



175 S. Third St. Suite 510 Columbus, OH 43215 – (614) 284-4394 - jbrown@omlohio.org

TO: Chairman Jay Hottinger  
Members of the Ohio Senate Insurance Committee

FROM: Josh Brown, Esq.  
Director of Communications & Legislative Advocate, Ohio Municipal League  
Executive Director, Ohio Association of Public Safety Directors

RE: Suggestions for Amending Senate Bill (SB) 27

Dear Chairman Hottinger,

Thank you for allowing us to testify again about Senate Bill 27.

### **RESPONSE TO THE VIDEO SHOWN AT THE LAST HEARING ON THIS MATTER**

At the last hearing on this bill, a video was shown that implied that the Ohio's municipal officials stand as an obstacle to firefighters getting treatment for cancer. First, the "interview" that was shown from our office was not shown in its entirety and it was misleading about what occurred at that encounter. Secondly, we want to reiterate that no firefighter is being denied treatment for cancer. **The issue here is how a firefighter's treatment will be paid for, not whether it will be paid for.** At the Ohio Municipal League (OML), our members are not only managers of public safety departments, but we are also members of our communities and care deeply about those who serve our communities. Thank you for allowing us to respond to that misleading video here today.

No person is saying that cancer is not a horrible disease or that firefighters do not get it. No person here is lacking in sympathy or care for those with this disease. And if it is contracted through work, no person then thinks that Workers Compensation should not cover it.

### **WHY THIS COMMITTEE SHOULD NOT VOTE IN FAVOR OF THIS BILL TODAY**

SB 27 is a fundamentally flawed bill with little evidentiary basis. The evidence about firefighter cancer does not support the conclusion that firefighters are at a higher risk for most cancers than the general public—and if there is evidence to that effect, current law provides path into the Workers Compensation system. This undermines SB 27's primary basis.

The Ohio Workers Compensation system is supposed to pay for work-related injuries only. Our municipalities provide health insurance for non-work-related injuries. This has been a pillar of the system for over 100 years.

Today, we have brought in an expert, Kris Kachline, who lives in Pennsylvania, a state that passed similar legislation in 2011. He is a lawyer who has litigated dozens of the very cases Ohio will have to litigate if this bill passes. He will go through the research regarding firefighter cancer rates for this Committee. The evidence will show that cancer cannot be treated in a generalized way, as SB 27 does. Rather, all cancers are different.

Because of the manner in which all cancers are different, I wrote a letter to Sen. Patton (attached) suggesting that the determination of whether a particular types of cancer are work-related injuries must be done on a periodic, open, and fair basis. The ORC is for settled issues of science—not issues where the evidence is completely unsettled.

Municipal public safety managers want to create a mechanism that can respond to the evidence as it evolves. The Workers Compensation legal system should be flexible to the science, because the science is unsettled at this point. Once it is closer to being settled, we believe the legislature should then embed those conclusions in the ORC. Until then, we support a process to monitor the evidence and make the law adjust to it on an ongoing basis.

In the letter to Sen. Patton we offered three suggested amendments. The one that was a point of contention between us was our suggestion that specific types of cancer not be enumerated in the bill – but rather, there should be a Committee or state agency that would review the evidence about firefighter cancer rates on a periodic basis, and promulgate rules based on that evidence. More detail about the suggestion is in the attached letter.

Our expert will now testify as to what the evidence actually says about firefighter cancer. He will show that there is no evidence that firefighters have higher rates of contracting several of the cancers listed in SB 27. He will show that there is difficulty in showing causation among others. He will explain how and why some studies show inconsistent results about this issue.

The legislature and municipal officials are deeply concerned about this issue. However, the current evidence does not support the conclusion that firefighters’ rates of certain cancers are so high that Ohio law should mandate a presumption that every one of them is work-related. This supports our suggested amendment.

*Because of the manner in which SB 27 attempts to enumerate specific types of cancer, while failing to provide any fair, open, or periodic process for ongoing review of the evidence related to this issue, and this bill is not supported by the available evidence, we therefore recommend that this Committee should not vote in favor of SB 27.*

p

**ATTACHMENT: LETTER TO SEN. PATTON:**

TO: Senator Tom Patton

FROM: Josh Brown, Esq.  
Legislative Advocate & Policy Analyst  
Ohio Municipal League

RE: Suggestions for Amending Senate Bill (SB) 27

Dear Senator Patton,

I was pleased to meet with you on Friday and thank you for the time. I hope you were satisfied with our presentation in which we discussed the evidence regarding any possible link between firefighting and cancer. At the end, we discussed the amendments that the Ohio Municipal League (OML) would like to suggest. If these amendments are incorporated into the bill, the OML would switch its status on the bill to “interested party.” We hope you agree that the amendments we suggest are justified by the evidence we presented on Friday.

**WHAT SB 27 DOES**

SB 27 says that a firefighter who has been assigned to at least three years of hazardous duty and contracts certain types of cancer, is presumed to have incurred or contracted it in the course of the firefighter’s employment. The consequence is that the firefighter’s treatment would be paid for by Ohio’s Worker Compensation system or pension system rather than the firefighter’s employer-provided health insurance. *We want to stress—above all else—that we will do whatever it takes to ensure that all cancer victims receive the care they need. Here, we are discussing how to pay for it, not whether it should be paid for.*

**SUGGESTION 1 AND 2: MAINTAINING THE INTEGRITY OF  
THE WORKERS COMPENSATION SYSTEM**

Ohio’s Workers Compensation system is paid for by Ohio’s employers. One of the essential pillars of the system, that has allowed it to be solvent, is that it covers work-related injuries only. Theoretically, this is because the employer takes responsibility for what happens to an employee in the course of his/her employment.

Here, if a firefighter were to contract or incur cancer as a result of the work they do for our communities, municipal employers would not object to seeing that paid for through the Workers Compensation system. However, Ohio’s municipal employers provide generous health insurance plans for employees who contract or incur their illness outside of work.

To ensure that claims made under the Workers Compensation system are work-related, we make the following two suggestions (in addition to the third laid out below).

- 1) There is no greater link between any activity and cancer, than that of tobacco use and cancer. Tobacco use would create a non-work-related causal connection too strong to ignore. We would ask that any employee who is or ever has been a tobacco user would have their care provided by the employer-provided health insurer, not Workers Compensation.
- 2) The rate of cancer among the general population spikes dramatically at about the age of 70. We would suggest that no person over the age of 70 would receive any presumption that their cancer was incurred or contracted in the course of employment. Of course, they would still be permitted to go through the process of making their claim without a presumption in their favor.

### **OCCUPATIONAL DISEASES AND WORKERS COMPENSATION**

One of the problems relevant to SB 27 and Ohio's Workers Compensation system is that viewing slightly elevated risks for cancer as an "occupational disease" is not consistent with the specific diseases currently listed as "occupational diseases" in the Workers Compensation section of the ORC. Each of the currently listed "occupational diseases" are examples where the disease and a particular profession are inextricably linked. We know that cancer is epidemic among the general population and is not unique to firefighters in any way.

### **WHAT WE SHOWED ON FRIDAY REGARDING THE CURRENT FIREFIGHTER CANCER RESEARCH**

Last Friday, we discussed several items. First, I was very pleased with our discussion about how cancer has affected us both very personally. Hopefully, we can understand that both of us are dealing in good faith with the best of motives. Next, we discussed that the science related to cancer is evolving and that this is an epidemic among the general populace. Also, currently, it is nearly impossible to determine the actual cause of most cancers in individual patients. We also showed you that the totality of the body of research regarding firefighter cancer show many different things for different types of cancers.

#### **Framework for This Discussion:**

One cannot generalize about cancer. Different types of cancer vary dramatically and those types vary in individual patients. There is a saying the oncology profession: "if you have seen one cancer, you've seen one cancer." Consequently, we want to present our legislative suggestions within a three-tiered framework: 1) cancer generally, 2) specific types of cancer categorically, and 3) case/patient specific cancers.

#### **1) Cancer Generally**

One of the biggest problems with SB 27 is that it comes relatively close to treating all cancers generally the same. We know that this is an inaccurate way to view cancer. To illustrate, I will review a comparison between brain and lung cancer to testicular and skin cancer, as we discussed last Friday.

In some cancers, such as brain and lung cancer, we showed you on Friday that there is absolutely no evidence of a link between firefighting and those types of cancer. In other cases, such as testicular cancer, some studies have said there is “probably” a slightly increased risk for firefighters—but here we showed, according to those very reports, that the population of firefighters with that particular cancer is likely to be higher by only a small percentage than the general population. Further, we also do not have any indication as to why firefighters might have a higher risk for this particular type of cancer—without determining causation, it makes it much more difficult to be sure the disease is work-related.

Further, when these studies show elevated rates among firefighters for certain cancers, they sometimes show that it is just as likely that the population percentage is the same as the general public. In other cases, such as skin cancer or colon cancer, the cancer risk that firefighters face is related to non-work-related factors such as family history, testing rates, and geography.

*The point is this: a periodic review of specific types of cancer is needed, in conjunction with adjudication of individual cases of cancer, rather than the generalized approach found in SB 27. Below, we lay out a path to achieve this that we hope will be acceptable to all parties.*

## **2) Individual Cases of Cancer**

If the risk that a firefighter has of contracting cancer is higher than the general public, then Ohio provides a clear path into the Worker’s Compensation system. ORC 4123.01 defines “occupational disease” as: “a disease contracted in the course of employment, which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally, and the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general.” ORC 4123.68 then says, “Every employee who is disabled because of the contraction of an occupational disease or the dependent of an employee whose death is caused by an occupational disease, is entitled to the compensation.”

This provision satisfactorily addresses the issue of adjudicating individual cases of cancer. These sections of ORC provide a clear path into the Workers Compensation system, without even requiring that the firefighter show that his/her individual cancer was a work-related injury. They must merely show that they had a risk of contracting cancer that is higher and different than the general public. These sections allow for an adjudication of the firefighter cancer issue on a case-specific basis, which is the most accurate way to determine whether a particular cancer was work-related or not.

Arguably, this section would also address specific types of cancer as well, because the decisions for each individual case would create precedents. However, if you feel that these sections do not adequately adjudicate the firefighter cancer issue on a cancer-specific basis, we offer the following suggestion.

**OUR SUGGESTION:**

**3) Addressing Specific Types of Cancer Categorically**

Any process intended to generalize about a particular type of cancer should be flexible, transparent, provide due process and be evidence-based. Rather than attempt through ORC to specifically enumerate the types of cancer that would get a presumption (as we showed on Friday is an inaccurate way to apply a presumption) we suggest the following: the bill would require the Director of the Ohio Bureau of Workers Compensation to hold public hearings and review the science regarding any link between cancer and firefighting and issue a report periodically, such as every two years.

The Director would then be required to assess specifically whether the available evidence shows that the link between any particular cancer and firefighting is so strong as to warrant enumerating that type of cancer as an occupational disease for firefighters. If any cancer warrants the designation of occupational disease, the BWC will promulgate rules that make that cancer one that receives a presumption that the cancer was incurred or contracted in the course of employment of firefighters and that a path into Workers Compensation under ORC 4123.01 and 4123.68 automatically applies.

**Contact:**

For follow up information or to schedule a review of the research regarding this issue, please contact:

Josh Brown, Esq.

OML Legislative Advocate and Policy Analyst

Executive Director – Ohio Association of Public Safety Directors

(614) 284-4394

[jbrown@omlohio.org](mailto:jbrown@omlohio.org)