employment in the absence of evidence to the contrary*. Instead of this phrase, the bill would apply the new standard described in the earlier paragraph to these diseases as well.

The bill specifies that this conditional presumption would apply to the medical benefits provided under Section 315 of the act. The bill also specifies that if an employee were eligible for any pension benefits, that eligibility would not prohibit the employee (or the dependents of that employee) from receiving benefits under Section 315 for the medical expenses (or portion of medical expenses) that are not provided for by the pension program.

MCL 418.405

BACKGROUND INFORMATION:

To learn further information about how firefighters are exposed to harmful substances at the fire scene as well as at the firehouse, see LeMasters, G. K., Genaidy, A. M., Succop, P., Deddens, J., Sobeih, T., Barriera-Viruet, H. Dunning, K., & Lockey, J. (2006). "Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 Studies." *Journal of Environmental Medicine*, Vol. 48, No. 11, pp 1189-1202.

ARGUMENTS:

For:

Proponents of this legislation argue that firefighters are at risk for many cancers because of the toxic contaminants they encounter while working to stop fires—contaminants like benzene which is a known carcinogen. They cite more than 20 studies—conducted in the U. S., Canada, Australia, and Denmark—to offer evidence that firefighters' *exposure* to toxic chemicals, their *incidence* of cancers, and their health *risks* for developing cancers far exceed normal exposure, incidence, and risk experienced in the general population.

For example, brain cancer can be caused by chemical exposures to vinyl chloride, benzene, polycyclic aromatic hydrocarbons, and other compounds that firefighters encounter—and studies have shown that firefighters have *two to three times higher risk of brain cancer*. Further, skin cancer can result from exposure to soot containing polycyclic aromatic hydrocarbons, and measured exposures shown in studies have found firefighters have a *threefold increased risk of skin cancer*. Finally, leukemia, lymphoma, and multiple myeloma (cancers of the blood and lymphatic system) can result from exposure to benzene, vinyl chloride, and other chemicals. Firefighters—exposed to high concentrations of benzene in almost all fires—have a *two times increased risk of blood and lymphatic cancers*. Studies also indicate up to *two times higher risk of gastrointestinal cancers*, and a *two to four times increased risk of genitourinary cancers*. Researchers point out that these increased risks actually understate the case because

firefighters begin their careers far more healthy and fit than others in the general population.

Proponents point out that 24 states have laws that presume that if a firefighter develops cancer, it is occupationally induced. Those states are Alabama, Alaska, Arizona, California, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Rhode Island, South Dakota, Texas, Virginia, Washington, and Wisconsin. In each of these states, worker's compensation boards increasingly recognize certain cancers in firefighters as employment-related.

Because the scientific evidence demonstrates that firefighters suffer from certain kinds of cancer due to their fire fighting exposures to known carcinogens, Michigan's worker's compensation law should presume that a firefighter's cancer is occupationally-related. In that way, firefighters will be eligible for compensation, assuming they have no history of smoking or the use of other tobacco products.

Against:

Opponents of this legislation argue that worker's compensation benefit determinations should be made on a case-by-case basis, not by state or federally mandated presumptions. Eligibility should be based on injuries that result out of, and in the course of, employment. They argue that with regard to occupationally-induced cancer among firefighters, the scientific research is, to date, unpersuasive as to causality. Further, by creating a preference for a class of employees and shifting the burden of proof to the employer, the basic principle of the worker's compensation system is eroded.

Opponents also argue that the legislation would increase the cost to municipal governments, and others, at a time when local officials must control costs.

Finally, opponents—and in particular, the Michigan Chamber of Commerce—raise several questions, noting that the legislation is overly broad in its construction. They ask:

- Would the bill provide presumptive eligibility to *any* employee of a fire department, regardless if he or she had ever fought a single fire?
- Would a firefighter who worked on the job for two years in his 20s and who developed cancer in his 60s have presumptive eligibility?
- Should the worker's compensation program be required to pay for the treatment of preventable or naturally occurring cancers, such as those brought on by a lifetime of poor diet or lifestyle choices (e.g. drinking) or family history?
- Is the employer's burden of proof insurmountable; that is, would it be possible for an employer to prove/show that an illness or injury occurred away from work since employers are not with their employees 24 hours a day, 7 days a week, monitoring their environment, diets, or exposure to carcinogens---nor are they able to know what employees may have done 5, 10, or more years before they started on the job?

POSITIONS:

The Service Employees International Union supports the bill. (3-18-09)

The Michigan AFL-CIO supports the bill. (4-1-09)

The Michigan Professional Fire Fighters Union supports the bill. (3-18-09)

Bay City Fire Fighters Local 116 supports the bill. (3-18-09)

The United Auto Workers International Union supports the bill. (3-18-09)

The Lansing Fire Fighters IAFF Local 421 supports the bill. (3-18-09)

The Portage Fire Department supports the bill. (3-18-09)

The IAFF supports the bill. (3-18-09)

The Detroit Fire Fighters Association supports the bill. (3-18-09)

The Michigan Municipal League opposes the bill. (4-1-09)

The City of Grand Rapids opposes the bill. (3-18-09)

The Insurance Institute of Michigan opposes the bill. (3-18-09)

The Michigan Chamber of Commerce opposes the bill. (4-1-09)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.