

Testimony on HB 27
by Karen Turano
on behalf of the Ohio Association of Professional Firefighters
and the Ohio Association for Justice
May 16, 2017

Chairman Brinkman, Vice Chair Henne, Ranking Member Bocchieri,

My name is Karen Turano and I am a workers' compensation attorney practicing here in Columbus with the law firm of Connor, Kimmet & Hafenstein. I also have a personal connection to this legislation as my husband, Thad, is a Lt. with the Columbus Fire Department where he battled blazes for the past 16 years

I am testifying today on behalf of the Ohio Association for Professional Firefighters and the Ohio Association for Justice in order to provide a legal perspective on a specific provision that was added to the most recent substitute bill. This new provision, found in Sec. 4123.68 (X)(2)(b), which begins on line 3292, says that the presumption that a firefighter incurred cancer in the course of work is rebuttable if the firefighter failed to use or improperly used protective equipment. The OAPFF and the OAJ oppose this provision primarily because the provision introduces the concept of fault under tort law to our no-fault workers' comp system.

1. I would like remind the committee that the Ohio workers' comp system is a no-fault system. In exchange for providing injured workers with medical care and compensation to replace lost wages, Ohio's no-fault system gives employers legal protection from workplace injury lawsuits. This grand bargain has served as the cornerstone of Ohio workers' comp system for over 100 years and is so proclaimed by the Ohio Constitution.
2. The Ohio Supreme Court most recently upheld the doctrine that Ohio's workers' comp law is a no fault system in 2007 decision. (State ex rel. Gross v. Indus. Comm., 115 Ohio St.3d 249, 2007-Ohio-4916).
3. The introduction of a fault analysis to determine whether a firefighter properly wore safety equipment also opens the door to intentional tort lawsuits against the employer. Questions will arise as to whether the equipment provided by the employer was effective in preventing cancer. I believe the legal recourse of the introduction of the fault analysis to the BWC system will be legal recourse for each and every time the employer failed to provide appropriate safety equipment.

4. Finally, the introduction of the fault analysis for the equipment opens the door for legal complexities regarding contributory negligence. Courts will be asked to determine how much negligent behavior did the firefighter contribute by failing to or improperly using protective gear and how much did that negligent behavior contribute to their cancer?

5. To the best of my knowledge, this committee has not been presented with evidence to show/establish that there is a real problem with firefighters not wearing the protective equipment. How widespread is this alleged failure to use or improper use equipment among fire fighters? I must question where or why employers believe that the inability to use/wear protective equipment is contributing to the elevated cancer statistics enough to prevent/rebut a BWC claim. What evidence can employers' show or rely on that the inability of their employees to use protective equipment has caused their cancer? I would question whether the employer has provided the appropriate protective gear/and training to enable its employees to effectively use the provided safety equipment.

Mr. Chairman, members, I respectfully request that you remove this equipment rebuttal provision. I recommend we wait a few years to gain some experience with the new fire fighter cancer legislation before making amendments. Let's base any future changes on real evidence of problems.

Mr. Chairman, if you or other members have questions, I'll do my best to answer them.